

Federal Court



Cour fédérale

**Date: 20110203**

**Docket: IMM-3323-10**

**Citation: 2011 FC 122**

**Ottawa, Ontario, February 3, 2011**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**ANICETUS REGAN GUNARATNAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Anicetus Regan Gunaratnam's application for a Pre-removal Risk Assessment was refused on the grounds that he had not shown that he would be at risk in Sri Lanka.

[2] Mr. Gunaratnam challenges the PRRA Officer's decision, asserting that the Officer erred in discounting the new evidence that he had provided in support of his claim, and in failing to allow him to explain a discrepancy in the information that he had submitted. The Officer further erred, Mr.

Gunaratnam says, by failing to provide him with an opportunity to address documentary evidence relating to novel and significant changes to country conditions within Sri Lanka.

[3] For the reasons that follow, the application will be allowed.

### **The Officer's Treatment of the "New" Evidence**

[4] Mr. Gunaratnam is a young Tamil, originally from the north of Sri Lanka. He claimed to be at risk in Sri Lanka from a paramilitary group known as the Eelam Peoples Democratic Party (EPDP), as he had been wrongly accused by a former classmate of being a supporter of the LTTE. The Refugee Protection Division found there to be no credible basis for his claim.

[5] Mr. Gunaratnam's PRRA application was based upon the same allegations of risk as were advanced in his refugee claim. He provided several letters from Sri Lanka in support of his PRRA application: one from the family priest, one from a Member of Parliament and several from Mr. Gunaratnam's father's lawyer. These letters refer to ongoing threats purportedly made against Mr. Gunaratnam and his family, as well as the unsafe situation in Sri Lanka for Tamils generally.

[6] The Officer refused to consider the letters, to the extent that they referred to events ostensibly occurring prior to Mr. Gunaratnam's departure from Sri Lanka. Mr. Gunaratnam conceded at the hearing that this was entirely appropriate, given that these portions of the letters clearly did not meet the test for new evidence established by the Federal Court of Appeal in *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] F.C.J. No. 1632.

[7] The Officer did consider the letters to the extent that they referred to ongoing threats against Mr. Gunaratnam and his parents. Given that none of the authors appeared to have any first-hand knowledge of the threats, it was not unreasonable for the Officer to give the letters little weight.

[8] Mr. Gunaratnam also says that the Officer erred in failing to consider the evidence in the letters with respect to the general risk environment for young Tamils in Sri Lanka. However, the Officer clearly stated that “the documentary evidence” demonstrated that the Tamil minority in Sri Lanka had experienced many problems with the Sinhalese majority, which were ongoing. In light of this, I am not persuaded that the general country condition information contained in the letters was overlooked.

#### **The Issue of Mr. Gunaratnam’s Parent’s Address**

[9] Mr. Gunaratnam says that his parents have been living in hiding because of on-going harassment by the EPDP. However, the PRRA Officer noted that Mr. Gunaratnam had given the same home address for his parents in 2009 as had been provided to the Refugee Protection Division in 2005. The Officer found that this called his claim that his parents had been forced to live in hiding into question.

[10] Mr. Gunaratnam says that the Officer should have afforded him an opportunity to explain this discrepancy. He says that he would have explained that the address given was his parents’ ‘permanent address’, but was not where they were in fact living.

[11] The discrepancy in the parents' address was evident on the face of the documents that Mr. Gunaratnam provided to the PRRA Officer. Moreover, the Refugee Protection Division had devoted a considerable portion of its analysis to the issue of where Mr. Gunaratnam's parents were living at the material times. In these circumstances, he should have been aware that there was an inconsistency in the information that he had provided, and should have explained this discrepancy. There was no obligation on the Officer to put the discrepancy to Mr. Gunaratnam.

### **The Failure of the Officer to Disclose Country Condition Information**

[12] Mr. Gunaratnam's PRRA application was filed in April of 2008, at the height of the conflict in Sri Lanka. However, it was not until March of 2010 that a decision was made in relation to his application. By this time, the war in Sri Lanka had ended.

[13] In assessing his PRRA application, the Officer looked at current information with respect to the situation facing Tamils in Sri Lanka. While Mr. Gunaratnam does not dispute that the information consulted by the Officer was publicly available information, he says that fairness required the Officer to draw this information to his attention and to give him an opportunity to respond to it.

[14] Mr. Gunaratnam accepts that Officers are not generally required to provide PRRA applicants with general country condition information otherwise available in documentation centres: *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461, [1998] F.C.J. No. 565 (C.A.), at para. 22.

[15] However, he points out that the Federal Court of Appeal also stated in *Mancia* that where an officer is going to rely on evidence that is either not normally found in documentation centres, or was not available at the time that the applicant filed his or her submissions, then “fairness dictates that the applicant be informed of any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case”: at para. 22.

[16] According to Mr. Gunaratnam, documentary evidence with respect to the end of the civil war in Sri Lanka constituted “novel and significant information” that clearly had an impact on the outcome of his application. This information was not available to him at the time that he filed his PRRA application in 2008. As a result, fairness required that he be given the documents and afforded an opportunity to respond.

[17] The respondent argues that Mr. Gunaratnam had provided updated submissions in August of 2009, and that he had the opportunity to address the evolving situation in Sri Lanka if he wanted to do so. With respect, the PRRA Officer either had a duty to disclose the new country condition information or the Officer did not. The fact that Mr. Gunaratnam chose to make updated submissions did not change the content of the duty of fairness owed to him. Moreover, much of the evidence relied upon by the Officer post-dated August of 2009.

[18] Several of my colleagues have looked at whether fairness requires that PRRA Officers disclose documentary information dealing with the changes occurring in Sri Lanka at the end of the civil war.

[19] In *Pathmanathan v. Canada (Minister of Citizenship and Immigration)*, [2010] 3 F.C.R. 395, Justice Kelen held that the “shift of Sri Lanka from a country embroiled in a decades long Civil War to normalcy [was] a significant and novel change in country conditions” As a consequence, he was of the view that “Procedural fairness required the Officer to notify the applicant of the reliance upon these new sources of information, which showed the impending end of the Civil War, and reduction of risk to a Tamil like the applicant, and provide the applicant with an opportunity to respond” : both quotes from para. 34. The failure of the Officer to do so constituted a breach of the duty of fairness.

[20] The respondent says that *Pathmanathan* is distinguishable from the present case. According to the respondent, the undisclosed document in *Pathmanathan* was a decision of the United Kingdom Asylum and Immigration Tribunal, whereas the document relied upon by the PRRA Officer in this case was a UK Home Office Report, “a more general and well-known document”.

[21] However, it is evident from Justice Kelen’s reasons that fairness required the disclosure of documents produced after the applicant’s updated submissions which showed changes in the general country conditions that affect the PRRA decision: at para. 32. This included not just the British decision, but three publicly available BBC articles as well.

[22] Similarly, in *Mahendran v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1236, [2009] F.C.J. No. 1554, Justice Beaudry found that a PRRA applicant was denied procedural fairness when the Officer relied on recent documentary evidence with respect to the conditions in

Sri Lanka, without first giving the applicant an opportunity to comment on the document in question.

[23] In Justice Beaudry's view, the documents in issue were not merely updated versions of reports submitted by the claimants, but rather showed a significant change in the situation in Sri Lanka: at para. 17.

[24] The respondent argues that *Mahendran* is distinguishable from this case, as the document in issue before Justice Beaudry was a BBC News country profile. According to the respondent, this document is "not as notorious or well-known as country condition reports originating from the UK Home Office". Indeed, in *Nallathamby v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1131, [2010] F.C.J. No. 1405, Justice Zinn found that fairness did not require the disclosure of a UK Home Office Report.

[25] However, a review of the PRRA decision in Mr. Gunaratnam's case reveals that the Officer considered the 2010 version of the BBC News country profile referred to in *Mahendran* as well as the UK Home Office document quoted extensively in the decision. The Officer also consulted several other documents that post-dated Mr. Gunaratnam's last set of PRRA submissions.

[26] The situation in Sri Lanka has been volatile for years. Clearly there was no duty on PRRA officers to disclose updated publicly-available documents that showed minor escalations or de-escalations in the hostilities over time. However, the developments in the civil war that occurred in 2009 were clearly new, major and significant as they related to the risk to Tamils in that country.

[27] As the Federal Court of Appeal observed in *Mancia*, fairness requires that applicants be informed of any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case. That was clearly the situation here.

[28] As a result, I am satisfied that Mr. Gunaratnam was denied procedural fairness in the PRRA process. Consequently, the application for judicial review will be allowed.

### **Certification**

[29] Mr. Gunaratnam proposes the following questions for certification:

- 1) Does the concept of “novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case” in the reasoning of the Court of Appeal in *Mancia v Minister of Citizenship & Immigration*, [1998] 3 F.C. 461: [1998] F.C.J. No. 565 signify ‘new’ and significant information, which covers the information considered by the officer in this case without notice to the Applicant, or does it signify solely ‘unusual’ and significant, which would not cover the new information considered by the officer?
- 2) Where a PRRA application has been outstanding for an extended time, when an officer is about to make a decision and there have been significant changes in the country whose human rights record is under consideration, does fairness require that the officer advise an applicant of the new, current reports and articles which will be taken into account in reaching a decision, or is the applicant responsible for regularly updating the officer about new information relating to conditions in the home country?

[30] I agree with the respondent that these are not appropriate questions for certification. The Federal Court of Appeal has already clearly identified the principles to be applied in determining whether fairness requires that extrinsic evidence be disclosed to a PRRA applicant in *Mancia*.



Whether a specific document had to be disclosed to a particular applicant in a given case is a fact-specific inquiry, and does not raise a question of general importance.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is allowed, and the matter is remitted to a different PRRA Officer for re-determination in accordance with these reasons; and
2. No serious question of general importance is certified.

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“Anne Mactavish  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3323-10

**STYLE OF CAUSE:** ANICETUS REGAN GUNARATNAM v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 26, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Mactavish J.

**DATED:** February 3, 2011

**APPEARANCES:**

Barbara Jackman

FOR THE APPLICANT

Ada Mok

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

JACKMAN & ASSOCIATES  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

MYLES J. KIRVAN  
Deputy Attorney General of Canada

FOR THE RESPONDENT