

Federal Court



Cour fédérale

Date: 20100318

Docket: IMM-4083-09

Citation: 2010 FC 314

Ottawa, Ontario, March 18, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

PURUSOTHAMAN SIVAPATHAM

Applicant

and

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

Respondents

REASONS FOR ORDER AND ORDER

[1] This is the second PRRA decision on which the Respondents have consented to judgment. In the first PRRA decision, the consent to judgment was given after leave was granted. In the present case, consent was given after the matter was sent for a judicial review hearing. In both cases, the Respondents vigorously opposed all interim steps as well. The only issue before the Court is the terms of the consent to judgment.

[2] The Applicant is a young Tamil from Northern Sri Lanka. His circumstances are set out in his PIF which outlines abuse by Sri Lankan military and police forces.

[3] He entered Canada via the United States and having been subject to the Safe Third Country Agreement, was declared ineligible to file a refugee claim in Canada. He has asserted his right to protection through the PRRA process.

[4] The Respondents have again had to concede that yet again a PRRA Officer at the Niagara Falls office failed to conduct a proper PRRA assessment in respect of this Applicant. On reviewing the pleadings in this case, the Respondents' concession is more than justified.

[5] Aside from seeking an order quashing the PRRA decision, the Applicant asked for a number of terms to expedite the reconsideration of the PRRA, to also avoid a repetition of the same sort of errors as in the past by the same office, and to obtain a symbolic order of costs to "punish" the Respondents for the course of conduct directed against the Applicant.

[6] The Court will issue a direction as to Canadian law to avoid any potential confusion as to the legal test applicable. While the PRRA Officer appeared to cite the test, there is some suggestion that he/she became entangled in international concepts not consistent with Canadian law.

[7] There has never been any challenge in either PRRA decision to the credibility of the Applicant's personal story. There has been no suggestion that the Applicant's personal story is not

credible and the new PRRA cannot be used by the Respondents to seek to challenge his credibility without Court sanction.

[8] The Court will not, as requested by the Applicant, refer the matter to the Immigration and Refugee Board to perform the s. 97 analysis. The proper process is to have that task performed by a PRRA unit of the Respondents. However, there is reason to believe that a third reference to the same office raises concerns about the objectivity of an officer in the Niagara Falls office who may be subject to, real or perceived, pressure to support the findings of two colleagues which had been supported by their superiors. Therefore, the reconsideration of the PRRA will be performed by a PRRA Officer in any unit other than the Niagara Falls office.

[9] As this will be the third PRRA based on the same facts, there is no reason not to expedite that reconsideration. A timetable is set forth in the Order.

[10] The Applicant's request for symbolic costs is denied. There is insufficient evidence to establish bad faith or similar circumstances constituting "special reasons" for costs – although there is a sense and scent that that may exist. As all parties are equal before the Court, to award costs because two decisions were unsustainable, would create the potential precedent that two unsuccessful judicial reviews by a claimant would justify costs in those instances. This would be a result or precedent which is inconsistent with the principle of the "no cost" scheme of the immigration legislation.

ORDER

THIS COURT ORDERS that:

1. The judicial review is granted, the PRRA decision is quashed and the matter is referred back to the Respondents for a reconsideration of the PRRA application, upon terms set forth in this Order, to be performed by an officer in any office selected by the Respondents other than the Niagara Falls office.
2. The reconsideration is to be conducted in a manner consistent with the legal test for “risk” set forth in Canadian jurisprudence being a “reasonable chance” as per *Adjei v. Canada (Minister of Employment and Immigration)* (1989), 7 Imm. L.R. (2d) 169 (F.C.A.).
3. The reviewing officer shall assume the credibility of the Applicant’s description of events related to his circumstances unless the Court orders that the Respondents have substantive grounds for a credibility challenge.
4. The timetable for the conduct of the reconsideration is as follows:
 - (a) the Applicant shall have twenty-one (21) days from the date of this Order to make any further submissions;
 - (b) the Respondents shall within fourteen (14) days thereafter provide the Applicant with any new evidence which it intends to consider;
 - (c) the Applicant shall respond within seven (7) days thereafter; and
 - (d) the decision on reconsideration shall issue sixty (60) days after the last of the above dates subject to any further order of the Court.

5. The Court shall remain seized of this matter until the new PRRA decision is issued.

“Michael L. Phelan”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4083-09

STYLE OF CAUSE: PURUSOTHAMAN SIVAPATHAM

and

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

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 17, 2010

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

DATED: March 18, 2010

APPEARANCES:

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FOR THE APPLICANT

Ms. Nicole Paduraru

FOR THE RESPONDENTS

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FOR THE RESPONDENTS