

Federal Court



Cour fédérale

Date: 20120217

Docket: IMM-5122-11

Citation: 2012 FC 226

Ottawa, Ontario, February 17, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**FALULULLA PEER MUHAMMED
RIFAYA MOHAMED HALALDEEN
RISLA BEGUM FALULULLA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Peer Muhammed fears that were he to be returned to Sri Lanka, he would be at risk of persecution, and even death, from one Mr. Perera, and those who act in concert with him. Mr. Perera has waged a personal vendetta against Mr. Peer Muhammed because he had fired him from his job. In addition, Mr. Peer Muhammed, who is a Muslim Tamil, was involved in the expansion of a Muslim community centre. Mr. Perera is a Sinhalese nationalist. He and others took exception to this activity.

[2] The member of the Refugee Protection Division, of the Immigration and Refugee Board of Canada, determined that he had reason to fear harm from Mr. Perera and his associates on the basis of religion and imputed political opinion. However, she found that he was neither a United Nations Convention refugee nor a person in need of Canada's protection in that there was an internal flight alternative available to him in Sri Lanka, more particularly in those districts in the east which are predominantly Tamil and inhabited almost exclusively by Muslims.

[3] There are two issues in the judicial review of that decision. The overall issue is whether the decision was reasonable. In addition, the applicants submit that although the member considered the Convention refugee grounds of religion and political opinion, she should also have considered that they were being persecuted on the basis of their ethnicity as Muslims in Sri Lanka are considered an ethnic group.

[4] As to the second issue, no matter if considered as a matter of race, religion, imputed political opinion, or membership in a particular social group, the persecutors were always one and the same. Consequently, no separate analysis was required.

[5] While working as the manager of his father-in-law's hardware store in Ambanpola, Mr. Peer Muhammed fired Mr. Perera, a retired police inspector, due to questionable business dealings. Mr. Perera swore revenge. There was in place a Muslim community centre on a land and in a building donated by Mr. Peer Muhammed's father-in-law. In 2005, Mr. Peer Muhammed was president of the board of trustees and began the approval process for expanding

the centre. As a result, there were threatening phone calls, his children were threatened with kidnapping, the police did not respond, and his home was robbed. Mr. Perera assaulted him, and others joined him. The police, however, did nothing.

[6] Later he fled with his family to his wife's uncle's home in Kandy. From there he continued to lead the project by phone. However, he was found out and accosted. Thereafter, the family fled to Canada.

[7] Mr. Peer Muhammed was found to be credible, notwithstanding that his two elder children had withdrawn their refugee claims and returned to another part of Sri Lanka and have come to no harm from Mr. Perera or anyone else, despite the fact that they had been threatened with kidnapping.

[8] The member found that, on the balance of probabilities, Mr. Perera would have neither the ability nor the interest to find him in the east as he was no longer associated with the community centre under construction, and that if he were surrounded by other Muslims he would be safe, and free to practice his religion and become involved in community projects.

[9] The member determined it would be reasonable to relocate to towns in the Eastern Province. She found that the Batticaloa District was predominantly Tamil and certain areas were inhabited almost exclusively by Muslims. The basis of that finding was the *Report of Information Gathering Visit to Columbo, Sri Lanka 23-29 August 2009*, dated 22 October 2009, which was undertaken by the Foreign and Commonwealth Office Migration Directorate at the

request of the United Kingdom Border Agency Country of Origin Information Service. Section 5.6 thereof reads:

The Eastern province offers a more mixed picture. The Batticaloa district is predominantly Tamil, but certain areas are inhabited almost exclusively by Muslims. The Ampara and Trincomalee districts are mixed with Muslims, Sinhalese and Tamils all present in large numbers.

[10] The leading case on the internal flight alternative is the decision of the Federal Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, [1993] FCJ No 1172 (QL). The test is two-pronged. In finding an internal flight alternative, there must be no serious possibility of the claimant being persecuted or subjected to persecution or to a danger of torture or to a risk to life or of cruel and unusual treatment or punishment and, furthermore, conditions in the proposed area must be such that it would not be unreasonable, in all the circumstances, to seek refuge there.

[11] The question of whether or not there is an internal flight alternative available is but one aspect to determine if a claimant is a refugee. The burden of proof rests with the claimant to establish there is a serious possibility of persecution throughout the country: see *Thirunavukkarasu*, above, and *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, [1991] FCJ No 1256 (QL) (FCA).

[12] In this case, it may not have been necessary for the member to imply that Mr. Peer Muhammed would only be safe in Muslim dominated areas, but, in any event, that finding was not unreasonable: see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47.

[13] It is the second part of the test that comes into play here, *i.e.* whether it would be reasonable for the claimant to relocate. In discussing whether it would be objectively unreasonable for a claimant to avail himself of the internal flight alternative in *Thirunavukkarasu*, above, Mr. Justice Linden stated at paragraphs 13 and 14:

[13] Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?

[14] An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.

[14] Mr. Peer Muhammed submits first of all that no specific place was identified as safe, and that it would be unreasonable for him to relocate in the Eastern Province.

[15] While it is not enough to simply hold that an internal flight alternative is available, it is also unnecessary to provide a street address. In my opinion, the reference to Muslim dominated areas in the Eastern Province was sufficient.

[16] It was submitted that it would be unreasonable to have Mr. Peer Muhammed relocate in the east because, although not as ravaged as other parts of the country in the civil war, there are unexploded landmines and the infrastructure leaves much to be desired. However, this is a situation facing millions of Sri Lankans, Sinhalese and Tamils alike, be they Buddhist, Hindu, Christian or Muslim. In *Megag v Canada (Minister of Employment and Immigration)*, 71 FTR 64, [1993] FCJ No 1459 (QL), Mr. Justice Rothstein, as he then was, dealt with northern Somalia. He said at paragraph 8: “In respect of instability in the north, I do not think that this alone is the test of reasonableness. The test pertains to the applicant as an individual.”

[17] This application shall be dismissed. The parties and the Court agree that there is no serious question of general importance to certify.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. This application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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PLACE OF HEARING: CALGARY, ALBERTA

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**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

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