Federal Court  Cour fédérale

Date: 20170419

Docket: IMM-3766-16

Citation: 2017 FC 381

Ottawa, Ontario, April 19, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

CHRISTY ARULRAJ ALAGARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Christy Arulraj Alagaratnam, is a 45 year old citizen of Sri Lanka of Tamil ethnicity. In 2006, he and his wife and three children fled Sri Lanka and arrived in India where they became registered as refugees at a refugee camp in Tamil Nadu, a southern Indian state. The Applicant left Tamil Nadu in March 2011 and eventually made his way to Canada in March 2013, where he claimed refugee protection. The Refugee Protection Division [RPD] of the Immigration and Refugee Board dismissed the Applicant's claim in May 2014. His

application for a pre-removal risk assessment was rejected in early July 2016, and his application for permanent residence on humanitarian and compassionate grounds was refused by a Senior Immigration Officer in a decision dated July 25, 2016. The Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the Officer's decision.

I. Background

[2] The Applicant lived in Sri Lanka and worked as a fisherman during the civil conflict between the Liberation Tigers of Tamil Eelam [LTTE] and the Sri Lankan authorities who suspected Tamil fisherman were involved in smuggling for the LTTE. The Applicant claimed that Sri Lankan authorities detained and tortured him and continually subjected him to harassment, interrogations, and threats due to his ethnicity and occupation, compelling him and his family in 2006 to flee to India where they claimed refugee protection. Although the Applicant and his family were registered as refugees, they were not afforded any permanent status in India and had to live in a refugee camp in Tamil Nadu.

[3] In March 2011, the Applicant left India, leaving his family behind at the refugee camp, and proceeded to travel through numerous countries before entering Canada on March 18, 2013. Upon entering Canada, the Applicant made a claim for refugee protection, but the RPD dismissed his claim in a decision dated May 2, 2014, determining that he was neither a Convention refugee nor person in need of protection. This Court denied the Applicant's application for leave and judicial review of the RPD's decision on August 25, 2014. Subsequently, the Applicant applied in October 2014 for permanent residence on humanitarian

and compassionate [H&C] grounds. While his H&C application was pending, the Applicant's removal from Canada was scheduled for November 26, 2014, but this Court stayed his deportation on November 24, 2014.

[4] The Applicant's H&C application was refused on January 27, 2015 but, after the Applicant applied for leave and judicial review of the negative H&C decision, the Respondent consented to a redetermination of the application by another immigration officer, and the Applicant was offered a pre-removal risk assessment [PRRA]. Accordingly, the Applicant submitted a PRRA application and, also, on August 4, 2015, he provided supplementary submissions for his H&C application. On July 7, 2016, the Applicant's PRRA application was refused, and this Court denied his application for leave and judicial review of the negative PRRA decision on October 19, 2016. In a decision dated July 25, 2016, the Officer who reconsidered the H&C application refused that application, and it is this decision which is presently under review.

[5] The Applicant says he has established bonds in Canada and has secured employment, currently working two jobs in the restaurant industry to support his family in Tamil Nadu. He also has relatives in Canada with whom he resides and he is involved in his local church. The Applicant states that his family receives a stipend of $65 per month from the refugee camp, and that he sends them an additional $700 to $1,000 per month to help pay for additional costs, such as food and his children's education. Before the Applicant secured employment in Canada, his brother in the United Kingdom had been supporting his family, but his brother can no longer do so since he is now married with his own children to support.

II. The Officer's Decision

[6] The Officer noted at the outset of the decision that, in view of the Supreme Court of Canada's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 [*Kanthasamy*], the previously applied "unusual and undeserved, or disproportionate" hardship test would not be applied in assessing the Applicant's H&C application. The Officer further noted the H&C factors advanced by the Applicant, specifically: the best interests of the Applicant's children; his fear of returning to Sri Lanka based on his profile as a Tamil fisherman; his fear of returning as a Christian; and his establishment in Canada.

[7] The Officer then turned to the best interests of the Applicant's two sons, who were aged 18 and 21 at the time, and his daughter, who was 14 years old, noting that his wife and two younger children continued to live in a refugee camp and that his oldest son was studying hotel management. The Officer acknowledged the Applicant's submission that, apart from the modest assistance which the family receives through the camp, his financial contributions are their only means of support towards their expenses including the children's tuition fees. The Officer further acknowledged the letter from the Applicant's daughter which noted that the family receives only 3200 Indian rupees per month from the Indian government and that this amount is not enough to support them.

[8] The Officer then reviewed the Applicant's history of financial contributions, noting that "although not a determinative factor the circumstances permeating around an individual's

historical circumstances can be a good indicator of future or anticipated challenges." After reviewing the Applicant's personal history for the two years before he entered Canada, the Officer stated there was "insufficient evidence…to indicate that the Applicant was able to assist his family financially" during this time period, or "to indicate that his children were adversely affected with regard to their academic progress or that their best interests were compromised on account of economic challenges." The Officer found that there was insufficient documentary evidence that the Applicant's brother had supported the Applicant's wife and the children during this period, stating that:

> The applicant's wife notes that her brother-in-law had been assisting with covering the expenses when the applicant was not working, but this is no longer an option as he is now married. I note insufficient documentary evidence, for example, a statement from the brother-in-law to corroborate the afore-mentioned. In the alternative, I have insufficient information to indicate why the applicant could not continue to support his family upon his return to Sri Lanka once he re-establishes himself and how this could adversely affect the best interests of his children or subject his wife to hardships.

[9] The Officer identified the option of the Applicant's family returning to Sri Lanka, and in this regard found:

> …that there [is] insufficient evidence before me to indicate that the best interests of the children could be compromised if they were to return to Sri Lanka and join the applicant….there may be a period of re-adjustment, but …they will be returning to a familiar culture and they have familial connections….a return by everyone to Sri Lanka affords the family an opportunity to be re-united as a family unit and the children could enjoy the benefits of having the physical presence of their father back in their lives. The children would also no longer be residing in a refugee camp….I have not been provided with sufficient evidence to satisfy me that the children's return to Sri Lanka with their parents could be detrimental to their well-being/development and therefore not be in their best interests.

[10] After assessing the best interests of the Applicant's children, the Officer proceeded to address the Applicant's fear of returning to Sri Lanka based on his profile as a Tamil fisherman, noting that since the time the Applicant had fled Sri Lanka "there has been a significant change in the country conditions and many Tamils are returning back to Sri Lanka." The Officer referred to the assistance provided by the United Nations High Commissioner for Refugees [UNHCR] to Sri Lankans to voluntarily return to Sri Lanka and to the thousands of returnees who had done so with no assistance from the UNHCR. In the Officer's mind, the UNHCR's participation in this return "suggests a confidence that the returnees are safe to return to Sri Lanka."

[11] The Officer addressed the Applicant's statement that, as a Tamil with his profile, he would face discrimination and adverse country conditions in Sri Lanka. The Officer acknowledged the documentary evidence about the increased military presence in the north and the reporting of Singhalese businessmen and fishermen regularly obtaining government advantages over their Tamil counterparts. The Officer also noted, however, that the Applicant had not provided evidence that his mother, sister, and brother still in Sri Lanka have faced any such discrimination, and that the Tamil National Alliance had won 16 seats in the 2015 election and the leader of that party was appointed as the Opposition Leader.

[12] The Officer then addressed the Applicant's submissions about adverse country conditions for people with the Applicant's profile, noting that while similar issues had been considered by the RPD, the test in a refugee claim and an H&C application are different. The Officer looked to the RPD's decision and found that there was insufficient evidence that the Applicant fit the profile of a Tamil from the north perceived to have links with the LTTE. The Officer

acknowledged that, while some sources state that some Tamils are detained and questioned upon return and that failed refugees from Western countries may be more readily associated with the LTTE, there was no evidence that the Applicant would be perceived as being involved with the LTTE upon his return to Sri Lanka. The Officer also reviewed the risk profiles outlined by the UNHCR, including specific risks for people who are suspected of certain links with the LTTE. The Officer noted that the Applicant's mother and siblings continue to reside in Jaffna, but there was: "insufficient evidence…to indicate that the authorities had imputed them with an adverse political opinion on account of the applicant's brother's profile" as an individual fleeing Sri Lanka and seeking refugee protection in England. There also was, in the Officer's view, "insufficient evidence to indicate that the applicant could be subjected to hardship in Sri Lanka based on his brother's profile."

[13] The Officer reviewed a letter from the Applicant's mother, noting that its origin could not be verified because it was not an original document and not accompanied by any envelope, post-mark or explanation as to how the Applicant received it. The Officer also noted that the letter bore no sender's address and was signed as "Loving mother" without any name, making it unclear as to who actually wrote it. The Officer remarked that the contents of the letter were "very brief and abstract" and there was no explanation as to the cause of the suffering referred to in the letter. In the Officer's view, it appeared that the Applicant's mother was "more concerned about the financial challenges the applicant's wife and children may experience if the applicant returns to Sri Lanka." After noting the mother's fears and the presence of the Navy and the police in large numbers, the Officer quoted from the letter: " 'If you also come here, do you thinks they will leave you alone.' [*sic*]." The Officer noted that the Applicant's mother was "not

an objective documentary source with no interest in the outcome of this application"; and for this and the other reasons stated, the Officer awarded the letter "little weight to corroborate the applicant's fear of returning to Sri Lanka and associated hardships."

[14] The Officer then addressed the Applicant's fears of being interrogated by the Sri Lankan authorities for suspected ties to the LTTE related to his occupation as a fisherman, something which the Applicant submitted to the Officer heightened his risk of being detained, mistreated or harassed upon return to Sri Lanka. The Officer acknowledged that, while some evidence indicated that Tamil fishermen are imputed with supporting the LTTE and consequently targeted, the UNHCR documentation did not highlight fishermen as being at a particularly higher risk profile. The Officer noted that it had been over nine years since the Applicant was a fisherman and there was "insufficient evidence to indicate how the authorities would learn of his previous fishing activities upon his return to Sri Lanka."

[15] The Officer concluded his analysis of the Applicant's fear of returning to Sri Lanka based on his profile as a Tamil fisherman from the north by stating:

> I have considered the applicant's noted profile cumulatively in a forward-looking perspective. I find that overall, in consideration of the information before me, the applicant has not presented sufficient objective evidence, including details to demonstrate discrimination and/or associated hardships based on his profile of a Tamil from the north of Sri Lanka and the other cited and considered profile factors or to indicate personal characteristics which would suggest he would attract the adverse interest of the authorities on his return to Sri Lanka and be subjected to discriminatory treatment.

[16] With respect to the Applicant's submission that he would face discrimination and economic hardship upon return to Sri Lanka because he could no longer work as a fisherman, the Officer acknowledged the evidence which demonstrated that Tamils have greater difficulty in obtaining and renewing fishing licences post-war. The Officer found, however, that there was "insufficient evidence to indicate that the applicant was denied opportunities to work as a fisherman or his ability to fish and earn money was restricted by the denial of or difficulties in obtain a fishing permit." The Officer further found, in view of the Applicant's history since departing Sri Lanka, that there was "insufficient evidence to indicate that he could face economic challenges if he chose not to resume to his fishing occupation."

[17] The Officer then noted that the Applicant had held various jobs since leaving Sri Lanka, including owning a fruit shop in India, and "also demonstrated his ability to be financially self-sufficient during his sojourn in Canada…as a hard-working, resourceful and dedicated individual." The Officer concluded in this regard as follows:

> I have insufficient evidence to indicate why the applicant could not utilise his entrepreneurial skills combined with his positive personality traits to secure a similar business venture or employment upon his return to Sri Lanka. Whilst I acknowledge that he may experience some challenges with respect to re-assimilating into life in Sri Lanka,…he has family members who reside there and [I] have insufficient evidence to indicate why they could not assist the applicant with the initial re-integration process. …the applicant would be returning to a familiar culture and to his native-land where he was born and educated.

[18] As to the Applicant's establishment in Canada, the Officer stated that it was "a positive factor" as he was currently self-sufficient and working with two different employers. Yet, there was, in the Officer's view, "insufficient evidence" to indicate a level of interdependency upon

the Applicant's relatives or friends in Canada such that geographical separation could result in challenges to the Applicant, his relatives or friends. There also was "insufficient evidence" to indicate to the Officer that the Applicant's involvement with the church was to such an extent that his departure would result in hardships to the church. The Officer found that, while there was "some establishment in Canada," it was reasonable to assume that a certain level of establishment would take place during the several years that the refugee process takes to run its course.

[19] The Officer then turned to review the Applicant's fear of discrimination based on his Christian faith, noting that this fear had not been presented to the RPD. The Officer stated there was "insufficient evidence to elaborate on any previous hardships experienced by the applicant in Sri Lanka on account of his religion." The Applicant submitted to the Officer that he is a devout Christian and he would personally face "severe hardships, discrimination, and worse if returned to Sri Lanka." The Officer acknowledged the UNHCR report submitted by the Applicant which stated that Christians are currently subjected to hate speech, discrimination, and acts of violence throughout Sri Lanka. The Officer conducted his own research as well, concluding that there are constitutional and legal protections against religious discrimination and the acts of discrimination against Christians in Sri Lanka were targeted towards evangelical Christian groups and physical places of worship. The Officer found that the materials did not suggest signs of growth in anti-Christian sentiment beyond fairly isolated examples of physical harm.

[20] The Officer found overall that:

> …in consideration of the information before me, the applicant has not presented sufficient objective evidence, including details to demonstrate a fear of discrimination in the future in Sri Lanka based on his profile of a Christian. I also find insufficient evidence to indicate that he could be subjected to hardships based on his Tamil ethnicity from the north and perceived to be associated with the LTTE because of his cumulative profile of individuals who are targeted for human rights' abuses. In terms of establishment…the applicant has been working in Canada, has made some friend and he is [a] member of a Church. The applicant also has some familial ties. Whilst I acknowledge the applicant's ties to his relatives in Canada, …the competing family ties (wife, children, mother and siblings) are quantitatively tipped in favour of outside of Canada….cumulatively such factors are insufficient to indicate that the applicant is well established in Canada. Consequently, establishment is a factor that I have given little weight in my assessment of this application.
>
> I have, on the other hand, given far more positive consideration to the applicant's demonstrated ability to adjust and find employment in different cities and countries and his devotion to assist his family in India. Based on the information before me the applicant could continue with that role upon his return to Sri Lanka. I also note that the applicant's return to his native-land affords his family an opportunity to reside again as a family unit, and in this regard find that it would be in the best interests of the applicant's children.

[21] The Officer concluded by stating there were insufficient H&C considerations to justify granting an exemption under subsection 25(1) of the *IRPA* and refused the application.

III. Issues

[22] This application for judicial review raises the following issues:

1. What is the appropriate standard of review?

2. Was the Officer's analysis of the best interests of the children reasonable?

3. Was the Officer's discretion fettered by misunderstanding the scope of a risk assessment?
4. Did the Officer's assessment of the hardship the Applicant would face ignore evidence and, therefore, render the decision unreasonable?
5. Did the Officer improperly negate the Applicant's establishment in Canada as a favourable factor?

IV. Analysis

A. *Standard of Review*

[23] An officer's decision to deny relief under subsection 25(1) of the *IRPA* involves the exercise of humanitarian and compassionate discretion and is reviewed on the reasonableness standard (*Kanthasamy* at para 44). Under this standard of review, the Court must determine whether the Officer's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and whether the decision is justifiable, transparent, and intelligible: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

[24] It warrants note that the Supreme Court in *Kanthasamy* applied a reasonableness standard of review, yet ultimately concluded that the officer had inappropriately fettered her discretion by

a literal obedience to the adjectives "unusual and undeserved or disproportionate" hardship, leading her "to see each of them as a distinct legal test, rather than as words designed to help reify the equitable purpose of the provision" (para 45).

[25] As to the standard of review for an allegation that an administrative decision-maker has fettered their discretion, this is somewhat unsettled in the jurisprudence. In *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299, 341 DLR (4th) 710 [*Stemijon*], Justice Stratas explained how fettering of discretion was traditionally an automatic ground for setting aside a decision, but now it should be subsumed into the reasonableness analysis:

> [21] The appellants' submissions, while based on reasonableness, seem to articulate "fettering of discretion" outside of the *Dunsmuir* reasonableness analysis. They seem to suggest that "fettering of discretion" is an automatic ground for setting aside administrative decisions and we need not engage in a *Dunsmuir*-type reasonableness review.
>
> [22] On this, there is authority on the appellants' side. For many decades now, "fettering of discretion" has been an automatic or nominate ground for setting aside administrative decision-making: see, for example, *Maple Lodge Farms Ltd. v. Government of Canada*, 1982 CanLII 24 (SCC), [1982] 2 S.C.R. 2 at page 6. The reasoning goes like this. Decision-makers must follow the law. If the law gives them discretion of a certain scope, they cannot, in a binding way, cut down that scope. To allow that is to allow them to rewrite the law. Only Parliament or its validly authorized delegates can write or rewrite law.
>
> [23] This sits uncomfortably with *Dunsmuir*, in which the Supreme Court's stated aim was to simplify judicial review of the substance of decision-making by encouraging courts to conduct one, single methodology of review using only two standards of review, correctness and reasonableness. In *Dunsmuir*, the Supreme Court did not discuss how automatic or nominate grounds for setting aside the substance of decision-making, such as "fettering of discretion," fit into the scheme of things. Might the automatic or nominate grounds now be subsumed within the rubric of reasonableness review? On this question, this Court recently had a difference of opinion: *Kane v. Canada (Attorney General)*, 2011

> FCA 19 (CanLII). But, in my view, this debate is of no moment where we are dealing with decisions that are the product of "fettered discretions." The result is the same.
>
> [24] *Dunsmuir* reaffirms a longstanding, cardinal principle: "all exercises of public authority must find their source in law" (paragraphs 27-28). Any decision that draws upon something other than the law – for example a decision based solely upon an informal policy statement without regard or cognizance of law, cannot fall within the range of what is acceptable and defensible and, thus, be reasonable as that is defined in *Dunsmuir* at paragraph 47. A decision that is the product of a fettered discretion must *per se* be unreasonable.

[26] In *Frankie's Burgers Lougheed Inc v Canada (Employment and Social Development)*, 2015 FC 27, 473 FTR 67, the Court followed this approach:

> [24] With respect to the fettering of discretion issue that has been raised, it is not necessary to definitively determine whether the standard of review is correctness or reasonableness, since the result is the same: a decision that is the product of a fettered discretion must *per se* be unreasonable (*Stemijon*…at paras 20-24).

[27] More recently, in *Gordon v Canada (Attorney General)*, 2016 FC 643, 267 ACWS (3d) 738, the Court noted the unsettled question as to whether a correctness or a reasonableness standard of review applies to an allegation that an administrative decision-maker fettered their discretion, observing that:

> [25] Some confusion exists regarding the appropriate standard of review where the fettering of discretion is at issue.
>
> [26] Traditionally, the fettering of discretion has been reviewable on the correctness standard: *Thamotharem v. Canada (Minister of Citizenship & Immigration)*, 2007 FCA 198 at para 33, 366 NR 30.
>
> [27] However, the Federal Court of Appeal has recently posited that post- *Dunsmuir*, the fettering of discretion should be reviewed on the reasonableness standard, as it is a kind of substantive error.

> The Federal Court of Appeal has, however, also been careful to say that the fettering of discretion is always outside the range of possible, acceptable outcomes, and is therefore *per se* unreasonable: *Stemijon* at paras 23-25…
>
> [28] It is sufficient to state in this case that the fettering of discretion is a reviewable error under either standard of review, and will result in the decision being quashed: *JP Morgan Asset Management (Canada) Inc. v. Minister of National Revenue*, 2013 FCA 250 at paras 71-73, 450 N.R. 91; see also *Stemijon Investments*, above, at para 23. Simply put, if the Minister's Delegate fettered her discretion, her decision should be set aside regardless of the standard of review applied.

[28] For the purposes of this case, it is sufficient to conclude that, regardless of the standard of review to be applied to the fettering of discretion issue raised by the Applicant, if the Officer fettered his or her discretion that would constitute a reviewable error under either standard of review and would require that the decision be set aside.

B. *Was the Officer's analysis of the best interests of the children reasonable?*

[29] The Applicant argues that the Officer's decision does not meet the standard set forth by the Supreme Court in *Kanthasamy* because it failed to properly identify and define the children's best interests and examine them with a great deal of attention in light of all the evidence. According to the Applicant, the Officer's finding that it was in the children's best interests to leave the refugee camp and return to Sri Lanka ignores or is highly dismissive of the fact that the children have been declared refugees and endorses a violation of international law and the principle of non-refoulement. The Applicant says the Officer's justification for this finding ignored evidence of former Sri Lankan asylum-seekers, in particular Tamils, being detained and ill-treated or tortured after returning to Sri Lanka and evidence that, since the end of the war,

there has been an erosion of democratic and human rights and continued torture of LTTE suspects. The Applicant further says the Officer provided inconsistent and incoherent reasons about the financial support of the Applicant's family and improperly rejected or ignored evidence that the Applicant's brother had financially supported his family while the Applicant travelled to Canada.

[30] The Respondent maintains that the Officer reasonably considered the best interests of all three children, including the two sons who were not minors. According to the Respondent, the Officer did not violate the principle of non-refoulement by suggesting that the children could return to Sri Lanka but merely stated that return of the Applicant and his family to Sri Lanka was an "option" open to them and, ultimately, it would be the family's choice. The Respondent states the Officer was aware that the Applicant and his family fled Sri Lanka, yet the Officer also recognized that numerous Tamils in India are returning to Sri Lanka. The Respondent further submits that the Officer reasonably concluded that, in the absence of any letter from the Applicant's brother, there was insufficient documentary evidence to show that his brother had financially supported his family.

[31] The Supreme Court in *Kanthasamy* noted that the "best interests" principle is "highly contextual" because of the multitude of factors that may impinge on the child's best interest, and that the principle must be applied "in a manner responsive to each child's particular age, capacity, needs and maturity" (at para 35). The Supreme Court further noted in *Kanthasamy* that:

> [39] A decision under s. 25(1) will…be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Baker*, at para. 75. This means that decision-makers must do more than simply state that the interests

> of a child have been taken into account: *Hawthorne*, at para. 32. Those interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence: *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 358 (C.A.), at paras.12 and 31; *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, 323 F.T.R. 181, at paras. 9-12.

[32] The best interests of the Applicant's children in this case were not sufficiently considered, identified, defined and examined by the Officer "with a great deal of attention." The Officer's assessment and analysis of the best interests of the children was premised upon an assumption that the Applicant and his family could be reunited in Sri Lanka. This assumption, however, cannot be justified, is unintelligible and, in view of the fact that each of the Applicant's children has been recognized by the Indian government as a refugee from Sri Lanka, is also perverse. The Officer's view that the children's best interests would be reunification with their father in Sri Lanka is unreasonable because it ignored and did not address the possibility that their best interests might be best served by maintaining the status quo (see: *Jimenez v. Canada (Citizenship and Immigration)*, 2015 FC 527 at paras 27, 28, [2015] FCJ No 488). The Applicant's daughter clearly stated in her letter which was before the Officer that: "If my father doesn't support us. My mother can't take care of us alone. So if my father doesn't support us we wouldn't be able to study and live. For us Indian government offers only 3250 rupees for a month, which is not even enough for our food needs. So we are living in a critical situation."

[33] Moreover, the Officer's determination as to the best interests of the Applicant's children presumed that the Applicant could continue to support his family upon his return to Sri Lanka once he re-established himself there. This presumption is speculative though, and hence unreasonable, since there was no evidence before the Officer that the Applicant would become

gainfully employed in the country from which he and his family fled as refugees; if anything, the evidence before the Officer suggested that obtaining employment in Sri Lanka could be somewhat uncertain or problematic for the Applicant by virtue of his Tamil ethnicity. The Officer in this case failed to consider how the best interests of the Applicant's children might be compromised or adversely affected if the Applicant was unable to continue to support them by remittances from Sri Lanka.

[34] In summary, the Officer's assessment of the best interests of the Applicant's children was unreasonable because it was premised upon an unintelligible assumption and a speculative conclusion as to the Applicant's employment prospects in Sri Lanka. On this basis alone the Officer's decision must be set aside and the matter returned for redetermination by a different immigration officer.

[35] In view of my determination as to the Officer's unreasonable assessment of the best interests of the Applicant's children, it is unnecessary to consider the remaining issues as noted above.

V. Conclusion

[36] The Officer's assessment of the best interests of the Applicant's children was unreasonable. The Officer's decision must be set aside and the matter returned for redetermination by a different immigration officer.

[37] Neither party raised a serious question of general importance; so, no such question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is granted; the decision of the senior immigration officer dated July 25, 2016, is set aside; the matter is returned for redetermination by a different immigration officer in accordance with the reasons for this judgment; and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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