Federal Court  Cour fédérale

**Date: 20120413**

**Docket: IMM-6096-11**

**Citation: 2012 FC 429**

**Ottawa, Ontario, April 13, 2012**

**PRESENT: The Honourable Mr. Justice Mandamin**

**BETWEEN:**

**VASEEKARAN MANICKAVASAGAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Vaseekaran Manickavasagar applies for judicial review of a pre-removal risk assessment officer's determination that Mr. Manickavasagar would not be subject to risk of danger of torture or risk to life or risk of cruel and unusual treatment if he is returned to Sri Lanka.

[2] Mr. Manickavasagar is a Tamil from Sri Lanka who has previously been deported from Canada due to serious criminality. He returned to Canada without official permission and his presence was discovered when he was arrested by police during a bar check. He applied for a pre-

removal risk assessment (PRRA). The PRRA Officer determined Mr. Manickavasagar would not be subject to risk if he returned to Sri Lanka.

[3] He now applies for judicial review contending that the PRRA Officer breached procedural fairness by failing to grant him an interview and by referring to post application documentation without giving him an opportunity to respond. He also submits the Officer's decision is unreasonable given the evidence before the Officer.

[4] For reasons that follow, I am dismissing this application.

**Background**

[5] The Applicant, Vaseekaran Manickavasagar, is a 35 year old Tamil male who first came to Canada at the age of 16 after being sponsored by his father who was a successful refugee claimant. The Applicant's immediate Sri Lankan family are now Canadian citizens. The Applicant also has a Canadian spouse and two children.

[6] The Applicant lost his permanent resident status and was deported from Canada in 2005 on the grounds of serious criminality. His deportation order required the Applicant to obtain written permission before returning to Canada. The Applicant returned without permission to Canada in September 2010. He came to the attention of immigration officials in June 2011 after he was arrested by police.

[7] On June 24, 2011, the Applicant was again determined to be inadmissible to Canada, this time under s. 44(1) of the *Immigration and Refugee Protection Act* (*IRPA*) for failing to obtain proper authorization to return to Canada. The Applicant made a claim for refugee protection but was found to be ineligible to make a claim for refugee protection because of s. 101(1)(f) of the *IRPA* due to the findings of serious criminality.

[8] On July 4, 2011, a second Deportation Order was issued against the Applicant. He was given an opportunity to apply for a PRRA, his third PRRA application overall. This latest PRRA application was refused on August 20, 2011. The Applicant then filed this application for judicial review of the negative PRRA decision.

**Decision Under Review**

[9] The Officer summarized the facts that led to the Applicant's PRRA application and then reviewed the standard to be met by the Applicant. The Officer noted that objective factual material must show a probability of danger to the Applicant if returned to his country of origin. The standard to be met by the Applicant alleging a risk to life or cruel and unusual treatment or punishment is the balance of probabilities.

[10] The Officer then went on to review the risk as submitted by the Applicant. The Officer quoted the following from the Applicant's submissions:

> "Mr. Manickvasgar is not applying for PRRA just because he is an ethnic Tamil but he request protection in Canada [sic] because his

> life has been personally threatened in that country as a result of his being falsely accused as a member of the VVT gang in Scarborough, Ontario sometime in the 1980's…. As a result of those false accusations and the information given to the Sri Lankan authorities when he was deported he was targeted by that government as a member of an organization that was an affiliate of the Tamil Tigers. It is for this reason that he was persecuted and his life threatened in Sri Lanka."

[11] The Officer noted that the pre-removal risk assessment is forward looking. The Officer stated that he must look to the most current, publicly available evidence regarding country and human rights conditions in order to make a determination. The Officer reviewed all of the documents submitted by the Applicant, as well as other publicly available documents.

[12] In referring to the Applicant's PRRA narrative, the Officer noted the Applicant was deported from Canada because he had a criminal record. The Applicant alleged that when he arrived in Sri Lanka, he was interviewed for five hours and asked about being a member of the VVT gang affiliated with the LTTE. The Applicant states he denied the allegation and was eventually released.

[13] The Officer quoted further from the Applicant's PRRA narrative setting out the details of the Applicant's instances of arrest and detention once he returned to Sri Lanka, and of how the Applicant sought to leave Sri Lanka and how he eventually made it back to Canada.

[14] The Officer considered four documents provided by the Applicant including three news articles and the U.S. Department of State 2009 Human Rights Report Sri Lanka released March 11, 2010. The Officer also considered additional documents and included a list of the documents consulted at the end of the decision.

[15] The Officer used the country documentation to identify a number of indicia or factors that would increase the risk that an individual could encounter difficulties with the authorities, including possible detention. The Officer compared the Applicant's situation to the list of factors and determined that, on a balance of probabilities, the objective factual evidence did not lead the Officer to conclude that the Applicant would face a probability of risk if returned to Sri Lanka.

[16] The Officer also considered the documentary evidence regarding torture in Sri Lanka. However, as the Officer found that it was not probable that the Applicant would come to the attention of the Sri Lankan authorities, the Officer concluded it was not likely that the Applicant would be subject to a risk of torture.

[17] The Officer found country conditions in Sri Lanka were slowly improving as a result of the end of the civil war in 2009. The Officer noted that Tamils are not at risk of serious harm from Sri Lankan authorities in Colombo. (Colombo is where the Applicant was born and is where he would be returned to.) The Officer also noted that the incidents of abuse and mistreatment alleged by the Applicant at the hands of the Sri Lankan authorities happened before the end of the hostilities.

[18] The Officer decided the facts did not demonstrate that the Applicant had the profile of someone who would attract the attention of the authorities in Sri Lanka if he arrived at the airport unescorted and carrying identification. The Officer held the documentary country condition evidence showed that most of the factors present in persons who may face problems upon return to Sri Lanka are not found in the Applicant.

**Relevant Legislation**

[19] *Immigration and Refugee Protection Act*, SC 2001, c 27:

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| 112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1). | 112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1). |
| … | … |
| (3) Refugee protection may not result from an application for protection if the person | (3) L'asile ne peut être conféré au demandeur dans les cas suivants : |
| … | … |
| (b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; | b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans; |
| […] | […] |
| 113. Consideration of an application for protection shall | 113. Il est disposé de la demande comme il suit : |

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| be as follows: | |
| … | … |
| (b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required; | b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires; |

[20] *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]:

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| 167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following: | 167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise : |
| (a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act; | a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur; |
| (b) whether the evidence is central to the decision with respect to the application for protection; and | b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection; |
| (c) whether the evidence, if accepted, would justify allowing the application for protection. | c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection. |
| [Emphasis added] | |

**Issues**

[21] The Applicant raises the following issues:

1. Did the Officer breach the duty of fairness in failing to afford the Applicant an opportunity to respond to the Officer's concerns about his credibility?

2. Did the Officer breach the required duty of fairness and natural justice by failing to disclose documentary evidence related to changing circumstances in Sri Lanka?

3. Did the Officer err by ignoring the Applicant's evidence of risk?

4. Did the Officer err in excluding the Applicant from the profile of at-risk persons?

**Standard of Review**

[22] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9 that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and of fact. *Dunsmuir* at paras 50 and 53.The Supreme Court also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated. *Dunsmuir* at para 62

[23] This Court has held that risk assessments conducted by PRRA officers should be reviewed on the standard of reasonableness because of their role as specialized administrative tribunals, and that significant deference is owed to their decisions, in particular to their decisions regarding the weight to be given to the evidence before them. *Aragon v Canada (Minister of Citizenship & Immigration)*, 2008 FC 1309, 77. The standard for procedural fairness is correctness. *Sketchley v Canada (Attorney General)*, 2005 FCA 404.

**Analysis**

*Did the Officer breach the duty of fairness in failing to afford the Applicant an opportunity to respond to the Officer's concerns about his credibility?*

[24] Section 113(b) of the IRPA provides that a hearing is to be held in exceptional circumstances. The factors for an immigration officer to consider are found in section 167 of the Regulations are evidence:

1) that raises a serious issue of the applicant's credibility;
2) are central to the decision; and
3) if accepted, would justify allowing the application.

[25] The Applicant submits that the Officer disbelieved the Applicant's account of past mistreatment because the Applicant had not provided documentary evidence to corroborate the mistreatment notwithstanding the Officer did not expressly say he disbelieved the Applicant. The Applicant argues the Officer made a negative credibility finding without explicitly stating that the

Applicant was not credible. The Applicant submits that the Officer failed to contact the Applicant to provide him with an opportunity to clarify his fears in light of this disbelief.

[26] The Applicant relies on this Court's decision in *Alimard v Canada (Minister of Citizenship & Immigration)*, [2000] FCJ no 1223 at para 15 where Justice Hansen stated:

> In situations such as this, the jurisprudence is clear that where a visa officer has an impression of deficiency in the proof being offered, fairness requires that the visa officer give the applicant some opportunity to disabuse the visa officer of that impression (*Muliadi v. Canada (Minister of Citizenship and Immigration)*, [1986] 2 F.C. 205).

[27] I consider this case is distinguishable from *Alimard*. In that case, the applicant applied for permanent residence under the entrepreneur category. As part of his application, the applicant submitted several deeds to his properties, a valuation for one of the properties and a bank statement showing a balance equivalent to $5,000 Cdn. The visa officer, based on her experience with the reliability of real estate valuations from Iran and her unfamiliarity with the organization which had prepared the valuation, gave no weight to the one valuation provided. The applicant was unaware of the visa officer's concerns with respect to the valuation. Justice Hansen held that because the visa officer's finding that the applicant lacked sufficient funds was a key factor in her assessment of his ability to successfully establish a business in Canada, the applicant should have been given the opportunity to address her concerns, possibly by providing the visa officer with evidence as to the *bona fides* of the valuation or a new valuation.

[28] In this case, the Applicant did not provide documentary evidence corroborating his account of mistreatment by Sri Lankan officials. This is not a case as in *Alimard* where the credibility of the Applicant's supporting evidence was questioned - there simply was no evidence other than the Applicant's statements.

[29] The lack of corroborating documentary evidence did not bring the Applicant's credibility into issue. Instead, the absence of corroborating documentary evidence goes to the weight of the Applicant's statements. In *Ahmad v Canada (Minister of Citizenship & Immigration*), 2012 FC 89 at paras 37-39 Justice Scott addressed this question and stated:

> [37] The applicant argues that the PRRA officer made credibility findings when assessing the evidence that was presented before her. The applicant relies on *Zokai* to support this argument. A close review of the disputed decision leads this Court to find that the evidence adduced was assessed by the officer in a manner in which it was open to her to do. In *Al Mansuri*, this Court held that "the officer did not deny the PRRA application on the basis of Mr. Al Mansuri's credibility. Rather, the officer found that the objective evidence with respect to country conditions did not support a finding of a danger of torture, or a risk to life, or a risk of cruel or unusual treatment or punishment. That finding is a matter distinct from Mr. Al Mansuri's personal credibility" (see *Al Mansuri* at para 43). The officer clearly made findings in regard to the probative value of the objective evidence adduced and not with regard to its credibility.
>
> [38] It has been clearly established that, in the context of a PRRA application, an oral hearing is the exception. Moreover, serious credibility issues must be central to the PRRA application in order to trigger the holding of an oral hearing. In reading the officer's decision, it is clear that no such serious issue of credibility was found to exist.
>
> [39] The officer did not breach her duty of procedural fairness. As in *Yousef v Canada (Minister of Citizenship and Immigration)*, 2006 FC 864 (CanLII), 2006 FC 864, [2006] FCJ No 1101 (QL) at para 36, "the PRRA officer's decision was based on the insufficiency

> of the evidence submitted by the applicant in support of his contention that he faced new or heightened risks if he returned to his country of nationality]". Finally, and equally important, it is clear that the criteria set out in section 167 of the *IRPR* were not met by the applicant.
>
> [Emphasis added]

[30] I agree with Justice Scott's analysis and would adopt his reasoning. In this case, the credibility of the Applicant was not an issue for the Officer. Rather, the Officer did not disbelieve the Applicant's evidence but instead treated it as having less weight in the absence of supporting documentary evidence.

[31] I would conclude that the Officer was not required to provide the Applicant with an oral interview because the factors in section 167 were not satisfied.

*Did the Officer breach the required duty of fairness and natural justice by failing to disclose documentary evidence related to changing circumstances in Sri Lanka?*

[32] In his assessment of the risk posed to the Applicant on arrival at the Sri Lankan airport, the Officer referred to published reports in the United Kingdom which detailed the risk potentially faced by 40 failed Sri Lankan asylum claimants. The Applicant submits the Officer relied on Sri Lankan news reports published after his PRRA was submitted that indicated that the returnees were all released from the Sri Lankan airport without incident.

[33] The Applicant takes issue with the independence of these sources. The Applicant submits "the officer heavily relied upon and quoted from these articles in order to establish that Mr.

Manickavasagar would not be at risk upon return to the Sri Lankan airport, despite the fact that they were published after the PRRA application was submitted." [Emphasis added] The Applicant goes on to state that the Officer did not contact the Applicant at any time to disclose his reliance on these current reports. The Applicant submits that in the circumstances of this case, that failure to disclose the new evidence of country conditions upon which the Officer intended to rely constitutes a breach of the duty of fairness.

[34] I must conclude the Applicant's argument is in error. The Applicant's PRRA application was dated July 18, 2011. According to the list of the sources cited by the Officer, the three documents challenged by the Applicant were published on June 19, 2011, June 18, 2011 and June 26, 2011. These three documents relied upon by the Officer were published before the Applicant's PRRA application was completed. As the three documents were general country documents that were publicly available when the Applicant was completing his PRRA application, I conclude the Officer made no reviewable error by not providing these documents to the Applicant.

[35] I find my conclusion is supported by the Federal Court of Appeal decision *Mancia v Canada (Minister of Citizenship & Immigration),* [1998] 3 FC 461, [1998] FCJ no 565 at paras 26-27 where Décary held:

> The documents are in the public domain. They are general by their very nature and are neutral in the sense that they do not refer expressly to an applicant and that they are not prepared or sought by the Department for the purposes of the proceeding at issue. They are not part of a "case" against the applicant. They are available and accessible, absent evidence to the contrary, through the files, indexes and records found in Documentation Centres. They are generally prepared by reliable sources. They can be repetitive, in the sense that

> they will often merely repeat or confirm or express in different words general country conditions evidenced in previously available documents. The fact that a document becomes available after the filing of an applicant's submissions by no means signifies that it contains new information or that such information is relevant information that will affect the decision. It is only, in my view, where an immigration officer relies on a significant post-submission document which evidences changes in the general country conditions that may affect the decision, that the document must be communicated to that applicant.
>
> [Emphasis added]

[36] As all three challenged articles were publicly available before the Applicant submitted his PRRA application, I conclude the Officer made no reviewable error by citing them in the decision.

*Did the Officer err by ignoring the Applicant's evidence of risk?*

[37] The main thrust of the Applicant's submissions is that the Officer's assessment of the Applicant's risk was unreasonable.

[38] The Applicant submits that he evidenced specific incidents of mistreatment at the hands of Sri Lankan authorities in his PRRA submission. The Applicant argues that while the Officer quoted from the Applicant's submissions, the Officer made no effort to discuss, analyze or assign weight to these specific assertions. The Applicant submits the Officer instead selectively relied upon general country condition reports and news articles to paint a picture of Sri Lanka as a country returned to normalcy after 26 years of civil war.

[39] The Applicant argues the Officer simply concluded that there was no documentation to support the Applicant's assertions of harm and so did not accept them. The Applicant submits the Officer could not just gloss over the Applicant's statements and ignore it in the analysis. This, the Applicant submits, was an error. In particular, the Applicant emphasizes his evidence that the Sri Lankan authorities interrogated him because of his association with the VVT, a now defunct Sri Lankan criminal street gang, and its links with the LTTE.

[40] I will first address one point of contention. The Applicant believes the Canadian authorities informed Sri Lanka about the Applicant's connections with the VVT. The Applicant points out the Officer would have known of the allegation that the Applicant had an association with the VVT. There is no evidence in the certified tribunal record to that effect. More importantly, there is no evidence in the certified tribunal record to that effect that the Canadian government gave such information about the Applicant to Sri Lanka. Finally, the Applicant said he was questioned about the VVT. He does not say he was told Canadian government officials gave Sri Lanka that information. He now speculates that is the case.

[41] The Applicant is essentially arguing that the Officer's reasons are not adequate as they do not specifically state that the Officer assigns little or no weight to the Applicant's personal evidence.

[42] The Supreme Court of Canada recently held in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16, 18, 21-22 that the adequacy of reasons is not a separate basis for judicial review nor a question of procedural fairness. Rather, reasons must be read organically with the record before the decision maker as part of the

reasonableness review. In conducting the review, the guiding principle is deference and a decision is not to be overturned simply because the reasons provided are not as fulsome as the reviewing court may have desired.

[43] Here, the Officer was alive to the claims of harm and mistreatment the Applicant suffered at the hand of the Sri Lankan authorities. The Officer quoted at several instances the various incidents alleged by the Applicant. By stating that the objective factual material does not show a probability of risk to the Applicant if returned to Sri Lanka, the Officer implicitly gave little weight to the Applicant's claims of mistreatment.

[44] I conclude the Officer did not ignore the Applicant's evidence of risk and thus made no error.

*Did the Officer err in excluding the Applicant from the profile of at-risk persons?*

[45] The Applicant submits that the Officer's finding that the Applicant did not fit the profile of a person at risk upon return to Sri Lanka is perverse. The Applicant submits the Officer selectively canvassed country condition documents and identified several indicia of risk upon return to Sri Lanka. I note that the Applicant only listed 8 of the 13 factors listed by the Officer in the reasons.

[46] The Applicant submits it is clear from the record available to the Officer that the Applicant met most of the indicia of risk identified by the Officer.

[47] In my view, the Applicant is seeking this Court to reweigh the evidence against the various indicia or risk identified by the Officer. The Court ought not to do this as the Officer's factual determination that "the Applicant does not have a profile that would cause him to be of interest to the authorities; if he is able to present himself with his own identification documents in hand," deserves deference.

[48] The Officer listed factors that would increase the risk that an individual could encounter difficulties with Sri Lankan authorities, including possible detention:

- Tamil ethnicity
- Previous record as a suspected or actual LTTE member or supporter
- Previous criminal record and/or outstanding arrest warrant
- Bail jumping and/or escaping from custody
- Having signed a confession or similar document
- Having been asked by the security forces to become an informer
- The presence of scarring
- Returned from London or other centre of LTTE activity or fund raising
- Illegal departure from Sri Lanka
- Lack of ID card or other documentation
- Having made an asylum claim abroad
- Having relatives in the LTTE
- Involvement with media or NGOs

[49] The Officer then applied the Applicant's circumstances to the various factors. Going through the list of factors, the Officer found the following:

- The Applicant is Tamil.
- The Applicant's counsel had stated that the VVT gang was linked to the Tamil Tigers. However, the Applicant stated that he denied membership in the VVT. The Officer also found that the Applicant had not provided supporting evidence to demonstrate that he was mistreated on that ground when he was last in Sri Lanka. In addition, the war is over in Sri Lanka and the VVT gang is reported as no longer being active. The Officer found on a balance of probabilities, that the Sri Lankan government would not perceive the claimant as having any association or links with the LTTE.
- The Officer noted that the Applicant had a criminal record in Canada. The Officer also stated that the Applicant has not provided evidence that he is subject to an outstanding arrest warrant.
- The Officer made no comment, nor was any evidence provided to suggest that the Applicant jumped bail or escaped from custody, had been asked by the security forces to become an informer, or that the Applicant evidenced scarring.
- While the Officer did not make a specific finding on this point, the Officer did note that the vast majority of Tamils returning at the moment are facing a minimal risk for undergoing a scrutiny at the airport and that only people with a clear LTTE-profile or people suspected of money transfer would be detained for further investigations.
- The Officer held that the Applicant listed his status in India, Peru and Mexico as Visitor; this led the Officer to believe that the Applicant did not leave Sri Lanka illegally.
- The Officer consistently stated that the level of risk would be minimized if the Applicant returned on his own identification such as a Sri Lankan passport or valid ID card.
- The Officer cited a country document for Iran which included information regarding the CBSA's process for removing foreign nationals. The Officer quoted the document stating that, "[a]t no point during the removal process are Iranian authorities or other receiving authorities advised that an individual has made a refugee claim in Canada." The Officer then found similarly that there was no evidence to show that the removal process to which the Applicant was subjected was any different from that described for

removals to Iran or that it would be in the event the Applicant was removed to Sri Lanka again.

- Finally, there was no comment on whether the Applicant had relatives in the LTTE or that he was involved with the media or NGOs. In fact, the record shows that all of the Applicant's family are now Canadian citizens.

[50] The Officer was tasked with determining whether the Applicant's circumstances fit within these indicia. This involved factual determinations based on the record and the evidence before the Officer. The Officer's factual determinations are to be afforded significant deference and reviewed on a standard of reasonableness.

[51] In my view, the Officer adequately considered the Applicant's personal profile against the indicia of risk. All of the Officer's findings are based on evidence. The Applicant may disagree with the appropriate weight or the final determinations made by the Officer. However, this Court is charged with determining whether the Officer's decision was reasonable.

[52] My review of the decision and the evidence indicates that the Officer's decision was reasonable. I disagree with the Applicant that the Officer's determination was perverse. I conclude no reviewable error was made.

**Conclusion**

[53] I conclude the Officer did not breach the duty of procedural fairness owed to the Applicant.

[54] Further, keeping in mind that the PRRA Officer's decision deserves significant deference, I find the Applicant has failed to demonstrate how the Officer's decision is unreasonable.

[55] I would dismiss the application for judicial review.

[56] Neither the Applicant nor Respondent proposed a general question of importance for certification. I do not certify any question.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Leonard S. Mandamin"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6096-11 |
| **STYLE OF CAUSE:** | VASEEKARAN MANICKAVASAGAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MARCH 28, 2012 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | MANDAMIN J. |
| **DATED:** | APRIL 13, 2012 |

**APPEARANCES:**

| | |
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| Judy Michaely | FOR THE RESPONDENT |

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