

Federal Court



Cour fédérale

**Date: 20160527**

**Docket: IMM-4130-15**

**Citation: 2016 FC 587**

**Fredericton, New Brunswick, May 27, 2016**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**JAYASIRI PUVANENTHIRAM**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] Jayasiri Puvanenthiram [Ms. Puvanenthiram] seeks judicial review of the August 24, 2015 decision of the Minister of Public Safety and Emergency Preparedness [the Minister] in which he refused to exercise his discretion under former s 34(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] to grant relief from a finding of inadmissibility against Ms. Puvanenthiram. Following a recommendation from the Canada Border Services Agency

[CBSA], the Minister concluded Ms. Puvanenthiram had failed to establish that her presence in Canada would not be detrimental to the national interest.

[2] Ms. Puvanenthiram contends the Minister did not assess her case in accordance with the jurisprudence in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [Agraira] and *Afridi v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1192, which requires that the national interest assessment consider compelling factors. She contends that her prior non-violent and limited association with the *Liberation Tigers of Tamil Eelam* [LTTE] militates in her favour. She contends the Minister made unreasonable findings with respect to her level of involvement with the LTTE, her knowledge of its activities and her lack of remorse.

[3] For the reasons that follow, I would dismiss the application for judicial review.

## II. Background

[4] Ms. Puvanenthiram was born on April 29, 1975, and is a citizen of Sri Lanka. She is a member of the Tamil ethnic group. She lived in Germany from July 1998 until January 2002, where she made an unsuccessful refugee claim. Following the refusal of her refugee claim in Germany, she fled to Canada on February 1, 2002 where she again claimed refugee protection. On March 30, 2004, the Immigration Division [ID] of the Immigration and Refugee Board [IRB] found Ms. Puvanenthiram inadmissible to Canada on security grounds under paragraph 34(1)(f) of the Act. The ID concluded she was, or had been, a member of an organization engaging in

terrorism, pursuant to paragraph 34(1)(c) of the Act. As a result, the ID determined, pursuant to paragraph 101(1)(f) of the Act, that Ms. Puvanenthiram was ineligible to make a refugee claim.

[5] Ms. Puvanenthiram's statements to German officials and the Citizenship and Immigration Canada [CIC] official differed significantly from the version of events she shared in her Personal Information Form [PIF] filed in Canada and at her admissibility hearing before the IRB. In her German claim, she stated that she started working for the student wing of the LTTE in 1992 (the *Student Organization of Liberation Tigers* [SOLT]), voluntarily joined the LTTE in 1993 and attended to injured persons until 1994. She also informed German authorities that she undertook one year of basic training in self-defence which was provided by the LTTE, and that until mid-1995, her duties in the LTTE included digging bunkers, transporting injured people and assisting in hospitals. She also informed German officials that following the Sri Lankan government's attack on, and arrests at, the LTTE camp where she was working, she went to another LTTE camp located in Kilinichchi where she stayed for another three years. She stated she received weapons training from 1995 to 1998 at the Kilinichchi camp. Finally, in her German claim, she stated that she sought permission to be excused from weapons training and sought permission to leave the camp for reasons of poor health. Both requests were, according to Ms. Puvanenthiram, denied.

[6] In her PIF, and at her admissibility hearing before the IRB, her version of events was markedly different. She stated that she had not voluntarily joined or supported the LTTE and that she had assisted the organization under duress. Specifically, she stated that between 1993 and 1995 the LTTE threatened her on ten to twelve occasions in order to recruit her for a day at a

time. At her admissibility hearing before the IRB, Ms. Puvanenthiram denied having had any knowledge of or connection to the SOLT. She also testified that she had never received weapons or self-defence training from the LTTE, that she never served in the Kilinichchi camp and that she never sought permission to leave the LTTE camp for reasons of poor health. The IRB rejected that new testimony and concluded there were reasonable grounds to believe Ms. Puvanenthiram had been a willing member of the LTTE.

[7] On April 22, 2004, Ms. Puvanenthiram filed an application for leave and judicial review of the ID decision. That application was dismissed. On June 18, 2004, she applied for a Pre-Removal Risk Assessment [PRRA]. On July 20, 2004, she received a negative decision. On August 16, 2004, she filed an application for leave and judicial review before this Court of the negative PRRA decision; however, leave was denied. Meanwhile, she unsuccessfully requested a deferral of her removal order from the CBSA. On September 8, 2004, Ms. Puvanenthiram filed an application for leave and judicial review before this Court of the refusal to defer her removal. Leave was denied. On October 20, 2004, Ms. Puvanenthiram applied for leave before this Court to seek a declaration that all PRRA decisions made between December 12, 2003, and October 8, 2004, were null and void based upon her contention that the PRRA process, formerly administered by the CBSA, was flawed and biased. That application for leave was dismissed.

[8] Ms. Puvanenthiram was originally included as a secondary applicant on her husband's application for permanent residence. Due to her inadmissibility, she was removed from her husband's application, and, on October 14, 2005, she submitted an individual application for permanent residence on humanitarian and compassionate [H&C] grounds. That application was

refused on January 16, 2008. Upon an application for leave and judicial review of that decision, this Court granted the application and, on January 28, 2009, ordered a redetermination of her H&C application. As at the date of the hearing of this application, that redetermination remained outstanding. I note parenthetically that Ms. Puvanenthiram's H&C application is not affected by the *Faster Removal of Foreign Criminals Act*, SC 2014, c 16 which renders certain persons ineligible for H&C relief under s 25(1) of the Act.

[9] On September 7, 2004, Ms. Puvanenthiram applied for Ministerial relief. In August 2008, October 2012 and October 2014, the CBSA disclosed to Ms. Puvanenthiram drafts of the Ministerial relief recommendations. All three of those drafts recommended that relief be denied. In September 2008, November 2012 and December 2014, Ms. Puvanenthiram provided additional submissions in response to the draft recommendations.

[10] On June 19, 2013, the Minister denied relief to Ms. Puvanenthiram, in accordance with the jurisprudence established in *Canada (Minister of Public Safety and Emergency Preparedness) v Ramadan Agraira*, 2011 FCA 103, [2011] FCJ No 407. Ms. Puvanenthiram's application for Ministerial relief was reconsidered following release of the Supreme Court of Canada decision in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 [*Agraira*].

### III. Impugned Decision

[11] The Minister adopted the CBSA's most recent recommendation and denied relief to Ms. Puvanenthiram on August 24, 2015. The CBSA recommendation will be considered the

Minister's reasons (*Yamani v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 381, [2007] FCJ No 520 at para 52 [*Yamani*]; *Khalil v Canada (Minister of Public Safety and Emergency Preparedness)*, 2014 FCA 213, [2014] FCJ No 964 at para 29).

[12] The Minister considered Ms. Puvanenthiram's submissions in response to the latest draft recommendation. The Minister set out the legislative scheme and the legal test for Ministerial relief. The Minister acknowledged that based upon *Agraira*, personal factors relating to an applicant may be considered in assessing national interest, but the predominant considerations remain public safety and national security. The Minister further stated that Ministerial relief is not intended to replace an H&C application.

[13] The Minister summarized Ms. Puvanenthiram's immigration history and the divergent accounts provided by her throughout the years. The Minister further addressed Ms. Puvanenthiram's contention that her claim must be evaluated in light of the decision *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678 [*Ezokola*]. The Minister noted that, according to *Kanagendren v Canada (Minister of Citizenship and Immigration)*, 2015 FCA 86, [2015] FCJ No 382, *Ezokola* did not extend to s 34(1)(f) of the Act. Therefore, *Ezokola* did not modify the test for membership in a terrorist organization.

[14] The Minister directed his mind to safety considerations with respect to Ms. Puvanenthiram's potential removal to Sri Lanka, but stated that those concerns were considered when the IRB provided her access to the PRRA process. The Minister noted that Ministerial relief is not intended to revisit a PRRA decision and that it might be possible for Ms.

Puvanenthiram to make another PRRA application in the event she meets the criteria. Regardless, the Minister considered Ms. Puvanenthiram's statement that she did not have any family members or know anyone who could assist her in Sri Lanka, her assertion that there is no safe place where she could live, and that she fears the LTTE, the Sri Lankan Government Security Forces and paramilitary groups. The Minister also considered Ms. Puvanenthiram's contention that the situation with regard to women in Sri Lanka is precarious, that conditions in Sri Lanka have changed since her PRRA application, and that gainful employment is difficult to secure in Sri Lanka due to poor economic conditions.

[15] The Minister considered the fact that Ms. Puvanenthiram has two minor children. He noted that her youngest son, a Canadian citizen, depends upon his mother because of his chronic medical problems. The Minister also considered Ms. Puvanenthiram's eldest son's learning and development issues, the fact that she and her husband were both diagnosed with an "Adjustment Disorder with Mixed Anxiety and Depressed Mood", as well as her husband's physical health problems for which he may require surgery. The Minister further noted that since her husband and her eldest son are both Convention refugees in Canada, it would not be possible for them to visit her in Sri Lanka. The Minister also elaborated on Ms. Puvanenthiram's role as a caregiver to her elderly and ill parents, who are both living in Canada.

[16] The Minister noted that Ms. Puvanenthiram and her husband purchased a house in Toronto and that both are employed. The Minister also considered the fact that Ms. Puvanenthiram participates in programs with registered non-profit and charitable organizations.

Moreover, the Minister noted that Ms. Puvanenthiram asserted she has many friends and co-workers with whom she has developed a strong network.

[17] In arriving at his conclusion, the Minister considered numerous documents, including, letters from health professionals; letters from charitable and non-profit organizations attesting to Ms. Puvanenthiram's good character, letters of support from her friends and family, and various personal papers. The Minister also considered Ms. Puvanenthiram's testimony relating to her German refugee claim, her interview with a CIC official, her PIF, the findings following her admissibility hearing before the IRB, her H&C submissions, as well as her submissions in response to the recommendations made by CBSA to him.

[18] The Minister concluded that Ms. Puvanenthiram's personal factors did not outweigh the fact that she "willingly belonged, for an extended period of time, to an organization for which she would have reasonably known, during her voluntary membership, extensively engaged in terrorist activities in pursuit of its political goals" and that "she did not indicate that she wanted to disassociate herself from the LTTE at the first opportunity, or that she even disapproved of the organization's reliance on terrorism while a member, and has failed to express remorse for her involvement with the group even after having been found inadmissible to Canada". Furthermore, the Minister found that her inconsistent and contradictory statements with respect to her involvement with the LTTE have "downplayed the significance of providing accurate information to government officials".



#### IV. Issue

[19] The sole issue raised in this application for judicial review is whether the Minister's decision to deny Ministerial relief is reasonable.

#### V. Standard of Review

[20] The standard of review to be applied to the Minister's reasons for refusing Ministerial relief is that of reasonableness. The decision is discretionary and warrants significant deference (*Agraira*, above at para 50; *Siddique v Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FC 192, [2016] FCJ No 212 at para 40 [*Siddique*]). When applying the reasonableness standard of review, this Court will only intervene if the analysis is not justified, transparent and intelligible, or if the decision falls outside "a range of possible, acceptable outcomes which are defensible in respect of the fact and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]). A Ministerial relief decision is reasonable if the analysis contained in the recommendation relates to public safety and national security, and does not exclude other relevant considerations (*Hameed v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1353, [2015] FCJ No 1488 at para 28 [*Hameed*]).

#### VI. Relevant Provisions

[21] Sections 34(1)(c) and 34(1)(f), and former section 34(2) of the Act are set out in Appendix 'A' attached to these reasons.

## VII. Analysis

[22] The applicant for Ministerial relief bears the onus of satisfying the Minister that his or her presence in Canada would not be detrimental to the national interest (*Yamani*, above at para 69; *Hameed*, above at para 24). While the test for Ministerial relief under former s 34(2) of the Act includes consideration of a broad range of factors in determining what is in the national interest, *Agraira* confirms that public safety and national security remain predominant considerations in such an application. Set out below I deal with each of the four contentions advanced by Ms. Puvanenthiram in support of her claim for judicial review.

[23] First, Ms. Puvanenthiram contends the recommendation did not balance factors related to national interest as set out in *Agraira*, which holds that national interest is not limited to the protection of public safety and national security. The term ‘national interest’ must also encompass factors such as humanitarian and compassionate considerations, as well as Canada’s Charter values and international obligations. While Ms. Puvanenthiram acknowledges that Ministerial relief applications are not intended to replace H&C applications, she submits that her personal situation should have been considered in conjunction with the Act’s objectives of family reunification and providing safe haven for refugees who fear persecution.

[24] I note that when the Minister considers H&C factors in a Ministerial relief application, he focuses on the factors that are relevant in determining whether the applicant’s presence in Canada is detrimental to the national interest (*Agraira*, above at para 87; *Siddique*, above at para 83; *Hameed*, above at para 27). The degree of relevance depends on the facts of each case

(*Agraira*, above at para 88). The Minister extensively outlined Ms. Puvanenthiram's numerous personal factors. Those considerations included the medical issues of the family members to whom she provides care, her employment, volunteer activities and involvement in the community, her potential separation from her family and its impact, and the possible risk she would face if returned to Sri Lanka. It was, in my view, reasonable for the Minister to find that the interests of the children and other personal factors considered by him, were insufficient to outweigh the predominant considerations of public safety and national security.

[25] Second, Ms. Puvanenthiram contends the Minister's findings with respect to her degree of volunteerism in the LTTE and its student wing, her lack of credibility and lack of remorse were all unreasonable and unfounded. The appropriate response to this assertion is that it is not the role of the court on judicial review to re-assess the evidence or revisit credibility findings. Furthermore, the Minister found that even if Ms. Puvanenthiram was not directly involved in violent terrorist acts, her voluntary participation in the LTTE (including the duties she performed, the military training, the length of her membership and her overall commitment to the LTTE) demonstrated more than a limited or low-level involvement.

[26] Third, Ms. Puvanenthiram contends the Minister's focus on her voluntary involvement with the LTTE, her lack of credibility and her lack of remorse constitute a denial of Ministerial relief solely on the basis of past membership in a terrorist organization, which, according to her, is contrary to *Agraira*. In my view, the Minister did not deny Ms. Puvanenthiram's Ministerial relief only because of her past membership in the LTTE. Unlike admissibility hearings, where the IRB makes inadmissibility findings based only on an applicant's past membership in a

terrorist organization, the Minister examined Ms. Puvanenthiram's level of commitment to the LTTE, the nature and the extent of her involvement with the organization, her lack of credibility and lack of remorse. Those considerations were relevant in the assessment of national interest and consistent with *Agraira*.

[27] Finally, Ms. Puvanenthiram contends the Minister's finding that she had knowledge of the LTTE's activities was unreasonable because he failed to consider her "naïve and straightforward" nature and the national context at the time of her involvement in the LTTE. I note, however, that the Minister's findings were based on the inferences made by the IRB member following Ms. Puvanenthiram's admissibility hearing. The Minister reasonably relied upon those findings. It is not this Court's function to revisit the IRB decision. Furthermore, the Minister's consideration of the fact that she had knowledge of the LTTE's activities was reasonable, regardless of the political context in Sri Lanka (*Siddique*, above at para 60).

#### VIII. Conclusion

The Ministerial recommendation outlined all the relevant factors, responded to the position advanced by Ms. Puvanenthiram and undertook a balanced assessment of those factors and issues raised. The Minister did not commit a reviewable error by attaching more weight to certain factors. It is not this Court's role to re-weigh the evidence. Furthermore, the Minister is not required to provide reasons explaining why certain factors were more heavily weighted than others (*Siddique*, above at para 84). The predominant factors on such applications are national security and public safety. I am of the view the Minister's decision was justified, transparent and

intelligible, and was within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above at para 47).

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is dismissed without costs. No question is certified.

“B. Richard Bell”

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Judge

## APPENDIX A

*Immigration and Refugee  
Protection Act, SC 2001, c 27*

*Loi sur l'immigration et la  
protection des réfugiés, LC  
2001, ch 27*

### **Inadmissibility**

### **Interdictions de territoire**

#### *Security*

#### *Sécurité*

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

...

...

(c) engaging in terrorism;

c) se livrer au terrorisme;

...

...

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), or (c).

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).

#### *Exception*

#### *Exception*

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4130-15

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