Federal Court Cour fédérale

Date: 20100722

Docket: IMM-4151-10

Citation: 2010 FC 780

Ottawa, Ontario, July 22, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ANTON DIAS PAVULIN APPU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR ORDER AND ORDER

I. Overview

[1] As a country condition backdrop, the Court is assisted by the evidence in the Stay Motion Record which includes the latest July 5, 2010 United Nations High Commission for Refugees (UNHCR) Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka:

> Given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of

> indiscriminate harm. In light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country.
>
> At the time of writing, the security situation in Sri Lanka had significantly stabilized, paving the way for a lasting solution for hundreds of thousands of internally displaced persons (IDPs) in the country's north and east. In response to calls for an independent international investigation into allegations of human rights and international humanitarian law violations by the parties to the conflict, the Government of Sri Lanka has recently announced the establishment of a truth and reconciliation commission mandated to examine the "lessons to be learnt from events" between February 2002 and May 2009. On 22 June, the UN Secretary-General also appointed a Panel of Experts mandated to advise on the issue of accountability with regard to any alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka.
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> At the time of writing, the greatly improved situation in Sri Lanka is still evolving. UNHCR recommends that all claims by asylum-seekers from Sri Lanka need to be considered on the basis of their individual merits in fair and efficient refugee status determination procedures taking into account up-to-date and relevant country of origin information. Particular attention is drawn to the profiles outlined in these Guidelines.

II. Preliminary Remarks

[2] Further to the Respondent's request that the Minister of Citizenship and Immigration, responsible for the underlying decision, be added as a Respondent, therefore, the Style of Cause is amended accordingly.

III. Introduction

[3] The Applicant is scheduled to be removed to Sri Lanka on July 22, 2010 at 19:45 p.m.

[4] On July 21, 2010, the Applicant filed an application to stay his removal, linked to a subsequent pre-Removal Risk Assessment (PRRA) decision made July 12, 2010.

[5] The evidence shows that the Applicant was advised of his removal date in person on July 13, 2010.

IV. Background

[6] The Applicant arrived in Canada on March 17, 2004, at the Lester B. Person International Airport and claimed for refugee protection. His claim was referred to the Refugee Protection Division (RPD) on the same day pursuant to subsection 100.(3) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[7] On the day of the Applicant's arrival, a departure order was issued against him and he was detained due to identity issues until March 26, 2004.

[8] For the purpose of the hearing before Refugee Protection Division of the Immigration and Refugee Board (RPD), numerous exhibits were filed by the Applicant, the Board and the Canada Border Services Agency (CBSA).

[9] The exhibits filed by the Applicant were photographs of scars allegedly sustained because of beating during detention and filed as exhibit P-10.

[10] On August 31, 2007, the RPD rejected the Applicant's claim for refugee protection, after 6 days of hearing.

[11] An Application for Leave and for judicial review of the RPD's decision was filed before this Court, but discontinued.

[12] On January 3, 2008, the Applicant made an Application for permanent residence from within Canada based on humanitarian and compassionate considerations (H&C) and filed written representations to that effect, dated January 1, 2008.

[13] On February 21, 2008, the Applicant made a PRRA application. He also filed a one page update on March 11, 2008.

[14] In May 2009, the Applicant updated his H&C application.

[15] The Applicant's PRRA application and his H&C application were refused, respectively on April 27 and on April 29, 2010. The Applicant received the negative decisions on May 27, 2010, during an interview with a CBSA Officer.

[16] These decisions were not challenged in Federal Court by the Applicant.

[17] On May 27, 2010, the Applicant was advised that he had to leave Canada since his departure order was now in force. The Applicant was given a two week delay (until June 9, 2010) to purchase his travel ticket.

[18] On June 2, 2010, the Applicant was told that the reasons for the two decisions had been sent to his attorney, Me Markaki.

[19] On June 9, 2010, a CBSA Officer met the Applicant and his lawyer, Me Markaki. They advised the Officer that they had a reservation to travel on July 22, 2010. The Officer told them the removal had to take place sooner than that date. The Applicant's lawyer informed the Officer that she would ask for a stay to proceed with a second H&C application. Another meeting for travel arrangements was scheduled for the June 16, 2010.

[20] On June 16, 2010, the Applicant met the CBSA Officer without his lawyer. He was advised that Air Canada had agreed to pay for his travel back to Colombo and that he had to present himself at the Pierre-Elliott Trudeau Airport on July 8, 2010. The Applicant asked and was refused a further delay to obtain his passport. The Officer advised him that he could travel without a passport since the Embassy would issue a travel document for him.

[21] On June 30, 2010, the Applicant made a subsequent PRRA application in conformity with section 165 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations).

[22] On July 8, 2010, the Applicant was told that his departure was possibly scheduled for July 22, 2010 and was asked to come the next day.

[23] On July 9, 2010 the Applicant was told that his subsequent PRRA application had not been finalized and was given a new appointment.

[24] On July 12, 2010, the PRRA officer made a subsequent PRRA decision.

[25] On July 13, 2010, the Applicant was given the subsequent PRRA decision and was told that his departure was scheduled for July 22, 2010.

V. Issue

[26] The Supreme Court of Canada has established a tri-partite test for determining whether interlocutory injunctions should be granted pending a determination of a case on its merits, namely, (i) whether there is a serious question to be tried; (ii) whether the litigant who seeks the interlocutory injunction would, unless the injunction is granted, suffer irreparable harm; **AND** (iii) the balance of convenience, in terms of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction pending a decision on the merits (*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.)).

[27] The requirements of the tri-partite test are **conjunctive**. That is, the Applicant must satisfy all three branches of the test before this Court can grant a stay of proceedings. (*Toth*, above; *RJR-MacDonald*, above).

VI. Analysis

[28] The Court is in full agreement with the position of the Respondents.

A. Serious Issue

[29] The Applicant argues that the Officer made an unreasonable and erroneous decision in regard to the risks facing the Applicant.

a. The Officer erred in his assessment of the Applicant's "scars" (Applicant's Record (AR) at pp. 249-250)

b. The Officer erred in his assessment of documentary evidence (AR at pp. 250-251);

c. The Officer ignored in his assessment the statements made by Phil Glendenning. (AR at pp. 251-252).

[30] To meet the "serious issue" factor of the *Toth* test, applicants are required to show that the issue in the application for leave and for judicial review is a "serious issue".

[31] In the subsequent PRRA decision, dated July 12, 201, the Officer made the following findings:

> Dans la présente et seconde demande ERAR, il allègue être exposé à des risques de retour sur la base des facteurs suivants:

> -il porte des cicatrices susceptibles de le faire passer pour un ancien tigre
>
> […]
>
> Je rappelle à nouveau qu'ERAR a pour seul objet d'évaluer les risques en fonction de la preuve nouvelle, c'est-à-dire celle ayant surgi depuis la date de la décision de la SPR et en fonction également de la situation objective dans le pays de nationalité du demandeur. Il ne s'agit pas d'un processus d'appel ou de révision des décisions de la SPR. Une décision concernant les conclusions tirées en rapport avec les articles 96 et 97 est définitive, sauf si des éléments de preuve montrent l'existence de risques nouveaux, différents ou supplémentaires que le demandeur n'aurait pas pu prévoir au moment de l'audience auprès de la SPR. **Je vais aussi appliquer *res judicata*, l'autorité de la chose jugée, pour ce qui est de ma précédente décision ERAR. Au soutien de cette demande ERAR subséquente, le demandeur a déposé sept photos de lui-même**, trente huit documents généraux sur les violations des droits de la personne au Sri Lanka, quatre pages sur l'activiste australien Phil Glendenning, une lettre d'Amnistie Internationale et des documents en liasse se rapportant aux problèmes de son frère Jeko Payes.
>
> Le demandeur a allégué que les cicatrices qu'il porte sur son dos et ses pieds sont susceptibles de le faire passer pour un ancien tigre. **Or, selon son témoignage à la SPR, ces cicatrices auraient été provoquées par des mauvais traitements et il n'avait pas auparavant, tant à la SPR que dans son premier ERAR, essayé de les faire passer pour celles caractéristiques aux personnes impliquées dans des combats**. Selon l'alinéas 113 (a) de la Loi, il ne m'appartient de considérer que les nouvelles preuves, celles nées après le rejet de la demande d'asile ou qui n'étaient pas raisonnablement accessibles ou dont il n'aurait pas été raisonnable de s'attendre à ce qu'elles soient versées devant la SPR. Agir autrement équivaudrait à transformer ERAR en un commode palier de substitution à la SPR à chaque fois que le demandeur dévoilerait un nouveau motif pour se qualifier. En fin de compte, il n'est pas à ma discrétion de récompenser un demandeur qui, en dépit de son serment lors de son audience à la SPR, a mis de côté un motif pour usage futur. Ce ne serait conforme ni à l'esprit de la Loi ni équitable par rapport aux autres demandeurs qui n'ont rien dissimulé. **De plus, les sept photos déposées font partie du lot soumis dans la première demande ERAR pour corroborer des mauvais traitements et ont été aussi mentionnées dans les motifs de la SPR. Elles ne constituent pas une preuve nouvelle et ne seront donc pas considérées**. Je suis donc d'avis que le demandeur n'est pas exposé à des risques par l'existence de cicatrices sur son corps.

(AR at pp. 217-218).

[32] The Applicant had first raised the issue of his scars before the RPD and in his first PRRA application. (Exhibit P-10).

[33] In regard to the photographs of the Applicant's scars, filed as Exhibit P-10, the RPD concluded:

> …With regard to the prhotographs that he submitted showing some marks on his body, the tribunal finds that there was no conclusive evidence presented to prove **that those marks were sustained under the alleged circumstances**, in view of the claimant's overall lack of credibility.

[34] In the first PRRA decision dated April 27, 2010, the Officer wrote:

> **Au soutien de sa demande, le demandeur a déposé treize photos de lui-même**, une page de photos miniatures représentant, sauf une, les victimes civiles du conflit sri-lankais et quarante quatre documents sur la situation générale des violations des droits de la personne au Sri Lanka. **Les photos de lui-même ont été considérées dans les motifs de la SPR.** Les photos miniatures portent la date du 14 mai 2006 et treize documents sur les trente neufs datent d'avant la décision de la SPR du 31 août 2007. **Cet ensemble de pièces ne constitue pas une preuve nouvelle et ne sera donc pas considéré**. […] "

[35] The Applicant did not challenge the two decisions, neither the RPD decision nor the PRRA decision.

[36] In the case of the RPD decision, the Applicant discontinued his Leave and Judicial Review Application without filing his Application Record. Therefore, the findings of the Board cannot be reconsidered by this Court.

[37] In the case of the first PRRA decision of April 27, 2010, the Applicant did not try to challenge before the Federal Court the findings of the PRRA officer and those findings cannot be reconsidered by this Court.

[38] As explained by the PRRA officer, the officer who processes a PRRA application or an application based on H&C considerations does not sit on an appeal or judicial review of a decision of the RPD.

[39] In *Cupid*, Justice Judith Snider summarized as follows the role of the PRRA process:

> [4] … the PRRA process is not to become another refugee determination process (see, for example, *Quiroga v. Canada (Minister of Citizenship and Immigration*), 2006 FC 1306, 153 A.C.W.S. (3d) 192, [2006] F.C.J. No. 1640 (F.C.) (QL)). Canada's obligations vis-à-vis a claimant are fulfilled, in the first instance and in most cases, by the RPD hearing and decision. However, recognizing that there may be a "gap" between the time that an RPD decision is issued and the actual date of removal of a claimant (or that some persons will not have had access to a refugee determination), Canada has taken steps to ensure that a claimant is provided with a process whereby changed conditions and circumstances may be assessed. … a claimant who has been rejected as a refugee claimant bears the onus of demonstrating that country conditions or personal circumstances have changed since the RPD decision such that the claimant, who was held not to be at risk by the RPD, is now at risk. If the applicant for a PRRA fails to meet that burden, the PRRA application will (and should) fail.

(*Cupid v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 501, 167 A.C.W.S. (3d) 148).

> [26] The purpose of the PRRA is to give failed refugee claimants a process which assesses whether country conditions or/and personal circumstances have changed since the issuance of the refugee decision: see *Cupid v. Canada (Minister of Citizenship and Immigration*), 2007 FC 176 (CanLII), 2007 FC 176 [Cupid] at para. 4. When an applicant fails to prove such a change, the PRRA officer is entitled to rely on an unchallenged decision of the Refugee Board: see Cupid, above at para. 21. (Emphasis added).

(*C.D. v. Canada (Minister of Citizenship and Immigration)*, (Justice Yves de Montigny).

[40] The same can be said in the case of H&C applications:

> [37] **Mr. Salomon Herrada and his family seem to believe that if they add documents to the record at the stage of their application based on humanitarian and compassionate considerations, the conclusions reached by the RPD, the Federal Court and the PRRA officer about their credibility will be set aside or forgotten**. Likewise, they also seem to believe that the conclusion concerning state protection in Peru will also be set aside if they submit documentary evidence about the situation in Peru.
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> [38] However, *Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16060 (F.C.), [2001] 1 F.C. 483, [2000] F.C.J. No. 1365 (QL), at paragraph 27, specifies that **the officer who processes an application based on humanitarian and compassionate considerations does not sit on an appeal or judicial review of a decision of the RPD**:
>
>> In my opinion, the PCDO process is an administrative one. As such, the officer's role is limited to a review of the evidence in the record, including any new documents and submissions presented by the applicants. Thus, it is not open for the officer to conduct a new assessment of an applicant's credibility and to reverse the credibility findings of the Refugee Division. Just as Nadon J. stated in *Hussain v. Canada (M.C.I.)*, that an immigration officer does not sit in appeal or review of the Refugee Board's decision in a humanitarian and compassionate application, where its purpose is not to re-argue the facts which were originally before the Refugee Board, I am of the view that the same applies to a PDRCC application. (See also: *Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751 (F.C.T.D.) (QL), at paragraph 12.)

(*Herrada v. Canada (Minister of Citizenship and Immigration)*, 2006 CF 1003, 157 A.C.W.S. (3d) 412; also: *Doumbouya v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1186, 325 F.T.R. 186).

> [12] It is important to note that H&C applications are not appeals from previous decisions of the Immigration and Refugee Board (RDP). The Minister's officers are not bound by the conclusions of the RDP. When the evidence before the officer is substantially the same as that which was before the RDP, it is reasonably open to the officer to reach the same conclusions (*Klais v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 783 (CanLII), 2004 FC 783 at paragraph 11).

(*Monteiro v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1322, 166 A.C.W.S. (3d) 556 (Justice Simon Noël)).

[41] The Applicant failed to show, in his subsequent PRRA application, that, since his case was heard by the RPD or since the first PRRA decision, his personal circumstances have changed or the conditions in country have worsened.

[42] On the contrary, the evidence filed by the Applicant was essentially to re-argue risks and facts which were found not to be credible by the RPD.

[43] The documentary evidence, on which the Applicant heavily relies to argue that his "scars" would put him at risk, this evidence is not relevant since the Applicant, who is now forty-year old, does not have the profile described in the documentary evidence he quotes and which reads as follows:

> Amongst issues relevant to the determination of eligibility for refugee protection are allegations by a number of sources regarding: torture of persons suspected of LTTE links in detention; death of LTTE suspects whilst in custody; as well as poor prison conditions, which include severe overcrowding and lack of adequate sanitation, food, water and medical treatment.[34] **According to some reports young Tamil men, particularly those originating from the north and east of the country, may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE**.
>
> > It is reported that Tamils are frequently harassed at army checkpoints in Colombo. Furthermore, police reportedly refuse to register Tamils originating from the north and the east of the country, a requirement for temporary residence in Colombo, sometimes forcing them to return to their homes; see US Department of State, *2009 Country Reports on Human Rights Practices - Sri Lanka*, 11 March 2010, http://www.unhcr.org/refworld/docid/4b9e52bbc.html. According to

> a Swiss Embassy official, persons arrested during cordon and search operations were mostly young Tamils from Jaffna, Kilinochchi, Mullaithivu, and other places in Vanni, and to some extent Tricomalee. Women with a Vanni national identity card were also reportedly targeted; see UK Home Office, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*, August 2009, http://www.unhcr.org/refworld/docid/4ae066de2.html. Based on the available country of origin information, the New Zealand Refugee Status Appeals Authority has recently found that "*those most likely to be of interest to authorities at the checkpoints are* ***young Tamil males originating from the north and east of the country, particularly those with: a profile or history of LTTE links; scarring consistent with wounds sustained in hostilities; no identity card or other identity documentation; no Colombo address; an outstanding arrest warrant or criminal record; no employment or other verifiable reason (such as study) for being in Colombo and those without family or other networks in Colombo on which to rely for support***"; see *Refugee Appeal No. 76466*, 11 June 2010, para. 77, http://www.unhcr.org/refworld/docid/4c2dd1b12.html. See also UK Asylum and Immigration Tribunal country guidance in *TK (Tamils - LP Updated) Sri Lanka* CG [2009] UKAIT 00049, 11 December 2009 http://www.unhcr.org/refworld/docid/4b2613ca2.html

(AR at pp. 230-231).

[44] The Board and the PRRA officer have considered that the Applicant did not have the profile of persons described as being targeted by the Sri Lanka authorities. Again since those two decisions were not challenged by the Applicant he cannot re-argue the same arguments in his subsequent PRRA application.

[45] The Applicant argues that PRRA officer selectively reviewed the documentary evidence.

[46] It is a well settled principle that the assessment of the weight to be given to a document is a matter within the discretion of the tribunal:

> [10] Several errors by the tribunal are urged by the applicant in written submissions but at the hearing of this matter counsel relied in the main on two errors which, in his view, warranted the setting aside of the tribunal's decision. **The first, described as an overriding error, was the tribunal's reference to the summons as "self-serving" evidence to which little weight should be given. The tribunal did not question the validity of the document, but the applicant's testimony that it was sent to him by his mother for use at his hearing appears to have been the basis for the tribunal's description. Counsel points out that all documentary evidence adduced by the applicant can be described as "self serving".** I do not accept the suggestion of counsel for the respondent, referring to Black's Law Dictionary, that the tribunal meant by the description that the document was manufactured by or for the applicant to serve his purposes at the hearing. **While I would not have described the document as the tribunal here did, that is not the test I must apply** (see, per Mr. Justice Noel in *Oduro v. M.E.I.*, Unreported, Court file 92-A-7171, June 2, 1993). **Moreover, its assessment of weight to be given to that document, as to any other, is a matter within the discretion of the tribunal in assessing the evidence before it.** » (Emphasis added).

(Huang v. Canada (Minister of Employment and Immigration), [1993] F.C.J. No. 901 (QL), 66 F.T.R. 178 (Justice Andrew MacKay)).

[47] The same can be said of officers dealing with PRRA or H&C applications.

> [15] … Questions of weight and credibility to be given to the evidence in risk assessments are entirely within the discretion of the PRRA Officer and, normally, the Court should not substitute its analysis for that of the Officer (*Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2; *Ferroequus Railway Co. v. Canadian National Railway Co*., [2003] F.C.J. No. 1773 at para. 14 (F.C.A.) (QL); *Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 974 at para. 4 (T.D.) (QL)). (Emphasis added).

(*Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 39, 128 A.C.W.S. (3d) 559; *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1293, 126 A.C.W.S. (3d) 841; *Singh v. MCI*, IMM-724-04, 23 février 2004 (C.F.); *Lene v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 23 (Justice Yvon Pinard)).

[48] Since the Applicant failed to show that he has the profile of the persons described in the documentary evidence, it was not unreasonable for the PRRA officer to conclude as he did (*Sivabalasuntharampillai v. MCI*, IMM-6702-09, January 27, 2010, (Justice Richard Mosley); *Arumugam v. M.C.I.,* IMM-565-10, March 1, 2010 (Justice James Russell)).

[49] The Applicant argues that the Officer choose to ignore in his assessment the statements made by Phil Glendenning.

[50] A simple reading of the notes to file contradicts that argument:

> Le demandeur a aussi allégué être exposé à des risques parce que des déboutés d'asile renvoyés d'Australie ont été tués, soumis à des violences physiques et détenus et que tout sri lankais ayant quitté son pays illégalement ou à l'insu des autorités est perçu par ces dernières comme un sympathisant des tigres tamoules. Au soutien de cette allégation, et d'autres aussi, il a déposé trente huit documents sur les atteintes aux droits de la personne, quatre pages sur l'activiste australien Phil Glendenning et une lettre d'Amnistie Internationale. Parmi les trente huit pièces, treize ne sont pas de nouveaux éléments de preuve puisque datant d'avant la première décision ERAR. Je ne vais pas non plus les considérer. Les vingt cinq restants portent sur les accusations d'abus des droits de la personne imputées aux forces de sécurité sri lankaises au lendemain de leur victoire militaire sur les tigres. Plus spécifiquement, deux articles d'ABC et SBS du 19 mai 2010 rapportent que de retour du Sri Lanka, monsieur Phil Glendenning, l'activiste australien, a déclaré que neuf sri lankais renvoyés dans leur pays par l'Australie ont été tués et que onze autres demeurent emprisonnés depuis une année. En dépit de quelques légères divergences entre ABC et SBS sur le nombre exact de victimes et la nature des sévices, j'ai sollicité l'aide de notre documentaliste et consacré deux journées entières pour trouver d'autres sources corroborant une telle information ou des évènements similaires. En vain. Une lecture plus approfondie de deux articles et d'autres qui reprennent la même déclaration de l'activiste, montre l'existence de très peu de détails sur les victimes, tels leurs noms, âges, profils personnels ou dates de renvoi et sur les moyens d'enquêtes ou sources utilisés par l'activiste pour arriver à un tel scoop. A mon opinion, de tels détails sont cruciaux pour notamment soutenir l'existence réelle d'événements aussi dramatiques afin d'obtenir et des sanctions contre les auteurs et la libération des personnes encore détenues. En fait, il est peu clair si les deux articles mettent l'accent sur des traitements aussi graves ou sur la

volonté du gouvernement australien, en raison de son appréciation de la situation des droits de la personne au Sri Lanka, de ne plus accepter de demandes d'asile de ressortissants sri lankais. Il est aussi peu concevable pour moi que seuls des déboutés du droits d'asile venant d'Australie puissent être ciblés à leur arrivée à Colombo et que les nombreuses ONG[1] présentes au Sri Lanka n'en disent mot. D'autre part, même si 9 déboutés d'asile sur les 1489[2] signalés par le Haut commissariat aux réfugiés (HCR) sont statistiquement parlant négligeables, il m'importe de considérer seulement que les violences évoquées ne sont ni justifiables ni légitimes même au regard des efforts du gouvernement sri lankais de lutter contre le terrorisme et même quand il s'agit d'anciens membres des tigres tamoules. En outre, je constate que non seulement dans son dernier rapport, le HCR ne fait plus référence aux risques auxquels sont confrontés les déboutés du droit d'asile à leur arrivée au Sri Lanka, mais dans son dernier profil opérationnel, il prévoit le retour de 5000 déboutés d'asile par an comparativement au plus récent chiffre de 1489. En fin de compte, vu que le caractère substantiellement divergent de l'évaluation de la situation par le HCR, un organisme à l'indépendance plus établie, et en dépit de ma considération pour la générosité de monsieur Glendenning, je ne peux me reposer sur les déclarations de ce dernier. D'autre part, je suis d'opinion que la lettre d'Amnistie Internationale ne repose pas sur le risques particuliers au demandeur et semble ignorer l'amélioration sensible de la situation générale telle que décrite par les sources documentaires que j'ai consultées, je ne suis pas en mesure d'accorder beaucoup de valeur à cette lettre. Je suis donc d'avis que le demandeur n'a pas établi qu'il est à risque par le simple fait qu'il a demandé la protection du Canada.

Reprenant la déclaration de **monsieur Glendenning**, le demandeur avance aussi que comme tout sri lankais ayant quitté son pays illégalement ou à l'insu des autorités, il sera perçu par ces dernières comme un sympathisant des tigres tamoules. J'ai indiqué dans le premier ERAR qu'il n'a pas établi qu'il a quitté son pays illégalement. En effet, même s'il a affirme avoir obtenu un passeport sri lankais, il n'a produit aucun document de voyage et la SPR a trouvé son témoignage peu crédible sur ce qu'il a fait depuis les incidents allégués jusqu'à son arrivée au Canada**. Il n'a déposé aucun élément de preuve soutenant le contraire. Il ne s'est donc pas déchargé du fardeau de sa preuve qu'il a illégalement ou à l'insu des autorités, quitté son pays. Je suis d'opinion qu'il n'a pas démontré qu'il exposé à des risques au regard de cet argument non plus**. (Emphasis added).

(Subsequent PRRA decision: exhibit D of the Applicant's affidavit).

B. Irreparable Harm

[51] The Applicant's only submission on the issue of irreparable harm is that, since he has allegedly showed a serious issue in the context of a serious risk to personal safety, there is presumption that irreparable harm follows. In his submissions, the Applicant relies on several cases where the Court has found a serious issue.

[52] In *El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42, 137 A.C.W.S. (3d) 161, penned by Justice Marshall Rothstein of the Federal Court of Appeal, found that the mere presence of a serious issue in a PRRA decision is not, in and of itself, determinative of irreparable harm:

> [8] The appellant argues that her appeal will be rendered nugatory if the stay is not granted, resulting in irreparable harm. The difficulty with the argument that an appeal being rendered nugatory amounts to irreparable harm is that if it is adopted as a principle, it would apply to virtually all removal cases in which a stay is sought and would essentially deprive the Court of the discretion to decide questions of irreparable harm on the facts of each case. In some cases, the fact that an appeal is rendered nugatory will amount to irreparable harm. In others, it will not. The material indicates that the appellant's husband may apply to sponsor her return to Canada. While removal will cause hardship, it is not clear that rendering the appeal nugatory will result in irreparable harm. (Emphasis added).

(Also: *Sivagnanansuntharam v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 70, 129 A.C.W.S. (3d) 567; *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 160, 139 A.C.W.S. (3d) 348; *Tesoro v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148, 139 A.C.W.S. (3d) 111).

[53] In regard specifically to Sri Lanka, a compendium of certain jurisprudence is discussed below in summary format to ensure that the Sri Lankan objective country condition situation is recalled in conjunction with subjective evidence of applicants from Sri Lanka:

B. Irreparable Harm

[43] Irreparable harm involves a high threshold. The Court must be satisfied that irreparable harm will occur if the stay is not granted (*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 (CanLII), 2004 FCA 261, 132 A.C.W.S. (3d) 261 at paras. 12-20; *Stampp v. Canada (Minister of Citizenship and Immigration)* 1997 CanLII 4966 (F.C.), (1997), 127 F.T.R. 107, 69 A.C.W.S. (3d) 901 at paras. 15-16; *Atakora v. Canada (Minister of Employment and Immigration)* reflex, (1993), 68 F.T.R. 122, 42 A.C.W.S. (3d) 486 at paras. 11-12 (T.D.); *Legrand v. Canada (Minister of Citizenship and Immigration)* (1994), 27 Imm. L.R. (2d) 259, 52 A.C.W.S. (3d) 1301 at para. 5 (F.C.T.D.); *Akyol v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 931 (CanLII), 2003 FC 931, 124 A.C.W.S. (3d) 1119 at para. 7).

[44] Jurisprudence from the Federal Court of Appeal makes clear that mootness in itself cannot establish irreparable harm. If it were otherwise, it would deny the Court the discretion to assess irreparable harm on a case-by-case basis (*El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42 (CanLII), 2005 FCA 42, 137 A.C.W.S. (3d) 161 at para. 8; *Palka v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 165 (CanLII), 2008 FCA 165, 167 A.C.W.S. (3d) 570 at paras. 18-20; *Selliah*, above, at para. 20; *Ryan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1413 (CanLII), 2001 FCT 1413, 110 A.C.W.S. (3d) 890 at para. 8; *Akyol*, above, at par. 11).

[45] Discretion is retained to hear appeals that are technically moot and a discretion exists in favour of hearing appeals after stays have been dismissed. The Federal Court of Appeal's decision in *Perez* which concerned a negative Pre-Removal Risk Assessment (PRRA) decision, follows the *Borowski* decision, criteria for determining whether the Court should entertain a case despite its mootness (*Perez v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 171 (CanLII), 2009 FCA 171, 82 Imm. L.R. (3d) 167, at paras. 3 and 7; *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (S.C.C.), [1989] 1 S.C.R. 342, 92 N.R. 10; reference is also made to *Palka*, above, at paras. 18-20).

[46] An applicant may continue his litigation by instructing counsel from abroad. Based on the jurisprudence, removal while an applicant's application is pending does not constitute irreparable harm (*Selliah*, above; *Ariyaratnam v. MCI*, IMM-8121-04, September 28, 2004; *Hussein v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1266 (CanLII), 2007 FC 1266, 162 A.C.W.S. (3d) 647 at para. 11).

…

[48] This Court and the Federal Court of Appeal have dismissed a substantial number of stays brought by Tamils, including stays of young Tamil males, who

argue that they would be at risk if returned to Sri Lanka (Reference is made to: *Selliah*, above, *Sivananthem v. MCI*, IMM-3948-04, May 3, 2004); *Sivagnanansuntharam v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 70 (CanLII), 2004 FCA 70, 129 A.C.W.S. (3d) 567; *Nagalingam v. MCI* , IMM-6447-05, December 2, 2005; FCA refused to entertain stay motion, December 3, 2005; *Thanabalasingham*, 2006 FC 486 (CanLII), 2006 FC 486, above; *Thanabalasingham v. MPSEP*, IMM-1649-06, March 27, 2006; *Ariyaratnam*, above; *Rajalingam v. MCI*, IMM-5783-05, September 27, 2005; *Kathiravelu v. MCI*, IMM4359-06, August 15, 2006; *Naganathan v. MPSEP*, IMM-1422-06, March 20, 2006; *Jeyakumar v. MCI*, IMM-2619-06, June 6, 2006; *Archarige v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 240 (CanLII), 2006 FC 240, 146 A.C.W.S. (3d) 532; *Sornalingam v. MCI*, IMM-3366-06; *Poopalasingam v. MCI*, IMM-1547-06; *Vidnusingam v. MCI*, IMM-2984-06; *Tharmaratnam v. MPSEP*, IMM-3208-06; *Tharmaratnam v. MCI*, IMM-2934-06; *Saravanapavananthan v. MPSEP*, IMM-1689-06; *Saravanapavananthan v. MPSEP*, IMM-1352-06; *Manohararaj v. MPSEP*, IMM-1509-06; *Sellatharai v. MCI*, IMM-2620-06, *Thangasivam v. MCI*, IMM-1824-06; *Figurado v. Canada (Solicitor General)*, 2004 FC 241 (CanLII), 2004 FC 241, 129 A.C.W.S. (3d) 374; *Thuraisingam v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 72 (CanLII), 2006 FC 72; 145 A.C.W.S. (3d) 888; *Sebamalaimuthu v. MCI*, IMM-4379-04 May 17, 2004; *Jesudhasmanohararaj v. Canada (Solicitor General)*, 2004 FC 596 (CanLII), 2004 FC 596, 130 A.C.W.S. (3d) 987; *Thurairajah v. MCI*, IMM-7478-03, December 12, 2003); *Thileepan v. MCI*, IMM-8535-03, November 20, 2003; *Thangasivam v. MCI*, IMM-8986-03).

[49] This Court has also held that the improving conditions in Sri Lanka cannot form the basis of irreparable harm, even for a young Tamil male from the north. As Justice Richard Mosley held in a stay motion brought earlier this year involving a young Tamil male from the north, from Jaffna, who was a television and radio producer in Canada, and whose father was a journalist at a Sri Lankan-based Tamil newspaper:

> The applicant has failed to persuade me on the evidence on a balance of probabilities that he will likely suffer irreparable harm if a stay is not now granted and he is returned to Sri Lanka. I accept that there continue to be serious human rights issues in Sri Lanka but from the evidence in the records, the situation appears to be improving.

(*Sivabalasuntharampillai v. MCI*, IMM-6702-09, January 27, 2010, at p. 3).

[50] No irreparable harm in *Sivabalasuntharampillai* was found due to improving conditions in Sri Lanka. Justice James Russell dismissed the stay motion in *Arumugam*, wherein a young Tamil male from the north brought a stay motion on a negative PRRA (*Arumugam v. MCI*, IMM-565-10, March 1, 2010).

(*Sittampalam v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 562).

[54] As stated in *Paul v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 398, 157 A.C.W.S. (3d) 393:

> **IRREPARABLE HARM**
>
> [23] The Federal Court of Appeal has found, on several occasions, that the mere presence of a serious issue is not, in and of itself, determinative of irreparable harm. (*Selliah v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1200 (F.C.A.) (QL); *El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42 (CanLII), 2005 FCA 42, [2005] F.C.J. No. 189 (QL); *Sivagnanansuntharam v. Canada (Minister of Citizenship and Immigration*), 2004 FCA 70 (CanLII), 2004 FCA 70, [2004] F.C.J. No. 325 (QL); *Tesoro v. Canada (Minister of Citizenship and Immigration*), 2005 FCA 148 (CanLII), 2005 FCA 148, [2004] F.C.J. No. 698 (QL).)
>
> [24] Similarly, there have been cases of this Court which have held that, if the underlying application on a PRRA is moot, this constitutes irreparable harm. Nevertheless, the Federal Court of Appeal has rejected this argument on several occasions. (*Selliah*, above, at para. 20; *El Ouardi*, above, at para 8.)
>
> [25] As Justice Marshall Rothstein in *El Ouardi*, above, held, on behalf of the Federal Court of Appeal:
>
> > [8] The appellant argues that her appeal will be rendered nugatory if the stay is not granted, resulting in irreparable harm. The difficulty with the argument that an appeal being rendered nugatory amounts to irreparable harm is that if it is adopted as a principle, it would apply to virtually all removal cases in which a stay is sought and would essentially deprive the Court of the discretion to decide questions of irreparable harm on the facts of each case. In some cases, the fact that an appeal is rendered nugatory will amount to irreparable harm. In others, it will not. The material indicates that the appellant's husband may apply to sponsor her return to Canada. While removal will cause hardship, it is not clear that rendering the appeal nugatory will result in irreparable harm.
>
> [26] This Court has made similar findings in numerous cases. For example, in *Akyol v. Canada (Minister of Citizenship and Immigration*), 2003 FC 931 (CanLII), 2003 FC 931, [2003] F.C.J. No. 1182 (QL), Justice Luc Martineau (who also decided

Figurado v. Canada (Minister of Citizenship and Immigration), 2005 FC 347 (CanLII), 2005 FC 347, [2005] F.C.J. No. 458 (QL)), stated as follows:

> [11] Sixth, the deportation of individuals while they have outstanding leave applications and/or other litigation before the Court, is not a serious issue nor does it constitute irreparable harm: *Ward v. Canada (Minister of Citizenship and Immigration*), [1997] F.C.J. No. 86 (T.D.) at para. 12; and *Owusu v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1166 (T.D.). I also note that the application for leave and judicial review will continue regardless of where the applicants are located, and that they can provide instructions to counsel as to how to proceed with the litigation from the U.S. or, should they end up there, Turkey…

(Reference is also made to: *Kim v. Canada (Minister of Citizenship and Immigration*), 2003 FCT 321 (CanLII), 2003 FCT 321, [2003] F.C.J. No. 452 (QL); *Ryan v. Canada (Minister of Citizenship and Immigration),* 2001 FCT 1413 (CanLII), 2001 FCT 1413, [2001] F.C.J. No. 1939 (QL), at para. 8.)

[27] In addition, Justice Judith Snider considered but rejected a similar argument to the one advanced by the Applicant and ultimately concluded that the application is not rendered nugatory by removal. In *Nalliah v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C.R. 210, [2004] F.C.J. No. 2005 (QL), Justice Snider stated the following:

> [30] The second branch of Mr. Nalliah's argument is that the loss of the right to continue the litigation constitutes irreparable harm. Contrary to these submissions, if the injunction is refused, their right to an effective remedy will not be rendered nugatory. As Mr. Justice O'Reilly stated in *Kim v. Canada (Minister of Citizenship and Immigration*) (2003), 33 Imm. L.R. (3d) 95 (F.C.T.D.), at paragraph 9: "nothing in the Act or the Rules would interfere with the entitlement of a PRRA applicant, who has been removed from Canada and who is successful on judicial review, to have that application reconsidered".
>
> [31] In *Selliah v. Canada (Minister of Citizenship and Immigration*), 2004 FCA 261 (CanLII), 2004 FCA 261, at paragraph 20, Justice Evans of the Court of Appeal stated:
>
> > Since the appeal can be ably conducted by experienced counsel in the absence of the appellants and since, if the appeal is successful, the appellants will probably be permitted to return to Canada at

> public expense, I cannot accept that removal renders their right of appeal nugatory.
>
> [32] The cases of *Suresh* and *Resulaj,* referred to by Mr. Nalliah may be distinguished on the basis that, in both of those cases, there was significant evidence supporting a personalized risk. From a review of the jurisprudence, I conclude that irreparable harm cannot be solely founded on difficulty in pursuing legal rights of challenge once removed from Canada.

[28] In addition, it was clearly not the intent of Parliament to allow all negative PRRA recipients to remain in Canada, pending the outcome of any litigation related to their PRRA decisions. Parliament chose to provide a statutory stay of removal pending the outcome of an application for leave of a negative refugee decision by the RPD. Parliament further envisioned statutory stays in certain specified circumstances related to PRRAs, as set out in R. 232 of Immigration and Refugee Protection Regulations, SOR/2002-227 (Regulations), none of which included applications for leave challenging negative PRRA decisions. (Regulations, ss. 231-232.)

[29] <u>Parliament clearly intended that persons, whose PRRA applications had been rejected, could be removed</u>. This is also consistent with s.48 of the IRPA, which provides that the Minister is obligated to effect valid removal orders as soon as practically possible. Any other interpretation would place the rights of a PRRA applicant, ahead of the legal obligation on the Minister, rights and obligations which Parliament has intentionally balanced through the statutory provisions in IRPA.

[30] Thus, the proper, persuasive, and authoritative approach is the one articulated by the Federal Court of Appeal that has held that removing an applicant from Canada while his appeal of his negative PRRA is pending, does not render his/her rights nugatory. (*Selliah*, above, at para. 20; El *Ouardi*, above.)

[31] Even if the Court accepts that a PRRA application for judicial review may be moot if the applicant has been removed, this does not necessarily result in irreparable harm. This Court and the Federal Court of Appeal have indicated that there must be something more in order to establish irreparable harm-e.g., evidence of personalized risk. As Justice Dawson determined in *Ryan*, above: "…it seems to me that something more than mootness must be established in order to constitute irreparable harm. Otherwise, by definition irreparable harm would exist whenever the validity of a decision not to defer removal is put in issue."

[32] The Federal Court of Appeal has also confirmed that the possibility of mootness cannot always equate to irreparable harm because every stay would then give rise to irreparable harm. This is certainly not the intention of Parliament, which

> specifically chose not to include outstanding PRRA litigation as a basis for a statutory stay. (*El Ouardi*, above.)
>
> [33] The Applicant's H&C application, made in January 2007, will continue to be processed in the Applicant's absence. There is no evidence to support the Applicant's contention that her H&C application will be refused if she is removed. (Emphasis added).

(Also: *Yang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 607 (Justice Russel Zinn).

[55] The Applicant has not shown that he will suffer irreparable harm because of his removal, since he failed to show a serious issue.

[56] Furthermore, since the Applicant's alleged risks were assessed by the RPD, which did not find them credible:

> [10] The irreparable harm branch of the test is broader than "serious issue". The Court may consider the RPD's negative credibility findings. The RPD found the Applicants' story not to be credible. It has been held that a story that was found not to be credible by the Refugee Board cannot serve as a basis for an argument supporting irreparable harm. There is no risk to the Applicants that would constitute irreparable harm. (RPD Reasons; Applicant' Motion Record, above; Beck-Ne, above; *Saibu*, above; *Rajz*, above; *Akyol,* above.)
>
> [11] The Applicants have already had their risk assessed. The same risk cannot serve as a basis for an argument supporting irreparable harm in a stay application**.** As to the underlying application, they may continue to instruct counsel and pursue their application from abroad. Nothing in the Immigration and Refugee Protection Act, S.C. 2001, c.27 or the Immigration and Refugee Protection Regulations, SOR/2002-227 interferes with the entitlement of a PRRA applicant, who has been removed from Canada and who is successful on judicial review, to have his application reconsidered. (*Sesay v. MCI* (IMM 912-07 and 914-07) per Justice Edmond Blanchard; *Kim v. Canada (Minister of Citizenship and Immigration*), 2003 FCT 321 (CanLII), 2003 FCT 321, [2003] F.C.J. No. (QL); *Sivagnanansuntharam v. M.C.I.* (February 16, 2004, Docket A-384-03) (F.C.A.); *Akyol,* above, para. 11 (and cases cited therein); *Selliah v. Canada (Minister of Citizenship and Immigration*), 2004

> FCA 261 (CanLII), 2004 FCA 261, [2004] F.C.J. No. 1200 (QL), para. 20; *El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42 (CanLII), 2005 FCA 42, [2005] F.C.J. No. 189 (QL).)"

(*Hussein v. Canada (Minister of Citizenship and Immigration)*, [2003] A.C.F. No. 466 (QL), 2007 FC 1266).

> Tel qu'indiqué à I'audience, le test applicable en matière de préjudice irréparable est très strict. Le demandeur doit fournir une preuve claire et crédible qui établit par prépondérance de preuve qu'il est probable qu'il subira le préjudice allégué. La Cour ne peut agir sur la base d'une simple possibilité même raisonnable et elle ne peut se fonder sur une preuve spéculative ou sur des hypothèses.
>
> De plus, tel que l'a indiqué le défendeur à l'audience, la jurisprudence est à l'effet que normalement le récit d'un demandeur jugé non crédible par la Section de la protection des réfugiés ne peut servir de fondement à un argument de préjudice irréparable dans le cadre d'une demande de sursis. (*Singh c. Canada (Ministre de la Citoyenneté et de 1 'Immigration*), [2005] A.C.F. no 199, paragraphe 14; *Kant c. Canada (Ministre de la Citoyenneté et de l'Immigration*) [2007] A.C.F. 2260, paragraphes 47 ss). **Comme dans *Kant,* le préjudice irréparable allégué est la crainte fondée essentiellement sur les motifs présentés devant la SPR et devant l'agent ERAR et l'agent chargé de réviser sa demande d'exemption.** »

(*Yansane v. M.C.I.*, IMM-790-08, March 3rd, 2008 (Justice Johanne Gauthier); also: *Ghanaseharan Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, 132 A.C.W.S. (3d) 547 (F.C.A.)).

[57] Essentially, the risks alleged by the Applicant in his subsequent PRRA application are similar to those argued in support of his asylum claim and in support to his first PRRA application and have been found by the IRB not to be credible and by the PRRA Officer not to be personalized risks.

[58] The Applicant had discontinued his Leave Application in regard to the decision of the RPD and has not filed judicial review applications in regard to the negative PRRA decision rendered in April 2010 nor the negative H&C decision rendered also in April 2010.

[59] Therefore, the Applicant's arguments filed in support of his asylum claim or his first PRRA application or his H&C application cannot be used to show that he will suffer irreparable harm because of his removal.

[60] Furthermore, the RPD found the Applicant's story not to be credible and in the first PRRA decision the PRRA officer found that the Applicant did not have the profile of persons at risk.

[61] Therefore those alleged risks cannot serve as a basis for an argument supporting irreparable harm:

> [14] … As held by this Court in a number of cases, when the applicant's account has been found not to be credible both by the Refugee Division and a PRRA officer, this same account cannot serve as a basis for an argument supporting irreparable harm in a stay application : *Akyol v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1182; *Saibu v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 151; *Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751; *Ahmed v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 483 (T.D.).

(*Singh v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 145, 137 A.C.W.S. (3d) 156; *Ghanaseharan*, above; *Nalliah v. Canada (Solicitor General)*, 2004 FC 1649, 264 F.T.R. 148; *Cerna v. M.C.I.*, IMM-5744-04, July 12, 2004 (F.C.); *Lee v. M.C.I*, IMM-5752-04, July 12, 2004 (F.C.); *Gill v. M.C.I.*, IMM-2763-04, March 18, 2004 (F.C.); *Mahadeo v. M.C.I.,* IMM-889-99, March 5, 1999 (F.C.))

> **CONSIDÉRANT** que même en présumant sans en décider que des questions sérieuses sont à débattre, le demandeur n'a pas satisfait la Cour qu'un préjudice irréparable lui serait causé s'il devait être retourné dans son pays, pour les raisons suivantes :
>
> - Les risques invoqués par le demandeur sont basés sur des événements qui ont été jugés non crédibles par la Commission de l'Immigration et du Statut de Réfugié (CISR);
> - Les mêmes risques ont été analysés par l'agent d'évaluation des Risques Avant Renvoi (ERAR);
> - Le même récit jugé non crédible des événements ne peut servir de fondement à un argument de préjudice irréparable dans le cadre d'une demande de sursis *(Akyol* c. *Canada (Ministre La Citoyenneté et de L'Immigration),* [2003] A.F.C. no 1182);
> - Dans sa plaidoirie orale, le demandeur prétend que événements récents qui se sont produits au Pakistan font en sorte qu'il est à risque s'il doit être retourné dans son pays. Cependant il n'y a aucune preuve au dossier d'un risque personnalisé le ciblant en particulier. "

Nisar KHAN and M.C.I. and M.S.P.P.C., IMM-5089-07, January 9, 2008 (Justice Michel Beaudry).

> I am not satisfied that the applicant has met all three elements of the *Toth, supra,* test. I need not make any comment on the merits of the "serious issue", but even if the applicant *met* that element, the applicant has failed to show irreparable harm. His refugee claim, his PDRCC application, his request for exemption of a visa for humanitarian consideration and his PRRA application were dismissed. **I agree with the respondent that the applicant's alleged risks were analyzed by many administrative tribunals and cannot serve as a basis for an argument supporting irreparable harm in the present motion** *Akyol* v. *Canada (Minister of Citizenship and Immigration),* [2003] F.C.J. No. 1182. The applicant's separation from his wife who is waiting for a new hearing before the Refugee Division Board cannot be considered as irreparable harm because family separation per se is within the normal consequences of deportation *Celis* v. *Canada (Minister of Citizenship and Immigration),* [2002] F.C.J. No. 1679." (Notre mise en évidence)

(*Sohal v. M.C.I.,* IMM-1005-05, 7 mars 2005 (Justice Beaudry.); *Akyol v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 931, 124 A.C.W.S. (3d) 1119 (Justice Luc Martineau)).

[62] In *Krishan Pal Singh*, Justice de Montigny found::

> [14] Turning now to the irreparable harm requirement, the applicant has failed to demonstrate that he is really at risk if he should be removed to India. As held by this Court in a number of cases, when the applicant's account has been found not to be credible both by the Refugee Division and a PRRA officer, this same account cannot serve as a basis for an argument supporting irreparable harm in a stay application:

> *Akyol v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1182; *Saibu v. Canada (Minister of Citizenship and Immigration),* [2002] F.C.J. No. 151; *Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751; *Ahmed v. Canada (Minister of Citizenship and Immigration)*, [2001] 1 F.C. 483 (T.D.).

(*Krishan Pal Singh v. Canada (Minister of Citizenship and Immigration),* [2005] F.C.J. No. 199 (QL); *Rwiyamirira v. Canada (Minister of Citizenship and Immigration),* [2006] F.C.J. No. 1472, 2006 FC 1711, at paras. 23-26; *Casanova v. Canada (Minister of Citizenship and Immigration),* [2006] F.C.J. No. 301 (QL), 2006 FC 32).

[63] When an Applicant does not have the profile of a person at risk, the Court will not intervene (*Sivabalasuntharampillai v. MCI*, IMM-6702-09, January 27, 2010, (Justice Mosley) at p. 3; also, *Arumugam v. M.C.I.,* IMM-565-10, March 1, 2010 (Justice Russell) at p. 2.)).

C. Balance of Convenience

[64] The Applicant has benefited from a review of his risk allegations by the Refugee Protection Division, a PRRA Officer. Paragraph 48(1) of IRPA provides that removals must be enforced as soon as reasonably practicable.

[65] In *Acharige v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 240:

> The circumstances of this case are such that the balance of convenience lies with the Minister. The Minister is under a statutory duty to enforce the Removal Order as soon as is reasonably practicable. There is a public interest in enforcing removal orders in an efficient, expeditious and fair manner. Only in exceptional cases will a person's individual interest outweigh the public interest *(Immigration and Refugee Protection Act*, S.C. 2001, c.27, s. 48; *Akyol* v. *Canada (M.C.I.)*, [2003] F.C.J. No. 1182, 2003 FC 931 at para. 12; *Dugonitsch v. Canada (M.E.I.)*, [1992] F.C.J. No. 320 (T.D.)).

[66] The balance of convenience favours the Respondents in this case.

VII. Conclusion

[67] On the basis of the above, the Applicant's application for a stay of removal is dismissed.

ORDER

THIS COURT ORDERS that the application for a stay of execution of the removal be denied.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4151-10
STYLE OF CAUSE:	ANTON DIAS PAVULIN APPU v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Ottawa, Ontario (by teleconference)
DATE OF HEARING:	July 22, 2010
REASONS FOR ORDER AND ORDER:	SHORE J.
DATED:	

APPEARANCES:

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Ms. Michèle Joubert	FOR THE RESPONDENT

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