Date: 20081020

Docket: IMM-1282-08

Citation: 2008 FC 1170

OTTAWA, Ontario, October 20, 2008

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

DANIEL SUPPIAH, DILRY MASHUDA DANIEL, PRAVIN JOASH DANIEL and AVINASH AARON DANIEL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are a family of four Tamil citizens of Sri Lanka. They lived in Colombo where the adult male applicant was employed by a company that supplied materials, including body armour, to the Sri Lankan security forces. After allegedly being extorted by Tamil militants and sought by the military, the family fled to Canada in 2001 and sought protection as refugees.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board dismissed their claim on January 22, 2003, finding them not to be credible in their claims of persecution and fear. In November 2006, the applicants filed for a pre-removal risk assessment (PRRA). It is the

negative PRRA decision, dated February 4, 2008, which is the subject of this judicial review application.

[3] The PRRA officer gave little weight to the new evidence submitted by the applicants, as it was not from disinterested parties and because some of the described events which transpired prior to their refugee hearing had not been adduced before the RPD. The officer also assessed the country conditions documentation and found that the applicants were not similarly situated to those described as at risk, given that they were from Colombo and were found not to be sought by Tamil militants or the Sri Lankan authorities. It was therefore found that they were not personally at risk of persecution or cruel and unusual punishment.

[4] The applicants submit that the officer erred:

a. by rejecting the new evidence they put forward in support of their application; and
b. by failing to provide a clear evidentiary basis for findings pursuant to section 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*).

[5] The assessment of evidence is the primary area of expertise of PRRA officers and their decisions in that regard will only be set aside by this Court where unreasonable. In assessing the reasonableness of factual findings, the Court is guided by paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, which permits the grant of relief where the decision is perverse, capricious or not based on the evidence.

[6] The applicants note that a PRRA officer can only consider new evidence pursuant to paragraph 113(a), that is, evidence which has arisen after or could not reasonably have been provided for a claimant's refugee hearing. They assert that the PRRA officer considering their case unreasonably rejected the new, additional and credible evidence they provided, thus stripping them of any possibility of success for their application.

[7] The applicants further submit that the fact that evidence is not from disinterested parties is not a clear basis for finding that it is not to be trusted. They contend that the PRRA officer ought to have provided them with an interview on the grounds that the findings of credibility were imported from the decision of the RPD and that the officer appeared to find their documents fraudulent: *Masongo v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 39.

[8] The respondent counters that the officer did not reject the new evidence the applicants submitted, but reasonably assigned it little weight and the Court should not interfere. He also notes that *Masongo* does not assist the applicants as it stands for the proposition that documents purportedly issued by a foreign government should be presumed valid absent evidence to the contrary. The documents at issue here are derived from the applicants' family, not the Sri Lankan government.

[9] The respondent also submits that the PRRA officer committed no error in referring to the credibility findings of the RPD without providing a hearing to the applicants. The applicants failed to provide any evidence to rehabilitate their credibility and the officer was entitled to find as she did.

[10] The applicants' assertions do not withstand scrutiny. The PRRA officer is tasked with the assessment of new evidence and the weight to give to it. Such findings should not be set aside by the Court unless they are outside the range of reasonable outcomes. In the instant case, the weight given to the new evidence was reasonably open to the officer and the decision will stand.

[11] Next, the applicants submit that the PRRA officer failed to provide a clear evidentiary basis to support the finding that the applicants did not face an objective risk pursuant to section 97 of the *IRPA*. Indeed, they argue that the officer failed to undertake a separate analysis of their section 97 risks by assessing those people who are similarly situated. They also contend that it was an error to fail to assess the risks faced by the two minor applicants.

[12] The respondent argues that a failure to demonstrate subjective fear can mean that a fear of personal persecution for the purpose of section 97 of the *IRPA* had also not been shown: *Alas v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1441. He submits that the officer found that the evidence showed that those Tamils objectively at risk were not similarly situated to the applicants because they were from other parts of the country or were of interest to either the Sri Lankan army or the LTTE. He also notes that the risks to the children were not raised separately by the applicants and therefore the PRRA officer did not err in failing to address them.

[13] Again, I find no error in the officer's decision. The purpose of the assessment under section 97 is to provide protection to those who do not meet the definition of a Convention refugee but who

face a real risk of persecution based on their personal circumstances. In assessing whether such protection is warranted, it is incumbent on the PRRA officer to consider any persecution the applicants themselves faced and also that faced by persons who are similarly situated and can therefore stand in as representatives. Inherent in this concept is that the selection of 'persons similarly situated' must be as close as possible to the actual identity of the claimants, whether ethnically, geographically or in other details.

[14] The officer's consideration of the objective evidence shows due consideration for the personal circumstances of the applicants and provides explanations for why those Tamils who are objectively at risk in Sri Lanka differ in their details. I find nothing unreasonable about that decision and will not set it aside.

[15] As for the failure to consider the risks faced by the children, it is clear that the PRRA officer is required to assess only those risks which are raised by the applicants. In the case at bar, no risks were raised as being faced by the children separate from those faced by their parents. It was therefore not an error to address all claims simultaneously and come to what has already been held to be a reasonable decision.

[16] For the foregoing reasons, this application is dismissed.

[17] No question of general importance was submitted for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Louis S. Tannenbaum"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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