Federal Court  Cour fédérale

Date: 20180802

Docket: IMM-313-17

Citation: 2018 FC 811

Ottawa, Ontario, August 2, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

KARTHIK MARIO RAVICHANDRAN
VINODH MARINO RAVICHANDRAN
DIVIYA MARIZA RAVICHANDRAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Karthik Mario Ravichandran [K], Vinodh Marino Ravichandran [V], and Diviya Mariza Ravichandran [D] (siblings), seek judicial review of a November 22, 2016, decision made by an Immigration Officer of the High Commission of Canada in New Delhi, India [the Officer], which rejected their application for Permanent Residence Visas under the

Convention refugee abroad class and humanitarian-protected persons (Country of asylum) class [the Decision]. The reasons for the Decision are found in the Global Case Management System [GCMS] notes.

[2] The Decision was rendered pursuant to sections 11 and 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and sections 139 and 144-147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The Officer further considered subsection 108(4) of the *IRPA* and found that it did not apply.

[3] To assist with comprehension of these reasons a brief summary of the legislation is set out in section IV of this Judgment and Reasons.

[4] For the reasons that follow this application is allowed based upon the deficient analysis provided for why subsection 108(4) of the *IRPA* does not apply.

II. **Previous applications for judicial review**

[5] Procedurally, there have been two previous applications for judicial review. The first one, which sought review of a negative determination made on January 31, 2012, was settled on consent and returned for redetermination.

[6] That redetermination resulted in another refusal and another application for judicial review. In a decision dated May 22, 2015 and reported as 2015 FC 665, Madam Justice Tremblay- Lamer allowed the application and sent the matter back for another redetermination.

[7] The Applicants attended at the High Commission of Canada in New Delhi on September 7, 2016, to be interviewed by the Officer for the redetermination. At that time they provided new evidence and new submissions in support of their claims. As previously stated, the Officer refused their application in the Decision.

[8] That redetermination Decision is the subject of this judicial review application.

III. **Background Facts**

[9] The Applicants are siblings and citizens of Sri Lanka who are of Tamil ethnicity. K (age 31) and V (age 28) are male, and D (age 25) is female. K is the principal applicant and is the oldest.

[10] The Applicants fled Sri Lanka for India in 2007 as a result of what had transpired between their father, the police, and a paramilitary organization known as the Karuna group. Briefly summarized, their father had refused to issue an airline travel ticket through his travel agency to a family member of the leader of the Karuna group. He was subsequently abducted by police and tortured.

[11] The father provided details of his torture and detention to a newspaper in Sri Lanka whereupon the editor warned him he could be at risk causing the father to flee. The Sri Lankan police and members of the Karuna group went to the Applicants' house looking for their father. When the mother refused to disclose his whereabouts she was assaulted as were K and D. K was

taken away, beaten and tortured. At that time he signed a blank piece of paper which was subsequently said to be a blank confession.

[12] After these events the Applicants fled to India in 2007. They have remained there without status but, at some point in time, the Applicants heard that since the conflict in Sri Lanka ended India was deporting asylum-seekers back to Sri Lanka.

[13] In 2010, as a result of such concern, the Applicants applied for Canadian permanent residency. They were privately sponsored by their relatives in Canada. The specific sponsorship classes were the Convention refugee abroad class and Humanitarian-protected persons abroad class.

IV. **Applicable legislation**

[14] The legislative provision in this instance which enables the Applicants possible selection as permanent residents is subsection 12(3) of the *IRPA*:

Refugees	**Réfugiés**
(3) A foreign national, inside or outside Canada, may be selected as a person who under this Act is a Convention refugee or as a person in similar circumstances, taking into account Canada's humanitarian tradition with respect to the displaced and the persecuted.	(3) La sélection de l'étranger, qu'il soit au Canada ou non, s'effectue, conformément à la tradition humanitaire du Canada à l'égard des personnes déplacées ou persécutées, selon qu'il a la qualité, au titre de la présente loi, de réfugié ou de personne en situation semblable.
(my emphasis)	(Non souligné dans l'original)

A. *Convention Refugees*

[15] The Convention refugees abroad class is prescribed by section 144 of the *IRPR* as a class of persons who may be issued a permanent resident visa. Section 145 of the *IRPR* establishes that a foreign national is a member of the class if an officer outside Canada determines them to be a Convention refugee.

[16] Section 96 of the *IRPA* establishes that a Convention refugee is a person who has a well-founded fear of persecution by reasons of race, religion, nationality, membership in a particular social group or political opinion, and cannot return to their country of nationality or former habitual residence because they are unable, or unwilling due to fear, to avail themselves of protection in their country of nationality, or are unable, or unwilling due to fear, to return to their country of former habitual residence if they do not have a country of nationality.

B. *A person in similar circumstances*

[17] By virtue of section 146 of the *IRPR*, Humanitarian-protected Persons Abroad are those persons who are in similar circumstances to Convention refugees. In that case, they are members of the country of asylum class and may be issued permanent resident visas.

[18] Section 147 of the *IRPR* requires that to be a member of the country of asylum class an Officer must determine the person is “in need of resettlement because: (a) they are outside all of their countries of nationality and habitual residence; and (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.”

V. **The Decision and GCMS notes**

A. *The Decision letter*

[19] The Decision is a two page letter dated November 22, 2016, from the Government of Canada High Commission of Canada in New Delhi, India. It sets out the provisions of section 96 in full and then refers to various sections and subsections of both the *IRPA* and the *IRPR*. From the *IRPA* subsections 2(2), 11(1), and 108(4), along with paragraph 108(1)(e), are mentioned. From the *IRPR* sections 145 and 147, subsection 146(2), and paragraph 139(1)(e), are all mentioned.

[20] The final paragraph of the letter indicates the Officer was not satisfied that the Applicants met the requirements of the *IRPA* and the *IRPR*, and therefore the application was refused.

B. *The GCMS notes*

[21] The GCMS notes were delivered as part of the Certified Tribunal Record. They contain the underlying reasons for the Decision. Although the information in the GCMS notes date back all the way to March 2010, the Applicants are only challenging the part of the GCMS notes that apply to the current matter. These notes run from May 2015 to November 22, 2016.

[22] The GSMC notes show that the Applicants all attended an interview with the Officer on September 7, 2016. The interview was conducted in English as all the Applicants were proficient in English. None of the Applicants are employed; they are all studying and it appears they have been since their arrival in 2007.

[23] After explaining the procedure to the Applicants the Officer confirmed their identities noting that none of them held a United Nations High Commissioner for Refugees [UNHCR] card. The Applicants stated they had not approached the UNHCR when they arrived in India as they were not aware they could.

[24] Each applicant possessed a Sri Lankan passport valid until 2018. It appeared from the passports that K travelled to Nepal and Thailand which he said was so he could travel on the MV Sun Sea to Canada in 2010. K told the Officer that his father forced him to go but they backed out. K does not know where his father is now. None of them have seen him since 2010, in India. He last contacted them in 2012.

[25] The Applicants said their father was physically abusive and they "wanted to cut ties with him." They moved, along with their mother and uncle, to another house in India to accomplish this desired separation.

[26] It would appear from the GCMS notes that the Officer was aware of the Applicants' concerns "that they are at risk [if] going back [to Sri Lanka] because of their link to their father, the fact that Karthik was detained previously and that their story is now in the public domain (their Federal Court Decision) and that as a result they fear reprisal by the authorities should they return."

[27] The Officer also notes that the documentary material provided by the Applicants on adverse country conditions is specific to those of certain risk profiles: "former LTTE

combatants/supporters, perceived or otherwise, journalists, activists, etc.". The Officer reiterates that the Applicants and their father are not connected in any way with the LTTE or other Tamil groups and that they do not fit the risk profiles. The Officer notes that "[t]he element of fear has considerably diminished, at least in Colombo and the South."

[28] The Officer discusses that it has been almost 10 years since the events of mistreatment with the Karuna/Police, that the Applicants could return to Colombo with their mother, and that they "could not sufficiently explain why the authorities would go to such length to pursue them should they return" given that no information was provided that those who mistreated the Applicants in 2007 had threatened them after coming to India, currently threatened them, or "continue to seek them out."

[29] The formal interview concluded at 10:30 a.m., one and one-half hours after it began.

[30] In summation, the Officer states that they "do not believe that [the Applicants] have a well-founded fear of persecution based on the evidence … [and that] [t]hey may have been seriously and personally affected by the civil war … in 2007, but there is currently no civil war or armed conflict in Sri Lanka and they are currently not seriously or personally affected by massive violation of human rights." The Officer goes on to state that the exemption provided by subsection 108(4) of the *IRPA* does not apply, although no reasons are given in conjunction with this statement.

VI. **Issues and Standard of Review**

[31] The parties agree, as does the Court, that the issues presented involve questions of mixed fact and law. As such they are reviewable on a standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]; *Mushimiyimana v Canada (Citizenship and Immigration)* 2010 FC 1124 at para 21, 93 Imm LR (3d) 157.

[32] While the only issue is whether the Decision is reasonable, the Applicants allege there are three errors, any one of which they say makes the Decision unreasonable; it is alleged that the Officer:

1. failed to assess cumulatively the grounds of risk raised (including whether those who had been abroad 10 years as asylum seekers would come to government attention);
2. either ignored or failed to consider (and failed to address in the reasons) evidence contrary to the Officer's finding of no future risk; and
3. failed to provide reasons for why subsection 108(4) the *IRPA* did not apply to the Applicants.

[33] A decision is reasonable if the decision-making process is justified, transparent, and intelligible, resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir* at para 47.

[34] If the reasons, when read as a whole, "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708 [*Nfld Nurses*].

[35] The Officer, sitting as an administrative tribunal, is not required to consider and comment in their reasons upon every minute issue raised by the parties. The issue for the reviewing court is whether the decision, when viewed as a whole in the context of the record, is reasonable: *Nfld Nurses* at para 16.

VII. **Analysis**

[36] A useful place to start the analysis in this case is the decision by the Federal Court of Appeal [FCA] in *Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134 at paras 1-2, [2017] 1 FCR 56, in which the FCA answered the following certified question in the affirmative:

> [… D]o the same or substantially the same legal considerations, precedents and analysis apply to persons found to be Convention refugees as to persons found to be in need of protection as members of the Country of asylum class?

[37] In other words, unless the legislation specifically provides otherwise, the same or substantially the same legal regime applies to both classes under which the Applicants have applied.

[38] In order to establish that they are members of the Convention refugee class the Applicants need to establish an objectively well-founded fear of persecution, on the prescribed grounds of having a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. The Applicants say they are members of particular social groups based upon their, and their family's, past and present circumstances.

[39] To establish that they are members of the Humanitarian-protected persons abroad (country of asylum) class they must establish that they are in need of resettlement because they have been and continue to be personally and seriously affected by civil war, armed conflict or massive violations of human rights in their countries of nationality and habitual residence.

[40] It is important to remember that the Applicants bear the onus of proving on a balance of probabilities that there is a "reasonable chance" or "*good grounds* for fearing" or "a serious possibility" of persecution: *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 at paras 6-8 (CA), 7 Imm LR (2d) 169.

[41] The court will keep these principles in mind while reviewing the Decision in light of the arguments of the parties and the evidence in the record.

A. *Did the Officer fail to assess the grounds of risk raised by the Applicants?*

[42] The Applicants argue the Officer erred by failing to assess the grounds of risk they raised and submit that if they had been assessed correctly the result would have been different. They put forward five grounds of risk:

1. persecution based on family status since 2007 arising from what transpired with their father;
2. failed refugees returning from India;
3. returnees who will be known to the authorities as opposing them because their previous case was reported online;
4. persons who the authorities would have a record of having previously detained and tortured, with respect to K;
5. persons who have signed a blank confession statement, with respect to K.

[43] The Applicants also say the Officer should have considered these factors cumulatively and that the Officer failed to do so resulting in an error.

(1) Positions of the Parties

[44] The Applicants make many arguments in support of their allegations that the Officer did not properly consider their risk. Chief amongst them is their belief that the Officer accepted their stories as credible and therefore believed they were tortured, and thus persecuted. As evidence of past persecution can support a finding of a well-founded fear of future persecution they submit the Officer's conclusion that their fear may not be well-founded based on objective evidence is unreasonable.

[45] The Applicants further argue the Officer improperly focussed on the past, by considering the passage of time from 2007 - 2016 a significant factor, resulting in a failure to properly assess future risk. In so doing they submit the Officer failed to assess whether the cumulative factors could lead to future risk if the Applicants were returned to Sri Lanka.

[46] The Applicants also state the Officer failed to assess their risk as returning failed asylum seekers. They submit that when this consideration is added to the risks of the signed blank confession, the torture and detention of K, and the assault of D, they possess a unique profile that the Officer improperly reduced to a discussion of Tamils in general and a finding that the Applicants do not fit the specific risk profiles set out in the country condition documents.

[47] The Applicants point out that considering the past, but not the future, is an error because the proper concern is forward-looking risk to the Applicants upon return to Sri Lanka: *B407 v Canada (Citizenship and Immigration)*, 2013 FC 1085 at para 39, 235 ACWS (3d) 481.

[48] The Respondent says that the Officer did a thorough assessment and examined the Applicants' circumstances in a forward-looking manner which resulted, based on the objective country conditions, in it being found that the Applicants would not be at risk as they do not have the profile of those persons who are at risk.

[49] Counsel for the Respondent submits that while past harm is a possible indicator, risk is to be assessed on a forward-looking basis and is to be personal to the Applicants on both a subjective and an objective basis. In that vein, past persecution is not sufficient in and of itself to prove future persecution: *AB v Canada (Citizenship and Immigration)*, 2015 FC 450 at paras 27, 29, 253 ACWS (3d) 188.

(2) The Court's view

[50] The Applicants' reliance on the conclusion that the Officer accepted they were tortured is misplaced. The Officer was willing to accept that the Applicants were telling the truth but this does not on its own result in a finding that they face a serious possibility of persecution on a forward-looking basis as outlined by the Respondent.

[51] The Officer specifically said they did not believe that the Applicants have a well-founded fear of persecution based on the evidence in the record. As will be further addressed below this conclusion was within the range of outcomes reasonably available to the Officer.

[52] With respect to the allegation that the Officer did not consider their cumulative risk, reference is made throughout the GCMS notes to the grounds alleged by the Applicants and considered. The Officer then weighed these grounds along with the objective evidence referring to the hundreds of Tamils who have returned to Sri Lanka since the end of the war. It is as a result of this assessment and weighing of the evidence that the Officer found that the profile of the Applicants does not fall within those facing a serious possibility of persecution based on the country condition documents.

[53] The Applicants' cumulative risk argument is most naturally subsumed within the argument that the Officer considered that only specific profiles of Tamil returnees face risk. For this reason it is considered in the following section.

B. *Did the Officer either ignore or fail to consider evidence contrary to the Officer's finding of no future risk*

(1) Positons of the Parties

[54] The Applicants submit the Officer selectively reviewed the country condition documents on Sri Lanka, ignoring in the process a human rights report that showed the Applicants would face future risk of persecution based on their profile as refugees from India who have been outside Sri Lanka for 10 years. They point to the UK Home Office report entitled "Country

Information and Guidance, Sri Lanka: Tamil Separatism" of August 2016 and say that the Officer ignored the reference therein to some returnees being tortured and interrogated.

[55] The Applicants say they are more likely than general returnees to be questioned at the airport or shortly after they arrive home. They are concerned that authorities will search their names in a public search engine and locate the decision of this Court which names them as refugee claimants alleging targeting by the Sri Lankan government. The Applicants also say the Officer failed to acknowledge the United States Department of State "Country Reports on Human Rights Practices for 2014" on Sri Lanka which reported that there is still considerable risk of torture for those perceived as critics of the government, not just for the very specific risk profiles mentioned by the Officer.

[56] Finally the Applicants cite a January 13, 2016, decision by the Refugee Appeal Division of the Immigration and Refugee Board [IRB] (*Re X*, Docket MB5-02552, 2016 CarswellNat 636 (WL Can)) in which it sets out documentary evidence the panel member accepts as indicating that "a period of residence in a Western country may itself constitute a risk factor for torture" and "failed asylum seekers are more likely to be readily associated with the LTTE, either by virtue of the fact that they sought asylum or because of a presumption of involvement in Tamil diaspora activities which are viewed by the Sri Lankan government as being supportive of the LTTE": at para 92. The RAD panel member also recognized that their conclusions were different than other RAD members: at paras 98-100. The Applicants complain that the Officer had indicated IRB decisions would be considered and then ignored an IRB decision showing that failed asylum seekers are at risk of being considered LTTE supporters.

[57] The Respondent's reply essentially is that the Applicants merely disagree with the Officer's assessment and weighing of the evidence and the resulting Decision.

(2) The Court's view

[58] It is by now trite law that the Officer is presumed to have considered all the evidence and she is not required to specifically refer to each piece of evidence: *Sing v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 90, 253 DLR (4th) 606. Of course it is equally trite law that although administrative law reasons are not to be read hyper-critically, if evidence that is not mentioned is contradictory to the conclusions reached then its importance is considered in order to determine whether the failure to address this contrary evidence renders the decision unreasonable: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at paras 15-17 (TD), [1998] FCJ No 1425.

[59] On its face, the 2016 UK Home Office report which the Applicants rely upon is not determinative of a level of risk to the Applicants that merits mention beyond it already being referenced in the GCMS notes with some sections being specifically discussed. The report specifically states that there was evidence that *some* returnees from India had been interrogated and tortured: s 2.3.9. This section also says to see the treatment of returnees section (6.5) which discusses evidence on this topic including evidence suggesting that the majority of those being arrested on return are ex-LTTE or have some association to the LTTE. The report states in section 2.3.1 that "[s]imply being a Tamil does not of itself give rise to a well founded fear of persecution or serious harm in Sri Lanka."

[60] The Applicants' reference to *some* returnees being tortured and interrogated is out of context when the report as a whole is considered. The report indicates in section 2.3.4 that the present objective of the government is to identify Tamil activists who are working for Tamil separatism with a focus on preventing both a resurgence of the LTTE and the revival of the civil war within Sri Lanka.

[61] From my review of this report, and the record in general, it was reasonable for the Officer to look at the specific profile of the Applicants and determine whether they fit the profile of returnees who would face persecution.

[62] One of the Officer's summaries indicates she considered all the relevant evidence and grounds put forward by the Applicants:

> the fear articulated by the applicants is based on possible retribution by the authorities due to their linkages with their father who had refused to issue an air ticket to a relative of the leader of the Karuna group, a paramilitary group, in 2007, and as result was detained, and that they left the country without paying the whole debt they owed for their brother's release from detention. They also fear retribution due to the older brother Karthik's subsequent detention and that if state authorities find out he is back in the country, they can find his record and could ill-treat him once again. Further fear was expressed that their situation of asylum in India be known to the authorities in Sri Lanka because their Federal Court of Canada Judicial Review case is published on the Internet and that as result this could increase their chance of retribution as their case is publicly known.

[63] Although the Officer did not use the word "speculative" to describe some of these fears it is the word that springs to mind. The Officer observed in her notes that the Applicants could not explain why the authorities would pursue them given "their father had no profile of interest to the

authorities outside of the fact that he refused to issue a ticket to a relative [of] a leader of the Karuna group … almost ten years ago."

[64] With respect, contrary to the Applicants' position that the Officer put undue focus on the passage of time, it is a highly relevant factor which the Applicants were unable to satisfactorily address.

C. *Did the Officer fail to provide reasons for why subsection 108(4) the IRPA did not apply to the Applicants?*

(1) Positions of the parties

[65] It is the Applicants' submission that the Officer accepted that they had faced torture and mistreatment in the past, which the Applicants state amounted to persecution. Therefore, under subsection 108(4) of the *IRPA*, the Applicants submit there are requisite "compelling reasons" to grant them a permanent resident visa as they should not be returned to their country of origin due to such past persecution and torture. Yet, the Officer provided no reasons when stating:

> I have also considered A108 of the IRPA and have determined that A108(1) (4) [*sic*] exception does not apply in their case.

[66] The Respondent replies that the Officer did not find the Applicants had been persecuted in the past; with the Officer only accepting the Applicants were truthful at the interview while still stating that they had not established a well-founded fear of persecution based on the evidence.

[67] The Applicants say that the threshold for needing to deal with compelling reasons was met based on their testimony accepted by the Officer and as a result it was unreasonable for the Officer to not say why they did not fall within the provisions of subsection 108(4).

(2) The Court's view

[68] In my view, given the record before the Officer and the acceptance of the Applicants' story the short statement that "the exception does not apply" is unreasonable. Although at no point did the Officer make an explicit statement that the Applicants were persecuted in the past, the Officer did accept the Applicants' story which included previous torture and mistreatment arising from being family of their father.

[69] For this reason the first condition precedent for considering subsection 108(4), previous persecution, torture, treatment or punishment, appears to have been implicitly met based on the Officer's reasons: see *Cabdi v Canada (Citizenship and Immigration)*, 2016 FC 26 at paras 31-33, 262 ACWS (3d) 1016 [*Cabdi*].

[70] This Court will decline to determine whether there was past persecution, in addition to the outlined and accepted torture, and leave this for redetermination since such a determination is properly the role of the Officer. Likewise, the second condition precedent for considering subsection 108(4), the reasons for seeking protection have ceased to exist, has also been implicitly met given the Officer specifically discusses how the impact of time, and change of country conditions, contributes to the Applicants not having a well-founded fear of persecution, on what is evidently a forward-looking basis: see *Cabdi* at paras 31, 34.

[71] As such, the Officer needed to consider subsection 108(4) and appears to have recognised this by making the effort of summarily concluding that the exemption did not apply. This conclusion however is reached without any analysis and for this reason it lacks transparency, justification, and intelligibility. Although the Court is permitted to examine the record to supplement reasons given by a decision maker in this case to do so would amount to speculation given no guidance as to how this conclusion was reached was provided in the reasons.

[72] It may have been that the Officer felt the Applicants did not have "compelling reasons" to warrant this exemption given the principles of past jurisprudence or after comparison to other cases where the exemption was and was not found to apply. Unlike in the case of *Moya v Canada (Citizenship and Immigration)*, 2016 FC 315 at para 142, 265 ACWS (3d) 453, where such an analysis was undertaken, no such analysis exists in the Officer's reasons resulting in a mere conclusion lacking in justification, transparency, and intelligibility.

[73] To assume that the Officer conducted such an examination and analysis without any indication supporting this speculation is a leap I decline to undertake. For this reason the issue of the applicability of section 108(4) is remitted for redetermination by the Officer.

VIII. **Conclusion**

[74] The Officer is owed significant deference on the reasonableness standard especially given that an in-person one and one-half hour fulsome interview was conducted with the Applicants. The Officer alerted them several times during the interview and in advance of it that there were

concerns about the significant passage of time and their lack of a risk profile consistent with the current country condition documents.

[75] As already stated, the onus is on the Applicants to prove their claim on a balance of probabilities. The Officer's job in considering the claim was to review the Applicants' submissions, their responses to questions posed, and the objective country condition documents, and then make a reasonable determination based thereon.

[76] In my view, the Officer fairly considered the evidence and provided reasons that enable the Applicants and the Court to understand why she came to the conclusions she did with respect to current risk of persecution and torture. The record supports these elements of the Decision rendering them within the range of possible, acceptable outcomes, defensible on the facts and law.

[77] The sole issue with the Decision is the unreasonable conclusion that subsection 108(4) does not apply as this conclusion lacks justification, transparency, and intelligibility. This Court declines to import a possible justification for why this conclusion was reached given there is nothing in the Decision and reasons to suggest such an analysis was undertaken.

[78] The parties did not suggest a question for certification and none exists on these facts.

[79] The application is allowed for the reasons given herein.

JUDGMENT IN IMM-313-17

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the issue of whether the exemption in subsection 108(4) of the *IRPA* applies to the Applicants is remitted for redetermination by the Officer.

2. No question is certified.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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