

Federal Court



Cour fédérale

**Date: 20171110**

**Docket: IMM-1349-17**

**Citation: 2017 FC 1034**

**Ottawa, Ontario, November 10, 2017**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**SELVARAJINI THANABALASINGAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision [Decision] by an Immigration Officer [the Officer] that the Applicant is not a Convention refugee, in the meaning of section 96 of the IRPA; not a person who has compelling reasons arising out of previous persecution, torture, treatment or punishment for her to refuse to avail herself of the protection of the country

she left in the meaning of subsection 108(4) of the IRPA; nor a person with sufficient humanitarian and compassionate considerations which would justify exempting her from the requirements of the IRPA. The Applicant is seeking an order to quash the Officer's Decision dated January 25, 2017 and return the matter to the visa office for a new determination by an impartial, competent visa officer.

[2] For the reasons that follow, the application is rejected.

## II. Background

[3] The Applicant was born in September 1968 and is a Tamil citizen of Sri Lanka, where she had been living before moving to India in 1998.

[4] The Applicant has two elder sisters who are Canadian citizens and a younger brother who has permanent residency in Switzerland.

[5] In her affidavit, she claims that while living in Sri Lanka she was suspected of having ties to the Liberation Tigers of Tamil Eelam [LTTE], although she denies that she or her family had any connexion with the organization. She further claims that she was sexually harassed when searches were carried out of the family home and was assaulted and physically abused on six occasions when in prison. She claims the authorities have details of her and she would have a problem if she went back to Sri Lanka.

[6] In her interview however, the Applicant indicated (on two occasions) that she was twice captured by the Army and that her father had her released on payment of money. She did not mention being sexually harassed in searches, or assaulted and physically abused when being held by the Army.

[7] She was asked to join the LTTE movement, and fearing the consequences, left Sri Lanka with her father in 1998, leaving behind their house and properties. She continues to live in India without any residential status, but without any difficulties. Her Canadian niece and nephew have been providing support from Canada and co-sponsored the Applicant.

[8] In February 2010, she applied for Canadian Permanent Residence as a refugee under its associated programs.

[9] In 2011, after the end of the war, the Applicant's father returned to Sri Lanka and discovered that his house was occupied by the Eelam People's Democratic Party [EPDP] supporters. According to an unknown person, who advised the Applicant's sister in Canada, her father was killed after filing a complaint against EPDP supporters occupying their house and the matter was not investigated.

### III. Impugned Decision

[10] On January 25, 2017, the Applicant was interviewed by an immigration Officer. He concluded that the information provided was insufficient to satisfy him that the Applicant met the requirements of either the refugee class or the exception of subsection 108(4), or that there

was evidence of sufficient humanitarian and compassionate factors. His conclusions may be summarized as follows:

- a. She left Sri Lanka almost twenty years ago, so any interest authorities may have had in the past is likely much diluted or nonexistent.
- b. Neither she nor her family had ties to groups that were of interest to the government before the war ended, or today.
- c. At no time during her interview did she raise concerns that she was sexually and physically abused in Sri Lanka before leaving for India, despite concerns being mentioned in the materials filed by her representative.
- d. While there are human right violations reported that continue to affect women in Sri Lanka's North and East, based on the information provided relating to her particular circumstances and her profile, she could return to Sri Lanka today to live there.
- e. Her repeated concern for her security is that if something were to happen to her, she would be alone and that there is no one to take care of her like her father, or who would know if anything happened to her.
- f. The humanitarian grounds advanced by the Applicant were that she has moral support in Canada and can obtain work in a restaurant, which are not sufficient, whereas she was not facing any difficulties in India where many women reside alone.
- g. There are no compelling reasons arising out of previous persecution etc. that would support an exception pursuant to subsection 108(4) of the Act.

IV. Legislative Framework

[11] The following provisions of the IRPA are applicable in these proceedings:

**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.

**Cessation of Refugee Protection***Rejection*

108 (1) A claim for refugee protection shall be rejected,

**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.

**Perte de l'asile***Rejet*

108 (1) Est rejetée la demande d'asile et le

and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

[...]

(e) the reasons for which the person sought refugee protection have ceased to exist.

### **Exception**

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

[...]

e) les raisons qui lui ont fait demander l'asile n'existent plus.

### **Exception**

(4) L'alinéa (1)e ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[12] The following provisions of the Immigration and Refugee Protection Regulations [IRPR]:

### **Member of Convention refugees abroad class**

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.

### **Qualité**

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.

**Humanitarian-protected  
Persons Abroad**

**Personnes protégées à titre  
humanitaire outre-  
frontières**

*Person in similar  
circumstances to those of a  
Convention refugee*

*Personne dans une situation  
semblable à celle d'un réfugié  
au sens de la Convention*

146 (1) For the purposes of  
subsection 12(3) of the Act, a  
person in similar  
circumstances to those of a  
Convention refugee is a  
member of the country of  
asylum class.

146 (1) Pour l'application du  
paragraphe 12(3) de la Loi, la  
personne dans une situation  
semblable à celle d'un réfugié  
au sens de la Convention  
appartient à la catégorie de  
personnes de pays d'accueil.

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.

V. Issues

[13] The following issues arise in this application:

1. Was the Officer's Decision concluding that the Applicant is not a refugee, or a humanitarian protected person abroad unreasonable?
2. Was the Officer's Decision unreasonable in concluding that the Applicant did not establish the existence of compelling reasons pursuant to subsection 108(4) of the IRPA, arising from her previous persecution, to refuse to avail herself of Sri Lanka?

VI. Standard of Review

[14] The Officer's decision on an application for permanent residence is reviewable on the reasonableness standard.

VII. Analysis

[15] The Court finds that there are no reviewable errors, while the evidence and explanation is sufficient to reasonably support the three conclusions of the Officer denying her permanent residency. Any fair reading of the interview notes demonstrate that her inducement for becoming a permanent resident of Canada, repeated on several occasions, was because she wanted to have the support of her sisters, and because she could obtain employment in Canada.



[16] The Applicant never mentioned during her interview that she would be persecuted in Sri Lanka because she is a woman. Neither did she mention the fact alleged in her affidavit of being sexually harassed during searches, or assaulted or physically abused in prison. Moreover she stated twice that she was imprisoned on only two occasions. These appear to have had financial considerations, inasmuch as her father paid for her release. Instead, she stated repeatedly that she did not want to return there because she did not want to be alone, as for example:

Q. Why could you not go back to Colombo to live? The war is over now since 2009. The events that happened to you happened a long time ago.

A. The life is not secure there. I don't want to go there.

Q. Why is it not secure?

A. I have no one in SL. No one is there to take care of me.

Q. Your family abroad take care of you now, and you can live in India. Any employment in India?

A. No.

Q. How do you survive economically?

A. My sister's children take care of me. My brother too.

Q. The only reason you don't want to go back to SL is because there is no one there to take care of you?

A. Life is not secure there, when I was there, my father was taking care of me. No one would come to know if something happened to me.

[17] The Applicant submits that the Officer failed to give any consideration to the country conditions in Sri Lanka. The Court concludes that they were considered, but with reference to the profile of the Applicant, which the Applicant also challenges. The Court disagrees that there is reliable evidence to challenge the Officer's conclusions rejecting that she is on a list of associates

to the LTTE, the evidence of her father's death in 2010. In addition, successful refugee claims by her sister and brother are not relevant without evidence supporting the claims and grounds for approval.

[18] Based on the country conditions evidence in relation to the Applicant's profile, it is not unreasonable to conclude after 20 years, even accepting that she may have been sexually harassed during searches or mistreated in prison, that there is any reason to reject the Officer's conclusion that the Applicant would not remain a person of interest to the authorities on her return to Sri Lanka. The Court disagrees with the Applicant's submission that a change in country conditions over a period of 20 years is not relevant to how authorities would perceive the Applicant on her return to Sri Lanka.

[19] With respect to her vulnerability as a single woman in Sri Lanka and the argument of the Officer's failure to consider the risks for a single woman in Sri Lanka or disregarding the Gender Guidelines, the Applicant did not present evidence or raise these issues as concerns in her interview. In any event, the country condition evidence does not support a profile of being a single woman without relatives living in Sri Lanka as sufficient to support a refugee claim. As indicated, there is sufficient evidence in the record for the Officer to conclude that her application for permanent residence was based on the "moral support of her family and opportunities in Canada" as opposed to subjective fears of persecution under section 96 of the IRPA.

[20] With respect to humanitarian and compassionate considerations, the Court does not accept that the argument of Applicant's counsel that "[t]he applicant is alone in India. Her desire is to be reunited with her sisters in Canada. What more compelling reason can the applicant provide?" Although sympathetic to the situation of the Applicant, the Court nevertheless disagrees that these arguments based on bettering her living conditions by reuniting with family members would be sufficient to challenge the Officer's rejection of her humanitarian claim.

[21] Of the factors considered to be relevant in *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 27 [*Kanhasamy*], the Applicant relies only upon that of the "consequences of the separation of relatives". Moreover, the Applicant has lived "without difficulties" in India for a period approaching 20 years. The Court finds that this would be a relevant factor in determining whether her situation is such as "would excite in a reasonable man [*sic*] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the Immigration Act": per *Kanhasamy*, at para 13, citing with approval *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 at 350.

[22] Finally, the Court concludes that there are no "compelling reasons", as required by subsection 108(1)(e), arising out of previous persecution, torture, treatment or punishment that would justify the Applicant gaining Canadian permanent residency. The exceptional circumstances contemplated by the provision only apply to a small minority of claims and are fact-specific. They are generally defined to apply to those who suffered such appalling persecution that their experience alone is a compelling reason not to return them even though

conditions have changed eliminating the fear of persecution: see *Canada (Minister of Employment and Immigration) v Obsoj*, [1992] 2 FC 739 (FCA), *Moya v Canada (Citizenship and immigration)*, 2016 FC 315, at para 122. It is reasonable for the Officer to have concluded that the Applicant did not demonstrate the existence of compelling reasons that would allow her to benefit from the exception in subsection 108(4) of the IRPA.

[23] For all of the foregoing reasons, the Court concludes that the Officer's Decision meets the reasonableness requirements of justification, transparency and intelligibility within the decision making process, and falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and the law, such that the application must be dismissed.

#### VIII. Conclusion

[24] The application is dismissed and no question is certified for appeal.

**JUDGMENT IMM-1349-17**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified for appeal.

"Peter Annis"

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Judge

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

**DOCKET:** IMM-1349-17

**STYLE OF CAUSE:** SELVARJININI THANABALASINGAM v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL (QC)

**DATE OF HEARING:** OCTOBER 11, 2017

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** NOVEMBER 10, 2017

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