

CANADA / JUDGMENT

TB9-02265

COURT

Refugee Appeal Division

DECIDED

19 August 2020

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RAD File / Dossier de la SAR : TB9-02265 TB9-02266 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Vancouver, BC Appel instruit / entendu à Date of decision August 19, 2020 Date de la décision Panel Daniel Tucci Tribunal Counsel for the persons who are the subject of the appeal Elyse Korman Barrister and Solicitor Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX XXXX (principal appellant) and XXXX XXXX XXXX XXXX (co-appellant) are citizens of Sri Lanka, appeal a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection. They request that the Refugee Appeal Division (RAD) set aside the RPD's decision under section 111(1)(b) of the Immigration and Refugee Protection Act (IRPA)¹ and find that the appellants are Convention² refugees or, in the alternative, that the RAD set aside the decision of the RPD and refer the matter back for redetermination under section 111(1)(c) of the IRPA.³ DETERMINATION OF THE APPEAL
- [2] The panel sets aside the determination of the RPD and substitutes the decision with a determination that the appellants are Convention refugees pursuant to section 96 of the IRPA.

BACKGROUND

- [3] The appellants have provided two reasons for coming to Canada and making a refugee claim. The appellants fear XXXX XXXX XXXX (XXXX), the principal appellant's former employer and former member of the Sri-Lanka Freedom Party. The appellants also fear members of the United National Party (UNP), a political party in Sri Lanka. The co-appellant was sexually assaulted by XXXX. The appellants did not make a complaint to the authorities in Sri Lanka. They also fear members of the UNP based on the fact that the principal appellant's father was a district organizer for a political party in Sri Lanka. The principal appellant fled Sri Lanka in 2015 because of his political activity and he has remained in Italy since then. The appellants believe that they will be targeted by the UNP because of their imputed political opinion.

ISSUES

- [4] The RPD rejected the claims on two grounds. The RPD member concluded that the appellants had not rebutted the presumption of state protection and that they had a viable Internal Flight Alternative (IFA) in Kandy. The appellants' counsel argues that the RPD erred by finding that the appellants did not rebut the presumption of state protection and that they have a viable IFA in Kandy. NEW EVIDENCE AND ORAL HEARING
- [5] The appellants have not submitted new evidence under section 110(4) of the IRPA and they are not seeking an oral hearing under section 110(6) of the IRPA.4 SCOPE OF RAD APPEAL
- [6] When reviewing the RPD decision, the panel is required to independently determine whether the RPD was correct in relation to each alleged error of law, fact or mixed fact and law. The panel may defer to the RPD's credibility assessment of oral testimony if the panel finds that the RPD had a meaningful advantage in the circumstances. Reasons will be provided in the panel's analysis if the panel finds that the RPD had a meaningful advantage. ANALYSIS OF THE MERITS OF THE APPEAL State Protection
- [7] The panel finds that the appellants have rebutted the presumption of state protection in Sri Lanka. The panel agrees with the RPD member that the appellants were credible and that the co-appellant was sexually assaulted by XXXX. The appellants did not report the sexual assault to the authorities. The RPD accepted that the appellants had a subjective belief that they would not receive adequate state protection if they went to the authorities to report XXXX. The RPD member concluded that appellants subjective belief was insufficient to rebut the presumption of state protection.
- [8] The RPD member found that the appellants should have approached the authorities in Sri Lanka to seek protection from XXXX because it would have been forthcoming. The panel disagrees. The panel finds that the objective evidence on Sri Lanka outlines a very difficult situation for victims of sexual violence. The objective evidence establishes that the authorities are ineffective in dealing with cases of sexual violence. There is a significant amount of sexual assaults in Sri Lanka and most are committed with impunity. The authorities in Sri Lanka are not only ineffective in dealing with sexual violence, but there is strong evidence that victims who do have the courage to make formal complaints to the authorities become victims of harassment and extortion at the hands of these same authorities.
- [9] The RPD member concluded that the authorities in Sri Lanka would provide the appellants adequate state protection in Sri Lanka because XXXX had been arrested and charged criminally in the past. In addition, the RPD member appears to have suggested that the authorities would deal with the co-appellant's case differently than it would other cases of sexual violence because the appellant had been kidnapped and sequestered by XXXX. The panel disagrees with the RPD member on this point. The panel finds that it is highly unlikely the authorities in Sri Lanka would have dealt with the co-appellant's case differently because there were other criminal offences associated with the sexual assault. The panel finds that

the authorities in Sri Lanka would have treated the co-appellant's case in a manner similar to way it deals with other cases involving sexual violence. The panel therefore finds that even if the appellants approached the authorities to report XXXX, state protection would not have been forthcoming. The panel also finds that although XXXX is or was facing criminal charges in Sri Lanka, none of these were related to sexual violence. While the authorities in Sri Lanka may deal with financial crimes in Sri Lanka, the objective evidence clearly establishes that this is not the case for sexual crimes. IFA

- [10] The RPD member determined that the appellants have a viable IFA in Kandy. The panel disagrees. The principal appellant was asked at the hearing whether he could live safely in Kandy. He stated that he could not. When asked why he could not, he mentioned that XXXX has a home in Kandy. The RPD member made no mention of this in the decision when considering Kandy as a possible IFA. The panel finds that this was an error on the part of the RPD member and, as such, the panel finds that Kandy is not a viable IFA for the appellants.
- [11] Having considered all the evidence, the panel finds that the appellants have established that they face a serious risk of persecution in Sri Lanka. The panel therefore finds that they have established their claims under section 96 of the IRPA. Having found that they have established their claims under section 96 of the IRPA, the panel does not need to assess their claims under section 97 of the IRPA. REMEDIES
- [12] For all these reasons, the panel sets aside the determination of the RPD and substitutes it by finding that the appellants have established their claims under section 96 of the IRPA. The panel therefore finds that they are Convention refugees. (signed) Daniel Tucci Daniel Tucci August 19, 2020 Date 1 Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, section 111(1)(b). 2 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention. 3 IRPA, section 111(1)(c). 4 IRPA, section 110(4); IRPA, section 110(6).

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