

Federal Court



Cour fédérale

Date: 20150331

Docket: IMM-6410-14

Citation: 2015 FC 409

Ottawa, Ontario, March 31, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

PUVANESAN THURAIRAJA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Thurairaja was a Tamil Tiger (of the Liberation Tigers of Tamil Eelam [LTTE]). This Sri Lankan separatist group has been branded as terrorist by the Canadian government. Thus, Mr. Thurairaja's claim for refugee status was rejected under article 1F of the *1951 Convention Relating to the Status of Refugees*. He was one of the persecutors, not one of the persecuted.

[2] Nevertheless, he is still entitled to Canada's protection if return to Sri Lanka would expose him to danger. He could become a protected person under s 112 of the *Immigration and Refugee Protection Act*, pursuant to s 113(d) thereof.

[3] With that in mind, he filed a pre-removal risk assessment [PRRA] application in November 2011. His application was dismissed in July 2014. This is the judicial review of that decision.

[4] He was well aware that the LTTE committed crimes against humanity. The organization had a limited brutal purpose. At his refugee hearing, he stated that he had worked with the Records Office and the Finance Department and that, as such, to use the words of the Refugee Protection Division, "he and other civilians had been responsible for collecting taxes owing the Tigers, which went particularly to pay for the fighters. He also indicated in his testimony that he was well aware that the persons being solicited for these taxes had no choice but to pay them and that they risked harsh reprisals if they refused to pay them to the Tigers." As the claimant stated himself during his testimony, "the taxes collected financed the Tigers' activities" (Tribunal Record, p 217).

[5] The civil war ended in 2009. Since then, more and more Sri Lankans of Tamil ethnicity have been returned to their country. There is great concern as to how they are treated. Mr. Thurairaja fears he will be accused of being a former LTTE member (which he was) and will be detained and mistreated by the army.

[6] The officer concluded that he would not be at serious risk. His reasoning is clearly set out in the following extracts from his notes to file:

Moreover, objective documentation indicates that there are some profiles of people with previous, real or perceived, links to the LTTE, that go beyond prior residency within an area that was controlled by the LTTE, who could need refugee protection. These profiles are:

- 1) Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka.
- 2) Former LTTE combatants or cadres.
- 3) Former LTTE combatants or cadres who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, computer branch or media (newspaper and radio).
- 4) Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE.
- 5) LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan Diaspora that provided funding and other support to the LTTE.
- 6) Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.

Thus, the Sri Lankans [sic] authorities target LTTE supporters with specific profiles. As noted previously, the applicant first worked for the LTTE in the Records Office at their camp in Tinnervelly, and then he worked in the Finance Department at their camp in Chankanai. The applicant did not demonstrate that he has the profile of one of the categories of individuals mentioned above who could be targeted by the authorities. I am not satisfied that the applicant is personally at risk in Sri Lanka because he worked for the LTTE.

[7] The quoted specific profiles come from a UNHCR Report of December 2012, which was in turn referred to in a United Kingdom Home Office report of July 2013.

[8] During argument on this judicial review, the Minister submitted that Mr. Thurairaja did not specifically raise the specter of persecution in Sri Lanka on the grounds that he was a tax collector and, in any event, the profile covered fundraisers, not tax collectors. According to the Minister, the officer had no duty to consider a possibility which had not been raised by the applicant himself.

[9] There are three reasons why this judicial review should be granted.

[10] The first reason is that the officer was required to consider any ground of persecution *i.e.* political opinion that was apparent on the face of the record, even if not specifically identified by the applicant. As Justice Rennie, as he then was, wrote at paragraph 5 of *Varga v Canada (Citizenship and Immigration)*, 2013 FC 494, [2013] FCJ No 531 (QL), “Refugee claims involve fundamental human rights. Accordingly, it is critical that the Board consider any ground raised by the evidence even if not specifically identified by the claimant”.

[11] The second reason is that, with respect to country condition documents which became available after the PRRA was filed, fairness required disclosure by the officer if the documents were novel or contained significant information indicating a change in the general country conditions which could have affected the disposition of the case (*Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461, [1998] FCJ No 565 (CA) (QL)). Profiles of

Tamils being returned to Sri Lanka have been changing in recent years. The UNHCR Report current at the time the application was filed listed six profiles of persons potentially at risk, one of which was persons suspected of having links with the LTTE. There was no elaboration of profiles of individuals within that category. Following the 2012 UNHCR Report, however, which was released after the applicant's application was filed, there was an illustrative list of profiles of persons with more elaborate links to the LTTE, such as "fundraisers". As this was novel and significant information indicating a change in the country conditions which could have an effect on Mr. Thurairaja's case, the officer had a duty to disclose this report to the applicant.

[12] The third reason judicial review should be granted is that the decision was, in any event, unreasonable. Given the reasons the applicant was excluded in the first place, it was unreasonable to distinguish tax collectors from fundraisers in the context of his PRRA. It may well be that Mr. Thurairaja would not be at risk simply because he worked for the LTTE, but given that the taxes he collected financed its activities he may well be at risk if returned.

[13] Counsel agreed at the hearing that there is no serious question of general importance to certify. I agree.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision of the senior immigration officer, Citizenship and Immigration Canada, dated 17 July 2014, rejecting the applicant's pre-removal risk assessment applicant, is set aside and the matter referred back for redetermination by a different senior immigration officer.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6410-14

STYLE OF CAUSE: PUVANESAN THURAIRAJA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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