Federal Court  Cour fédérale

Date: 20170922

Docket: IMM-5196-16

Citation: 2017 FC 834

Ottawa, Ontario, September 22, 2017

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

JEEVAKARAN RAMANATHAN

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Jeevakaran Ramanathan, the applicant, seeks judicial review of a decision by the Minister's delegate [the Delegate] dated December 8, 2016, determining that he could be removed to Sri Lanka despite having been recognized as a Convention refugee in 2001. The Delegate found Mr. Ramanathan to be inadmissible for serious criminality under paragraph

36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], to be a danger to the public in Canada, and ultimately, that the exception to the non-refoulement principle found at paragraph 115(2)(a) of the IRPA applied to his situation.

[2] The Court closely considered the documents, affidavits, authorities and arguments submitted by the parties. In light of the applicable standards of review, and for the reasons exposed hereinafter, the Court will deny this Application for judicial review.

II. Factual Background

[3] Mr. Ramanathan is a citizen of Sri Lanka who entered Canada on May 18, 2000. On January 16, 2001, he was found to be a Convention refugee by the *Immigration and Refugee Board of Canada* [IRB], and on April 28, 2005, he was granted Canadian permanent resident status. In 2007, Mr. Ramanathan married Mrs. Rehka Selvarajah, and the couple has three minor children.

[4] It is not disputed that Mr. Ramanathan is inadmissible to Canada for reasons of serious criminality pursuant to paragraph 36(1)(a) of the IRPA. He was convicted on 19 different counts relating to five separate instances before the Canadian criminal courts:

- April 17, 2007: Convicted of theft under $5,000. Sentenced to a fine and one year of probation.
- February 3, 2010: Convicted of robbery (para 344(b) of the *Criminal Code*, RSC 1985, c C-46 [*CCC*]). Received a suspended sentence with a two-year probation, 100 hours of community work and a fine.
- June 20, 2011: Convicted of forging or falsifying credit cards, (s 342.01 *CCC*); two counts of fraud under $5,000 (subpara 380(1)(b)(i) CCC); and assaulting a peace officer

(para 270(1)(a) *CCC*). Sentenced to a 12-month conditional sentence, one year of probation and a fine.

- April 7, 2014: Convicted of theft over $5,000 (para 334(a) *CCC*); possession of break-in instruments (para 351(1)(a) *CCC*); obstruction of a peace officer (para 129(a)(d) *CCC*); and two counts of credit card theft (para 342(1)(c)(e) *CCC*). Sentenced to five months of conditional sentence and two years of probation for the theft under $5,000; and to two months conditional sentence and two years of probation for the other convictions.

- On or around February 12, 2015, he was arrested and held until his charges were dealt with and on July 10, 2015, he was convicted in three criminal files: (1) four counts of fraud over $5,000 ($575,000.00$ in total, para 380(1)(a) *CCC*); (2) possession of forged document with knowledge (para 368(1)(d) *CCC*), possession of an identity document that relates to another person (para 56.1(4)(a) *CCC*), possession of property under $5,000 with knowledge that it was obtained by crime (subpara 355(b)(i) *CCC*), and possession of counterfeit money (para 450(b) *CCC*); and (3) failure to comply with probation order (subpara 733.1(1)a) *CCC*). Sentenced to imprisonment for 2 years less one day going forward (with 8 months and 1 day of presentence custody also noted) followed by 3 years of probation.

[5] As part of his criminal history, Mr. Ramanathan's risk of reoffending, among others, was evaluated by various interveners, and various police reports were also prepared. It is worthy to note a few conclusions.

[6] In a police report dated February 17, 2015, prepared for the purpose of a potential bail hearing, the detective sergeant reviewed Mr. Ramanathan's past criminal activities and concluded that Mr. Ramanathan is a "notorious criminal" who takes advantage of vulnerable people to achieve his own ends and who does not refrain from using violence for the purpose of evading justice. This explains why the SWAT team was deployed to arrest him in 2015. The police report recommended detention in order to protect the public and ensure his presence in court (at p 5, 13).

[7] In a risk and needs assessment report dated August 19, 2015, the probation officer noted that Mr. Ramanathan's crimes were of an acquisitive nature, but also demonstrated that he was capable of violence. The officer noted that Mr. Ramanathan was unable to explain the consequences of his actions on his victims and society in general. On the contrary, his expression of remorse was solely related to the consequences of his actions on himself. It evaluated a moderate risk to re-offend (at p 9).

[8] An October 31, 2015 report to the *Commission Québécoise des libérations conditionnelles* observed that Mr. Ramanathan demonstrated a tendency to walk away from his responsibilities and minimize his previous offences and their effects on his victims. The report recommended that Mr. Ramanathan continue to work on himself in prison, indicating that he needed to reflect on his criminal behaviour.

III. Impugned Decision

[9] On December 8, 2016, the Delegate determined that Mr. Ramanathan was inadmissible for serious criminality and constituted a danger to the public in Canada. In his reasons, the Delegate established his mandate and examined (I) the applicable provisions of the IRPA; (II) the facts of the case; (III) the danger assessment; (IV) the risk assessment; and (V) the humanitarian and compassionate considerations before (VI) rendering his decision and (VII) confirming the material considered. Ultimately, the Delegate found that the need to protect Canadian society outweighed the possible risk Mr. Ramanathan might face if returned to Sri Lanka. The Delegate thus decided that Mr. Ramanathan could be removed pursuant to paragraph 115(2)(a) of the IRPA.

[10] Considering the issues raised by Mr. Ramanathan, parts III, IV and V of the Delegate's reasons appear particularly relevant to these proceedings. It does not appear necessary to outline the applicable provisions or the facts as outlined by the Delegate as they are not in dispute.

[11] In relation to (III) the danger assessment, the Delegate was first satisfied that Mr. Ramanathan is indeed inadmissible for "serious criminality" pursuant to paragraph 36(1)(a) of the IRPA.

[12] The Delegate summarized Mr. Ramanathan's submissions that he was not a danger to the public. Mr. Ramanathan stressed that his then current incarceration, his first one, had forced him to evaluate his actions and their consequences; that the probation officer had rated the risk of recidivism as moderate; that he could count on his wife's support; that he was working at the detention centre and that his new circumstances would now be preventing him from returning to his past life.

[13] The Delegate outlined that in assessing whether Mr. Ramanathan is a "danger to the public" he must determine in fact if Mr. Ramanathan presents "a present or future danger to the public"; whether or not there is sufficient evidence on which to formulate the opinion that Mr. Ramanathan is a potential re-offender, whose presence in Canada would pose an unacceptable risk to the public. Hence, this is the test the Delegate applied.

[14] The Delegate then noted that the seriousness of Mr. Ramanathan's offences had progressively increased with the passage of time, starting with theft and ultimately graduating to

well-planned and orchestrated criminality with multiple players, taking advantage of vulnerable members of the Sri Lankan community on social assistance in order to draw them into his schemes. According to the Delegate, Mr. Ramanathan's criminality was well-entrenched and formed part of his lifestyle.

[15] The Delegate noted that while little violence was involved in the commission of Mr. Ramanathan's crimes, they were still dangerous to the public. Indeed, Mr. Ramanathan enriched himself at the expense of others. The Delegate noted that the moderate risk did not suggest a low risk given the scale used, and that a reading of the reports on the record suggests Mr. Ramanathan is not rehabilitated and would have limited potential to lead a crime-free lifestyle in the future. Hence, the Delegate concluded that Mr. Ramanathan's criminal activities were serious and dangerous to the public, and that there was a lack of evidence of rehabilitation. He thus found that, on a balance of probabilities, Mr. Ramanathan represented a present and future danger.

[16] In relation to (IV) the risk assessment, the Delegate noted that the situation in Sri Lanka had changed since 2000, when Mr. Ramanathan came to Canada. The Delegate reviewed the documentary evidence. The Delegate found there was little to suggest Mr. Ramanathan, as a Tamil returning to Sri Lanka, fitted within any of the profiles which would now put him at particular risk of ill-treatment, noting that Mr. Ramanathan got married at the Deputy High Commission of Sri Lanka in India in 2007, thus showing he had no difficulties approaching the Sri Lankan authorities.

[17] The Delegate having considered the risk to life, liberty and security of the person and being informed by the risks set out in subsection 115(1) of the IRPA and section 7 of the Charter, found Mr. Ramanathan will not personally face a risk of persecution, risk to life, liberty or security of the person on a balance of probabilities.

[18] With regards to (V) the humanitarian and compassionate considerations, the Delegate reviewed Mr. Ramanathan's family situation, the impact of a separation on his wife and children, the impact of his criminal activities on his children, his limited pro-social establishment, and the presence of his parents in Sri Lanka. The Delegate concluded that the humanitarian and compassionate factors put forward by Mr. Ramanathan did not outweigh the danger he posed to the public.

[19] After consideration of all the facets of the case, the Delegate found that the need to protect members of the Canadian society outweighed the possible risks faced by Mr. Ramanathan if returned to Sri Lanka, and that the need to protect members of the Canadian society weighed in favour of Mr. Ramanathan's removal from Canada. The Delegate found that Mr. Ramanathan's removal would not, on a balance of probabilities, violate his rights under section 7 of the Charter.

IV. Submissions of the Parties

A. *Submissions of the Applicant*

[20] In his memorandum, Mr. Ramanathan does not explicitly refer to the applicable standard of review. At the hearing he argued that the test used by the Delegate to assess the danger to the public component must be reviewed against the correctness standard while the decision must generally be reviewed against the reasonable standard.

[21] Mr. Ramanathan raises five main arguments to challenge the Delegate's decision.

[22] The first argument pertains to the criteria, or test, used in determining what constitutes a danger to the public, submitting that non-violent crimes and that one prison sentence are insufficient to reach the threshold. Mr. Ramanathan, referring to Article 33(2) and Article 1F(b) of the Convention Relating to the Status of Refugees (Refugee Convention), further submits that only "serious non-political and particularly serious crimes" should be considered as part of the danger to the public assessment of paragraph 115(2)(a) of the IRPA, and that economic crimes are all but excluded.

[23] Mr. Ramanathan submits that "danger to the public" relates to acts of violence, drugs, human trafficking, sexual crimes, and very serious economic crimes, contrary to his own crimes where the only violence involved resisting arrest. He argues that he does not have multiple convictions for anything dangerous; he has a total of six convictions over a 12-year period of which the first three were minor. Moreover, while his 2015 conviction was for a relatively serious fraud, no violence or destruction of property was involved, and there is no evidence at all to suggest a high potential for reoffending.

[24] Mr. Ramanathan relies on *Galvez Padilla v Canada (Minister of Citizenship and Immigration)*, 2013 FC 247 [*Galvez Padilla*] where the Court allowed the applicant's application for judicial review despite his long list of convictions.

[25] The second argument pertains to the assessment of the risk, as the Delegate allegedly failed to consider the criteria set by the United Nations Convention against Torture.

[26] Mr. Ramanathan submits that he is not just a young Tamil returning to Sri Lanka, but also someone previously targeted as a Liberation Tigers of Tamil Eelam [LTTE] sympathizer, as decided by the Refugee Protection Division in 2001. However, according to Mr. Ramanathan, no analysis has been made of his perceived links with the LTTE, his previous experience as a victim of torture on several occasions, and the fact that several family members have been previously targeted and live abroad.

[27] The third argument pertains to the Delegate's assessment of the humanitarian and compassionate considerations as it did not give proper weight to the question of the children's best interests and to the principle of the protection of the family life.

[28] The fourth argument pertains to the Delegate's failure to balance the serious risk of torture and the protection of family life with the relatively minor criminal offences committed by this Convention refugee, particularly given the fact that the decision maker did not have the original file.

[29] In the final argument of his memorandum, Mr. Ramanathan cites section 24 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 [the *Canadian Charter*], and submits that new evidence should be admissible as the decision maker failed to respect his duty to assess important factors. He requests the permission to submit new evidence on the risk of return and his family life, given that there has been no serious consideration of these elements. Mr. Ramanathan believes that his previous lawyer did not consider that a danger opinion could be based only on non-violent crimes and may have made a mistake in that regard. Moreover, Mr. Ramanathan argues that the Delegate should have either provided him with an opportunity to testify, or if no, assessed the documentary evidence in a fair and sensible manner.

B. *Submissions of the Respondent*

[30] The respondent submits that the appropriate standard of review is reasonableness and that a high degree of deference is to be afforded to the Delegate's factual findings (*Nagalingam v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 153 at paras 31-35 [*Nagalingam*]).

[31] In response to the argument raised in relation to the interpretation of the danger to the public, the respondent submits that the assessment is not limited to "serious non-political or particularly serious crimes" and that economic crimes can be considered as dangerous to the public. The respondent stresses that the Delegate noted that the seriousness of the offences committed by Mr. Ramanathan had progressively increased with the passage of time. The respondent refers to the decision in *Arinze v Canada (Solicitor General)*, 2005 FC 1547 [*Arinze*].

[32] The respondent submits Mr. Ramanathan has not demonstrated that the Delegate finding that he is a danger to the public did not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[33] In relation to the risk assessment, the respondent submits that a past finding that an applicant is a Convention refugee is not a sufficient basis to establish present risk of harm (*Nagalingam* at para 25; *Al-Kafage v Canada (Minister of Citizenship and Immigration)*, 2007 FC 815 at para 15). In the same vein, being a Tamil does not in itself give rise to a well-founded fear of persecution or serious harm in Sri Lanka (UK Home Office Country Information Report 2016; *Krishnapillai v Canada (Minister of Citizenship and Immigration)*, 2015 FC 781 at para 13).

[34] The respondent contends that the assessment of the weight to be given to a document is a matter within the discretion of the tribunal (*Sidhu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 at para 15). Furthermore, a tribunal does not need to refer to every piece of evidence and is presumed to have considered all the evidence before it, even if not explicitly mentioned (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317 (FCA); *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA)).

[35] In relation to the humanitarian and compassionate considerations, the respondent submits that the Delegate was alert, alive and sensitive to the best interests of Mr. Ramanathan's children in Canada. According to the criminal investigation documentation, Mr. Ramanathan's family

was threatened with death by the Italian mafia because of his dealings with organized criminals. Thus, Mr. Ramanathan's continued presence in Canada may in fact endanger his children's lives. The Delegate also found that if Mr. Ramanathan were permitted to remain in Canada, his criminality may continue unabated and this would not only be a bad example and influence on his children, but he may simply continue to be unavailable as a father due to future incarcerations.

[36] Finally, the respondent argues that the Delegate was not required to treat the best interests of the children as an overriding or determinative factor in the analysis (*Okoloubu v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 326 at para 48). Parliament has not decided, as of yet, that the presence of children in Canada constitutes in itself an impediment to any "refoulement" of a parent illegally residing in Canada.

V. Issues

[37] As per the parties' submissions, the Court must decide whether the Delegate used the proper test in assessing the danger to the public component, and if he reasonably found that Mr. Ramanathan could be removed from Canada to Sri Lanka under paragraph 115(2)(a) of the IRPA.

VI. Analysis

A. *Standard of review*

[38] The Court concurs with the applicant that the question of whether or not the Delegate used the proper legal test must be assessed against the correctness standard (*Galvez Padilla* at para 31). However, the determination of whether or not Mr. Ramanathan constitutes a danger to the public in Canada turns essentially on an analysis of the facts, and the Delegate's decision must thus be reviewed against the reasonableness standard (*Nagalingam* at para 32; *Derisca v Canada (Citizenship and Immigration)*, 2013 FC 524 at para 24). The decision will be reasonable if it bears the qualities of justification, transparency and intelligibility, and falls "within a range of possible, acceptable outcomes which are defensible with respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

B. *Principles governing the danger opinion under section 115 of the IRPA*

[39] The principles governing the proper approach to be taken by the Delegate in conducting an analysis under paragraph 115(2)(a) of the IRPA have been summarized as follows (*Nagalingam* at para 44; *Hasan v Canada (Citizenship and Immigration)*, 2008 FC 1069 at para 10; *Galvez Padilla* at para 29):

1. A protected person or a Convention refugee benefits from the principle of non-refoulement recognized by subsection 115(1) of the IRPA, unless the exception provided by paragraph 115(2)(a) applies;

2. For paragraph 115(2)(a) to apply, the individual must be inadmissible on grounds of serious criminality (s 36 of the IRPA);

3. If the individual is inadmissible on such grounds, the delegate must determine whether the person should not be allowed to remain in Canada on the basis that he or she is a danger to the public in Canada;

4. Once such a determination is made, the delegate must proceed to a section 7 of the *Canadian Charter* analysis. To this end, the delegate must assess whether the individual, if removed to his country of origin, will personally face a risk to life, security or liberty, on a balance of probabilities. This assessment must be made contemporaneously; the Convention refugee or protected person cannot rely on his or her status to trigger the

application of section 7 of the Charter (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 127 [*Suresh*]);

5. Continuing his analysis, the delegate must balance the danger to the public in Canada against the degree of risk, as well as against any other humanitarian and compassionate considerations (*Suresh* at paras 76-79; *Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2005 FC 834 at para 19).

C. *Danger to the public*

[40] The concept of "danger to the public" referred to in section 115 of the IRPA is not defined within the IRPA, but it has been defined within the jurisprudence, namely by Justice Strayer in *Williams v Canada (Minister of Citizenship and Immigration)*, [1997] 2 FC 646 (see also *Thuraisingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 607 at para 32) and the test to be applied has thus been established:

> In the context the meaning of "public danger" is not a mystery: it must refer to the possibility that a person who has committed a serious crime in the past may seriously be thought to be a potential re-offender. It need not be proven--indeed it cannot be proven--that the person will reoffend. What I believe the subsection adequately focusses the Minister's mind on is consideration of whether, given what she knows about the individual and what that individual has had to say in his own behalf, she can form an opinion in good faith that he is a possible re-offender whose presence in Canada creates an unacceptable risk to the public.

[41] It thus requires a serious criminal offence, although conviction of a serious criminal offence is not, alone, sufficient to conclude that the individual poses a danger to the public in Canada (*Mohamed v Canada (Citizenship and Immigration)*, 2008 FC 315 at para 16). The Delegate needs to turn his mind to the actual circumstances of the offence(s) (*Galvez Padilla* at para 39), which he did in this case.

[42] The applicant asks the Court essentially to add to the text of section 115(2)(a) of the IRPA words found in the Refugee Convention, in order to raise the threshold and to exclude from the concept of "danger to the public" both economic crimes and situations where the offender has been incarcerated only once.

[43] However, the Courts have already confirmed that section 115 of the IRPA is the embodiment of Article 33(2) of the Refugee Convention into Canadian law (*Németh v Canada (Justice)*, 2010 SCC 56 at para 23, *Nagalingam* at para 37), and that it must be presumed that the Canadian domestic law conforms with international law (*R v Hape*, 2007 SCC 26 at paras 53-54, *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 70). We must therefore presume that Parliament fulfilled its international obligations related to non-refoulement of refugees by the adoption of section 115 of the IRPA, and thus rely on this section's wording as interpreted by the Courts.

[44] At the hearing, counsel for Mr. Ramanathan affirmed there existed an extensive set of case law confirming that economic crimes cannot be considered in the danger to the public assessment, and that he would submit the relevant decisions to the Court. However, counsel submitted no such case, even after having been reminded by the Court of his previous undertaking.

[45] To the contrary, the available case law unequivocally confirms that a crime need not be violent in order for the offender to constitute a danger to the public within the meaning of section 115 of the IRPA (*Arinze* at para 22) and that economic crimes could thus lead to a conclusion of

danger to the public. In *Arinze*, the applicant, who had been granted Convention refugee status in Canada in 1991, was subsequently convicted of approximately 28 CCC offences, one in which a term of imprisonment of more than six months had already been imposed (para 11). Justice Blais stated that:

> I disagree with the applicant's reasoning regarding section 115 and the parallel he draws between violent acts and the danger to the public classification. The wording of section 115 does not include limitations to only particular types of offences. It leaves the consideration of whether an individual constitutes a danger to the public to the discretion of the Minister's delegate. The Minister's delegate considered that violence was not used in the commission of the applicant's offence, but also acknowledged the number of crimes committed, their continuing nature, and the serious effect such crimes can and do have on the Canadian public. After weighing all the evidence before him, the Minister's delegate determined the applicant was a danger to the public based on the nature of his crimes (at para 22).

[46] Justice Blais's comments were applied in *Camara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 168 at paragraph 46 and, likewise, in *Kongolo c Canada (Immigration, Réfugiés et Citoyenneté)*, 2017 CF 489, where the Delegate issued a danger opinion after having considered the number of crimes committed and the lack of involvement in the rehabilitation process. The applicant did not challenge this finding before the Court and Justice Shore, after quoting paragraphs 21 to 23 of *Arinze*, did not address this question further.

[47] Paragraph 115(2)(a) of the IRPA excludes neither economic crimes nor individuals having been incarcerated only once, and the case law already confirmed these crimes can indeed be considered in the danger to the public assessment.

[48] Furthermore, although not directly applicable to paragraph 115(2)(a) of the IRPA, it is well established in criminal law that danger to the community includes physical or psychological danger as well as financial danger (*R v McKinnon*, 2005 ABCA 8 at para 39 and *R v Proulx*, 2000 SCC 5 at paras 75-76). In brief, there is no basis to support the exclusion of economic crimes from the danger to the public assessment.

[49] In *Galvez Padilla*, above, Justice de Montigny found that the danger opinion was unreasonable and allowed the Application for judicial review. He reiterated that while the applicant's crimes (consisting of theft, failing to attend Court, communicating for the purpose of prostitution, aggravated assault, and trafficking cocaine) were indubitably serious and unacceptable, the real issue was whether they rose to the magnitude of a "particularly serious crime" (at para 37). He found that the Delegate had not turned his mind to the actual circumstances of the offences as what weighed more heavily on his mind were the applicant's sexual behaviour and the fact that he admitted not disclosing his HIV status to his clients, behaviour for which the applicant was never convicted, let alone found inadmissible (at paras 42-43). Justice de Montigny, given the circumstances at hand and the fact that the individual's criminal record was peripheral to his dependence concluded: "If left standing, that decision could have the perverse effect of facilitating the removal of petty criminals, drug addicts involved only peripherally in the drug trade, and individuals who are HIV positive. Such a result would clearly not be in keeping with Canada's international obligations and must be censored" (*Galvez Padilla* at para 46).

[50] Mr. Ramanathan's circumstances are quite different as his criminal activities cannot be construed as peripheral, having appropriately been found to be "well entrenched", and are thus in any event, particular serious.

[51] The Court is satisfied that the Delegate applied the correct test in assessing the danger to the public component by evaluating the seriousness of the crimes and of the possibility to re-offend, that he properly turned his mind to the circumstances of the offences and, based on the record and the evidence, that his conclusions are reasonable.

D. *Risk assessment*

[52] The Delegate referenced to statements from the United Nations High Commissioner for Refugees made in September 2016; to the 2015 International Crisis Group report dated May 2016; to the United States Department of State 2015 Country Reports on Human Rights Practices (Sri Lanka) dated April 2016; to the United Kingdom Home Office Country Information and Guidance (Sri Lanka) dated May 2016. The UK documentation notably indicates that "A person being of Tamil ethnicity would not in itself warrant international protection. Neither in general would a person who evidences past membership or connection to the LTTE unless they have or are perceived to have a significant role in relation to post-conflict Tamil separatism or appear on a 'stop' list at the airport."

[53] Relying on these documents, the Delegate thoroughly discussed the prevalent situation in Sri Lanka and Mr. Ramanathan's profile. Contrary to the applicant's submission, the Delegate did address Mr. Ramanathan's link with the LTTE, concluding that there is little to suggest that

his profile fits within any categories at risk of persecution or serious harm, or that he would be seen as a high profile or influential ex-member of the LTTE.

[54] The Delegate's findings bear the qualities of justification, transparency and intelligibility, and fall within a range of possible outcomes.

[55] The access to the original refugee file of 2001 is not necessary given that the risk assessment must be made contemporaneously, as mentioned above.

[56] I see no reviewable error in this respect.

E. *Humanitarian and compassionate considerations*

[57] The February 2015 police report discusses Mr. Ramanathan's involvement with the Italian mafia. The report indicates: "il y a quelques mois, il a été menacé par des mafieux italiens qui exigeaient de lui qu'il paie 120 000 $ à défaut de quoi il le tuerait lui et sa famille, ce qui indique qu'il a fort probablement fait quelque chose qui a déplu à quelqu'un du milieu interlope". The record contains no evidence supporting this assumption, which is contested by Mr. Ramanathan.

[58] Even so, the Delegate refers to this assumption to find that Mr. Ramanathan's children may be safer without him by their side. This statement constitutes speculation and it was not reasonable for the Delegate to rely on it in its evaluation of the best interests of the children, but this is not fatal to the decision.

[59] After a comprehensive review of the file, of the family's situation, of the evidence, and of the Delegate's reasons, the Court considers that it was reasonable to conclude that the humanitarian and compassionate considerations put forth were insufficient to outweigh the danger to public.

F. *Evidence*

[60] Mr. Ramanathan does not point to a specific piece of evidence in order to substantiate his allegation that the Delegate did not refer to the opinion of the correctional authorities or anyone who has dealt with him since his incarceration. In the same vein, Mr. Ramanathan's request to submit new evidence on the risk of return and his family life given that there has been no serious consideration of these elements fails to identify the evidence he wished to submit. Counsel has not provided any additional information at the hearing and the Court will thus not address this further.

G. *Questions submitted for certification*

[61] At the hearing, Counsel for the applicant submitted a list of 9 questions for certification, in 3 groups. The respondent opposed certification, arguing they did not satisfy the requirements of section 74(d) of the IRPA, citing extracts of the case law and arguments for each of the 9 questions.

[62] The applicant took issue with the fact that the respondent addressed each question separately and, by a letter dated July 31, 2017, the applicant rephrased his central question and

confirmed that all sub questions related to that central question. He thus submitted the following central question:

> "When the minister studies the option of issuing a danger opinion, must he respects the test of a particularly serious crime of Article 33(2) of the Geneva Convention and be mindful of the test of a "serious non-political crime" of Section F of the Geneva Convention?"

[63] The Court first note that the references are incomplete, and assume the applicant refers to Article 33(2) and Article 1F(b) of the Convention Relating to the Status of Refugees (Refugee Convention).

[64] The principles governing the certification have recently been confirmed by the Federal Court of Appeal in *Mudrak v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 178 at paras 15 to 19.

[65] The Court sides with the respondent's arguments as laid out in his reply to deny certification, reiterates that section 115 is the embodiment in Canadian law of Article 33(2) of the Refugee convention and notes that Article 1F(b) does not relate to the facts at hand.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application be dismissed.

2. No question is certified.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5196-16
STYLE OF CAUSE:	JEEVAKARAN RAMANATHAN v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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