

Date: 20070727

Docket: IMM-4763-06

Citation: 2007 FC 788

Ottawa, Ontario, July 27, 2007

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**BASKARAN SORNALINGAM
(litigation guardian
SORNAMALAR MAHENDRALINGHAM)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant seeks judicial review of a negative PRRA decision which held that despite his mental illness, he was not at risk if returned to Sri Lanka.

II. FACTUAL BACKGROUND

[2] The Applicant is a Tamil Sri Lankan. He suffers from a mental schizo-affective disorder. His sister acts as his litigation guardian.

[3] There appears to be no question that the Applicant suffers from mental illness although the medical evidence is that the condition is in remission.

[4] The Refugee Protection Division (RPD) rejected his refugee claim. At that time the Applicant, while confirming that he was schizophrenic, based his case on his fear of being recruited by the LTTE. The RPD held that he was unlikely to be recruited given his mental condition.

[5] The Applicant had an initial PRRA in which he downplayed his mental condition and emphasized his fear of LTTE recruitment. The first PRRA was negative.

[6] The Applicant filed a second PRRA in which he relied on worsening country conditions and a new fear – that when he arrives at the Sri Lanka airport, he is at risk of behaving inappropriately due to his mental condition. As a result of his raising suspicions at the airport, he would be questioned and might admit falsely that he was implicated in Tamil activities. Also he claimed that because he had no family in Sri Lanka, he might wander the streets because he would not know to report to the police.

[7] The PRRA Officer found that the arguments about the danger he would face at the airport and the problems checking in with police are not new facts.

[8] The Officer also isolated out the documentary evidence which was new since the first PRRA and concluded that the evidence did not show that the Applicant faced a personalized risk. As to a more general risk, the Officer referred to the U.K. Home Office Report that “there was insufficient evidence that the authorities in Sri Lanka are concerned with those individuals with low-level support for the LTTE”. The evidence did not show that the violence had risen to past levels. Therefore, the Applicant is at the same risk as the entire population. It is not stated but is implied that the Applicant is at no greater level than a low-level supporter of the LTTE.

[9] On a matter not directly related to this judicial review, the Applicant had an H&C application pending and the Respondent has determined that it would not remove the Applicant until a decision on the H&C.

III. ANALYSIS

[10] The standard of review for a PRRA decision has been well described, which I accept, in *Demirovic v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284, in particular, at paragraph 23:

23. As to the appropriate standard of review to be applied to a decision of a PRRA officer, in *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 540 (T.D.) at paragraph 19, Mr. Justice Mosley, after conducting a pragmatic and functional analysis, concluded that "the appropriate standard of

review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness". Mr. Justice Mosley also endorsed the finding of Mr. Justice Martineau in *Figurado v. Canada (Solicitor General)*, [2005] F.C.J. No. 458 (T.D.) at paragraph 51, that the appropriate standard of review for the decision of a PRRA officer is reasonableness *simpliciter* when the decision is considered "globally and as a whole". This jurisprudence was followed by Madam Justice Layden-Stevenson in *Nadarajah v. Canada (Solicitor General)*, [2005] F.C.J. No. 895 (T.D.) at paragraph 13. For the reasons given by my colleagues, I accept this to be an accurate statement of the applicable standard of review.

Overall, the standard is reasonableness *simpliciter* as the case is one of mixed fact and law.

[11] The Applicant argues that the Officer misapplied the new evidence rule contained in s. 113(a) of the *Immigration and Refugee Protection Act*. However, in my view, the Officer correctly identified that all the pertinent facts were known previously upon which the Applicant alleges the new risk. This is not a case of old facts in a new context which leads to a new risk.

[12] There is nothing in the changed conditions which suggests that the Applicant is at any greater risk especially in view of the Home Office Report. The concern that he would misbehave at the airport has not been shown to be a new concern – his mental condition had been well-known in the earlier proceedings. One need only contrast the Applicant's grounds before the RPD and on the first PRRA of fear of recruitment with the grounds of the second PRRA to conclude that the Applicant raised a new argument in the second PRRA largely on old facts.

[13] It was reasonable for the Officer to conclude that these arguments could have been raised before.

[14] The Officer took into account all the evidence of the Applicant's mental health. She made a reasonable assessment of the risk to the Applicant personally (the "personalized risk"). Because there was nothing about the Applicant which would raise his risk beyond that of the rest of the population, the Officer reached a reasonable conclusion that he was at the same level of risk as the rest of the Sri Lankan population.

[15] Therefore, despite the cogent and innovative arguments of Applicant's counsel, this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4763-06

STYLE OF CAUSE: BASKARAN SORNALINGAM
(litigation guardian SORNAMALAR
MAHENDRALINGHAM)

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 24, 2007

**REASONS FOR ORDER
AND ORDER:** Phelan J.

DATED: July 27, 2007

APPEARANCES:

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