

Federal Court



Cour fédérale

Date: 20101027

Docket: IMM-506-10

Citation: 2010 FC 1054

Ottawa, Ontario, October 27, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RATNARAJAH SINNAMMAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Sinnammah Ratnarajah has been living in Canada with her daughter and grandchildren since 2002. She left her home in Sri Lanka in 1998, and then lived in India for four years before travelling to Canada. She is 68 years old.

[2] Ms. Ratnarajah sought refugee protection in Canada based on her fear of the Liberation Tigers of Tamil Eelam (LTTE). A panel of the Immigration and Refugee Board (IRB) denied her claim; this Court then denied her leave to seek judicial review. Ms. Ratnarajah also applied for a

pre-removal risk assessment (PRRA) and made a request for a humanitarian and compassionate exemption (H&C) from the usual requirement that applicants for permanent residence apply from outside Canada.

[3] An immigration officer dealt with both the PRRA and the H&C, and dismissed both applications. Ms. Ratnarajah returned to Sri Lanka after making an unsuccessful request for a stay of removal. As she has left Canada, her PRRA application is moot (*Perez v. Canada (Minister of Citizenship and Immigration)* 2008 FC 663). Her H&C is not.

[4] The officer dismissed the H&C because Ms. Ratnarajah had failed to show that she would suffer unusual, undeserved or disproportionate hardship if she were required to apply for permanent residence from Sri Lanka instead of within Canada. The main thrust of Ms. Ratnarajah's application was that current conditions in Sri Lanka are so appalling - especially for people who, like her, are of Tamil ancestry from the north of Sri Lanka - that she would suffer serious hardship if forced to return there.

[5] Ms. Ratnarajah submits that the officer failed to consider important evidence in her favour, which caused the officer to render an unreasonable conclusion. She asks me to overturn the officer's decision and order another officer to reconsider her application.

[6] I agree that the officer overlooked important evidence and rendered an unreasonable decision. I must, therefore, allow this application for judicial review.

[7] The sole issue is whether the officer's decision was unreasonable.

II. The Officer's Decision

[8] As mentioned, the main focus of Ms. Ratnarajah's H&C application was her contention that she would suffer serious hardship in Sri Lanka due to the deplorable conditions there, especially for Tamils from the north. She also maintained that an elderly woman who would be perceived to be relatively well-off would be at greater risk of extortion, kidnapping, and other criminal acts.

[9] After reviewing the evidence supporting her refugee claim and the IRB's negative decision, the officer referred to documentary evidence relating to human rights abuses and violence in Sri Lanka. The officer believed that the evidence showed that the problems in Sri Lanka either affected the entire population or persons who were not similarly situated to Ms. Ratnarajah.

[10] The officer went on to identify a number of areas where conditions had recently improved in Sri Lanka:

- no recent abductions, disappearances or murders in Jaffna;
- curfews had been relaxed;
- more police officers were going to be hired, many from the Tamil and Muslim minority populations;
- anyone with an identity card can now live in Jaffna;
- Tamils have been released from refugee camps and have been given some financial assistance.

[11] The officer concluded that Ms. Ratnarajah's H&C application was not supported by evidence showing that the hardship she would suffer on return to Sri Lanka was unusual, undeserved or disproportionate.

III. Was the Officer's Decision Unreasonable?

[12] Ms. Ratnarajah maintains that the officer overlooked significant evidence. In particular, she cites an April 2009 report from the United Nations High Commission for Refugees (UNHCR) that includes the following statements:

- Violations of the rights of women and children, in particular in the conflict zones and areas of heavy displacement, are a serious problem.
- Wide scale arrests and detentions of Tamils have been reported throughout the country.
- The Government has been heavily criticized for the high number of Tamils who have been subjected to arrest and security detention, particularly on the basis of information gathered in registration exercises and questioning at cordons and road checkpoints in and around the capital.
- Abductions of civilians have also been reported in Colombo and the Western Province. The recorded cases involve predominantly Tamil abductees, particularly young Tamils.
- Serious human rights violations continue to be committed by multiple actors in Sri Lanka [who] have all been implicated in the high number of abductions, disappearances, killings, extortions and forced recruitments in Sri Lanka.

[13] The Minister argues that Ms. Ratnarajah's submissions amount, in effect, to an invitation to reweigh the evidence before the officer. In addition, the Minister points out the officer was clearly aware of the UNHCR report; it was referred to in the officer's PRRA decision.

[14] In my view, the UNHCR report points to circumstances that may well amount to unusual, undeserved or disproportionate hardship for Ms. Ratnarajah. Clearly, not all of the documentary evidence was, as the officer concluded, relevant only to the population of Sri Lanka as a whole and to persons whose circumstances were unlike Ms. Ratnarajah's. The officer was obliged at least to refer to evidence that contradicted that conclusion, and to explain why the other evidence was more relevant or persuasive.

[15] It is true, as the Minister notes, that the officer was aware of the UNHCR report. However, the officer merely noted that the report was not binding and did not refer to any of its contents. While the report was not binding, it was important evidence for the officer to consider.

[16] I conclude that the officer's decision was unreasonable because of the failure to consider significant evidence supporting Ms. Ratnarajah's H&C application.

IV. Conclusion and Disposition

[17] The officer overlooked important evidence that contradicted his main conclusion. I find that the officer's decision was unreasonable, as it did not fall within the range of possible, acceptable outcomes, based on the facts and the law. I must, therefore, allow this application for judicial review and order a reconsideration of Ms. Ratnarajah's H&C application by another officer. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is referred back to another officer for reconsideration;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-506-10

STYLE OF CAUSE: SINNAMMAH v. MCI

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: October 20, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: October 27, 2010

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