

Federal Court



Cour fédérale

Date: 20150702

Docket: IMM-2742-14

Citation: 2015 FC 813

Ottawa, Ontario, July 2, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JENANTHAN SITTAMBALAM

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Jenanthan Sittampalam is a Tamil male and was born and raised in the northern part of Sri Lanka. He refused to become involved in Liberation Tigers of Tamil Eelam [LTTE]; however, his brother was taken by LTTE, and died in war on January 23, 2009.

[2] The applicant's family moved around and he ended up in an internally displaced persons camp. Due to fear of being taken away by the army, given his brother's involvement in the

LTTE, the applicant escaped the camp with a group of others by bribing guards. The applicant left Sri Lanka for Thailand on March 20, 2010, before making his way on the *MV Sun Sea* to Canada.

[3] The Refugee Protection Division [RPD] in denying the applicant's refugee claim focused on his overall credibility, the allegations of potential persecution, the issue of change in circumstance, and the *sur place* claim.

[4] The applicant has raised numerous issues with respect to the decision of the RPD; however, in my view, there is one that is determinative of the application and which makes it unnecessary to examine the others – the reasonableness of the *sur place* analysis done by the RPD.

[5] I have reviewed the record before the RPD and its decision, and am unable to materially distinguish the analysis done of the *sur place* claim in this case, from those in the decisions under review in *Thanabalasingam v Canada (Minister of Citizenship and Immigration)*, 2015 FC 361 [*Thanabalasingam*], *Y.S. v Canada (Minister of Citizenship and Immigration)*, 2014 FC 324, and *B381 v Canada (Minister of Citizenship and Immigration)*, 2014 FC 608.

[6] Reference is made to the latter two decisions by Justice Fothergill in *Thanabalasingam*. He notes, in particular, the relevance and importance of two documents when considering *sur place* claims from *MV Sun Sea* passengers. The first is the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, December 21,

2012 [Guidelines] which notes that failed asylum-seekers, particularly those who are Tamil, have been detained, ill-treated or tortured after being forcibly returned to Sri Lanka. The second document is a report titled *Amnesty International Concerns with respect to forced returns to Sri Lanka for passengers of the Ocean Lady and MV Sun Sea* [AI Report] which concluded that failed asylum claimants face a serious risk of detention, torture and mistreatment if the Sri Lankan government suspects that they travelled on the *MV Sun Sea*.

[7] In the decision under review, the RPD accepts that the Sri Lankan authorities “may come to know how the claimant came to Canada” but concludes without mention or analysis of either of the Guidelines or the AI Report, that because there is little evidence that he was involved in or a supporter of the LTTE, and because he was “subjected to rigorous scrutiny by Canadian officials and been subsequently released” that he would not be at risk if returned to Sri Lanka.

[8] As in *Thanabalasingam*, the RPD has ignored these relevant and contradictory documents, and has provided no reason or explanation why, notwithstanding this contradictory evidence, it is of the view that the applicant would not be at risk. This failure renders the ultimate conclusion and decision unreasonable.

[9] For these reasons, the decision will be set aside. The claim for Convention refugee status or protection in Canada will be remitted back to be determined by a differently constituted panel.

[10] Neither party proposed a question for certification nor is there one on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed and the decision under review is set aside, the applicant's claim for Convention refugee status or protection is to be determined by a differently constituted panel, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2742-14

STYLE OF CAUSE: JENANTHAN SITTAMBALAM v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: ZINN J.

DATED: JULY 2, 2015

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