

Federal Court



Cour fédérale

**Date: 20170405**

**Docket: IMM-3737-16**

**Citation: 2017 FC 344**

**Toronto, Ontario, April 5, 2017**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**SUSIYANTHAN RASALINGAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

(Delivered orally from the Bench in Toronto, Ontario on April 4, 2017)

I. Proceeding

[1] The Applicant has applied for judicial review of a decision dated July 19, 2016 [the Decision] to deny his application for a Pre-Removal Risk Assessment [PRRA]. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

## II. Background

[2] The Applicant is a 34 year old Tamil man from Northern Sri Lanka. He says that he went to Vavuniya to visit family after finishing his exams in 2006. After the visit, he could not return home because the government had closed the highway due to clashes with the LTTE.

[3] The Applicant says that after the war ended in May 2009, people were held in camps in Vavuniya. Two people from the Applicant's village left a camp and stayed with him briefly. The police visited his home and pro-government militants began to threaten him. The Applicant's cousin also fled the camp. The authorities visited his home three times, and accused him of helping LTTE members escape Sri Lanka. However, he was never arrested or detained.

[4] The Applicant fled to Thailand, and then travelled to Canada on the MV Sun Sea with the help of a smuggler. The Applicant made a refugee claim when he arrived in Canada on August 13, 2010. Among other submissions, the Applicant argued that his profile as a Sun Sea passenger grounded a *sur place* claim. The RPD rejected his claim on July 25, 2013 due to a lack of credibility and objectively well-founded fear. Leave to judicially review the RPD decision was denied.

[5] The RPD concluded that the Applicant was inconsistent about the timing and frequency of authorities' visits to his uncle's house to look for his cousin and about how his cousin escaped from the camp. The Applicant told the CBSA that he had been assaulted by the Sri Lankan Criminal Investigation Department [CID] but did not include this information in his PIF. His explanation about how the authorities knew that he had left Sri Lanka evolved. The RPD

concluded that the Applicant was “not credible regarding the key and pivotal elements of his claim” and gave no probative value to his allegations of pursuit and persecution by authorities upon return.

[6] The RPD also considered and rejected the Applicant’s *sur place* claim, finding that transport on the MV Sun Sea was not sufficient to establish an imputed affiliation with the LTTE. The RPD also concluded as follows at paragraph 46 of the Decision “...there is no indication that he has been involved with or supportive of any pro-LTTE organization during his time in Canada. The Panel finds that there is insufficient evidence to suggest that since he fled Sri Lanka, other than his presence on the MV Sun Sea, the Sri Lankan Government has any reasons to believe he is a member or supporter of the LTTE.”

### III. PRRA Decision

[7] The officer who made the Decision (the Officer) considered new evidence which included a letter from the Applicant’s father dated May 10, 2014 (the Father’s Letter). It read in part:

On 07-05-2014, the army intelligent came to our house with some Tamils speaking people and checked our house. They asked about our family details. On suspicion that the Diaspora Tamil are trying to bring back the LTTE, they mentioned your name and questioned about you and your political activities in Canada. They accused that the Tamil Diaspora was responsible for the recent LTTE activities and that you were involved in LTTE activities there. They also accused that you helped the LTTE when you were in Sri Lanka and you went to Canada on a ship and all these prove that you are an LTTE and they were concerned about the political activities being carried out against Sri Lanka in foreign countries.

(The errors are in the original translation)

[8] The Officer said the following about the Father's Letter:

I find that the Applicant's father's letter is insufficient corroborative new evidence, because the Applicant's father is a source highly proximate to the Applicant. He therefore has, more likely than not, an interest in the outcome of this assessment and therefore lacks objectivity and independence. Furthermore, the Applicant was found not to be credible in his refugee claim. For these reasons, I assign little weight to the Applicant's father's letter.

IV. Discussion and Conclusion

[9] In my view, there are two problems with the Officer's treatment of the Father's Letter. First, it was given "little weight" because it lacked "objectivity and independence." This was unreasonable because it is unlikely that anyone but a member of the Applicant's family could have given evidence about the army's search of their home. Second, the Officer appears to have overlooked the fact that the Father's Letter alleges a new risk to the Applicant as a member of the Tamil Diaspora in Canada. According to the Father's Letter, the Sri Lankan army perceives Tamils in Canada to be responsible for recent LTTE revival activities in Sri Lanka.

V. Certification

[10] No questions were posed for certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed. The Decision is set aside and the PRRA application is to be reconsidered by a different officer. The reconsideration is only to deal with the Applicant's alleged future risk as a member of the Tamil Diaspora in Canada. The parties may submit further evidence on this issue, if so advised.

“Sandra J. Simpson”

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Judge

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

**DOCKET:** IMM-3737-16

**STYLE OF CAUSE:** SUSIYANTHAN RASALINGAM V THE  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2017

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** APRIL 5, 2017

**APPEARANCES:**

Robert I. Blanshay

FOR THE APPLICANT

Suranjana Bhattacharyya

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Robert I. Blanshay  
Barrister and Solicitor  
Professional Corporation  
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of  
Canada

FOR THE RESPONDENT