Federal Court  Cour fédérale

Date: 20150305

Docket: IMM-2608-13

Citation: 2015 FC 274

Ottawa, Ontario, March 5, 2015

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SURAJ NAVARATNAM
ATHAPATHTHU DISANAYA NIMALI SHIRANI PERERA
ABHIMANYA SURAJ NAVARATHNAM
ADHITHYA SURAJ NAVARATNAM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants' claim for refugee protection was denied by the Refugee Protection Division of the Immigration and Refugee Board of Canada [the Board]. They now apply for judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The applicants seek an order setting aside the negative decision and returning the matter to a different member of the Board for redetermination.

I. Background

[3] The applicants are citizens of Sri Lanka. Suraj Navaratnam, the principal applicant, is Tamil and his spouse is Sinhalese. They seek refugee protection for two reasons: 1) being Tamil; and 2) their mixed marriage.

[4] In January and February 1996, prior to the applicants' marriage, the couple received opposition from their community regarding their foreseeable union. The police officers, army officers and the Sinhalese people along with their relatives gave death threats in their attempt to prohibit the marriage.

[5] On March 28, 1996, the principal applicant and his wife got married but lived separately in order to keep their marriage a secret. In October 1997, one and a half years after their marriage, they started living together. In November 1997, the uncle of the applicant wife visited and after learning about their marriage, spread the news. The police officers, army officers and the Sinhalese people came again with threats.

[6] In January 1998, the principal applicant left Sri Lanka. He has not returned there except to visit over the past 15 years. His wife left in 1999.

[7] In October 2005, the parents of the principal applicant's wife were threatened three times and her mother suffered a heart attack the following day.

II. Decision Under Review

[8] The Board hearing was on March 25, 2013. The Board gave oral reasons for its negative decision on the same day and subsequently released its written decision on April 15, 2013. It found that the principal applicant and his family were not Convention refugees and not persons in need of protection.

[9] The Board first summarized its credibility finding, stating the applicants' claim had some exaggeration because it has been 15 years since the mixed marriage, so it questioned if "the Sinhalese community was still angry about [their] mixed marriage." In support, the Board stated it could not find evidence in any of the human rights reports that mixed marriages in Sri Lanka face such a series of threats and persecution to continue for 15 years or more.

[10] The Board then summarized its state protection finding, stating the applicants failed to meet their onus to prove that there was no state protection. It stated the determinative issue is internal flight alternative [IFA].

[11] The Board first explained what an IFA is and stated that even if it accepts the applicants' subjective fear, it still has to be satisfied that there is not some other place the applicants could go. It proposed Colombo, a city of roughly five million people with many Tamil residents; and Trincomalee and Jaffna. The Board noted that the principal applicant and his wife returned to Sri

Lanka on multiple occasions between 1998 and 2012; and although staying for only short durations in Colombo, they were safe. It further found it implausible that the police in Battaramulla would pursue the applicants as far as Trincomalee and Jaffna.

[12] Therefore, the Board concluded that the principal applicant did not establish if he and his family returned to Sri Lanka that they would face more than a mere possibility of persecution based on either their ethnicity or being members of a particular social group.

III. Issues

[13] The applicants submit the following issues for my consideration:

1. A preliminary issue to join the principal applicant's wife and two children to the style of cause.
2. The Board failed to provide adequate reasons and lack of evidentiary basis.
3. As self-represented applicants during the Board hearing, the time provided to prepare their claim was insufficient and breached procedural fairness.

[14] The respondent agrees with the applicants' preliminary issue and submits that there is only one other issue: the applicants have not demonstrated that there is a reviewable error upon which the proposed application for judicial review might succeed.

[15] In my view, there are four issues:

A. Should the principal applicant's wife and his two children be joined to the style of cause?

B. What is the standard of review?

C. Did the Board breach procedural fairness?

D. Was the Board's decision reasonable?

IV. Applicants' Written Submissions

[16] The applicants submit the standard of review is reasonableness for the issue of the Board's consideration of the applicants' allegations and evidence (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraphs 45, 46 and 59, [2009] 1 SCR 339 [*Khosa*]).

[17] The applicants submit as a preliminary issue that the style of cause be changed so the principal applicant's judicial review application is joined with those of his wife and their two children.

[18] The applicants then submit the timeline of one and a half months from the refugee claim to the refugee hearing is too short for the purpose of material preparation and argue the new CIC timelines requiring supporting evidence be submitted to the Board twenty days in advance of hearing is "grossly unfair, unreasonable and prejudicial."

[19] The applicants then argue the Board erred on mainly two grounds: 1) the Board breached procedural fairness; and 2) its decision on state protection and IFA is unreasonable.

[20] Insofar as the issue of procedural fairness is concerned, the applicants submit the Board failed to meet the greater care and duty owed to a self-represented claimant (see *Nino v Canada*

(Citizenship and Immigration), 2012 FC 956, [2012] FCJ No 1020 [*Nino*]). Although the applicants concede that they had every right to appear with legal counsel, they rely on the notion of the right to a fair hearing (see *Austria v Canada (Minister of Citizenship and Immigration)*, 2006 FC 423, [2006] FCJ No 597 [*Austria*]; *Mervilus v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1206 at paragraph 17, [2004] FCJ No 1460 [*Mervilus*]; *Siloch v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 10, 151 NR 76 (FCA) [*Siloch*]; and *Nemeth v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 590, [2003] FCJ No 776 [*Nemeth*]).

[21] The applicants argue that in this case, the Board failed to do something to explain the process to the applicants, help the applicants navigate through the proceedings, remain alert to whether or not they comprehend the proceedings and invite them to make any final submissions or "statement" in support of their claim.

[22] Insofar as the issue of reasonability is concerned, the applicants submit the Board erred in analyzing state protection and IFA. First, the applicants argue the issue of state protection cannot arise because in the case at bar, the named agents of persecution are or include state security agents such as the police and/or military (see *Zhuravlvev v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 507, 187 FTR 110; *Canada (Minister of Employment and Immigration) v Villafranca* [1992] FCJ No 1189, 18 Imm LR (2d) 130, (FCA) [*Villafranca*]; and *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1376, 143 DLR (4th) 532). They submit the Board was unreasonable to have accepted that the Sri Lankan police acted as an agent of persecution, and then reject the claim on the ground that the applicants failed

to "exhaust" the possibilities of getting protection in their own country. Also, the applicants argue the Board erred in ruling the applicants did not rebut the presumption of adequate state protection because it did not refer to any objective evidence that if state protection was sought, adequate protection would have been forthcoming (see *Hercegi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 250 at paragraphs 5 to 7, [2012] FCJ No 273; *Meza Varela v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364, [2011] FCJ No 1663; *Gomez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1041, [2010] FCJ No 1346; and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* [1998] FCJ No 1425, 157 FTR 35).

[23] Second, the applicants argue if the Board accepted that the named agent of persecution in Battaramulla included state security agents, then it was an error of law for it to raise the issue of IFA in another part of Sri Lanka, given that objective evidence confirms that state security agents exist and operate in every part of the country, such as in the proposed IFAs (see *Canada (Minister of Employment and Immigration) v Sharbdeen*, [1994] FCJ No 371, 23 Imm LR (2d) 300; and *Tripathi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 174, [2009] FCJ No 219). Also, the applicants state the Board merely rendered a finding and failed to conduct any analysis or consideration of an IFA in either Trincomalee or Jaffna (see *Miranda v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 437, 63 FTR 81).

[24] Lastly, the applicants submit the Board's reasons are brief and lack any references to specific documentary evidence in its findings of adequate state protection and IFAs. The applicants further argue that the Board failed to properly assess and provide reasons for its

finding on section 97. The applicants cite *Asu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1693, [2005] FCJ No 2096 [*Asu*] for support.

V. Respondent's Written Submissions

[25] For the preliminary issue, the respondent agrees with the applicants that the style of cause should be amended to include all the parties from the refugee claim and hence, it addresses them collectively as the applicants.

[26] First, the respondent argues that although the applicants assert they were prejudiced by the short timeframe, they had relevant documentation in support of their claim and failed to articulate what they were unable to present to the Board. Further, the timeline is there to ensure a timely and fair process for the determination of refugee claims.

[27] Second, the respondent argues the hearing met the requirements of procedural fairness and the applicants participated meaningfully and presented their case fairly. Also, it submits the Board's conduct of the hearing was not improper and that there was nothing problematic about indicating that counsel would make submissions on law at the end of the hearing. The Board was simply explaining the hearing process to the self-represented applicants.

[28] Third, the respondent submits the Board's reasons were adequate. The obligation to provide adequate reasons is satisfied when the decision maker sets out its findings of fact and the principal evidence upon which those findings were based (see *Canada (Minister of Citizenship and Immigration) v Charles*, 2007 FC 1146 at paragraph 27, [2007] FCJ No 1493; and *Ivanov v*

Canada (Minister of Citizenship and Immigration), 2006 FC 1055 at paragraph 35, [2006] FCJ No 1339). Here, the Board addressed the major points in issue and the relevant evidence. This reasoning process reflects the fact that the Board gave consideration to the relevant factors. Further, the test for the adequacy of reasons depends on the circumstances of each case so far as it allows the person concerned to know why a particular result was reached (see *Townsend v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 371, [2003] FCJ No 516 [*Townsend*]).

[29] Here, the Board found the applicants had not taken all reasonable steps to pursue available state protection. It also considered that police might have been complicit in Battaramulla, but the fact remains that no avenues of protection were explored elsewhere in the country. Further, the test for state protection is adequacy, not effectiveness. The applicants failed to rebut this presumption (see *Hernandez Victoria v Canada (Citizenship and Immigration)*, 2009 FC 388 at paragraphs 13 to 19, [2009] FCJ No 532; *Canada (Attorney General) v Ward* [1993] 2 SCR 689 at paragraph 49; *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1376, at paragraph 5, 143 DLR (4th) 532 (FCA); *Villafranca* at paragraph 7; *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraphs 18, 19 and 30, [2008] FCJ No 399; *Ruiz Martnez v Canada (Citizenship and Immigration)*, 2009 FC 1163, [2009] FCJ No 1443). Applicants must do more than rely on a subjective assertion that they thought state protection would not be available (see *Duran Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354, [2009] FCJ No 438 [*Mejia*]).

[30] Fourth, the onus is on the refugee claimants to show they do not have an IFA once the issue of IFA is raised (see *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, [1991] FCJ No 1256 (FCA) [*Rasaratnam*]; and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, [1993] FCJ No 1172 (FCA) [*Thirunavukkarasu*]). Here, the applicants failed to do so because they had safely visited the country over half a dozen times in the last fifteen years. Also, the respondent in its attempt to clarify the applicants' submission, argues the Board's concern was that the applicants did not complain to the police in jurisdictions other than the place of persecution.

VI. Analysis and Decision

A. *Issue 1 - Should the principal applicant's wife and his two children be joined to the style of cause?*

[31] The principal applicant submits that his wife and two children should be joined to the style of cause. The respondent agrees. I agree that it is in the best interests of justice and utilization of judicial resources to join them to the style of cause.

B. *Issue 2 - What is the standard of review?*

[32] Here, I will examine the applicants' submissions regarding the timeline of the refugee claim, the hearing process and the adequacy of reasons as matters of procedural fairness. Pursuant to *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at paragraph 43, [2009] 1 SCR 339 [*Khosa*], issues of procedural fairness are questions of law and are reviewed on a standard of correctness (see also *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29 at paragraph 100, [2003] 1 SCR 539).

[33] As for the issue of the reasonability of the Board's decision, I agree the standard of review is reasonableness. Here, the issue under review is a mix of fact and law. It has been established in *Dunsmuir*, at paragraph 53, that the standard of reasonableness is applied "where the legal and factual issues are intertwined with and cannot be readily separated." (see also *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at paragraph 4, 160 NR 315 (FCA); *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paragraphs 22 to 40, [2012] FCJ No 369). Further, the Federal Court of Appeal has determined in *Carrillo* at paragraph 36, that the standard of review is reasonableness for the issue of state protection (see also *Mejia* at paragraph 25). This means that I should not intervene if the decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (see *Dunsmuir* at paragraph 47; *Khosa* at paragraph 59). As the Supreme Court held in *Khosa* at paragraphs 59 and 61, a court reviewing for reasonableness cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

C. *Issue 3 - Did the Board breach procedural fairness?*

[34] I will deal with the applicants' assertions on procedural fairness in three parts: first, on the timeline of the refugee claim, second, on the hearing process, and third, on the adequacy of reasons.

[35] Firstly, I agree with the respondent that the refugee claim process does not prejudice the applicants. The timeline is there to ensure a timely and fair process for the determination of refugee claims. Here, the applicants submitted relevant documentation in support of their claim; they have not made any submissions on judicial review pertaining to how the timeline

supposedly had prejudiced them in terms of material preparation. Therefore, the timeline implemented does not breach procedural fairness.

[36] Secondly, the applicants submit that the Board failed to meet the greater care and duty owed to self-represented claimants during the refugee hearing. In support, they cite *Nino*, *Austria*, *Mervilus*, *Siloch* and *Nemeth*.

[37] This Court has repeatedly held in immigration matters that the right to counsel is not absolute (*Mervilus* at paragraphs 17 to 25). Madame Justice Danièle Tremblay-Lamer stated in *Austria* at paragraph 6 that "[w]hat is absolute, however, is the right to a fair hearing. To ensure that a hearing proceeds fairly, the applicant must be able to "participate meaningfully"." (see *Canada (Minister of Citizenship and Immigration) v Fast*, 2001 FCT 1269 at paragraphs 46 and 47, [2002] 3 FC 373).

[38] In *Nino*, although this Court ruled an adjournment should be granted, it was based on the fact that counsel for the applicant had requested an adjournment, but the Board proceeded with the hearing in the absence of counsel. Similarly in *Mervilus*, an adjournment was requested due to counsel's unavailability and the Board erred in not granting it. Also, in *Siloch*, this Court found the Board's denial of the applicant's request for adjournment was unreasonable because it erred in penalizing her for her counsel's previous poor behaviour. These cases can be distinguished factually because there was no request for adjournment in the present case.

[39] As for *Austria*, at paragraphs 8 and 9, this Court ruled the Board in that case did not breach procedural fairness in allowing a self-represented claimant to proceed without counsel after the Board confirmed the claimant's readiness and adequately explained the hearing process. The proposition from this case does not help the applicants' argument in any way.

[40] In *Nemeth*, this Court allowed the judicial review and explained in paragraph 10 that "[t]he Board was aware that the Nemeths had been represented up until just prior to the hearing" but it was not "alive to the risk that the claimants were ill-prepared to represent themselves." Mr. Justice James O'Reilly found procedural fairness was breached because "[u]nder the circumstances, [the Board] had an obligation to ensure that the Nemeths understood the proceedings, had a reasonable opportunity to tender any evidence that supported their claim and were given a chance to persuade the Board that their claims were well-founded."

[41] Here, the applicants argue the Board breached procedural fairness: 1) the Board did not explain the proceedings; 2) it did not help them navigate through the process; 3) it was not alert as to whether the applicants comprehended the proceedings; 4) it invited them to make final submissions; and 5) it did not offer an adjournment.

[42] In the present case, I do not find that the Board conducted the hearing in such a way as to breach procedural fairness. First, I am satisfied that the Board did explain the process to the applicants. There are multiple points as shown from the record that the Board helped them navigate during the hearing, such as on page 159 at the beginning of the hearing and on page 201 near the end of the hearing. Second, although there are multiple times during the hearing that the

Board required the applicants to clarify and explain their answers, the hearing as an entirety as reflected by the record does not show that the applicants failed to comprehend the proceeding. Third, I see the Board's invitation to the applicants to make final submissions in support of their claim as its attempt in guiding the applicants through the process, as opposed to being inappropriate as alleged by the applicants. Lastly, in the absence of an adjournment request, the Board is not required to offer an adjournment whenever there is a case involving a self-represented claimant. In my view, to find otherwise would result in a tremendous burden on the Board and the refugee claim process. Here, similar to *Austria*, the Board met its obligation by confirming the applicants were ready to proceed without counsel (certified tribunal record, page 158). Therefore, the hearing was fair and the Board's conduct did not breach procedural fairness.

[43] Thirdly, I agree with the respondent that the Board provided adequate reasons. The applicants argue that the reasons are too brief and lack section 97 analysis. Under *Townsend*, Madam Justice Judith Snider examined the adequacy of reasons at paragraph 22:

> The purpose of reasons is to tell the person concerned why a particular result was reached. Reasons allow the parties to see that the applicable issues have been carefully considered and to effectuate any right of appeal or judicial review (*Baker v. Canada (Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817; *VIA Rail, supra*). What constitutes adequate reasons will depend on the circumstances of each case (*VIA Rail, supra*). The reasons requirement under the duty of fairness is sufficiently flexible to permit various types of written explanations for the decision to satisfy this requirement (*Baker, supra* at para. 40)…

[44] In the present case, the Board did address major points under section 97, such as state protection and IFAs and referenced the National Documentation Package in doing so (see the third page of the Board's decision). Here, the Board reasoned the applicants did not seek state

protection and since the applicants returned to Sri Lanka multiple times and stayed there without issue, the presumption of IFAs was not rebutted. Although no specific document was referenced, the reasons do provide me with enough insight to determine why a negative decision was reached. Therefore, the Board did provide adequate reasons to meet its duty of fairness.

D. *Issue 4 - Was the Board's decision reasonable?*

[45] The applicants argue the Board was unreasonable in assessing state protection and IFA. In particular, they submit that first the Board did not refer to any objective evidence that if state protection was sought, adequate protection would have been forthcoming; and second, when the state is involved as agents of persecution, it is an error of law to raise the issue of IFA. The respondent submits although the police might have been complicit in Battaramulla, the applicants did not explore other avenues of protection in the country to rebut the state protection presumption; and it is the applicants' onus to show no IFAs are available. Here, I will first analyze state protection and then IFA.

[46] First, insofar as the state protection factor is concerned, I am satisfied that the Board assessed state protection reasonably.

[47] Mr. Justice Russel Zinn in *Majoros v Canada (Minister of Citizenship and Immigration)*, 2013 FC 421, [2013] FCJ No 447 [*Majoros*], outlined at paragraph 10 that the role in seeking the protection of the state in a refugee claim is a *de facto* requirement, not a legal requirement. Here, the main question is would the applicants be more protected if they sought state protection?

[48] The Board accepted the applicants' submission that the police and army personnel from Battaramulla were involved in the persecution; however, the applicants did not seek protection outside of Battaramulla and provided no objective documentary evidence to prove this persecution is state wide by the police and army personnel with the result that no more protection would be provided even if state protection was sought. The applicants thereby did not rebut the presumption of adequate state protection. I agree with the respondent that the applicants must do more than rely on a subjective assertion that they thought state protection would not be available (see *Mejia)*. Therefore, the applicants did not rebut the presumption of adequate state protection.

[49] Second, insofar as the IFA factor is concerned, I agree with the respondent that the applicants did not meet their onus to show no IFAs are available.

[50] Pursuant to *Rasaratnam* and further confirmed in *Thirunavukkarasu*, in determining whether a reasonable IFA exists, it is well settled that an applicant bears the onus to prove that 1) on a balance of probabilities, there is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA; and 2) the conditions in the proposed IFA must be such that it would be unreasonable, upon consideration of all the circumstances, including an applicant's personal circumstances, for an applicant to seek refuge.

[51] Here, although the applicants submit that the police and army personnel from Battaramulla were involved in the persecution, they did not provide objective documentary evidence to prove this persecution is state wide. This does not satisfy the first prong of the test

showing that there is a serious possibility of persecution throughout the country. Therefore, the Board was reasonable to conclude IFAs are available.

[52] For the reasons above, I would deny this application for judicial review.

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

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended by adding Athapaththu Disanaya Nimali Shirani Perera, Abhimanya Suraj Navarathnam and Adhithya Suraj Navaratnam as applicants.

2. The application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
…	…
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	97. (1) A qualité de personne à protéger la personne qui se trouve au

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

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,

(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(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) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SURAJ NAVARATNAM, ATHAPATHTHU DISANAYA NIMALI SHIRANI PERERA, ABHIMANYA SURAJ NAVARATHNAM, ADHITHYA SURAJ NAVARATNAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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