

Federal Court



Cour fédérale

Date: 20130417

Docket: IMM-3402-12

Citation: 2013 FC 384

Ottawa, Ontario, April 17, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

THIVYAGANTHAN THIYAGARAJAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPARATION**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2010, Mr Thivyaganthan Thiyagarajah arrived in Canada from Sri Lanka and claimed refugee protection based on his fear of persecution by the Liberation Tigers of Tamil Eelam (LTTE), the Criminal Investigation Division (CID), the Sri Lankan Army (SLA), the Karuna Group, and the Eelam People's Democratic Party (EPDP). Specifically, he alleged that the SLA had

arrested and detained him based on his perceived connection with the LTTE. A panel of the Immigration and Refugee Board dismissed his claim on the basis that his testimony was inconsistent and implausible.

[2] In 2011, Mr Thiyagarajah filed a request for a pre-removal risk assessment (PRRA). In it, he presented evidence that he contended was new – his affidavit, and letters from his sister, his uncle, a friend, a justice of the peace, and a human rights lawyer. The PRRA officer found that the affidavit and the letter from Mr Thiyagarajah's sister amounted to new evidence. The officer rejected the other documents on the basis that they could have been presented as part of Mr Thiyagarajah's refugee claim.

[3] The officer dismissed Mr Thiyagarajah's PRRA application finding that his sister's letter did not establish that he was targeted by authorities in Sri Lanka. In addition, the letter from the human rights lawyer did not actually corroborate Mr Thiyagarajah's version of events. Further, documentary evidence did not show that conditions in Sri Lanka had deteriorated since Mr Thiyagarajah's failed refugee claim. Accordingly, the officer found that there was no more than a mere possibility that Mr Thiyagarajah would experience persecution or a substantial risk of torture, cruel and unusual treatment, or death on his return to Sri Lanka.

[4] Mr Thiyagarajah argues that the officer erred in three respects. First, the officer made adverse credibility findings without convening an oral hearing. Second, the officer applied the wrong legal test. Third, the officer failed to consider relevant new evidence and, therefore, rendered an unreasonable decision.

[5] I agree that the officer's decision was unreasonable and will grant this application for judicial review on that basis alone. It is unnecessary, therefore, to consider the two other issues Mr Thiyagarajah presented.

II. The officer's treatment of the evidence

[6] The officer agreed to consider as new evidence the letter from Mr Thiyagarajah's sister. In it, she reported that the EPDP and the CID had visited her to inquire about Mr Thiyagarajah's activities in Canada, particularly his involvement in pro-LTTE activities. They told her that he would have problems if he returned to Sri Lanka. The officer concluded that this evidence did not show that Mr Thiyagarajah was being targeted since he had not been involved in any pro-LTTE activities in Canada.

[7] While the officer rejected the letter from the human rights lawyer because it was not new evidence, the officer nonetheless used the letter to discredit Mr Thiyagarajah's version of events. In his letter, the lawyer stated that Mr Thiyagarajah had been released from detention after the village headman intervened. However, Mr Thiyagarajah had previously claimed that he was released after his uncle paid a bribe or when his mother persuaded officials to liberate him.

III. Did the officer render an unreasonable decision?

[8] In my view, the officer's treatment of the evidence described above resulted in an unreasonable decision.

[9] First, because he had not been involved in pro-LTTE activities in Canada, the officer discounted the evidence that officials in Sri Lanka were interested in Mr Thiyagarajah. However, the evidence actually showed that officials may have perceived Mr Thiyagarajah as an LTTE sympathizer, whether or not they had legitimate grounds for doing so. Persecution based on perceived political opinion is a valid basis for refugee protection. The officer simply did not consider that possibility.

[10] Second, it was unreasonable for the officer to reject the evidence in the lawyer's letter that supported Mr Thiyagarajah's application while, at the same time, using the portions of it that contradicted his version of events to discredit Mr Thiyagarajah's evidence. The lawyer confirmed Mr Thiyagarajah's claim that he had been arrested by Sri Lankan forces following a bomb blast near his home. In the circumstances, the officer was bound to explain why the lawyer's evidence about Mr Thiyagarajah's release could be accepted while his corroboration of Mr Thiyagarajah's arrest and detention could not.

IV. Conclusion and Disposition

[11] In my view, the officer's treatment of the evidence resulted in an unreasonable decision. I must, therefore, allow this application for judicial review and order another officer to reassess Mr

Thiyagarajah's PRRA application. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is referred back to another officer for a reassessment.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3402-12

STYLE OF CAUSE: THIVYAGANTHAN THIYAGARAJAH
v
MCI & MPSEP

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 23, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 17, 2013

APPEARANCES:

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