

Federal Court



Cour fédérale

Date: 20180221

Docket: IMM-1601-17

Citation: 2018 FC 198

Ottawa, Ontario, February 21, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**SHANMUGARAJAH SELLAPPAH AND
NESARATNAM SHANMUGARAJAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Shanmugarah Sellappah and Mrs. Nesaratnam Shanmugarah (the “Applicants”) seek judicial review of the decision of an immigration officer (the “Officer”) dated March 18, 2017, refusing their request for Temporary Resident Permits (“TRPs”) as available pursuant to section 24 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the “Act”).

[2] The Applicants are citizens of Sri Lanka. They entered Canada in 2013, holding TRPs, for the purpose of visiting relatives.

[3] In 2015, Mr. Sellappah learned that he was suffering from a medical problem for which surgery was a recommended treatment. He did not undergo the surgery.

[4] The Applicants applied renewal of their TRPs. The Officer refused their application on the basis that the purpose of the original TRPs had been satisfied, that is the Applicants' travel to Canada to visit family, and that they could seek admission into Canada, from their home country, under other provisions of the Act.

[5] A decision regarding the issuance of a TRP involves the exercise of discretion and is reviewable on the standard of reasonableness; see the decision in *Huang v. Canada (Citizenship and Immigration)*, 94 IMM. L.R. (3d) 213 at paragraph 12. The Supreme Court of Canada described the content of the reasonableness standard of review in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47. That standard requires that a decision be transparent, justifiable and intelligible, and falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

[6] Subsection 24(1) of the Act is relevant and provides as follows:

Temporary resident permit	Permis de séjour temporaire
24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act	24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme

becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révoquant en tout temps.
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[7] The Applicants plead that they are prime candidates for the positive exercise of discretion to allow the renewal of the TRPs. They have the financial resources to support their continued stay in Canada as well as the emotional support of their daughter and her family in Canada.

[8] On the other hand, the Minister of Citizenship and Immigration (the “Respondent”) argues that the discretion pursuant to subsection 24(1) of the Act is to be exercised only in exceptional circumstances, highlighting the words “it is justified in the circumstances”, he submits that the personal circumstances of the Applicants do not meet that level.

[9] As noted by Justice Shore in *Farhat v. Canada (Citizenship and Immigration)*, [2006], 302 F.T.R. 54 at paragraph 2, the issuance of a TRP is part of an “exceptional regime”. Evidence is required of something more than inconvenience to an applicant to justify the issuance of such a privilege.

[10] I acknowledge that the personal circumstances of the Applicants including the physical infirmities of Mr. Sellappah invite sympathy. However, I am not persuaded that the Officer erred in refusing their application for renewal of the TRPs.

[11] In the result, this application for judicial review is dismissed, there is no question for certification arising.

JUDGMENT in IMM-1601-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
there is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1601-17

STYLE OF CAUSE: SHANMUGARAJAH SELLAPPAH AND
NESARATNAM SHANMUGARAJAH v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 22, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 21, 2018

APPEARANCES:

Robert Israel Blanshay FOR THE APPLICANTS

Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robert Israel Blanshay FOR THE APPLICANTS
Professional Corporation
Barristers & Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario