Date: 20081020

Docket: IMM-5235-07

Citation: 2008 FC 1169

OTTAWA, Ontario, October 20, 2008

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

RAVICHANDRAN SELVARASA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Selvarasa, the applicant, seeks judicial review of the negative decision on his application for a Pre-removal Risk Assessment (PRRA). He claims to fear persecution from both the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan army.

[2] The applicant travelled from Sri Lanka to the United States, by way of Ghana and Dubai, arriving on September 22, 2006 and claiming asylum. The American authorities arrested and detained him for fraud and fraudulent use of official documents under another name. He was known by four different names. His sister, a Canadian permanent resident by means of spousal sponsorship, provided bail and he was released in July of 2007 on condition that he report to

immigration officials for removal. Rather than comply with those conditions, he came to Canada with a human smuggler and applied for refugee protection. He was deemed ineligible because of the Canada-U.S. Safe Third Country Agreement and returned to the United States.

[3] Mr. Selvarasa then returned to Canada illegally and applied again for refugee protection in Montreal. The application was again deemed ineligible and he was detained by Canadian immigration authorities because it was believed he would not report for deportation. He next applied for a pre-removal risk assessment (PRRA), which was rejected on December 4, 2007.

[4] The officer noted that she had to review and consider all evidence, as Mr. Selvarasa had not had a hearing before the Refugee Board and thus paragraph 113(a) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) did not apply. She accepted his identity but found that he had not provided sufficient evidence that he was personally targeted by the authorities and would thereby be at risk upon return. She then separately concluded that she did not find more than a mere possibility of risk on each of the grounds he had asserted: extortion by the LTTE; his psychological and physical vulnerability; and, retaliation as a failed applicant for protection.

[5] There are two issues before the Court:

a. Did the officer err in failing to consider the applicant's description of the incidents of persecution which caused him to flee Sri Lanka, found at page 48 of his Record?

b. Did the officer err in considering documents from the internet site Tamilnet.com with reservations because she held that the website belonged to a pro-Tamil group supporting an independent country for Tamils?

[6] Relief may be granted by this Court where a decision is perverse, capricious or taken without regard to the evidence. It is naturally available, then, where a tribunal ignores material evidence which points away from the final decision. This Court has held that the more central a piece of evidence is to a claim, the more important it is that a tribunal consider it: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35. On general factual findings, where a finding is reasonable, the Court should not interfere.

[7] The applicant submits that the officer erred in failing to consider the statements about his prior persecution made at page 48 of his Record. The respondent submits in return that that page was not included in his PRRA application and therefore was not in evidence before the officer. Her failure to mention it cannot be construed as erroneous. Both parties have filed affidavits in support of their positions, which are directly contradictory.

[8] It is unfortunate that neither affiant was cross-examined on her affidavit, as the Court is thereby denied an opportunity to see whether the contradiction could be somehow resolved. However, that did not occur and it is up to this Court to decide which version of events it prefers: *Molnar v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 479.

[9] In the instant case, the PRRA officer's affidavit asserts that she reviewed the contents of the PRRA application materials which had been before her when she considered Mr. Selvarasa's case and that the disputed page was not contained therein. The affidavit from the person who helped Mr. Selvarasa prepare his PRRA submissions states that the page was included and that it was "inconceivable" that it would have been left out. Given that the PRRA officer had available to her the actual file to review, I find her version of events preferable and hold that she did not err by failing to consider evidence which was not before her.

[10] In concluding that the PRRA officer's version (that page 48 was not included in the PRRA application) is preferable to that of Mr. Sivagnanam who helped the applicant prepare the application, I note the following:

- The applicant's application record at page 47 with respect to question # 50 states "Please refer to the annexed statement". The following page 48 in my view is not a statement that is annexed to the PRRA application.
- The PRRA application ends at page 49 of the application record. Pages 52 to 57 of the application record are in my view a statement that can be properly described as annexed to the application, and I am satisfied that the reference "Please refer to annexed statement" refers to pages 52-57, which are (1) a statement and (2) annexed to and after the application. In my view, page 48 does not constitute a statement annexed to the application.

Accordingly, I am satisfied on the balance of probabilities that page 48 was not part of the record submitted to the officer.

[11] I would note that the respondent's argument that it is open to Mr. Selvarasa to make another PRRA application and put all evidence, including one assumes the page currently in dispute, before that officer appears to be incorrect in law. While in general those who otherwise did not have a refugee hearing are not limited to the 'new evidence' requirement of paragraph 113(a), Mr. Selvarasa was not technically permitted to have his risk of return assessed in the first place as one who was ineligible for protection under paragraph 101(1)(e) of the *IRPA*. The relevant provisions read as follow:

101. (1) A claim is ineligible to be referred to the Refugee Protection Division if	101. (1) La demande est irrecevable dans les cas suivants :
(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence;	e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate	112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au

described in subsection 77(1).	certificat visé au paragraphe 77(1).
(2) Despite subsection (1), a person may not apply for protection if	(2) Elle n'est pas admise à demander la protection dans les cas suivants :
(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;	b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);

[12] The officer ought not to have considered this PRRA application in the first place. That said, she did not err in failing to consider a document which was not before her. The decision will therefore stand.

[13] The applicant also asserts that the officer erred in giving little weight to the documents provided by him from the Tamilnet.com website. He asserts that there is no evidence to support her statement that the Tamilnet.com website belongs to a pro-Tamil group for an independent country for Tamils. He further submits that the website is a mainstream news source on issues pertaining to the conflict in Sri Lanka and should have been considered without reservation. He also contends that the officer committed a reviewable error in failing to refer to specific documents with respect to country conditions.

[14] The respondent counters that it was open to the PRRA officer to prefer some evidence over others especially where, as in the case at bar, she explained why she did so. She further notes that

the US Department of State Report listed by the officer as one of the official sources consulted does state that Tamilnet.com is a website of the LTTE. Her finding that Tamilnet belongs to a pro-Tamil group for an independent country was based on her assessment of the evidence before her and the Court should not engage in a reweighing of that evidence.

[15] I agree with the respondent that there was reasonable evidence before the PRRA officer to support her finding that Tamilnet.com was a website belonging to the LTTE and her decision to consider material from that source with some reservation. I note that she did not refuse to consider the evidence, but merely considered it in light of its origin and in comparison with sources she considered more reliable. Such a course was open to her and her assessment of the evidence will not be vacated by this Court.

[16] This application is dismissed. No questions were proposed by the parties for certification and none arise on these facts.

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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