

Date: 20071106

Docket: IMM-4085-07

Citation: 2007 FC 1153

Toronto, Ontario, November 6, 2007

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

SUSEENTHIRAN THARMARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This application by the applicant to stay his removal to Sri Lanka scheduled for this afternoon must be dismissed for the following reasons.

[2] The underlying judicial review application to which this stay application is grafted is the October 22, 2007 decision by a Pre-Removal Risk Assessment (PRRA) officer who decided the applicant's second PRRA application filed June 6, 2006 must be rejected. The PRRA Officer found

that the applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual punishment if returned to Sri Lanka.

[3] The following facts are relevant. The applicant is a 30 year old Tamil born in the North of Sri Lanka. He came to Canada in 1993 at the age of 15 as a permanent resident sponsored by his father who had been recognized as a refugee. At the time of sponsorship, his mother, the applicant and his siblings had been residing in India since 1990 because their house and business had been commandeered by the LTEE during the civil war.

[4] In 1999, under the Old Immigration Act, a removal order was issued against him on the grounds he was inadmissible for serious criminality. He appealed the removal order to the Immigration Appeal Board (the IAD) where it failed. On November 5, 2004, it decided the removal order was valid because the applicant had not challenged its validity, but more importantly, the IAD refused to exercise its discretionary jurisdiction to stay his removal because of his criminal record: eight convictions, four of which involved violence or weapons. It found he was a gang member when he committed those crimes being associated with the Gilder Boys from 1997 to 2001 and currently (from 2001 to 2004) associated with a splinter group.

[5] He challenged the IAD decision in the Federal Court. Leave was denied on February 23, 2005.

[6] He made his first PRRA application on January 4, 2005 with submissions filed by his counsel on January 15, 2005 expressing a risk of conscription and extortion by the LTEE in the LTEE controlled North if returned there and a risk of persecution by the Sri Lankan Police/Army because he is a young Tamil male who will be persecuted as a member or supporter of the LTEE.

[7] The PRRA officer rejected his PRRA application on April 19, 2006. The PRRA officer found there was a serious possibility of persecution of being forcibly conscripted by the LTEE if returned to LTEE controlled territory in the North.

[8] However, the PRRA officer found the application had a viable IFA in Colombo. The PRRA officer found the evidence did not indicate that members of Canadian gangs affiliated with the LTEE are being persecuted by either the LTEE in Sri Lanka or by the Sri Lankan government. For this view, the PRRA officer relied upon the testimony of a Canadian Foreign Service officer at the High Commission in Colombo who indicated that returnees to Colombo, failed asylum seekers or members known to be affiliated with gangs were not detained at the airport in Colombo on arrival. The PRRA officer said this opinion was corroborated by other objective and reliable sources including the U.K. Home Office Science and Research Group.

[9] The applicant sought leave to the Federal Court from this decision and sought a stay of the execution of his removal. On June 19, 2006, Justice Beaudry dismissed the stay application being of the view “the applicant failed to provide any meaningful argument that the PRRA officer made

any error. There is no serious issue to be tried.” He also found the balance of convenience supported the Minister because “the applicant has a serious criminal record”.

[10] The applicant filed his second PRRA application on June 6, 2006. His counsel submitted new documentary evidence focussed on events in the April, May and June of 2006. The PRRA officer rejected this 2nd PRRA on October 22nd, 2007. His view was that the applicant had put forward the same risks as he had in his first PRRA application. He quoted with approval, the first PRRA officer’s determination that members known to be affiliated with gangs not being detained at the Colombo Airport or arrested or experiencing negative repercussions. He confirmed the first PRRA officer’s review of a viable IFA in Colombo.

[11] He accepted the applicant’s documentary evidence as new evidence. He conducted an independent review of current country conditions and in particular took into account the current USDOS of March 2007, the Home Office Report of September 4, 2007 and the South Asian Terrorism Portal-Sri Lanka, October 19th, 2007.

[12] He concluded the applicant had not provided sufficient objective evidence that demonstrated new risk developments that were personal to him and have arising since his last PRRA rejection.

[13] On serious issue, counsel for the applicant argues the PRRA officer either ignored the new evidence or misread it. He focussed on the Home Office Report of September 4th, 2007. He relied specifically on paragraphs 20.15 and 28.10 of that report to the effect Tamils from the North or East who are able to reach Colombo could be vulnerable to arbitrary arrest, detention or other forms of human rights abuse. He also relied upon the Human Rights Watch Report of August 2007, the typical profile of a detainee by the Sri Lankan government under the Emergency Regulations is a Tamil person between 18 and 40. He puts his argument in the context that the PRRA officer's finding encompassed persecution under section 96 of the IRPA and that consequently all that had to be shown was a serious possibility of persecution if returned to Sri Lanka.

[14] I cannot find a serious issue on the points raised by applicant's counsel. The serious issue must be analyzed in the context of the alleged errors advanced by the applicant. The error is one of fact with the standard of review being patent unreasonableness.

[15] I cannot see any error of fact in the PRRA officer decision. His reliance on a number of paragraphs of the Home Office report does not say what applicant's counsel says because these paragraphs must be viewed in the entire context of the documentary evidence relied on by the PRRA officer and, in particular, the finding of a viable IFA based on objective evidence concerning the treatment of failed refugees known to be gang member affiliated with the LTEE. Counsel for the applicant has not satisfied me the applicant has a profile which reasonably suggests he will be

targeted by the Sri Lankan Army or Police. The evidence of sweeps in Colombo primarily affecting Tamils and language his inability to speak Singalese doe not approach persecution. Counsel for the applicant has not brought forward any sufficient evidence to demonstrate the PRRA officer's reliance on the documentary evidence was erroneous. This is particularly so when the baseline is the previous 1st PRRA decision where Justice Beaudry found no serious issue in the first PRRA officer's decision and where leave was denied by this Court.

[16] Based on this analysis of lack of serious issue, irreparable harm has not been demonstrated.

[17] The balance of convenience favours the Member and I endorse Justice Beaudry's comment about the applicant's serious criminal record (see also, *Sinnarajah v. Minister of Public Safety and Emergency Preparedness*, 2007 F.C. 895, at para. 12).

ORDER

THIS COURT ORDERS that this stay application is dismissed.

“François Lemieux”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4085-07

STYLE OF CAUSE: SUSEENTHIRAN THARMARATNAM v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 5, 2007

**REASONS FOR ORDER
AND ORDER:** LEMIEUX, J

DATED: NOVEMBER 6, 2007

APPEARANCES:

David Orman FOR THE APPLICANT

Ned Djordjevic FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Orman
Barrister and Solicitor
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE RESPONDENT