Federal Court  Cour fédérale

Date: 20110811

Docket: IMM-7464-10

Citation: 2011 FC 987

Ottawa, Ontario, August 11, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MARIACHRISTIN ALFRED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of D. Manhas, First Secretary, Immigration Section at the High Commission of Canada in New Delhi, India (Officer), dated October 14, 2010 (Decision), wherein the Officer denied the Applicant's application for a permanent resident visa as a member of the Convention refugees abroad class and the country of asylum class.

BACKGROUND

[2] The Applicant is a citizen of Sri Lanka currently living in India. She alleges that as a Tamil with past involvement in the Liberation Tigers of Tamil Eelam (LTTE), she cannot return home.

[3] At her interview with the Officer, she alleged that her problems began in 1996 while she was living in Delft. She states that at that time, the area was controlled by the Eelam People's Democratic Party (EPDP) and, as a result, the LTTE would frequently attack the area. She claims that her home was slightly damaged in 1996 in one of these attacks, and that her house was destroyed in a subsequent attack in 1998. After her home was destroyed, she says, she had to move to her aunt's house, six kilometres away, where she remained until 2006.

[4] In 2002, cease fire agreement was reached between the government and the LTTE, so the LTTE began moving more freely in the area. The Applicant says that the LTTE came to her house and tried to recruit her because they knew she was volunteering for social services. She was asked if she would run in the local election against an EPDP candidate. She agreed and put in her name, but after receiving a threatening phone call from the EPDP, she had her name withdrawn from the list. As a result of her actions, she claims she was placed on a watch list from 2002 to 2006; however, no action was ever taken against her by either the EPDP or the LTTE.

[5] In 2005, she went to visit her uncle in Vanni, an area under the control of the LTTE at the time. She claims that the LTTE came to her uncle's home, forcefully took her cousin, and told the

Applicant that they would be back for her the following week. The next day, her uncle took her to Jaffna from where she travelled home to Delft by boat.

[6] She says that, since she had been away visiting her uncle for six months, the EPDP began to doubt her. As a result, members of the EPDP came to her house looking for her while she was at church. On her way home, the EPDP confronted her and told her that, because she had disappeared for six months, she had to sign in at their office every Sunday. She followed these instructions but claims she was insulted and threatened each time she went to sign in and that it took between three and four hours on each occasion.

[7] In March 2006, when she went to sign in, the EPDP told her that she needed to go to the EPDP head office in Jaffna. She travelled with two men who took her to the head of the EPDP at the Jaffna office. He told her that she was considered a spy because she had run in the election and had gone to Jaffna for six months. He also told her that if the EPDP was ever attacked, she would be killed. She was then released.

[8] She continued signing in at the EPDP office in Delft until August 2006, when her mother and brother were sponsored to Canada. She and her aunt told the EPDP that her aunt was sick and the EPDP gave her permission to leave. They moved to Colombo where she met and married her husband in December 2006. She remained in Colombo until May 2007.

[9] In January 2007, she claims that the police came to her home after they received a tip that Tamil LTTE from Jaffna had come to Colombo. The police checked her home and took her details.

In February 2007, there was a bomb attack, and the police returned to her home and told her to obtain police clearance from Delft. Later, there was another attack, and the police came again and told her that she and her aunt could not stay in Colombo without police clearance from Delft. She also claims that she could not register her marriage because her husband was Singla. As a result, she and her family left Colombo in May 2007 and went to India.

[10] The Applicant applied for permanent residence in Canada as a member of either the Convention refugees abroad class or the country of asylum class. The Officer rejected this application on 14 October 2010, as the Officer was not convinced that the Applicant's fear was well-founded or that she had been or continued to be seriously and personally affected by civil war or armed conflict. This is the Decision under review.

DECISION UNDER REVIEW

[11] In the refusal letter sent to the Applicant, the Officer indicated that she was not satisfied that the Applicant was a member of any of the classes for which her application was considered. Specifically, the Officer noted that, at the interview, the Applicant indicated that she had left Colombo because the authorities demanded that she register, but she could not do so without a Police Clearance Certificate. However, the Officer cited evidence indicating that Tamils can register with their identity card or passport, of which she had both. The Officer was satisfied that the Applicant could register herself and her daughter, particularly because her daughter had a Singla father. As a result, the Officer was not satisfied that she fled Colombo due to a well-founded fear of persecution or because she was seriously and personally affected by civil war or armed conflict.

[12] The Officer further noted that the Applicant's husband had returned to and remained in Colombo, in the same house where she resided, for six months without issue in 2010. The Officer was not satisfied that if she had a well-founded fear of persecution, her husband would be able or willing to return for such an extended period of time. Accordingly, based on the Applicant's lengthy stay and the changed situation in Sri Lanka, the Officer was not convinced that the Applicant could not return to Sri Lanka. As a result, the Officer concluded that the Applicant did not fall within the Convention refugees abroad class or the country of asylum class.

[13] In the CAIPS notes, the Officer outlined her concerns with the application, specifically: (i) it was not credible that she could not register with her identity card or her passport because she is married to a Singla man; (ii) it was not credible that the EPDP is still actively searching for her because she stated that she never did anything; (iii) it was not credible that the Applicant could not return to any part of Sri Lanka; (iv) her husband returned to Sri Lanka and remained for six months without incident, signalling that the family can return to Sri Lanka; and (v) there is now peace in Sri Lanka.

ISSUES

[14] The Applicant raises the following issues:

a. Whether the Officer erred in concluding that a local police clearance was not necessary for the Applicant to register with the police in Colombo; and

b. Whether the Officer erred in concluding that the family could return to Colombo because the Applicant's husband returned for six months without incident.

[15] The Respondent has raised an additional issue:

a. Whether the Officer's decision can be upheld on the basis of a finding of an internal flight alternative in Colombo made in the CAIPS notes.

STATUTORY PROVISIONS

[16] The following provision of the Act is applicable in these proceedings:

Convention refugee	Définition de « réfugié »
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,	**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*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*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*) 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.	*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.

[17] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, are applicable in these proceedings:

Member of Convention refugees abroad class	Qualité

145. A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.	**145.** Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.
Member of country of asylum class	Catégorie de personnes de pays d'accueil
147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	**147.** Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(*a*) they are outside all of their countries of nationality and habitual residence; and	*a*) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(*b*) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	*b*) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

STANDARD OF REVIEW

[18] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the 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.

[19] The first and second issues concern the Officer's assessment of whether the Applicant comes within the Convention refugees abroad class or the country of asylum class, which are questions of mixed fact and law. The applicable standard of review is reasonableness. See *Kamara v Canada (Minister of Citizenship and Immigration)*, 2008 FC 785; *Alakozai v Canada (Minister of Citizenship and Immigration)*, 2009 FC 266.

[20] 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."

[21] The third issue concerns a question of law and a question of procedural fairness. The applicable standard is correctness. See *Sribalaganeshamoorthy v Canada (Minister of Citizenship and Immigration)*, 2010 FC 11.

ARGUMENTS

The Applicant

Documentary Evidence on the Need for Local Police Clearance

[22] The Applicant submits that the Officer misunderstood the documentary evidence regarding whether a police clearance was necessary in order for her to register in Colombo. The Applicant notes that the Officer relied on a footnote in the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, published in July 2010, which indicated that persons who want to move to Colombo must register with the police, which usually requires a national identification card or passport and information on the planned length and purpose of stay. However, the Applicant asserts that the Officer should have gone further and checked the source cited in that footnote, namely, the UK Home Office Report.

[23] Citing portions of the UK Home Office Report which indicate that deportees were not allowed back into Sri Lanka until a check was made for offences outstanding in Sri Lanka and with the local police station from where the deportee originated, the Applicant submits that the Officer did not address deportees, even though the fate of deportees is obviously relevant to the situation of the Applicant.

[24] The Applicant further notes that the UK Home Office Report stated that anyone arriving in Colombo had to register and inform the police of any change of residence, and that the Colombo police could check with the local police in the area from which the person originated. The Applicant asserts that if deportees are detained until local police station clearance is given, then the lack of

clearance in other contexts would also have consequences, as there must be a purpose for checking with the local police in the area from which the person originated. The Applicant acknowledges that the document does not state that the absence of local police clearance will result in a denial of registration, but the location of the statement suggests that local police clearance is a requirement for registration.

[25] The Applicant also submits that the footnote relied on by the Officer stated that registration "usually requires" an identification card and passport, indicating some, but not necessarily all, of the requirements for registration. As a result, the Applicant argues that the Officer misread the country condition information and that the information actually supported the information that the Applicant gave to the Officer.

[26] The Applicant further argues that the Officer erred by relying on the footnote in one document that referred to and excerpted some information from another cited document without checking the source document to see if it dealt with this issue. The Applicant asserts that due diligence required that the Officer consider the source of the information.

[27] The Applicant takes the position that the country condition information shows that a police certificate is required. However, the Applicant also argues that, even if that is not a fair reading, there is at least some indication that a local police clearance is required and the Officer found that there "is no indication" that a police certificate is required.

[28] Moreover, the Applicant submits that the Officer relied on the footnote without considering the text that the footnote is meant to explain, which states that young Tamil men from the north and

east of the country could encounter closer scrutiny during the police registration process and may be denied a residence permit. The Applicant notes that a second document is cited in this sentence, the U.S. Department of State report, which states that although the law grants freedom of movement, the government severely restricted this right on multiple occasions, including additional checks on travellers from the north and the east.

[29] The Applicant further notes that the UK Home Office Report stated that the police will pay greater attention to those who exhibit any "risk factors," including an asylum claim abroad and a previous record as a suspected or actual LTTE member, which are both factors relevant to the Applicant. The Applicant asserts that the Officer erred by failing to undertake this analysis.

[30] Finally, on this point, the Applicant submits that the Officer's conclusion that a police certificate was not required to register is contrary to common sense, particularly in the aftermath of a civil war. The Applicant notes that police clearances are required internationally, even for visa processing for applications to come to Canada. The Applicant asserts that the notion that police in the capital of Sri Lanka would not even bother to care, in the aftermath of a civil war and the reunification of a divided country, about the police record of a new arrival in her place of origin defies reasonable expectations. Thus, the Applicant asserts that the Officer's conclusion on the evidence is plainly wrong and was made without regard to the material. It is also unreasonable and fails to engage in the necessary analysis to support the conclusion reached.

The Return of the Husband

[31] The Applicant notes that the Officer also found that because her husband returned to Sri Lanka, then the whole family could return. The Applicant submits that it is unclear if this reason is a separate ground for refusal. The Applicant notes that the error regarding the documentary evidence relates to the Officer's assessment of the Applicant's application under both the Convention refugees abroad class and the country of asylum class, whereas this finding is an additional obstacle to overturning the Officer's assessment of the Applicant's application under the Convention refugees abroad class only.

[32] The Applicant asserts that the Officer's reasoning on this point changes between the CAIPS notes and the refusal letter. In the CAIPS notes, the Officer indicated that the reason for refusal related to the fact that the husband is single, not the fact that he returned to Colombo for six months.

[33] In any event, the Applicant submits that the Officer erred by assuming that because the husband could return to Colombo without any issues, the whole family could return. The Applicant notes that there were significant differences between her husband's circumstances and her personal circumstances, including: (i) she is Tamil, while he is Singla; (ii) she was a candidate for the LTTE, while he was not; (iii) she want to Jaffna for six months in 2005, he did not; (iv) she had a cousin recruited into the LTTE, and he did not; and (v) she had to register with the Colombo police, but he did not. The Applicant notes that a person is not a refugee simply because their spouse is a refugee. It is necessary to establish a personalized risk, not just a risk to a family member: *Pour-Shariati v Canada (Minister of Employment and Immigration)*, [1995] 1 FC 767. The Applicant submits that

the converse must also be true: the fact that one family member is safe does not mean that a claimant faces no risk.

[34] The Applicant acknowledges that the documentary evidence suggests that the Applicant's husband may be at risk because of his wife, but submits that one can only conclude from the ability of the husband to return to Colombo that either the risk factor alone was not sufficient to put him at risk, or that the Colombo authorities did not know that his wife had stood as a candidate for the LTTE during civil elections in Delft and had gone to Jaffna for six months.

The Finding of an Internal Flight Alternative in the CAIPS Notes

[35] In response to the Respondent's assertion that the Officer's conclusion can stand on the basis of a finding of an internal flight alterative (IFA), the Applicant notes that the refusal letter does not give IFA as a ground of refusal, and submits that a ground of refusal not mentioned in the letter, but mentioned only in the CAIPS notes, is not a ground of refusal on which the Respondent can rely for the purposes of judicial review. The Applicant argues that where reasons are not given in the letter of refusal, the Respondent is entitled to rely on the reasons in the CAIPS notes, since those are the only reasons. However, where reasons are given in the letter of refusal, then those are the reasons for the decision.

[36] The Applicant cites *Ziaei v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1169, where Justice Michael Phelan stated that "[i]t is well recognized that the visa decision letter may not contain all of the reasons for a decision. For that reason, the CAIPS notes form an integral

part of the reasons." The Applicant asserts that this statement was made in the context of a case where the CAIPS notes merely amplified what was contained in the visa decision letter, as the letter contained no details of the points assessed, and that Justice Phelan did not find that the CAIPS notes could provide a whole new ground of refusal not mentioned in the refusal letter.

[37] The Applicant further asserts that the Respondent should not be permitted to rely on a ground of refusal outlined in the CAIPS notes, as the Applicant decided to serve and file the application for judicial review based on the reasons given in the refusal letter which, as far as the Applicant was concerned, contained the reasons for the refusal. The Applicant cites section 10(1) of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, which outlines how to perfect an application for leave and judicial review. The Applicant asserts that this rule is based on the assumption that the reasons received with the decision are the reasons for the decision; otherwise, the rule would have been written differently.

[38] Furthermore, the Applicant asserts that giving reasons is a component of the duty of fairness, as giving reasons allows the affected person to decide whether she wishes to seek judicial review of the decision: *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 429; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. This purpose for giving reasons would be undermined if the reasons given at the time of the decision and the reasons shown in the notes diverge and the reasons shown in the notes are allowed to prevail.

[39] The Applicant also notes that the Immigration Manual OP1 states that officers should give factual and objective reasons for their decision. This indicates that reasons are to be given to the

Applicant, not simply recorded in the CAIPS notes. The Applicant asserts that she had a legitimate expectation that the Manual's procedures would be followed, which is relevant to a determination of the content of the duty of fairness: *Baker*, above. The Applicant argues that when reasons do not form part of the letter of refusal but are recorded only in the CAIPS notes, one cannot say that they have been given to the person concerned. The Applicant acknowledges that the Officer expressed concerns to her during the interview and gave her an opportunity to respond, but claims that the refusal and the reasons for refusal were not given at that time. Thus, the sole communication to the Applicant from the Officer of the reasons for refusal was the letter of refusal. The Applicant argues that if one presumes that the Manual's instructions were followed, then the internal flight alternative was not a reason for the decision or, if it was a reason, it was not a factual and objective reason of the Officer. In either case, the Applicant submits that the Decision cannot be upheld on the ground that there exists an internal flight alternative.

[40] Moreover, the Applicant notes that the Federal Court of Appeal has held that an IFA cannot be given as a reason for refusal without advance notice indicating the proposed IFA area: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA); *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA). The Applicant asserts that it would be anomalous for the duty of fairness to require notice of an IFA before a decision is made, but not to require it as a reason for the decision in the refusal letter.

[41] The Applicant further asserts that the Respondent's position depends on the assumption that the failure to mention the IFA finding in the letter of refusal was an oversight and that the letter of refusal does not state all the reasons for the refusal. However, the Applicant argues that this is not

the only possible explanation for the variation. The Applicant suggests that the Officer decided to abandon the IFA as a reason for the refusal, which the Respondent has not addressed. The Applicant takes the position that there is no IFA, and asserts that the Officer realized this when reviewing her notes. This explains the failure to include the IFA finding in the refusal letter; it was purposeful and not a mere oversight. The Applicant submits that this is supported by the presumption in law that the Officer wrote what she meant and was not being sloppy or forgetful: *Ellis-Don Ltd. v Ontario (Labour Relations Board)*, 2001 SCC 4 at para 107.

[42] Finally, the Applicant notes that the Respondent has failed to provide an affidavit from the Officer swearing that the CAIPS notes and not the letter of refusal reflect the true reasons for the decision. The Applicant asserts that in the absence of this affidavit, the Court is not entitled to assume that the true intention of the Officer is reflected in the CAIPS notes and not in the refusal letter, since notes made by an Officer during an interview are not acceptable as proof of the truth of their contents where no affidavit averring to the truth of their contents is filed: *Wang v Canada (Minister of Employment and Immigration)*, [1991] 2 FC 165 (CA); *Qiu v Canada (Minister of Citizenship and Immigration)* (2000), 4 Imm LR (3d) 247 (FCTD).

The Respondent

The Finding of an Internal Flight Alternative in the CAIPS Notes

[43] The Respondent submits that the Applicant takes issue with the Officer's finding that she does not have a well-founded fear of persecution, but has not challenged the Officer's finding that she had an IFA.

[44] The Respondent notes that, in the CAIPS notes, the Officer found that it was not credible that the Applicant could not return to any part of Sri Lanka. The notes also reflect the Officer's statement made during the Applicant's interview that she was satisfied that the Applicant could return to Jaffna or to Delft, since it is peace time and it is not credible that she would still be sought after considering she did not do anything. The Respondent submits that the Officer's conclusion on whether the Applicant was a Convention refugee can stand on the basis of this unchallenged finding of an IFA.

[45] The Respondent asserts that it is well settled that the CAIPS notes explicitly form part of the decision: *Veryamani v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1268; *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 779. The Respondent notes that the Court has held that this is precisely because a refusal letter may not contain all of the reasons for a decision: *Ziaei*, above.

[46] In response to the Applicant's claim that CAIPS notes may only amplify reasons but may not provide a new reason for refusal not mentioned in the letter, the Respondent submits that this Court has found that it is not a breach of procedural fairness for reasons to be supplied in his manner: *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298.

[47] The Respondent also notes that the Applicant has referred to the Officer's IFA finding as both a ground and a reason for the refusal. In this case, the Respondent asserts that the Applicant's application was refused on the ground that she was not a member of either the Convention refugees

abroad class or the country of asylum class, and the reasons that the Officer came to that finding are found in both the refusal letter and the CAIPS notes.

[48] Furthermore, the Respondent notes that the Applicant has said that, in so far as the CAIPS notes diverge from the refusal letter, there is a breach of the duty of fairness, as she decided to file her leave application on the basis of the reasons contained in the refusal letter. The Respondent submits that the necessary implication is that she was disadvantaged by not having the additional reasons found in the CAIPS notes. However, the Court has held that there is no requirement for an applicant to receive the CAIPS notes at the same time as the refusal letter or prior to initiating a leave application for judicial review: *Veryamani*, above at paragraph 30, *Wang* (2006), above at paragraphs 21-23; Rule 9 of the *Federal Courts Immigration and Refugee Protection Rules*, above. The Respondent also notes that the Applicant had the CAIPS notes at the time she submitted her application record, as they were attached to an affidavit, and thus the Applicant was not at any disadvantage.

[49] Finally, the Respondent submits that the Applicant has simply speculated about why the IFA finding was not included in the refusal letter. There is no requirement to explain why the reasons were given a certain way. The only requirement is that reasons are given. Since the Court has repeatedly indicated that parties are entitled to rely on both the refusal letter and the CAIPS notes as the reasons for refusal, the IFA is a valid finding as to whether the Applicant is member of the Convention refugees abroad class.

Documentary Evidence on the Need for Local Police Clearance

[50] The Respondent notes that, in concluding that the Applicant is not a member of the Country of Asylum class, the Officer found that the Applicant's explanation for why she cannot return to Colombo was not credible because her husband is Singla, she can register with the police, and it is now peace time. The Respondent further observes that the Applicant only challenges the Officer's finding that she could register with the police.

[51] The Respondent submits that, in determining whether the Applicant could register with the police, the Officer was required to undertake an analysis that involved balancing the documentary evidence with the evidence of the Applicant. After undertaking this analysis, the Officer chose to give more weight to the UNHCR document than to the evidence of the Applicant. The Respondent asserts that it is well established that it is not the role of a reviewing court to reweigh evidence: *Dunsmuir*, above, at paragraph 48.

[52] The Respondent also notes that the Applicant has argued that the Officer erred by relying on the UNHCR document without reviewing the documents cited in it. The Respondent submits that, contrary to this submission, it was entirely reasonable for the Officer to rely on a UNHCR document without reviewing every source document cited in it. The Respondent also argues that a review of the excerpts of the source documents cited by the Applicant do not establish that a police clearance is a pre-requisite to registration in Colombo.

[53] The Respondent further notes that, in arguing that the Officer erred by failing to review the source documents, the Applicant has relied on a pair of documents that were not before the Officer to assert that the Officer erred by finding that the Applicant could register and live in Colombo. The Respondent submits that since these documents were not before the Officer at the time the Decision was made, they are irrelevant for the purpose of judicial review: *Korayem v Canada (Minister of Citizenship and Immigration)*, 2011 FC 486.

[54] Moreover, contrary to the submission of the Applicant, the Respondent asserts that the Officer's finding that the Applicant should be able to register in Colombo (since she has both an identity card and a passport) is fully consistent with the information contained in the footnote on which the Officer relies. The Respondent is not suggesting that it is reasonable for an Officer to ignore footnotes, but is submitting that the Officer is entitled to rely on the information contained in a document, inclusive of footnotes, and is not required to check all of the citations therein.

The Return of the Husband

[55] The Respondent submits that the Officer's conclusions that (i) the fact that the Applicant's husband returned to Colombo for six months without incident indicated that the Applicant's fear of persecution was not well-founded and (ii) the fact that Applicant's husband is Singla rather than Tamil supported a finding that the Applicant's explanation as to why she left and could not return TO Sri Lanka was not credible. These conclusions were reasonable and should not be disturbed.

[56] The Respondent notes that the above findings were made in addition to findings that: (i) the Applicant had an IFA; (ii) the Applicant can register with the police in Colombo; (iii) it is not credible that the Applicant is still sought by the EPDP even though she did not do anything for the LTTE; and (iv) there is now peace in Sri Lanka, making it safe for the Applicant to return. The Respondent asserts that even if the findings regarding the Applicant's husband and his return are unreasonable, such an error is immaterial, as the determination of the Officer that the Applicant can return to Sri Lanka and register there is wholly supported by the numerous other factual credibility findings: *Martinez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1065; *Guan v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 452 (TD).

ANALYSIS

[57] The Officer relied upon a footnote at page 10 of the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka (5 July 2010), which provided as follows:

> It is reported that persons who want to move to Colombo must register with the local police. Registration usually requires a national identification card or passport and information on the planned length and purpose of stay.

[58] The Officer concluded that, because the Applicant had a Sri Lankan Identity Card, she would be able to register in Colombo. The logic is unreasonable. Just because a national identification card or passport is required, does not mean that anyone who possesses a national identification card will be allowed to register in Colombo. This is naïve and wilfully blind.

[59] For example, the officer relied upon a footnote in one document that referred to and excerpted some information from another cited document.

[60] The same source document also makes the following obvious point:

> 23. In theory, anyone was entitled to register to stay in Colombo, but some sources suggested that young Tamil men originally from the North or East of the country could encounter difficulties and face closer scrutiny. The presence of any of the risk factors noted above would also generate greater attention from the police. In general, registration would be easier if people indicated that their stay in Colombo was temporary.
>
> 24. The risk factors noted above in the document are:
>
> If an individual:
>
> a. Had a previous record as a suspected or actual LTTE member;
> b. has been identified as having relatives in the LTTE;
> c. has a previous criminal record and/or arrest warrant outstanding;
> d. has jumped bail/escaped from custody;
> e. has signed a confession or a similar document;
> f. has been asked by the security forces to become an informer;
> g. has visible scarring;
> h. has returned from London or another center of LTTE fundraising;
> i. has illegally departed from Sri Lanka;
> j. has made an asylum claim abroad;
> k. lacks an ID card or other documentation.

[61] During the course of her interview, the Applicant provided evidence that suggested that some important risk factors were presented in her case:

a. The Applicant is making an asylum claim to Canada;

b. The Applicant once put her name forward for the LTTE in a local election in Delft.

She has a record of being a suspected LTTE member or sympathizer;

c. The Applicant went to Jafna for six months in 2005 where she was threatened by the EPDP;

d. The Applicant had a relative in the LTTE, a cousin who was recruited to combat in Vanni;

e. The Applicant had a previous record with the EPDP and had been threatened by them.

[62] In other words, even if footnote 76 on page 10 of the UNHCR Guidelines is correct and that registration "usually requires a national identification card…," this does not mean that other factors, such as the risk factors outlined above, will simply be disregarded if a Tamil produces a national identification card.

[63] As the Applicant says, even if all formal requirements are met, a consideration of the risk factors present in each case is required in order to assess whether permission to register in Colombo is likely to be granted. The risk factors were not analyzed in this case and this makes the Decision unreasonable even though the husband had returned to Colombo for six months in 2010. The Applicant did not return with the husband and the risk factors in his case are not the same as those of the Applicant.

[64] The Decision is not saved by the mention of an IFA in the CAIPS notes. To begin with, when the CAIPS notes are read in conjunction with the refusal letter it is not possible to tell what the Officer's final conclusions are on IFA. The Officer's final conclusion is contained in the Letter of Referral:

> As a result of the foregoing, I am not satisfied that this is a well-founded fear of persecution based on the reasons listed in the definition of Convention Refugee. Further based on your statements at interview, I am not satisfied that you had been or continue to be seriously and personally affected by civil war or armed conflict.

[65] The "foregoing" in this conclusion is what is contained in the Refusal letter. The Officer makes it clear that the negative Decision regarding persecution is based upon the reasons given in the Refusal letter. Thus, it is not possible to say whether the IFA – which is raised and commented upon in the CAIPS notes – forms part of the final Decision. Hence, I do not think it would be safe or reasonable to conclude that the Officer also rejected the claim because of the availability of an IFA. The Officer must provide clear and coherent reasons for a Decision. See *Nagalingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1397 at paragraph 15. Because of the way the Officer has written the refusal letter, it is not clear whether, in the final determination, the Officer relied upon IFA as a ground of exclusion.

[66] In addition, I think it would also be unsafe and unreasonable to rely upon IFA in a Decision where the central point of concern is that the Officer has chosen to rely upon a bare formal requirement and has neglected to assess the actual risk factors which the Applicant placed on the record.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The 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

SOLICITORS OF RECORD

DOCKET:	IMM-7464-10
STYLE OF CAUSE:	**MARIACHRISTIN ALFRED** **and** **THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	July 15, 2011
REASONS FOR JUDGMENT AND JUDGMENT	**Russell J.**
DATED:	August 11, 2011

APPEARANCES:

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