

Federal Court



Cour fédérale

**Date: 20130417**

**Docket: IMM-4944-12**

**Citation: 2013 FC 392**

**Ottawa, Ontario, April 17, 2013**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ANGELIN SAGAYA SUGIRTHA FERNANDO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] Ms Angelin Sagaya Sugirtha Fernando, a citizen of Sri Lanka, has been working in Canada off and on since 2009. In 2011, she claimed refugee protection based on her fear of political persecution in Sri Lanka. She based her claim on the fact that, since 1993, she had been detained by authorities on three occasions on suspicion of being a supporter of the Liberation Tigers of Tamil Eelam (LTTE). On one of those occasions, an official tried to sexually assault her.

[2] A panel of the Immigration and Refugee Board dismissed Ms Fernando's claim, concluding that her testimony was not credible, that her fear was not connected to any recognized ground for refugee protection, and that she faced a generalized risk of harm if she returned to Sri Lanka.

[3] Ms Fernando argues that the Board's credibility assessment was unreasonable, that it erred in finding that her fear of extortion was not a recognized ground for refugee protection, and that its conclusion on generalized risk was unreasonable. She asks me to quash the Board's decision and order another panel to reconsider her claim.

[4] I can find no basis to overturn the Board's decision and must, therefore, dismiss this application for judicial review. In my view, the Board expressed valid grounds for doubting Ms Fernando's version of events, reasonably found that her claim was not tied to recognized grounds for refugee protection, and reasonably concluded that she faced a generalized, not a personal, risk of harm in Sri Lanka.

[5] There are three issues:

1. Was the Board's credibility assessment unreasonable?
2. Did the Board err in concluding that Ms Fernando's claim was not based on a recognized ground of refugee protection?

3. Was the Board's conclusion that Ms Fernando faced a generalized risk unreasonable?

## II. The Board's Decision

[6] The Board did not believe that Ms Fernando was suspected of supporting the LTTE. If that had been true, officials would not have released her merely on the payment of a bribe. Further, there was no evidence that she was treated differently at check points, or at the airport, than other Tamils. Finally, the fact that Ms Fernando had visited Canada in 2009 and had not sought refugee protection then, nor immediately on her return to Canada in 2010, indicated that she lacked a subjective fear of persecution in Sri Lanka.

[7] The Board also noted that the fact that a police officer had once tried to touch Ms Fernando intimately was "opportunistic" and not indicative of persecution.

[8] The Board found that Ms Fernando was not detained for political reasons, but in order to extort bribes from her or her family. These were simply criminal acts by rogue officials, not persecution. Therefore, her claim fell outside the definition of a refugee (s 96, *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – see Annex for provisions cited). Similarly, the risk of extortion was generalized, not personal to Ms Fernando, in the sense that all persons of means are at risk of extortion or kidnapping in Sri Lanka (s 97(1)(b)(ii), IRPA).

## III. Issue One – Was the Board's credibility assessment unreasonable?

[9] The Board's credibility assessment was not unreasonable. It gave several reasons for doubting that Ms Fernando was suspected of being an LTTE supporter – she was released after brief periods of detention, she had no significant problems at security checkpoints or at the airport, she returned to Sri Lanka for a vacation, and she delayed claiming refugee protection when she came back to Canada.

[10] In my view, this evidence provided a valid basis for the Board's credibility assessment. Therefore, its conclusion was not unreasonable.

IV. Issue Two – Did the Board err in concluding that Ms Fernando's claim was not based on a recognized ground of refugee protection?

[11] The evidence clearly showed that Ms Fernando's principal fear was of extortion. She testified that she feared that officials would try to extract money from her if she returned to Sri Lanka from Canada.

[12] In my view, the Board reasonably found that extortion was not a recognized ground of refugee protection. Ms Fernando's treatment was not connected to her ethnicity or political beliefs but, rather, her ability to satisfy corrupt officials' demands for bribes. Therefore, her claim did not fall within s 96 of IRPA.

V. Issue Three – Was the Board’s conclusion that Ms Fernando faced a generalized risk unreasonable?

[13] For similar reasons, the Board reasonably concluded that Ms Fernando faced a generalized risk in Sri Lanka. It appears she was the victim of criminal conduct on the part of government officials and was not singled out because of any personal characteristic. Therefore, her claim was excluded under s 97(1)(b)(ii) of IRPA.

VI. Conclusion and Disposition

[14] The Board had valid reasons to doubt Ms Fernando’s credibility. In addition, it reasonably found her claim to fall outside the scope of s 96 and to be excluded under s 97(1)(b)(ii) of IRPA. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

## Annex

*Immigration and Refugee Protection Act, SC 2001, c 27*

*Loi sur l'immigration et la protection des réfugiés, LC 2001 ch-27*

## Convention refugee

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

## Person in need of protection

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other

## Définition de « réfugié »

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

## Personne à protéger

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.



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

**DOCKET:** IMM-4944-12

**STYLE OF CAUSE:** ANGELIN SAGAYA SUGIRTHA FERNANDO  
v  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 20, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** April 17, 2013

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