

Date: 20081107

Docket: IMM-2183-08

Citation: 2008 FC 1238

Ottawa, Ontario, November 7, 2008

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

VISAKAN THANGARAJAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a 27-year old Tamil male from Jaffna, Sri Lanka who is residing in India. He applied for a permanent resident visa in Canada as a member of the Convention refugees abroad class and as a member of the Humanitarian-protected persons abroad class. In a decision dated February 27, 2008, a visa officer (the Visa Officer) at the Canadian High Commission in New Delhi, India, denied the application. The Applicant seeks judicial review of this decision.

[2] At the end of oral submissions, I advised the parties that I would allow the application for judicial review. The following sets out my reasons for doing so.

[3] In the decision, the Visa Officer rejected the Applicant's application on the basis that the Applicant failed to provide a reasonable and credible account of his activities from 1999 to 2006 and his experience with Liberation Tigers Tamil Eelam (LTTE) recruitment. As a result, the Visa Officer doubted other aspects of the application and was not satisfied that the Applicant fell within a group deserving of refugee protection.

[4] The determinative issue is whether the Visa Officer misapprehended the Applicant's claim or ignored some aspects of his claim.

[5] It is self-evident that a visa officer must consider the totality of a claim. A review of the written submissions of the Applicant amply demonstrates that his claim consisted not only of a fear based on his personal activities and experiences, but also his concern that, as a young Tamil male, he might be singled out by Sri Lankan authorities or para-military forces as a suspected LTTE member or sympathizer. In documentary evidence submitted with his application, he included numerous articles that appear to address this concern. It is this second aspect of the claim that, in the view of the Applicant, was not assessed by the Officer. In other words, the Officer did not consider his claimed fear of Sri Lankan authorities or of para-military groups who target young Tamil males for alleged ties to the LTTE.

[6] In contrast, the Respondent submits that the Applicant based his claim on his personal and family experiences and not on his personal identity.

[7] I do not agree with the Respondent's characterization of Mr. Thangarajah's refugee application as one based solely on his personal and family experiences rather than his fear of the authorities and para-military groups as a young male Tamil. In his application, Mr. Thangarajah claimed:

I left Sri Lanka in fear for my safety due to the surge in violence and killings recently. The peace process began [sic] in Feb. 2002 is in serious jeopardy. A shadow war is wreaking havoc. Innocent people are being killed almost daily either by the security forces or the LTTE...I fear for my life. I fear for extortion and unusual treatment by the LTTE. I fear arrest, detention and torture by the security forces too. In such a situation, I cannot return to Sri Lanka.
[Emphasis added]

[8] In response to the question of whether he could build a life elsewhere in Sri Lanka, he wrote:

Due to my ethnicity, I fear that I cannot build up a peaceful life anywhere out of my own area. I will be suspected as a supporter of the LTTE in Colombo and other southern areas.

[9] In a written statement, the Applicant wrote:

Furthermore, the situation in Sri Lanka in general, and in the Tamil areas in particular, has deteriorated within the past few months. Killings of innocent people are being reported almost daily in places, such as, Jaffna, Trinco and Batticaloa. Innocent people are the most affected. This makes me fearful, mainly because I am a Tamil youth.
[Emphasis added]

[10] Reading the application as a whole, I find that it includes the Applicant's risk of persecution and torture from authorities and para-military forces as a result of his being a young male Tamil. The Visa Officer failed to properly consider this risk to the Applicant. A finding of lack of credibility on one aspect of the claim does not eliminate the need to evaluate all aspects of the claim

that are not necessarily dependant on that lack of credibility finding. It may have been open to the Officer to reject these concerns; however, it was an error to ignore them.

[11] In conclusion, the application will be allowed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed and this matter referred back for reconsideration by a different Visa Officer; and
2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2183-08

STYLE OF CAUSE: VISAKAN THANGARAJAH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 4, 2008

REASONS FOR JUDGMENT: SNIDER J.

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