

Federal Court



Cour fédérale

**Date: 20090709**

**Docket: IMM-133-09**

**Citation: 2009 FC 716**

**Toronto, Ontario, July 9, 2009**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**ARAVINTHAN ARIYATHURAI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Aravinthan Ariyathurai (the “Applicant”) seeks judicial review of the decision of Pre-Removal Risk Assessment Officer L. D’Alessandro (the “PRRA Officer”). In that decision dated November 26, 2008, the PRRA Officer found that the Applicant would not be subject to a risk of

persecution, torture, risk to life or risk of cruel or unusual treatment or punishment if returned to his country of nationality, Sri Lanka.

[2] The Applicant, a thirty-four year old citizen of Sri Lanka, lived in Jaffna, in the north of the country. He was forced to leave Jaffna in 1995, following seizure of that area by the Sri Lankan Army (“SLA”). He was forced to return to Jaffna by the authorities in July 1997. He was later arrested by the SLA and tortured.

[3] The Applicant left Jaffna in December 2004 and went to Colombo, after he had received extortion demands from the Liberation Tigers of Tamil Eelam (“LTTE”). In January 2005, he fled Colombo and went to California. On March 13, 2005, he arrived in Canada and claimed refugee protection under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[4] In a decision dated June 13, 2008, the Immigration and Refugee Board, Refugee Protection Division dismissed his claim. He applied for Pre-Removal Risk Assessment on the basis that he was at risk in Sri Lanka due to his status as an ethnic Tamil from Sri Lanka, claiming that he feared the SLA, the LTTE, the police and other Tamil militants, as well as the possibility of extortion. He alleged that he could return neither to the north of the country because the SLA and paramilitary forces have inquired about him, nor to the east which is overwhelmed with internally displaced Tamils. The Applicant submitted new evidence with his PRRA application, consisting of the death certificate of his brother, various documents supporting his residency and employment in Sri Lanka,

a statement from his wife attesting to his arrest in Sri Lanka and various news articles and country documents concerning the situation in Sri Lanka.

[5] The PRRA Officer found that the risks identified by the Applicant were substantially the same ones that he had presented to the Board. He concluded that the Applicant had failed to establish a link between his situation and those described in the documentary evidence such that he could show a personalized risk if he were returned to Sri Lanka.

[6] The first matter to be addressed here is the applicable standard of review. Findings of nexus to a Convention ground are questions of mixed fact and law, reviewable on the standard of reasonableness *simpliciter*; see *Jayasekara v. Canada (Minister of Citizenship and Immigration)* (2001), 211 F.T.R. 100. Subsequent to the decisions of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, this standard is now identified as reasonableness.

[7] I am satisfied, on the basis of the record before me that the PRRA Officer committed a reviewable error in rejecting the Applicant's claim for protection because he did so without regard to the evidence that was submitted. This means that the decision fails to meet the standard of reasonableness.

[8] I find that the PRRA Officer erred by failing to recognize that the Applicant is as described within a particular social group, that is the group of ethnic Tamils who lived in the north of Sri Lanka. The PRRA Officer acknowledged the Applicant's submissions that he would be at risk in Sri

Lanka as a result of this status but then failed to address the submissions in his analysis. Since there was no expression of doubt about the Applicant's credibility, the finding that the Applicant is not a member of a particular and identifiable group of individuals that would face persecution as a result of their membership in a particular social group, fails to meet the standard of reasonableness.

[9] A proper assessment of the evidence would have led to the conclusion that the Applicant had established an objective basis for his claim for protection. The PRRA Officer either ignored the evidence or misapprehended the evidence. In the result, the decision merits judicial intervention.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that this application for judicial review is allowed, the decision of the PRRA Officer is quashed and the matter is remitted to a different officer for re-determination. There is no question for certification arising.

“E. Heneghan”

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Judge

**SOLICITORS OF RECORD**

**DOCKET:** IMM-133-09

**STYLE OF CAUSE:** ARAVINTHAN ARIYATHURAI v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** July 8, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HENEGHAN J.

**DATED:** July 9, 2009

**APPEARANCES:**

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