Date: 20080617

Docket: IMM-6412-06

Citation: 2008 FC 746

Toronto, Ontario, June 17, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

BAWANI VARATHARAJAH and
YAALINI VARATHARAJAH

Applicants

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*, S.C. 2001, c. 27 (IRPA) for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated November 9, 2006, wherein the Board found Bawani Varatharajah and Yaalini Varatharajah (collectively the applicants) to be neither Convention refugees nor persons in need of protection.

[2] The applicants requested that the decision be set aside and the matter referred back to a newly constituted panel of the Board for redetermination.

I. Background

[3] Bawani Varatharajah (the principal applicant) and her four-year-old adoptive daughter, Yaalini Varatharajah are both citizens of Sri Lanka. The facts leading to the applicants' claim for refugee status are as set out in the principal applicant's Personal Information Form (PIF).

[4] The principal applicant alleges that she witnessed the kidnapping of her husband by a militant group. She alleges that her husband, a well networked businessman, who spoke Tamil, Sinhalese and English, was targeted because of his involvement in distributing relief to the victims of the Tsunami flood disaster. After the kidnapping, the principal applicant alleges to have filed a complaint at the local police station. According to the principal applicant, a short while after the kidnapping, members of another militant group approached her, asked her about the whereabouts of her husband, and told her that she was to bring her husband to them within two weeks or she would suffer serious consequences. The principal applicant alleges that at this point, she feared for the safety of herself and her child and as such, they fled Sri Lanka on September 9, 2005.

[5] The applicants' travel to Canada was arranged through an agent. The applicants spent September 2005 to December 2005 in Guanzhou, China. The applicants arrived in Canada on December 12, 2005 and filed their applications for refugee status. The applicants based their claims

of a well-founded fear of persecution in Sri Lanka on the grounds of race, nationality, perceived political opinion and membership in a particular social group, namely Tamilians in the eastern area of Sri Lanka Batticaloa. In a decision dated November 9, 2006, the Board found that the applicants were neither Convention refugees, nor persons in need of protection. This is the judicial review of the Board's decision.

II. The Board's Decision

[6] From the outset of its decision, the Board identified credibility as the determinative issue in the application. The Board stated that closely linked to the principal applicant's credibility was her personal identity as someone who had resided in Kallady town in the Batticaloa region of Sri Lanka. The Board's ultimate decision was that the principal applicant was totally devoid of any credibility with respect to the core material aspects of her allegations. The Board also determined that on a balance of probabilities, the principal applicant did not establish a well-founded fear of persecution in Sri Lanka.

[7] The Board noted in its analysis that it had taken into account the cultural factors, milieu of the hearing and the anxiety that the principal applicant may have felt during the oral hearing. With regards to the principal applicant's demeanour, the Board noted that she had 17 years of formal education, held a Bachelor's degree in Commerce, and had a good facility of the English language. The Board stated that despite her education and reasonable level of sophistication, her testimony was markedly unpersuasive and evasive with unrelated responses even to simple questions. The

Board found her testimony vague, ambivalent and wavering, long on generalities, but short on specifics. The Board took guidance from the Federal Court noting that demeanour can be one of the factors that a fact finder can consider while assessing the credibility of a witness.

[8] As to the identity of the principal applicant, the Board accepted the Tamil ethnicity of the principal applicant, and both applicants' Sri Lankan citizenship. However, the Board found that the principle applicant's assertion of being a resident of Kallady in Batticaloa from November 1983 until she left for Canada in September, 2005 was circumspect and not credible.

[9] With regards to the Board's credibility findings, the Board identified two issues central to the principal applicant's claim and found credibility issues with both. The first issue was the principal applicant's residency in Kallady, a city in the Batticaloa district. The Board found that she had failed to provide persuasive, informed and consistent testimony regarding her residency. The Board stated that her testimony was "marred by vagueness, vacillations and pleas of being kept in the dark by her husband". The Board stated that the principal applicant had also failed to provide any corroboration whatsoever of the business that her husband owned for more than 20 years and that he had worked with the Government Tsunami Relief Agency. The Board noted that the principal applicant had submitted a residence certificate dated September 6, 2005, which she had purportedly had in her possession all along, but only brought it forward at the second hearing. The Board also noted problems with the residency card. Specifically, the principal applicant could not offer a reasonable explanation as to why there was an overwriting showing her last year of residence as 2005 when the original date read 2006, and as to the lack of information on the residency card

regarding the type of business operated by the principal applicant's husband. The Board noted the easy availability of fraudulent documents in Sri Lanka. The Board also highlighted that the principal applicant's national identity card issued on 2002-12-14 showed her as a resident of a suburb in Colombo and not Batticaloa district. In the end, the Board found that the principal applicant had never resided in the Batticaloa district. Moreover, the Board stated that the principal applicant's "story of alleged residence in the troubled eastern area of Sri Lanka [was] a total fabrication concocted for the purpose of providing a basis for her claim for refugee protection".

[10] The Board then concentrated on the second issue central to the claim, the husband's alleged kidnapping. The Board noted that "there were a myriad of unresolved anomalies in the evidence of the claimant respecting the allegations related to the abduction of her husband" and that despite "ample opportunity to explain these discrepancies, the claimant was unable to provide reasonable explanations." The Board noted that during her Point of Entry (POE) examination, the principal applicant had testified that her husband was in charge of a committee in the Tsunami relief operation and had been for 3 to 4 years. The Board noted that the Tsunami had only occurred two years ago. Moreover, during the hearing, the principal applicant stated that her husband was not in charge of any committee and that he was actually a volunteer. The Board did not find the principal applicant's explanations for the discrepancies to be reasonable. The Board noted that she claimed to have been detained without food and water for 12 hours during her initial POE examination, but during the hearing testified that she had a pack of nourishing biscuits in her bag the entire time. The Board also noted the inconsistencies surrounding the date of her husband's abduction and the

identity of his abductors. In the end, due to the unresolved contradictions and anomalies, the Board found the principal applicant was not credible in the material aspects of her claim.

[11] As to the objective basis of the claim, the Board was not persuaded that there was sufficient credible evidence before it that young mothers with young children were being recruited or persecuted by the LLTE especially in Colombo. The Board stated that there was “no credible evidence before it on which to base a positive decision”. The Board acknowledged the recent worsening of the situation in Sri Lanka, but found that this did not affect the decision given the circumstances of the case.

[12] In closing, the Board found “the claimant bereft of any credibility or trustworthiness.” The Board went on to find that the principal applicant was not a Convention refugee, nor a person in need of protection. The Board also determined that the minor applicant’s claim should also be rejected as it was based on that of the mother.

III. Issues

[13] The applicants submitted the following issues for consideration:

1. In coming to an adverse conclusion regarding the principal applicant’s credibility, did the Board err in law, ignore evidence or base its decision on erroneous findings of fact made in a perverse or capricious manner?
2. Did the principal applicant have a fair hearing?

3. Did the Board raise concerns about the authenticity about any documents and did the Board give the applicants an opportunity to address any concerns about the authenticity of any documents before making a general statement about the availability of fraudulent documents in Sri Lanka?

[14] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in finding the principal applicant not to be a credible witness?
3. Did the Board err in finding that the applicants were not residents of the Batticaloa region?
4. Did the Board's actions give rise to a reasonable apprehension of bias?
5. Did the Board commit an error of fact in stating that the applicants were from China?

IV. Applicants' Submissions

[15] The applicants submitted that the Board made a number of errors regarding the principal applicant's credibility and thus, the decision must be set aside.

[16] The applicants submitted that the Board failed to appreciate the amendments made to the PIF narrative. The applicants submitted that in making its credibility findings, the Board failed to consider the impact of the circumstances surrounding the POE examination, mainly the length of

time it took and the conditions faced by the applicants. The applicants submitted that the Board's adverse credibility finding based on inconsistencies between the PIF and the POE notes is an error of law (*Ameir* v. *Canada (Minister of Citizenship and Immigration)* 2005 FC 876). The applicants submitted that they provided a plausible explanation for clarifying the details of the answers given to the POE officer in that the POE examination notes were recorded by an officer through an interpreter on the phone. The applicants also submitted that as the POE examination was not recorded, there is no way to verify whether the POE officer correctly recorded the answers in his notes. The applicants submitted that the Board also erred in not considering the principal applicant's particularly vulnerable state in its assessment of her credibility.

[17] The applicants submitted that the Board erred in failing to appreciate the practices and procedures of different cultures. Specifically, the Board totally rejected the possibility that as a traditional Sri Lankan Tamil woman, it was within the cultural norms for the principal applicant's husband not to keep his wife fully abreast of all the details of his business and political activities. While the Board is entitled to use common sense in its assessment of plausibilities, considerable caution is required when assessing the norms and patterns of different cultures (*Giron* v. *Canada (Minister of Employment and Immigration)* (1992), 143 N.R. 238 (F.C.A)).

[18] The applicants submitted that the Board's credibility findings were far too general, without adequate reasons. Credibility findings must be clear, unmistakable and supported by adequate reasons (*Armson* v. *Canada (Minister of Employment and Immigration)* (1989), 9 Imm. L.R. (2d) 150 (F.C.A.)).

[19] The applicants also submitted that the Board erred in fact in finding that the applicants were not residents of the Batticaloa district. The applicants submitted that the police report clearly supported and corroborated the applicants' residency. The applicants took issue with the Board's mention of the availability of fraudulent documents in Sri Lanka. The applicants submitted that there is no evidence that the Board had any particular expertise in interpreting foreign documents like the one in question (*Cheema* v. *Canada (Minister of Citizenship and Immigration)* 2004 FC 224).

[20] The applicants also submitted that the Board's behaviour gave rise to a reasonable apprehension of bias. The legal test for reasonable apprehension of bias is whether or not an informed person, viewing the matter realistically and practically and having thought the matter through would think it more likely than not that the decision-maker would unconsciously or consciously decide an issue unfairly (*Committee for Justice and Liberty et al.* v. *National Energy Board*, [1978] 1 S.C.R. 369). The applicants further submitted that there is no waiver unless the party entitled to make the objection is fully aware of the nature of the disqualification and has an adequate opportunity to make the objection (*Khadh* v. *Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 548 (T.D.)). The applicants submitted that the first opportunity for them to raise a reasonable apprehension of bias was after the Board provided its reasons because several of the Board's reasons were unsupported by any evidence. The applicants also alleged that the Board was aggressive and hostile in its questioning at the hearing and that the principal applicant was not permitted to continue her testimony in the language of her choice. Inept questioning and

constant interruptions can provide the basis for allowing a judicial review (*Chaudhry* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 200). Judicial review should be permitted where interruptions are frequent and questions with unnecessary confusion are asked, as this results in the denial of natural justice.

V. Respondent's Submissions

[21] The respondent submitted that the Board is presumed to have considered all the evidence before it unless the applicants establish otherwise (*Woolaston* v. *Canada (Minister of Manpower and Immigration)*, [1973] S.C.R. 102 at 108, *Hassan* v. *Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 at 318 (F.C.A.), *Florea* v. *Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (C.A.)). Moreover, the respondent submitted that the Board's reasons show that it considered all the evidence before it in assessing credibility including the police report. A negative decision on a person's credibility is properly made as long as the Board gives reasons for doing so in "clear and unmistakable terms" (*Hilo* v. *Canada (Minister of Employment and Immigration)* (1991), 130 N.R. 236 (F.C.A.)).

[22] The respondent submitted that the Board provided numerous examples of why it found the principal applicant's testimony not credible. It was submitted that the Board noted the principal applicant's demeanor finding that despite her education, her testimony was evasive with unrelated responses to simple questions. The Board also noted the applicants' failure to produce corroborating documents. In particular, the principal applicant failed to provide any corroborating evidence

regarding the type of business her husband operated, her husband's work in the Tsunami relief, or the sale of her home in the Batticaloa region. The respondent submitted that the Board gave the principal applicant clear instructions regarding documentation that would help bolster her case after the first sitting of the hearing on July 28, 2006. In particular, the Board suggested that the principal applicant bring any photographs, newspaper articles, business licenses or income tax receipts to the next sitting. During the second sitting of the hearing on August 23, 2006, the principal applicant submitted only a residence certificate dated September 6, 2005. When asked why there was an overwriting to show the last year of residence from 2006 to 2005, the principal applicant could not provide a reasonable answer. It was submitted that the Board also took issue with inconsistencies and anomalies in the principal applicant's testimony at the hearing. Such inconsistencies and anomalies included those regarding her husband's role in the Tsunami relief, having no food during her lengthy POE examination, the details of her husband's abduction, and the threats made against her by agents of persecution. The respondent submitted that the Board's mention of all these factors in its reasons clearly provided the "clear and unmistakable terms" upon which the Board based its negative credibility finding.

[23] With regards to the Board's finding that the applicants were not residents of the Batticaloa region, the respondent submitted that the applicants hold the fundamental obligation to establish their identity on a balance of probabilities (*Kante* v. *Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 525 (T.D.), *Balkhi* v. *Canada (Minister of Citizenship and Immigration)*, [2001] FCT 419). A lack of relevant documents may lead to a finding that a claimant has not discharged the burden with respect to identity and other elements of the claim (*Syed* v.

Canada (Minister of Citizenship and Immigration), [1998] F.C.J. No. 357 (T.D.), *Bin* v. *Canada (Minister of Citizenship and Immigration)* (2001), 213 F.T.R. 47, *Nallanathan* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCT 326, *Nadarajalingam* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCT 444).

[24] The respondent submitted that the applicants' argument that the Board's behavior gave rise to a reasonable apprehension of bias is unfounded and should be dismissed. The respondent submitted that the applicants failed to raise the issue of bias at the earliest practical opportunity; and therefore there was an implied waiver (*In Re Human Rights Tribunal and Atomic Energy of Canada Limited*, [1986] 1 F.C. 103). It was further submitted that regardless of whether the applicants waived their right to complain of bias, they have adduced no cogent evidence and based their claim on unsubstantiated grounds. Questioning by the Board does not necessarily give rise to a reasonable apprehension of bias. To succeed on this ground, the applicants must demonstrate that there was something more than extensive questioning such as a degree of hostility or aggressiveness. The Board has a "right and duty to obtain answers from the applicants" (*Hagi-Mayow* v. *Canada (Minister of Employment and Immigration)* (1994), 24 Imm. L.R. (2d) 26 (F.C.T.D.)).

A. *Issue 1*

(1) What is the appropriate standard of Review?

The Board's credibility findings are reviewed on a standard of reasonableness and are therefore accorded a high level of deference. Errors of fact are reviewable on a standard of

reasonableness. The issue of a possible reasonable apprehension of bias is a question of procedural fairness and is reviewable on a standard of correctness.

B. *Issue 2*

(1) Did the Board err in finding the principal applicant not to be a credible witness?

The applicants submitted that the Board erred in finding the principal applicant not to be a credible witness. The respondent submitted that negative credibility findings are to be given the highest deference so long as the Board provides reasons for doing so in "clear and unmistakable terms" (*Hilo*, above). At page 5 of its decision, the Board discusses its credibility findings. The Board clearly identifies the two aspects of the evidence that are central to her claim for refugee protection: (1) her residency in Kallady, Batticaloa district, and (2) her evidence respecting the abduction of her husband. The Board then goes on to individually assess the principal applicant's evidence regarding each of these central issues individually.

[25] With regards to the principal applicant's residency in Kallady, Batticaloa district, the Board stated that her testimony was marred by "vagueness, vacillations and pleas of being kept in the dark by her husband". The Board also stated that "cultural background alone cannot satisfactorily explain major anomalies in her evidence". The Board noted the failure to provide any corroboration whatsoever of the family business or her husband's work with the Government Tsunami Relief Agency.

[26] With regards to her evidence respecting the abduction of her husband, the Board stated that there was a “myriad of unresolved anomalies” in her evidence and that despite “ample opportunity to explain these discrepancies”, she was unable to provide reasonable answers. The Board stated that her responses were “markedly evolving, contradictory and disingenuous.” The Board noted inconsistencies between her POE examination and her oral testimony at the hearing. Specifically, the Board noted that during her POE examination, she stated her husband was in charge of a committee in the Tsunami relief effort, was paid for his work and had being doing so for three or four years. At the hearing, she stated that her husband was not in charge of a committee, and was just a regular volunteer. The Board noted that the principal applicant first explained these inconsistencies were due to the immigration officer and translation problems during the POE examination. She went on to say that the inconsistencies were a result of the “emotional state of her mind and the physical condition at the end of 12 hours of grueling waiting period.” The Board also made further credibility findings regarding the timeline of her husband’s abduction and when she was approached by the second militant group, and the identity of that group.

[27] Although this was a new issue raised at the hearing I have taken into consideration Guideline 4, section D (2) when deciding the issue.

[28] In my opinion, the Board’s finding that the principal applicant was not credible was in no way unreasonable. The reasons provided by the Board for the negative credibility finding are clear and unmistakable. This is not a situation where the Board failed to properly explain its basis and

analysis for finding the principal applicant to be not credible. I will not allow the judicial review on this ground.

C. *Issue 3*

(1) Did the Board err in finding that the principal applicant was not a resident of the Batticaloa district?

At pages 10 and 11 of its decision, the Board stated:

> For all the aforesaid reasons, it is the finding of the panel that the claimant never resided in Batticaloa district and that her husband owned and operated a successful shop for more than 20 years. The panel determines that the claimant's story of alleged residence in the troubled eastern area of Sri Lanka is a total fabrication concocted for the purpose of providing a basis for her claim for refugee protection. The claim should therefore be rejected on this count alone.

[29] The above finding that the principal applicant never resided in Batticaloa district is a finding of fact and deference is owed.

[30] The evidence before the Board in making the above finding was conflicting and incomplete. The Board noted that despite having been informed that it would help her prove her case, the principal applicant failed to provide sufficient documents supporting her residency. The Board noted that the principal applicant did not provide any photographs of her residence and business. When asked why she had not done so, the principal applicant stated that it was too difficult for her mother or younger brother to go to Batticaloa from Colombo to procure corroborative documents. The Board noted at page 9 of its decision that this "begs the question why would the claimant not approach her [father in law] or brother-in-law (elder brother of her husband) to mail some

documents including photographs?" The Board also noted that the principal applicant had failed to provide any documentation regarding the sale of the business and home just five days after her husband's abduction. The Board rejected her explanation for the failure, stating at page 9 of its decision that "after all, these [were] recent documents of importance that one is expected to keep by the parties concerned". At page 10 of its decision, the Board considered the residency certificate provided by the principal applicant to the Board and noted that "the claimant could not offer a reasonable explanation why there was an overwriting to show the last year of residence from 2006 to 2005." The Board was of the opinion that the claimant was trying to mislead the Board with a fraudulent document. And finally, the Board stated that "it was discerning that the claimant's national identity card issued on 2002-12-14 [showed] her as a resident of a suburb in Colombo and not Batticaloa district."

[31] The applicant submitted that the Board's failure to consider the police report constituted a reviewable error as it supports the alleged residency of the principal applicant. The English translation of the police report reads in part as follows:

> I Mrs.Bawani Varatharajah, age 45 years old, Hindu, residing at No.2, Old Road, Batticaloa, employment, having Grocery Store at this address, arrives at the Police Station and stat as follows: […]

[32] I agree that this document supports the finding that the principal applicant is a resident of the Batticaloa district. However, as evidenced by the Board's reasons, it considered the police report and accorded it little weight because of contradictions and inconsistencies made by the principal applicant. At pages 13 and 14 of the Board's decision, the Board stated:

> There was also inconsistency as to who and when the police report was obtained. The claimant testified at the first setting that she and her father went the morning after the abduction on August 26, 2005 to file an oral complaint after being kept waiting for more than 6 hours or so. She stated that her FIL [father-in-law] obtained the police report two days after she made the oral statement. The claimant also stated that she was not sure whether she identified LTTE to the police as the abductors of her husband. The claimant compounded the ambiguity of her evidence by adding a sentence in her amendment- "I do not know which faction." Notwithstanding the above anomalies, the report mentions her husband receiving death threats. The panel observed that there was no mention of death threats either in her testimony or in her detailed amended PIF narrative. During her counsel's redirect, the claimant denied saying anything about death threats in her statement to the police. It begs the question: why would then death threats be mentioned in the official version of the police report? <u>Given the above, I do not give any probative value to the police report.</u> After all, as stated earlier, it is not much of a problem to get fraudulent documents in Sri Lanka. [Emphasis added.]

[33] As such, I find that the Board did not err in failing to consider the police report. Moreover, the Board's finding that the principal applicant was not a resident of Batticaloa district was not unreasonable given the evidence before it. As stated by the respondent, the burden of proving the claimant's identity rests with the claimant (*Kante*, above). I will not allow the judicial review on this ground.

D. *Issue 4*

(1) <u>Did the Board's actions give rise to a reasonable apprehension of bias?</u>

Both parties agree that the appropriate test for a reasonable apprehension of bias is whether or not an informed person, viewing the matter realistically and practically and having thought the

matter through, would think it more likely than not that the decision-maker would unconsciously or consciously decide an issue unfairly (*Committee for Justice and Liberty et al.*, above).

[34] The applicants submitted that the first opportunity to raise a reasonable apprehension of bias was after the decision was rendered. The applicants submitted that it was not until then that they discovered that several of the Board's reasons were unsupported by any evidence. In my opinion, the applicants' argument is two-fold. First, they take issue with the Board's decision. This is not an issue of a reasonable apprehension of bias; the applicants are in effect challenging the Board's overall decision because they believe it is unfounded.

[35] The applicants' second bias argument relates to the Board's questioning during the hearing. The first opportunity to raise this argument was at the hearing as it was then that the applicants witnessed the Board's alleged aggressive and hostile questioning. Having reviewed the transcripts from both sittings of the hearing, I do not find that the Board's questioning amounted to a reasonable apprehension of bias. The Board member did interject numerous times during questioning to ask follow-up questions or to clarify, but this does not appear to have been done in an aggressive manner. The principal applicant's testimony was at times very ambiguous and vague, and as a result the Board made reasonable attempts to better understand the principal applicant's evidence through questioning. I find that there is no reasonable apprehension of bias and will not allow the judicial review on this ground.

E. *Issue 5*

(1) Did the Board commit an error of fact in stating the applicants were from China?

The applicants submitted that the Board's reference to China on page 17 of the decision was a reviewable error. I simply do not agree. The Board's reasons illustrate that it was alive to the applicants' claims as citizens of Sri Lanka. The mention of China was obviously a mistake, but not a reviewable one. Immaterial and isolated mistakes raise no ground for judicial review (*Miranda* v. *Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 81, *Nyathi* v. *Canada (Minister of Citizenship and Immigration)*, 2003 FC 1119, *Gan* v. *Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1329). I will not allow the judicial review on this ground.

[36] And finally, with regards to the applicants' argument that the Board erred in mentioning the ease with which fraudulent documents can be obtained in Sri Lanka, the applicants have failed to convince me that this was an error on the part of the Board.

[37] The application for judicial review is therefore dismissed.

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

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The Immigration and Refugee Protection Act, S.C. 2001, c. 27 (IRPA):

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,	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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se 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 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	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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	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) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(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.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d’une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT

SOLICITORS OF RECORD

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<u>APPEARANCES</u>:

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