

Federal Court



Cour fédérale

Date: 20140623

Docket: IMM-7938-13

Citation: 2014 FC 602

Ottawa, Ontario, June 23, 2014

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SIVAEESAN THAVACHCHELVAM

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 25-year-old Sri Lankan Tamil. On April 10, 2012, the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected his claim for Convention refugee status. The Court denied his application for judicial review on January 28, 2013. His applications for Pre-Removal Risk Assessment [PRRA] and an exemption on the basis of humanitarian and compassionate grounds were also rejected on September 16, 2013.

[2] The applicant filed an application challenging the legality of the PRRA, which is also the object of a judicial review application (Docket IMM-7417-13).

[3] In the meantime, the applicant was scheduled to be removed to Sri Lanka on December 20, 2013. His request for a deferral of the removal was denied on December 11, 2013 by Law Enforcement Officer, Henry Kwan [removal officer], leading to the present judicial review application which challenges the reasonableness of the removal officer's refusal. However, on December 18, 2013 Justice Noël allowed the applicant's motion to stay the removal pending a final decision on this application for judicial review.

[4] Justice Noël stated in his Order that "it is in the interest of justice that the present application be dealt with by a judge of the Court with complete records". By order made on March 20, 2014, the present application was heard by the Court on June 11, 2014 concurrently with the judicial review application challenging the legality of the negative PRRA decision made earlier on September 16, 2013 (Docket IMM-7417-13). Counsel agree that the present application shall become moot in the case the Court allows the first judicial review application.

[5] The respondent opposed the stay motion and emphasizes that the removal officer was not required to conduct a last minute assessment unless the allegations could not have been raised earlier. This did not convince Justice Noël who granted the stay motion. The same argument was made again by respondent's counsel in his memorandum of law filed in connection with the application for judicial review. This is one of those exceptional circumstances where the Court in the exercise of its judicial discretion should refuse to let an applicant suffer for the errors of his

or her former counsel or representative (*Acevedo v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 401 at paragraph 42). Indeed, the new information discloses a very strong risk that could expose the applicant, if returned, to arrest, detention or torture in Sri Lanka based on his suspected links with a convicted terrorist.

[6] From December 2007 until his departure from Sri Lanka, the applicant lived with his uncle in Colombo. The applicant registered himself with the police when he arrived, including stating that he was living with his uncle at the specific address. The uncle's son (and the applicant's first cousin), is a citizen of the United Kingdom who was arrested on April 3, 2007 at the Colombo airport on suspicion that he was bringing in telecommunications equipment for the LTTE. His detention was extended on multiple occasions. In February 2012, he was formally indicted on two counts of terrorist activities under the *Prevention of Terrorism Act*: first, purchasing ten tractors for the LTTE and second, failing to inform the police about prominent LTTE cadres. He pled guilty to the first charge and was sentenced on July 23, 2012 to five years in jail. The second charge was dropped. The applicant visited his cousin twice at the Magazine prison in Colombo. Each visit was allegedly recorded by the authorities. However, there has never been any assessment of the applicant's fear of being at risk based on the fact that he lived with his cousin's father in Colombo at the address given by the cousin to the Sri Lankan authorities, that his particulars were noted during his visits to his cousin in prison and that he was detained for four days.

[7] The Court has decided today to grant the judicial review application in respect of the September 16, 2013 decision made by the Pre-Removal Risk Assessment Officer (2014 FC 601).

Accordingly, this application is moot. Thus, it would serve no practical purpose to refer the request for deferral back to another removal officer for redetermination or to direct that the removal should be stayed until September 16, 2014 which corresponds to the one year bar period.

[8] For all these reasons, the present judicial review application is dismissed.

[9] Counsel agree that there is no question of law of general importance requiring certification by the Court.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review application is dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7938-13

STYLE OF CAUSE: SIVAEESAN THAVACHCHELVAM v THE
MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 11, 2014

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

DATED: JUNE 23, 2014

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