

Federal Court



Cour fédérale

**Date: 20121220**

**Docket: IMM-1738-12**

**Citation: 2012 FC 1518**

**Ottawa, Ontario, December 20, 2012**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**THARSINI  
THIRUGUANASAMBANDAMURTHY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision by a visa officer at the High Commission of Canada in Colombo (the officer) dated December 20, 2011, wherein the applicant's study permit application was refused.

[2] The applicant requests that the officer's decision be set aside and the application be referred back to the High Commission for redetermination.

## **Background**

[3] The applicant is a citizen of Sri Lanka. She applied for a study permit to study in Canada at York University for a Bachelor of Science degree in computer science, a program she had been previously accepted to. Her only family is her mother, who lives in Sri Lanka and who the applicant intended to rely on for financial support during her studies. She wishes to obtain this credential in order to pursue technology jobs in Sri Lanka.

[4] The applicant made her visa application on December 1, 2011.

## **Officer's Decision**

[5] In a letter dated December 20, 2011, the officer informed the applicant her visa application had been rejected. The officer had checked boxes on the form letter indicating two reasons for the refusal: failure to satisfy the officer of the existence of adequate funds to pay for tuition, living expenses and return to country of residence and failure to satisfy the officer of sufficient ties to Sri Lanka to ensure departure from Canada at the end of the visa.

[6] The Global Case Management System records (the GCMS notes) served as reasons for the officer's decision.

[7] The notes first replicate GCMS notes from the applicant's four previous visa applications, which were rejected. The notes entered on December 16, 2011, summarize the facts of the current

visa application, indicating that the applicant was 21 years old and single, had an aunt and grandmother in Canada, had not been employed or studied since August 2009 and had previously studied at the American National College in Colombo so sought to gain credits for those studies in Canada. The applicant would require two years and one semester of study to complete her degree at York University. The applicant's mother received the equivalent of \$160 Canadian per month from the rental of land in Jaffna and had the equivalent of \$123,000 Canadian in fixed assets.

[8] The notes then summarize the officer's interview with the applicant. The applicant indicated her purpose in selecting Canada for her studies was due to the wide recognition of diplomas and the low cost. She indicated her credits could only be transferred to an American or Canadian university and tuition was more expensive in the United States. She said she would have many job opportunities in the Sri Lankan tech sector if she obtained a Canadian degree. When asked why she would apply to Canada again after being refused a visa four times, she indicated this was due to being accepted by York University and the recognition of her credits.

[9] When the officer inquired why she did not apply to India given its large technology sector, the applicant stated that computer science in Canada was more advanced. The officer noted that the applicant gave inconsistent answers as to her employment efforts, first saying she had not applied for any jobs but then saying she had applied to her old school, which did not have any positions available. The applicant listed the types of courses she wished to take and planned to get a job in the Sri Lankan technology sector. She said it would cost \$30,000 Canadian per year to obtain this education. The officer asked how long it would take to recoup those costs and the applicant did not

have a reply. She indicated the source of her mother's funds was revenue from land purchased via funds from her mother's brothers in Australia and the United Kingdom.

[10] The officer expressed his concerns to the applicant that she appeared focused on Canada despite her British and American based studies, as shown by her lack of applications to other countries and her failure to advance herself in Sri Lanka in the previous two years. The officer noted she gave vague answers and did not seem to have considered the financial benefit from the studies or how long it might take to recoup the costs. The officer noted the funds for her studies were not the applicant's or her mother's, but from third parties in other countries. The officer was not satisfied once she was in Canada the funds would be used to pay for her studies or that her uncles could afford to pay for her studies. The applicant said her mother's loan of two million Sri Lankan rupees had been paid back to her and the original money for the loan had come from her brothers.

[11] The officer indicated the applicant had not allayed these concerns. The applicant had not demonstrated good establishment in Sri Lanka and shown weak economic and family ties. The officer was not satisfied that the main purpose of the application was not to gain entrance to Canada. The officer was not satisfied the funds owned by the uncles would be used to pay for the applicant's studies. The officer was not satisfied the applicant would depart Canada once granted entry. The officer refused the application.

### **Issues**

[12] The applicant submits the following points at issue:

1. Did the officer commit a reviewable error by determining without sufficient evidence that the applicant would not leave Canada on the completion of her studies?
2. Did the officer commit a reviewable error by failing to assess the evidence before determining that:
  - (a) the applicant did not have adequate funds to pay for her studies and return to her country of residence;
  - (b) the source of the applicant's funds was not her mother; and
  - (c) the funds listed in her application would not be used to pay for her studies in Canada?

[13] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the officer err in refusing the application?

### **Applicant's Written Submissions**

[14] The applicant submits that the appropriate standard of review is reasonableness, given the issues are questions of fact.

[15] The applicant argues the officer failed to consider the totality of the evidence in determining she was not likely to return to Sri Lanka. The officer had a duty to verify the strength of an applicant's family ties in assessing her establishment in Sri Lanka. This Court has held that a child's close relationship to her parents is an important and relevant factor which an officer must consider

and that the mere fact that an applicant was single without dependants was not sufficient to justify a finding of non-establishment.

[16] The applicant further argues oversimplified generalizations should not supplant an individualized assessment and that it has been recognized that a person may have the dual intent of immigrating to Canada and of abiding by immigration law respecting temporary entry.

[17] The applicant argues the officer's finding of weak social and economic ties to Sri Lanka was unreasonable. The officer failed to consider her personal circumstances and it was unreasonable to expect a person at her stage of life to have substantial family or economic ties. The officer also erred by focusing on the quantity of the applicant's familial ties instead of the strength of her relationship to her mother, who had no other support in Sri Lanka. That relationship represented a strong incentive for the applicant to leave Canada at the end of her authorized stay.

[18] The fact that the applicant has not completely considered how to recoup the costs of her education was irrelevant to whether she was a *bona fide* student who would return to Sri Lanka. Focusing on this issue exclusively ignored the reasons given by the applicant for her desire to study in Canada.

[19] The applicant offers statistics on the Sri Lankan economy showing it has improved since the end of the civil war in 2009, meaning the officer's assumptions about recouping the cost of education were wrong. The applicant argues it was not open to the officer to speculate about what the future may hold for the applicant.

[20] The applicant argues she gave valid reasons for wanting to study in Canada, including the cost of tuition and the quality of education at York University. The applicant submits that even if the officer believed the applicant would later apply to immigrate to Canada, this is not a proper basis on which to reject a study permit.

[21] On the issue of sufficient funds, the applicant argues the officer failed to consider the evidence of the applicant's mother's finances. There was no reason to believe the funds belonged to her uncles, rather, she had stated that they had provided her mother with funds to buy land in 2009, but her mother had sold that land in 2011. The officer disregarded abundant evidence of the mother's personal financial resources.

[22] In her further memorandum, the applicant repeats these arguments and notes that the inconsistent responses relating to her job application are simply attributable to the difference between a formal job application and an informal inquiry.

### **Respondent's Written Submissions**

[23] The respondent argues the appropriate standard of review is reasonableness, given that the officer's decision is discretionary and for the most part a question of fact.

[24] The respondent recites the factors the officer considered in refusing the application and argues the officer is entitled to rely on common sense and rationality in determining a visa applicant's intentions. The respondent characterizes the applicant's arguments as pertaining only to

the weighing of evidence. The officer's reasons were clear and the law is well established that only very minimal reasons are required for this type of temporary resident visa application.

[25] The officer was not required to extensively refer to every piece of evidence. The onus was on the applicant to demonstrate that she would leave Canada as required and has the financial resources to support herself. The officer was under no legal duty to ask for clarification or additional information.

### **Analysis and Decision**

#### [26] **Issue 1**

##### What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57, [2008] 1 SCR 190).

[27] I agree with the parties that a visa officer's decision on a study permit application should be reviewed on a reasonableness standard (see *Patel v Canada (Minister of Citizenship and Immigration)*, 2009 FC 602 at paragraph 28, [2009] FCJ No 787).

[28] In reviewing the officer's decision on the standard of reasonableness, the Court should not intervene unless the officer came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above,

at paragraph 47). As the Supreme Court held in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraph 59).

[29] **Issue 2**

Did the officer err in refusing the application?

The reasonableness standard brings with it the *Dunsmuir* above, value of justification. In this matter, the applicant contends that the two findings made by the officer were not reasonably justified given the evidence presented. I would also add that the value of transparency is engaged, as the basis for several factual findings was far from clear in the officer's own notes.

[30] The officer's finding that the funds for the applicant's studies belong to her uncles is not transparent. The officer does not give a reason for this finding and it conflicts with the officer's note elsewhere that the financial records reflect the mother having a fixed deposit of the equivalent of \$123,000 Canadian. The only mention of the uncles is the officer's note that the uncles had given the applicant's mother the money to pay for land that was ultimately sold and that they had provided her with money for a loan that had been paid back. How the officer infers that the fixed deposit funds do not now belong to the mother is impossible to tell from the reasons. There is simply no indication anywhere in the record why the officer would doubt the ownership of the deposit. Transfers of wealth from immigrants in rich countries to their family members in less developed parts of the world are a common feature of globalization and hardly an obvious indicator of deception.

[31] It is not this Court's role to reweigh evidence and the officer did raise valid concerns about the visa application. The finding on this point, however, is unreasonable, given that the applicant had provided proof of access to funds for the cost of her education and it is impossible to discern from this record why the officer doubted that evidence.

[32] On the issue of the applicant's intention to return to Sri Lanka, I find the officer's reasoning to be similarly opaque. The officer concluded the applicant had only weak family ties to Sri Lanka. As there is no elaboration on this finding, one can only assume the officer concluded the ties are weak due to only a single family member being in that country. However, to judge family ties solely based on the quantity of family members is to ignore the relevant factor of the strength of the child-parent bond (see *Guo v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1353 at paragraph 15, [2001] FCJ No 1851). The officer may have had legitimate reasons for doubting the strength of that bond in this case. The record is silent, making it very difficult for this Court to see this finding as reasonable.

[33] While the family tie was only one part of the evidence considered by the officer on the issue of intention to leave Canada, it clearly was central to that determination and I cannot discern how the officer would have decided absent that finding.

[34] The two reasons identified by the officer for rejecting the visa application were both based on unreasonable findings. Therefore, I would grant the application and remit the matter to a different officer for redetermination.

[35] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is allowed, the decision of the officer is set aside and the matter is referred to a different officer for redetermination.

“John A. O’Keefe”

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Judge

## ANNEX

**Relevant Statutory Provisions*****Immigration and Refugee Protection Act, SC 2001, c 27***

25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is

25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se

outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

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

**DOCKET:** IMM-1738-12

**STYLE OF CAUSE:** THARSINI  
THIRUGUANASAMBANDAMURTHY

- and -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 5, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** December 20, 2012

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