

Federal Court



Cour fédérale

Date: 201212 18

Docket: IMM-1989-12

Citation: 2012 FC 1493

Edmonton, Alberta, December 18, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MANONMANY GOVINDASAMY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Manonmany Govindasamy arrived in Canada from Sri Lanka in 2000. She claimed refugee protection based on her Tamil ethnicity, and her fear of persecution from the Sri Lankan Army (SLA), who suspected her of being associated with the Liberation Tigers of Tamil Eelam (LTTE). However, in 2003, a panel of the Immigration and Refugee Board concluded that her claim was not well-founded.

[2] In 2011, Ms Govindasamy, age 84, applied for a pre-removal risk assessment (PRRA). She alleged that she faced a risk of severe harassment, extortion, discrimination and persecution if she returned to Sri Lanka. She emphasized that her allegation of risk was based on her gender, her age, her status as a widow, and her vulnerability to being targeted by militant groups.

[3] The PRRA officer found that Ms Govindasamy had not established that she faced a substantial risk to her life or of cruel and unusual treatment if she returned to Sri Lanka.

[4] Ms Govindasamy argues that the officer's decision was unreasonable because it was based on unrepresentative and outdated excerpts from the documentary evidence. She asks me to quash the officer's decision and order a reassessment by a different officer.

[5] I agree that the officer's decision was unreasonable and must, therefore, allow this application for judicial review.

II. Ms Govindasamy's Submissions

[6] Ms Govindasamy made extensive references to documentary evidence of conditions in Sri Lanka in her submissions to the PRRA officer, showing:

- ethnic tensions are high, perhaps worse than ever;
- government claims of reform are not reflected in reality;

- Tamils have been arbitrarily arrested or detained in Colombo;
- returnees from abroad are perceived to be wealthy and are targeted for extortion;
- disappearances and abductions, including for purposes of extortion, are widespread, especially for Tamils, women, and residents of the north; and
- politically motivated and gender-based violence persists.

III. The Officer's Decision

[7] The officer found that the documentary evidence submitted by Ms Govindasamy was of a general nature, applicable to the population as a whole. The only groups specifically targeted were young Tamil males. Overall, the situation in Sri Lanka is improving. Returnees to Sri Lanka from abroad are generally not targeted, although Tamils from the north receive greater scrutiny. Usually, officials are interested only in persons with an outstanding arrest warrant or ties to the LTTE. In particular, returnees from Canada have not received negative treatment.

[8] The officer noted that the situation for women in Sri Lanka is “not ideal” and “not perfect.” Sexual and domestic violence are a problem, but the situation is improving.

[9] As for extortion, the officer found that Ms Govindasamy was in the same situation as the rest of the population. The officer acknowledged that women are often targets of abductions, but Ms Govindasamy was at the same risk as the Sri Lankan population as a whole. Further, kidnappings are declining.

[10] Based on this evidence, the officer concluded that Ms Govindasamy had not met her burden of showing that she faced a risk recognized in either s 96 or s 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (see Annex).

IV. Was the Officer's Decision Unreasonable?

[11] Ms Govindasamy argues that the officer overlooked significant documentary evidence that was relevant to her application. In particular, she points to the following:

- persons perceived to be LTTE sympathizers continue to be targeted for arbitrary killings, disappearances, and detention;
- returnees from abroad are sometimes held for questioning at the airport; and
- violence against women is pervasive.

[12] Ms Govindasamy also notes that the officer failed to consider recent documentary evidence that was available. In particular, the officer relied on a 2010 report of the International Crisis Group (ICG), even though a 2011 report was available. Further, the officer cited a 2006 Response to Information Request (RIR) about the treatment of returnees from abroad, not more recent evidence.

[13] I am satisfied that the officer failed to respond adequately to the particular allegations put forward in Ms Govindasamy's submissions and the documentary evidence that was before her. A PRRA officer must consider "the most recent sources of information" (*Hassaballa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, at para 33). In addition, an officer must

consider documentary evidence that contradicts his or her conclusion (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (FCTD)).

[14] Here, there were more recent reports that were relevant to the officer's assessment. Some of those were cited in Ms Govindasamy's submissions. In addition, there was a 2011 RIR that was issued several months before the officer's decision. That RIR indicated that failed asylum seekers from abroad are subject to special questioning and sometimes detained for months on their return to Sri Lanka, especially when there are no family members to come to the person's assistance.

[15] In my view, the officer failed to address and to respond adequately to the evidence supporting Ms Govindasamy's claim to be at risk on her return to Sri Lanka. Some of that evidence related to her personal situation, not the population as a whole. The officer's decision does not represent a defensible outcome based on the applicable facts and law; therefore, it is unreasonable.

V. Conclusion and Disposition

[16] The officer's decision did not respond adequately to the evidence and allegations put forward by Ms Govindasamy, and did not take account of the most recent, publicly available documentary evidence. Accordingly, the officer's decision was unreasonable. I must, therefore, allow this application for judicial review and order another officer to reassess Ms Govindasamy's application. 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. The matter is referred back to another officer for a reassessment.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

Annex "A"

Immigration and Refugee Protection Act, SC 2001 c 27***Loi sur l'immigration et la protection des réfugiés, LC 2001, ch. 27***

Convention refugee

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

Person in need of protection

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

Définition de « réfugié »

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

Personne à protéger

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

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.

Person in need of protection

(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.

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.

Personne à protéger

(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

DOCKET: IMM-1989-12

STYLE OF CAUSE: MANONMANY GOVINDASAMY
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 12, 2012

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

DATED: December 18, 2012

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