

Date: 20080306

Docket: IMM-2766-07

Citation: 2008 FC 311

Toronto, Ontario, March 6, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

SUGANTHAN SELLATHURAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] In the decision presently under review, the Refugee Protection Division (RPD) found as follows:

The claimant is a 28-year-old Hindu Tamil male with grade 9 of education and has last worked as a driver. He is a citizen of Sri Lanka. He left his country on November 29, 2004, arrived in Canada on March 12, 2005, after sojourning in the United States of America (USA) over three months, and made his claim the same day. Grounds for his claim are enumerated in his Personal Information Form (PIF) at page 9.

(Decision, p.1)

However, because the RPD did not find the Applicant credible with respect to his residency in Sri Lanka before making his claim, the RPD found that it was not obliged to provide an analysis under s.97 of the *IRPA*.

[2] For two reasons I find that the decision under review is made in reviewable error. It is quite apparent from the decision that a principal focus of the RPD's is with respect to whether the Applicant was a resident of the North of Sri Lanka in a specific timeframe. In reaching the conclusion that the Applicant failed to meet the standard of proof to establish this fact, it is admitted that the RPD did not consider an essentially important piece of documentary evidence which, if accepted, established the Applicant's residence in the North since his birth to 2000. In my opinion, the RPD's failure to consider this piece of evidence constitutes a reviewable error.

[3] In addition, regardless of the Applicant's proof of residency in Sri Lanka, since the RPD accepted that he is a Tamil male who is a citizen of Sri Lanka, I find that it was incumbent on the RPD to engage in an analysis of the available evidence with respect to the Applicant's claim for protection under s.97 of the *IRPA* (see *eg. Thanabalasingam v. Canada (Minister of Citizenship and Immigration)* 2008 FC 34).

[4] As a result, I find that the decision under review is patently unreasonable.

ORDER

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2766-07

STYLE OF CAUSE: SUGANTHAN SELLATHURAI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 6, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: March 6, 2008

APPEARANCES:

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