

Date: 20071005

Docket: IMM-4094-06

Citation: 2007 FC 1031

Ottawa, Ontario, October 5, 2007

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

**SAROGINIDEVI SIVAGURUNATHAN
SIVAGURUNATHAN KURUSAMY**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Kurusamy Sivagurunathan and his wife, Saroginidevi Sivagurunathan, are citizens of Sri Lanka who claimed refugee protection.

[2] Mr. and Mrs. Sivagurunathan gave evidence before the Refugee Protection Division of the Immigration and Refugee Board (RPD or Board) that they were originally from Jaffna, Sri Lanka. When Mr. Sivagurunathan obtained work in Saudi Arabia in 1980, Mrs. Sivagurunathan remained in Jaffna with their family. In 1995, Mrs. Sivagurunathan and her daughter fled Jaffna to reside in

Colombo. Until his retirement in July of 2005, Mr. Sivagurunathan visited his family in Colombo each year during his vacation. Mrs. Sivagurunathan testified about her fear of the army and the police. The event that they said caused them to flee Sri Lanka took place in January of 2005, when five youths came to their home in Colombo. The youths identified themselves to be members of the Liberation Tigers of Tamil Eelam (LTTE) and demanded money. Mr. Sivagurunathan paid some money to them and promised to pay more later. Instead, Mr. and Mrs. Sivagurunathan left Sri Lanka, fearing that Mr. Sivagurunathan would be abducted or killed by the LTTE because he failed to pay the promised money.

[3] The RPD accepted that Mr. and Mrs. Sivagurunathan were Tamils and that Mr. Sivagurunathan had lived and worked in Saudi Arabia. The RPD did not, however, believe Mrs. Sivagurunathan's testimony about her fear of the army and did not believe Mr. Sivagurunathan's testimony about his efforts to avoid extortion by the LTTE while he was in Jaffna in 1992. While Mr. and Mrs. Sivagurunathan challenge those credibility findings, I have not been persuaded that they were patently unreasonable so as to warrant intervention on this application for judicial review.

[4] Mr. and Mrs. Sivagurunathan also argue that the Board was overzealous in its search for inconsistencies in their testimony and say that the Board asked vague and confusing questions. I have carefully reviewed the transcript of the hearing and, in my view, the manner in which the RPD questioned Mr. and Mrs. Sivagurunathan did not assist these older persons in giving their evidence through an interpreter. However, the manner of the Board's questioning of Mr. and Mrs. Sivagurunathan, while not exemplary, does not warrant intervention.

[5] What does warrant intervention is the RPD's failure to come to grips with the central element of Mr. and Mrs. Sivagurunathan's claim and the Board's cursory treatment of the issue of state protection. The Board did not reject their testimony about the 2005 extortion attempt. The Board's only reference to this event is as follows:

The male claimant was questioned about his failure to apply for state protection when, on January 15, 2005, Tigers allegedly came to extort money from him. He explained that if he complained against Tigers, the latter would punish him in abducting him or even shoot him if they were very angry at him. To further questioning, he added that he heard that the army or the police never protect Tamils.

[6] Having apparently accepted that an extortion attempt took place, the Board then moved to the issue of the existence of state protection, writing:

The panel is aware that, since the ceasefire agreement in February 2002, plenty of problems have surfaced. The road to final peace between the belligerents is not an easy one. Although there are still isolated incidents, the ceasefire has been in effect for more than three years now, which is a tremendous achievement in itself. Considering all the evidence, the panel finds that the claimant [*sic*] would not face more than a mere possibility of persecution or that on a balance of probabilities, he [*sic*] would be subjected to a danger of torture, or to a risk to life or to a risk of cruel and unusual treatment or punishment if they returned to Sri Lanka and lived in the government controlled areas.

[7] The country condition documentation was express that, as a consequence of the ceasefire agreement, the LTTE was able to move freely in government-controlled areas and, thus, was free to extend its extortion activity into those areas. At the same time, the LTTE was said to have formalized what it referred to as its collection of "taxes". Citizens who did not pay as required were reported to risk detention by the LTTE. During the course of the hearing, the presiding member

observed that he was aware that there was a great deal of extortion carried on by the LTTE in respect of business people in Colombo.

[8] In light of this evidence, the Board was required to provide a more coherent and comprehensive explanation for its conclusion that Mr. and Mrs. Sivagurunathan would not face more than a mere possibility of persecution if they returned to Sri Lanka and lived in government-controlled areas.

[9] The application for judicial review is therefore allowed. Counsel posed no question for certification, and I see no question arising on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, and the decision of the Refugee Protection Division dated June 16, 2006 is hereby set aside.
2. The matter is remitted for redetermination by a differently constituted panel of the Refugee Protection Division.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4094-06

STYLE OF CAUSE: SAROGINIDEVI SIVAGURUNATHAN
SIVAGURUNATHAN KURUSAMY, applicants

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: OCTOBER 5, 2007

APPEARANCES:

DAVID YERZY FOR THE APPLICANTS

LADAN SHAHROOZ FOR THE RESPONDENT

SOLICITORS OF RECORD:

DAVID YERZY FOR THE APPLICANTS
BARRISTER & SOLICITOR
TORONTO, ONTARIO

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
DEPUTY ATTORNEY GENERAL OF CANADA