Federal Court Cour fédérale

Date: 20111116

Docket: IMM-6584-10

Citation: 2011 FC 1312

Ottawa, Ontario, November 16, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PATHMALOGENI JAYASUNDARARAJAH
ABISHNA JAYASUNDARARAJAH (by her guardian Pathmalogeni Jayasundararajah) and
SUVIGSHAN JAYASUNDARARAJAH (by his guardian Pathmalogeni Jayasundararajah)

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of an Enforcement Officer of the Canada Border Services Agency (Officer), dated November 10, 2010 (Decision), which denied the Applicants' request for a deferral of their removal until their H&C (H&C) and PRRA applications were processed.

BACKGROUND

[2] Pathmalogeni Jayasundararajah is the Principal Applicant in this application. The Secondary Applicants are her daughter, Abishna Jayasundararajah, and her son, Suvigshan Jayasundararajah. All are Tamils and citizens of Sri Lanka.

[3] In September 2004, the Applicants arrived to Canada together with Jayasundararajah Murugan, the Principal Applicant's husband and the children's father (Murugan). On arrival, they were granted temporary resident status. Since their arrival, the family has collectively filed several applications to remain in Canada.

[4] On 4 November 2004 the Applicants and Murugan filed a claim for refugee protection. This claim was denied on 16 August 2005 on the grounds of credibility. On 12 September 2005 the family filed an application for leave and judicial review of the negative refugee decision, which was denied on 1 December 2005. The family then applied for permanent residence on H&C grounds on 1 February 2006. They were notified of their right to request a Pre-Removal Risk Assessment (PRRA) on 18 December 2006. They applied for a PRRA on 28 December 2006 and were refused on 22 December 2009. They were notified of the negative PRRA decision on 1 March 2010. On 9 March 2010, the family applied for leave and judicial review of the negative PRRA decision. This application was denied on 10 June 2010.

[5] On 4 May 2009, Murugan was charged with assaulting the Principal Applicant contrary to section 266 of the *Criminal Code of Canada*. Between 21 July 2009 and 31 November 2009, Murugan completed a Partner Abuse Response Program and was issued a certificate of completion on 13 November 2009. On 1 December 2009, he was ordered by the Ontario Court of Justice to

refrain from contacting the Principal Applicant without her express written and revocable consent for a period of twelve months. On 8 October 2010, the CBSA interviewed Murugan and discovered that the couple had separated. Murugan submitted a separate deferral request, but this was refused on 1 November 2010. He was removed from Canada on 7 November 2010.

[6] After leave for judicial review of their application for permanent residence on H&C grounds was denied, the Applicants, independently of Murugan, filed new applications for permanent residence on H&C grounds on 9 July 2010. Their applications included submissions on new risks that they alleged had not previously been assessed. These new risks included new grounds of personalized risk, new information regarding Murugan's family in Sri Lanka, and risks from the authorities in Sri Lanka based on suspicions that the Principal Applicant was a Liberation Tigers of Tamil Eelam (LTTE) sympathizer.

[7] On 12 October 2010, the Applicants were served with a Direction to Report for Removal from Canada, with removal scheduled for 15 November 2010. The Applicants filed another request for a PRRA on 25 October 2010.

[8] On 1 November 2010, the Applicants made a formal request to the Greater Toronto Enforcement Centre (GTEC) for a deferral of their removal until their applications for permanent residence on H&C grounds and their new PRRAs were assessed by qualified officers. They also requested that a decision be made by noon on 3 November 2010. In their request, they said that they would assume a negative decision if this deadline was not met.

[9] On 9 November 2010 the Applicants brought a motion for a stay of their removal. The following day, the Applicants filed an application for leave and judicial review of the Officer's

anticipated refusal to defer their removal. On that same day, the Officer refused to defer the Applicants' removal.

[10] Currently, the 9 July 2010 H&C application for permanent residence and the 25 October 2010 PRRA application remain outstanding.

DECISION UNDER REVIEW

[11] On 10 November 2010, the Officer denied the Applicants' request to defer their removal.

[12] In the notes to file, the Officer acknowledged that enforcement officers have little discretion to defer removal.

[13] In response to the Applicants' filing of the new PRRA application, the Officer first acknowledged their submissions regarding the change in their circumstances, namely that the new application was based on the Principal Applicant's own circumstances, rather than on those of her former husband's. One of these new circumstances was the abuse perpetrated by Murugan against the Principal Applicant.

[14] The Officer then gave several reasons for not deferring the removal pending the determination of the new PRRA application.

[15] First, he noted that, according to section 15.13 of the Enforcement Manual 10, a subsequent PRRA application does not provide for a statutory stay. Second, the Officer was not convinced that the Principal Applicant would not be able to seek protection from the Sri Lankan authorities and social agencies, or that these authorities and agencies would be unwilling to protect the Principal

Applicant. Third, the Officer noted that several months had lapsed since the couple had separated and since the Principal Applicant was notified of the negative decisions on the previous applications. The Officer questioned why the new applications were not filed until immediately before the removal date.

[16] The Officer then explained that the new H&C application was not in of itself an impediment to removal and would continue to be processed while the Applicants were in Sri Lanka. He acknowledged the information submitted on the Applicants' establishment in Canada and the concerns about uprooting the children from Canadian society. However, he also noted that the children would be in the care and support of their mother, and should be able to continue to thrive in Sri Lanka after a period of transition. The Officer also found that insufficient evidence had been submitted to demonstrate that the Principal Applicant would not be able to receive treatment and counselling in Sri Lanka for her psychiatric condition stemming from Murugan's abuse.

[17] In summary, the Officer was not convinced that sufficient new risk had been presented or that a deferral of removal was warranted in the circumstances.

ISSUES

[18] The Applicants raise the following issues:

a. Whether the Officer exceeded his jurisdiction by considering the merits of the PRRA and H&C applications;

b. Whether the Applicants' rights under section 7 of the Charter were breached through the denial of their procedural entitlements;

c. Whether the Officer breached the Applicants' right to procedural fairness by providing inadequate reasons;

d. Whether the Officer ignored evidence in coming to his Decision.

STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in this proceeding:

48. (1) A removal order is enforceable if it has come into force and is not stayed.	**48.** (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.
(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable	(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent
…	**…**
112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).	**112.** (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick,* 2008 SCC 9, [2008] SCJ 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[21] In *Smith v Alliance Pipeline Ltd.*, 2011 SCC 7, the Supreme Court of Canada held at paragraph 26 that true questions of jurisdiction or *vires* are subject to the standard of correctness. As the second issue is such a question, the standard of review on this issue is correctness.

[22] In *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, [2003] 1 SCR 539, [2003] SCJ No. 28, the Supreme Court of Canada held that the standard of review with respect to questions of procedural fairness is correctness. Further, the Federal Court of Appeal in *Sketchley v Canada (Attorney General)* 2005 FCA 404 at paragraph 53 held that the "procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty." As the second issue and third issues are questions of procedural fairness, the standard of review on this issue is correctness.

[23] As the Supreme Court held in *Dunsmuir* (above, at paragraph 50).

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will

> rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[24] Previous jurisprudence has established that the standard of review of an enforcement Officer's refusal to defer removal from Canada is reasonableness (*Baron*, above at paragraph 25). This standard is based on the statutory discretion, albeit limited, granted to an enforcement Officer under subsection 48(2) of the IRPA and the deference owed to decision-makers exercising such discretion (*Ramirez v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 706, [2010] FCJ No 861 at paragraph 10). The standard of review with respect to the third issue is reasonableness.

[25] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa,* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicants

The Officer Exceeds His Jurisdiction by Considering the Merits of the H&C and PRRA Applications

[26] The Applicants argue that the Officer exceeded his jurisdiction when he examined the merits of both the PRRA and H&C applications. They say that an officer's jurisdiction when deciding to defer removal is limited to deciding if there is new and credible evidence which ought to be considered by a qualified PRRA or H&C officer. When the Officer concluded in the Decision that he was "not convinced that that the Principal Applicant would not be able to seek protection from the Sri Lankan authorities and social agencies, as she had done in Canada, or that they will be unwilling to take measures to counter any threat presented to her and her children," the Officer was deciding the PRRA and H&C applications on their merits.

[27] The Applicants say that although an officer's discretion on deciding in favour of a deferral of removal request is limited, there are a number of reasons for deferral that have consistently been accepted in the jurisprudence. These reasons include family dependency, medical conditions, and the best interests of children. The discretion must be exercised on a case by case basis. Where an H&C application is outstanding, both the strength of the application and its timeliness are relevant factors for the decision-maker to take into account in exercising the discretion to defer removal.

[28] In this case, the Officer was not asked to make a decision on the new applications He was asked to defer removal until qualified officers could consider and determine the Applicants' new H&C and PRRA applications. The Officer ought to have determined if there was new and credible

evidence that should be considered by qualified officers. The new applications contain new facts, and raise serious issues that have not previously been assessed.

[29] First, while growing up, and as a young wife and mother, the Principal Applicant experienced significant harassment, violence and discrimination as a Tamil in Sri Lanka. Second, the Principal Applicant's husband was abusive to her for many years, and he and his family in Sri Lanka have issued threats against her for pressing assault charges against the husband in Canada. There is little protection available to women in Sri Lanka from domestic abuse. She has also sought psychiatric care and has been diagnosed with post-traumatic stress disorder, depression, and battered woman syndrome. Third, the Principal Applicant's entire family (parents and all five siblings) have fled Sri Lanka. Most of her family members have made successful refugee claims abroad so she has no remaining family in Sri Lanka. Fourth, the Applicants are settled in Canada and the Secondary Applicants' main language is now English – they speak little Tamil, and no Sinhalese. Both children fear for their lives should they return to Sri Lanka and have been diagnosed with emerging anxiety. Their best interests, within the context of returning to Sri Lanka with their mother as their sole parent, have not been considered before. Finally, the Principal Applicant fears the increasing violence against single mothers in Sri Lanka, and the associated lack of protection available to her there. In addition, as a Tamil from the northern part of the country, the Principal Applicant has been labelled as a possible sympathiser, supporter or member of the LTTE, thus placing her and her children in even greater risk.

The Officer Breached the Applicants' Rights Under Section 7 of the Charter

[30] The Applicants also say that the Officer's failure to defer removal so that qualified officers could fully assess the new information relating to the serious risk of harm breached the principles of fairness at common law and the principles of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*, part 1 of the *Constitution Act 1982* being Schedule B to the *Canada Act 1982* (UK) c. 11 (Charter). They say that, following *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] SCJ No 46, [1998] 1 SCR 982 (*Pushpanathan*), where a person who is being removed from Canada faces a risk of harm, this engages the protections of section 7 of the Charter. In *Pushpanathan*, at paragraph 157, the Supreme Court of Canada held that

> […] it would be unthinkable if there were not a fair hearing before an impartial arbiter to determine whether there are "substantial grounds for believing" that the individual to be deported would face a risk of torture, arbitrary execution, disappearance or other such serious violation of human rights. In light of the grave consequences of deportation in such a case, there must be an opportunity for a hearing before the individual is deported, and the hearing must comply with all of the principles of natural justice. As well, the individual in question ought to be entitled to have the decision reviewed to ensure that it did indeed comply with those principles. These protections should be available whether or not the individual is excluded from claiming status as a refugee, to avoid unacceptably harsh consequences arising from the exclusion.

The Officer breached the Applicants right to a hearing, in violation of their rights under section 7 of the Charter, when he did not defer their removal to allow the new evidence of harm to be considered.

[31] The Applicants say that the facts of the case at bar are similar to *Park v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 46, [2001] FCJ No 196 in which the Court granted a stay pending the review of a refusal to defer removal so that a recently filed H&C application could be

considered. In *Park*, the applicant had also been a victim of domestic violence, and had not had that risk considered.

The Officer's Reasons Were Inadequate

[32] The Applicants also say that the Officer's reasons did not indicate that he adequately grasped or addressed the issues before him. They say that the Officer's statement that

> I note that while the information that is provided in the deferral request with regards to the abuse that Ms. Jayasundararajah and her children suffered at the hands of Mr. Murugan, has not been reviewed in the context of the PRRA application, I am not convinced that Ms. Ms. Jayasundararajah, [*sic*]

is an incomplete sentence. This incomplete sentence does not articulate the reasons why the Officer did not defer removal.

[33] The Applicants also say that the Decision does not show how the Officer concluded that the Secondary Applicants would continue to thrive in Sri Lanka. The Officer noted in his Decision that the Secondary Applicants would be affected by the removal. This, the Applicants say, calls for an explanation. Since the Officer did not sufficiently explain the disconnect between the affect on the Secondary Applicants of their removal and their ability to continue to thrive in Sri Lanka, the reasons provided were inadequate.

The Officer Ignored Evidence

[34] The Applicants also argue that the Officer ignored or misunderstood evidence in his Decision. They say that he ignored evidence on the unavailability of protection from Sri Lankan authorities and that he did not understand that the risk to the Applicants was not just from

Murugan's family, but also from the Principal Applicant's status as a single woman in Sri Lanka. While the authorities could protect her from Murugan's family, they could not protect her from the risk arising from her status as a single woman.

[35] The Principal Applicant also says that the Officer did not address a psychologist's report she had submitted in support of her applications when he concluded that the Principal Applicant would be able to find treatment and counselling in Sri Lanka. That report showed that the Principal Applicant would suffer harm from deportation beyond that which is inherent in the deportation process. The issue before the Officer was not whether the Principal Applicant could seek treatment, but whether she would suffer harm from being deported.

The Respondent

The Officer Did Not Act Outside His Jurisdiction

[36] First, the Respondent argues that the Officer did not act outside his jurisdiction. The Officer acted in accordance with *Saini v Canada (Minister of Citizenship and Immigration)*, [1998] 4 FC 325, [1998] FCJ No 982 where Justice Frederick Gibson said at paragraph 19 that

> […] a removal Officer may have regard to cogent evidence of risk in removal to a particular destination and as to whether or not an appropriate risk assessment has been conducted and evaluated, solely for the purpose of informing his or her exercise of discretion regarding deferral.

When the Officer looked at the Principal Applicants' access to social services and the ability of Sri Lankan authorities to protect her, he was considering appropriate evidence. Further, the Officer took the information about the domestic violence the Principal Applicant had suffered at the hands of Murugan into account when he scheduled separate removal dates for both of them.

The Officer Did Not Breach the Applicants' Section 7 Rights

[37] The Respondent argues that the Applicants' got all the procedural protections to which they were entitled. The Principal Applicant met with the Officer and explained her fears. She delayed in filing her new H&C and PRRA applications until shortly before her removal, though she was separated from her husband in late 2009 and was informed of the negative decisions on her previous PRRA and H&C applications on 1 March 2010.

[38] The case at bar is distinguishable from *Park*, above. Unlike *Park*, in this case the Applicants have a pending H&C application and intervention attempts have been made by the authorities to prevent and forestall the abuse of the Principal Applicant by her former husband. Further, if their H&C application, which is still in process, is approved, the Applicants will be allowed to return to Canada; the Principal Applicant has to live with the consequences of filing the H&C application when she did.

[39] The Respondent also says that the Applicants' Charter rights are not at issue. In *Arenas Pareja v Canada (Minister of Citizenship and Immigration)* 2008 FC 133 at paragraph 32 where Justice Maurice Legacé said that

> It is not enough for the applicant to raise the Charter and Canada's international obligations to contest the PRRA decision and oppose his removal. He must also establish how the PRRA decision breaches the Charter and Canada's obligations.

The Applicants are required to establish how the lack of additional risk assessment violates their section 7 Charter rights, which they have failed to do.

The Officer Did Not Ignore Evidence

[40] The Respondent says that the Officer did not ignore the evidence that was before him. The Respondent relies on *Bhatia v Canada (Minister of Public Safety and Emergency Preparedness)* 2006 FC 1551, [2006] FCJ No 1936, for the proposition that there is a presumption that removal officers have considered all the evidence before them. In light of the Officer's finding that the Applicants could seek protection from the local authorities in Sri Lanka, the evidence on the Applicants' lack of family in Sri Lanka is irrelevant.

[41] The evidence indicates that protection is available to victims of domestic violence in Sri Lanka and the Officer considered this. The Respondent refers to the passing of the *Prevention of Domestic Violence Act* in October 2005 and the protection orders issued under that Act. Shelters are available for abuse victims where challenges arise due to the male-dominated cultural tendencies in the country. The country evidence shows that legal frameworks and mechanisms are in place to provide protection to the Applicants.

[42] Further, the Respondent says that, as the Applicants are being removed to Colombo rather than to former conflict areas in the northern and eastern parts of the country or camps for internally displaced persons, and neither child is a child soldier, the Applicants do not match the risk profiles set out in the UNHCR Guidelines.

[43] The Respondent says in addition that the Applicants did not provide any evidence that they were being sought by the Sri Lankan authorities. They do not fit the UNHCR criteria as young Tamil men from the north and east of the country. Though the Principal Applicant was once questioned by the Sri Lankan authorities, country evidence shows no concrete evidence that a

database is maintained to track those who have previously been detained by the police or army. The Applicants do not fall into the categories of persons with alleged association with the LTTE. Recent country evidence shows that previously displaced civilians are now exercising somewhat greater freedom of movement.

[44] The Respondent refers to the decisions on the Applicants' previous immigration applications (filed along with Murugan), and the associated findings of lack of credibility and lack of exposure to unusual, undeserved or disproportionate hardship should the family return to Sri Lanka.

[45] The Respondent also refers the Court to other country evidence in response to the Principal Applicant's concern that she is more vulnerable as a single mother with a teenage daughter. The Applicants do not have the risk profiles described in this evidence based on geographical location; the evidence only refers to women in areas outside Colombo, the city where the Applicants would be returned to.

[46] On the Principal Applicant's psychological suffering, the Respondent refers to *Kandiah v Canada (Solicitor General)* 2004 FC 322 and *Palka v Canada (Minister of Public Safety and Emergency Preparedness*) 2008 FCA 165, which hold that suffering arising solely from an applicant's removal from Canada is not harm that warrants a stay or deferral of removal.

The Reasons Provided Were Adequate

[47] Finally, the Respondent argues that the Officer provided adequate reasons. The Officer detailed the scope of his discretion to defer, considered the Applicants' submissions and considered the Applicants' pending PRRA and H&C applications. The Respondent refers to *Varga v Canada*

(Minister of Citizenship and Immigration), 2006 FCA 394, for the proposition that the duty of a removal Officer to provide reasons is minimal.

[48] The Respondent says that the Secondary Applicants will not suffer unusual hardship from their removal to Sri Lanka, though they will need to make some adjustments, as established by the decisions in the Applicants' previous H&C determinations.

[49] The Respondent says that the case at bar is similar to *Jonas v Canada (Citizenship and Immigration)* 2010 FC 273, [2010] FCJ No 317, at paragraph 23, where Justice Russel Zinn held that

> … the officer's reasons include a discussion of the nature of his discretion, an explanation of what was considered in reaching the decision, and an outline of the basis on which the discretion was not exercised. In the circumstances of this case, nothing more was required; the reasons were adequate.

ANALYSIS

[50] The deferral request clearly asks the Officer to "defer removal until such time as qualified PRRA and H&C officers have had a chance to consider the very real and serious human rights issues which are at stake, both with respect to the minor children, and [the Applicant] herself." The request then sets out the reasons why this is necessary. The situation of the Principal Applicant and her children has changed significantly since previous PRRA and H&C assessments were done and the three of them will be at serious risk if returned to Sri Lanka. In fact, the Principal Applicant has never had her own proper assessment. Past decisions have involved her abusive and now estranged husband.

[51] As the Decision makes clear, the Officer's approach to the problem is not responsive to the deferral request. Instead of considering whether removal should be postponed until qualified officers can complete the new PRRA and H&C applications, the Officer proceeds to conduct his own assessment of risk.

[52] It seems to me that the Officer could and should have examined the materials in the deferral request to satisfy himself that there was cogent evidence of new risk that required PRRA and H&C assessments by competent officers. However, this is not what he does. Instead, he conducts his own risk assessment and refuses to defer removal in accordance with the deferral request.

[53] At the very least, then, the Decision is not responsive to the deferral request. As Justice Richard Mosley pointed out in *Lin v Canada (Minister of Public Safety and Emergency Preparedness)*, [2011] FCJ No 971 at paragraphs 12 and 17

> It was not the officer's responsibility to make the risk assessment. Rather, as noted by Justice Denis Pelletier, as he then was, at paragraph 50 in *Wang v. Canada (Minister of Citizenship and Immigration),* 2001 FCT 148, 13 Imm. L.R. (3d) 289, and as cited recently by Justice Sean Harrington in his Reasons for Order and Order in the stay application of *Shpati v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 367, 89 Imm. L.R. (3d) 25 (*Shpati I*) at paragraph 41:
>
> > The discretion to be exercised is whether or not to defer to another process which may render the removal order ineffective or unenforceable, the object of that process being to determine whether removal of that person would expose him to a risk of death or other extreme sanction.
>
> See also *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 741, 106 A.C.W.S. (3d) 1092 at para. 15 where Justice Edmond Blanchard describes a removal officer's discretion this way:

> I am also of the view that discretion to be exercised by the removal officer does not consist of assessing risk, but rather one of assessing whether there are special circumstances that would justify her deferring the removal.
>
> …
>
> In the particular circumstances of this case, the view of Justice Harrington in *Shpati I*, above, at paragraph 45 is particularly apt. He stated that he had difficulty in accepting that "Parliament intended that it was "reasonably practicable," for an enforcement officer, who is not trained in these matters, to deprive an applicant of the very recourse Parliament has given him". The officer should have considered that removal would not be practicable until a specialized assessment of the risk had been obtained. For that reason, I will grant this application and quash the officer's decision. The applicant has filed a PRRA and is entitled, under Canadian law, to a proper risk assessment. That does not, of course, assume the outcome of that assessment.

[54] Having taken upon himself the assessment of risk, something he was not asked to do and for which he is not qualified, the Officer then proceeds to commit a series of errors, some of which were referred to by Justice François Lemieux in his judgment dealing with the stay motion in this matter. I concur with Justice Lemieux's observations and his assessment of the Applicants' case. The Officer not only failed to appreciate his own role and jurisdiction in this matter, he also failed to appreciate the true nature of the risks the Applicants face in Sri Lanka and so committed several egregious errors. For example, he concluded that the Applicants could seek assistance from the Principal Applicant's family in Sri Lanka, thus ignoring the fact that her family had fled Sri Lanka and live in the United Kingdom, except for a sister who lives in Canada. He also, in my view, was selective regarding the evidence concerning protection for women in Sri Lanka, and ignored evidence that the authorities do not protect women from domestic violence. Also, the Officer failed to address the advice and opinion of Dr. Thirwell concerning the psychological harm the Principal

Applicant (who is very vulnerable) will suffer if she has to leave Canada. This is not harm that is inherent in the process of deportation.

[55] The Applicants have raised a range of issues and defects that can be found in the Decision. I do not think it is necessary to consider them all. As discussed above, it is my view that the Decision is fundamentally flawed and must be returned for reconsideration.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. Application is allowed. The decision is quashed and the matter is returned for reconsideration by a different officer.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-6584-10
STYLE OF CAUSE:	**PATHMALOGENI JAYASUNDARARAJAH ABISHNA JAYASUNDARARAJAH (by her guardian Pathmalogeni Jayasundararajah) and SUVIGSHAN JAYASUNDARARAJAH (by his guardian Pathmalogeni Jayasundararajah)** - and - **THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 29, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	November 16, 2011

APPEARANCES:

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