

Federal Court



Cour fédérale

**Date: 20160408**

**Docket: IMM-4598-15**

**Citation: 2016 FC 395**

**Ottawa, Ontario, April 8, 2016**

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

**BETWEEN:**

**MAHINTHAN SIVALINGAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] challenging an immigration officer's [the Officer] decision refusing the Applicant's Pre-Removal Risk Assessment [PRRA] by concluding that he is not a person in need of protection pursuant to section 97 of the Act.

[2] The Applicant, a citizen of Sri Lanka, arrived in Canada on July 13, 2003. The Applicant's father, who was granted refugee status in Canada, sponsored the Applicant, the Applicant's mother and siblings to Canada. The Applicant has since resided in Canada.

[3] The Applicant was the subject of numerous convictions between 2007 and 2011. More specifically, the Applicant pled guilty in June 2009 to charges of theft, possession, forgery and trafficking of credit card pursuant to subsection 342(1) of the *Criminal Code*.

[4] On September 14, 2014, as a result of his June 2009 conviction, the Applicant was found inadmissible to Canada for serious criminality pursuant to paragraph 36(1)(a) of the Act. The Immigration Division [ID] issued a removal Order against the Applicant.

[5] On December 18, 2014, the Immigration Appeal Division [IAD] refused the Applicant's appeal of the ID's removal Order. The Federal Court also denied the Applicant's leave for judicial review of the IAD's decision dated April 14, 2015.

[6] The Applicant filed a PRRA application that was limited to section 97 factors due to his inadmissibility. It was denied on September 1, 2015.

[7] The Applicant's removal was scheduled for October 21, 2015. However, on October 20, 2015, this Court granted the Applicant a stay of removal pending the judicial review of his failed PRRA application, which is the subject of this proceeding.

[8] The Applicant raises two issues for the Court's consideration relating to the PRRA decision, both of which are subject to being reviewed on a standard of reasonableness. First, he argues that the Officer failed to assess the risks associated with his likely interrogation and detention upon arriving in Sri Lanka, and second, the Officer failed to consider risk factors associated with his profile as the son of someone who had been determined to be a Convention refugee.

[9] I consider first the second issue relating to risk factors attached to the Applicant's profile. Premised primarily on the December 2012 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, the Officer found that as a young Tamil male from the North, he did not present a profile history that would warrant negative attention upon his return.

[10] The Applicant nevertheless submitted that his additional attributes as the son of a Convention refugee of Sri Lanka upon whose status he had been granted permanent residency in Canada would raise serious risks to his personal safety.

[11] In this regard, the Court was referred to a decision by my colleague Justice O'Reilly in the matter of *Muthuthevar v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1, paras 17-19. The case presented somewhat similar facts as in this matter, where the applicant had been absent from Sri Lanka for a considerable period of time and where his permanent resident status was based upon his father being determined to be a Convention refugee. The father was

granted asylum based on his fear of persecution after being forced to assist the Liberation Tigers of Tamil Eelam [LTTE] and subsequently being detained and tortured by the Sri Lankan army. The Court found that the board committed a reviewable error by failing to consider whether the applicant would now be suspected of having LTTE ties upon removal to Sri Lanka due to his father's past history and his being a failed asylum seeker.

[12] The Officer had considered the Applicant's factual situation relating to his father being a Convention refugee. The Officer noted that, besides the statement in his counsel's letter, there was "no transcript of that hearing and no written reasons which detail the reasons for that positive [Convention refugee] decision." The Officer concluded that "[c]ounsel has provided no evidence regarding any issues that the applicant's father had in Sri Lanka with the LTTE or the army which would cause the applicant to be at risk ... [or] that the military or paramilitary groups in Sri Lanka are aware of the father's background or that the father was granted refugee status in Canada."

[13] Based on the Applicant's facility in leaving Sri Lanka with all the proper travel documents and the absence of evidence concerning the father's background, the Officer found the Applicant's statement, that he would be persecuted upon his return as a family member of a Canadian Convention refugee, to be speculative. I find no reviewable error arising from the Officer's analysis and conclusion in this regard, particularly given the absence of any evidence regarding the father's Convention refugee status.

[14] With respect to the issue of the alleged error by the Officer in failing to assess the risks associated with the interrogation and detention, I similarly find no reviewable error requiring the Court's intervention.

[15] The Officer found that the country condition documentation with respect to the screening process for persons returning to Sri Lanka was "mixed." The Applicant pointed the Court to reports indicating the prevalence of torture generally associated with interrogation and detention by civil forces, in addition to concerns about the lack of transparency and information with respect to these screening activities. However, the Officer reviewed and reported in considerable detail on the screening processes, including the negative reports of organizations such as the Law and Society Trust of Colombo, as well as those prepared by the Immigration Refugee Board of Canada and the Canadian High Commission, which tended to be less critical of the risks associated with the screening process. Accordingly, I am not satisfied that the Applicant has established that the Officer failed to consider the risks attached to returning Tamil males from the North arising from the screening process given his profile.

[16] Moreover, I do not find that the cases cited by the Applicant are of assistance to demonstrate the perils of the screening process given the very different factual circumstances described therein. For instance, Justice de Montigny in the matter of *Sinnasamy v Canada (Minister of Citizenship and Immigration)*, 2008 FC 67, set out principles in terms of the requirement to consider the particular circumstances of the applicant when being detained as a result of security measures implemented by the Sri Lankan government for returnees. However,

the underlying factual circumstances in that matter concerned a 46 year old Tamil who was tortured on several occasions and suffered human rights abuses at the hands of both the Sri Lankan army and the LTTE.

[17] Similarly, Justice Diner's decision in the matter of *Kanagarasa v Canada (Minister of Citizenship and Immigration)*, 2015 FC 145 is similarly distinguishable. The facts in that matter concerned a returning applicant who had visible scarring and a history of detention, such as was found to place him at risk of torture and mistreatment when undergoing Sri Lanka's re-entry screening process.

[18] The Officer ultimately found that the Applicant's profile did not match any of those generally acknowledged to give rise to heightened risk for returnees. This, in addition to the conclusions about the speculative nature of the risk attached to the father's Convention refugee status, the Applicant's lack of LTTE affiliation, the absence of any difficulty he faced upon leaving Sri Lanka, and his being removed on the basis of serious criminality in Canada as opposed to being a failed Convention refugee, I find reasonably supports the Officer's conclusion that the Applicant would not likely be subjected to section 97 forms of risks upon his return to the country.

[19] Accordingly, the application is dismissed, and no question is certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified for appeal.

"Peter Annis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4598-15

**STYLE OF CAUSE:** MAHINTHAN SIVALINGAM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUÉBEC

**DATE OF HEARING:** MARCH 23, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** APRIL 8, 2016

**APPEARANCES:**

Peter Shams FOR THE APPLICANT

Daniel Latulippe FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Peter Shams FOR THE APPLICANT  
Barrister & Solicitor  
Montréal, Québec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Montréal, Québec