

Federal Court



Cour fédérale

Date: 20101028

Docket: IMM-6042-09

Citation: 2010 FC 1062

Toronto, Ontario, October 28, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**MOHAMED RAZAKDEEN ABDUL AZIZ
FATHIMA RIZWANA MOHAMED NAZEEN
MOHAMED RIFAAD MOHAMED RAZAKDEEN
MOHAMED RISHFF MOHAMED RAZAKDEEN
MOHAMED RISHFA MOHAMED RAZAKDEEN
MOHAMED RASHAD MOHAMED RAZAKDEEN**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant in the present Application is a Tamil speaking Muslim who has wealth as a result of being a successful gem merchant in Sri Lanka. The Applicant claims refugee protection as a member of a social group characterized as wealthy Tamil speaking Muslims subject to extortion in Sri Lanka. In support of his claim, the Applicant gives credible and accepted evidence that, prior to

fleeing for Canada in February 2009, he was twice kidnapped in 2008 and was forced to pay some 20 million rupees of extortion money in order to be released.

[2] In support of his claim before the Refugee Protection Division (RPD), Counsel for the Applicant made the following submissions:

The Claimant, according to his testimony, he's an affluent person, a rich person in the Sri Lanka context. And since 2006-2007 according to the documentary evidence since the new government came to power, the extortion, abduction for the purpose of ransom, especially the Tamils and the Tamil-speaking Muslims outside the north of (inaudible) became a common factor and that is fully supported by the documentary evidence.

(Tribunal Record, p. 373)

Neither before the RPD nor in the hearing of the present Application is the truth of the contents of this argument contested.

[3] In the decision under review the RPD acknowledges the nature of the Applicant's claim by repeating the following statement contained in the Applicant's Personal Information Form (PIF):

In early 2007, the situation changed. It became obvious that Muslims were openly kidnapped, extorted and those who refused to pay were killed. Many Muslim businessmen known to me were kidnapped and some even left the country for good.

However, immediately following, the critical finding made by the RPD in rejecting the Applicant claim is stated as follows:

I find that the claimant was targeted as part of a large group of business persons who are perceived to be well off. That does not make his risk a personalized risk.

(Decision, p. 4)

[4] The Applicant's personalized claim for refugee protection under the *IRPA* required the RPD to make a determination, on critical analysis of the evidence, on two issues having regard to the Applicant's social group identity: whether pursuant to s. 96 there is more than a mere possibility that the Applicant will be persecuted, and whether pursuant to s. 97 there is a probability of risk, should he be required to return to Sri Lanka. I find that the RPD failed to meet the obligation on either issue.

[5] As a result, I find that the decision under review is made in reviewable error.

ORDER

The decision under review is set aside and the matter is referred back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6042-09

STYLE OF CAUSE: MOHAMED RAZAKDEEN ABDUL AZIZ, FATHIMA RIZWANA MOHAMED NAZEEN, MOHAMED RIFAAD MOHAMED RAZAKDEEN, MOHAMED RISHFF MOHAMED RAZAKDEEN, MOHAMED RISHFA MOHAMED RAZAKDEEN, MOHAMED RASHAD MOHAMED RAZAKDEEN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 27, 2010

REASONS FOR ORDER AND ORDER BY: CAMPBELL J.

DATED: October 28, 2010

APPEARANCES:

Kumar S. Sriskanda FOR THE APPLICANTS

Bradley Bechard FOR THE RESPONDENT

SOLICITORS OF RECORD:

KUMAR S. SRISKANDA FOR THE APPLICANTS
Barrister & Solicitor
Scarborough, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario