

Date: 20070910

Docket: IMM-3529-07

Citation: 2007 FC 895

Ottawa, Ontario, September 10, 2007

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

THANESWARAN SINNARAJAH

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER

[1] These are the reasons for dismissing on September 4, 2003, the applicant's application for a stay of his removal to Sri Lanka scheduled for later that afternoon.

[2] The applicant's request for a deferral of his removal was denied by an Enforcement Officer on August 30, 2007, with reasons provided to the applicant's counsel on August 31, 2007, at approximately 1:50 p.m. August 31, 2007, was the Friday of the Labour Day weekend.

[3] The material and contextual facts underlying the stay application are as follows:

1. The applicant is a male Tamil 35-years of age and a citizen of Sri Lanka;
2. He came to Canada on the 12th of May, 1994, as a permanent resident upon his sponsorship by his parents;
3. In March of 2002, the applicant was convicted of assault causing bodily harm. In April of 2002, the applicant was convicted of assault. The applicant was also charged for criminal harassment but this charge was stayed at the request of the Canada Border Services Agency (CBSA) in order to effect his removal from Canada;
4. On February 7, 2006, the applicant was found inadmissible to remain in Canada on the grounds that he is an individual described in paragraph 37(1)(a) of the *Immigration and Refugee Protection Act* (the Act) in that he has engaged in activity which was part of a gang-related pattern of criminal activity organized by a number of persons acting in concert in furtherance of offences punishable under an Act of Canada by way of an indictment. He was ordered deported. In addition, on the basis of the evidence adduced at the admissibility hearing a second deportation order issued against the applicant, the Immigration Division determining he was a person described in paragraph 36(1)(a) of *IRPA*, i.e., excluded on the grounds of serious criminality;

5. The applicant challenged the inadmissibility decision in this Court. My colleague Justice Shore on February 20, 2007 dismissed the applicant's judicial review application. The Court concluded given the applicant's association with known members of a criminal group and his involvement in numerous criminal incidents his allegation he was not involved in the gang was not credible;

6. On March 23, 2006, the applicant was notified he could make a pre-removal risk assessment (PRRA) application which he did. On August 8, 2006, a PRRA Officer determined he was not at risk;

7. On March 8, 2007, counsel made a new PRRA application. This PRRA request was refused on May 11, 2007. The PRRA Officer concluded the applicant had provided insufficient evidence he would be personally at risk if returned to Sri Lanka or that he would be a person of interest to the Sri Lankan Army (SLA). He was of the view documentary evidence showed for people of no interest to the SLA, detention was for a short period. He was of the view there was insufficient evidence to suggest the applicant's medical condition would put him at risk in returning to Sri Lanka.

8. The applicant sought judicial review of this PRRA refusal. His application was filed on May 30, 2007 and perfected on June 29, 2007. On August 16, 2007, my colleague Justice Teitelbaum refused to grant leave for judicial review.

9. Before Justice Teitelbaum's decision was rendered, counsel for the applicant had written to a Removal's Officer asking that the applicant's removal be deferred pending the consideration of the leave application in the PRRA matter. Counsel made submissions and submitted new reports on Sri Lanka issued by international human rights organizations.

10. Counsel was advised that the deferral request would not be considered until a removal date had been scheduled. A removal date was scheduled for September 4, 2007. Counsel for the applicant received notice of this fact on August 22, 2007, at which time she renewed the request for deferral making further submissions;

11. When counsel's office received word on August 27, 2007 that the leave application had been dismissed, counsel for the applicant submitted to the PRRA office in Toronto, a new PRRA application with a request that it be assessed on an urgent basis. Additional submissions and evidence in support were provided. She repeated her request for deferral.

12. I mention an additional fact. The applicant had been detained for some time at the time of his deportation. His application for release on conditions was denied. The Immigration Officer was satisfied there was a strong case to conclude the applicant was a danger to the Canadian public.

[4] As noted, on August 31, 2007, Enforcement Officer Leblanc's reasons were forwarded to counsel for the applicant. She noted the latest submissions to defer were dated August 27, 2007. She also noted the documents provided by counsel were country and travel reports that deal with the instability and the human rights situations in Sri Lanka. She noted previous submissions had referred to the applicant's health and his entitlement to an effective remedy by a competent court prior to being put at risk.

[5] Enforcement Officer Leblanc further concluded in her reasons as follows:

"I have considered my discretion to defer a removal under section 48 of *IRPA* and have considered all of counsel's submissions.

I am satisfied that the client has had opportunity to present his personal risk in that he was provided with an application for PRRA submitted on March 23, 2006, and determined on August 8, 2006. Given a second opportunity on March 14, 2007, and received a negative decision on May 11, 1007. Leave was denied on August 21, 2007. For these reasons I am satisfied that this issue has been fully explored. In regards to his medical condition, Immigration Medical Services has advised that medical and treatment are available in Sri Lanka for epilepsy." After reviewing the submissions provided to me and having no new information, a deferral is not appropriate in this case." [Emphasis mine]

[6] Counsel for the applicant argued the Enforcement Officer erred in two ways demonstrating the existence of serious issue. First, there was new information available in the documentation recently provided and second, the applicant was denied procedural fairness in not being able to respond to the advice provided by Immigration Medical Services that medication and medical treatment is available in Sri Lanka for epilepsy, confirmation of which was included in the respondent's record by way of a document found on the Government of Sri Lanka's website referring to the existence of 300,000 epilepsy patients on the island and 70% treated by medicines

and 30% by surgery. This website document also talked about Colombo National Hospital's Epilepsy Centre.

[8] It is trite law that the scope of an Enforcement Officer's discretion to defer removal under section 48 of the *Immigration and Refugee Protection Act* is limited.

[9] In the case at hand the context is important. The applicant has had two negative PRRA decisions. The first one dated August 8, 2006 analysed his fear of return to Sri Lanka on account of his epilepsy; leave for judicial review was not sought of that decision. His second PRRA application was also denied. It is very recent – May 11, 2007; it analysed the applicant's risk in terms of current country conditions and also touched upon his medical condition.

[10] The new information which counsel for the applicant says was not considered by the Enforcement Officer was a recent report concerning Tamil evictions from Colombo (made public on June 1, 2007). I was not satisfied this new fact materially altered the risk analysis he had received previously. It appears from the report itself the expulsions were a one-time occurrence which has been restrained by the Courts and have been discounted.

[11] As to counsel for the applicant's second argument I was also of the view no serious issue was raised. It is also trite law the content of procedural fairness is variable. I took into account the fact of his epilepsy had been previously canvassed and the fact the Enforcement Officer relied on

the expert advice of Immigration Medical Services was corroborated. Moreover, counsel for the applicant could have challenged the finding of medical availability at the stay hearing.

[12] In the circumstances, I was of the view the applicant's claim of irreparable harm was speculative. Finally, the balance of convenience favoured the Minister particularly the fact the applicant had been found to be a danger to the public.

“François Lemieux”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3529-07

STYLE OF CAUSE: THANESWARAN SINNARAJAH v. MPSEP

PLACE OF HEARING: Via tele-conference, Ottawa, Ontario

DATE OF HEARING: September 4, 2007

REASONS FOR ORDER: LEMIEUX J.

DATED: September 10, 2007

APPEARANCES:

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