

**Date: 20071023**

**Docket: IMM-4805-06**

**Citation: 2007 FC 2001**

**Toronto, Ontario, October 23, 2007**

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

**BETWEEN:**

**VIBULARAJ KANAGARAJAH**

**Applicant**

**and**

**MINISTER CITIZENSHIP AND IMMIGRATION**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant is an adult single male Tamil. He is a citizen of Sri Lanka who entered Canada as a landed immigrant in 1995 together with other members of his family. On June 21, 2006, he was ordered deported due to criminality. A pre-removal risk assessment (PRRA) was made and on August 18, 2006, a Pre-Removal Risk Assessment Officer gave written decision in which it was determined that the Applicant would not be subject to risk if removed to Sri Lanka. It is this decision that is the subject of this judicial review proceeding.

[2] For the reasons that follow, I find that the application is dismissed. There is no question for certification. There is no Order as to costs.

[3] The issues raised by Applicant's Counsel in this application are entirely fact driven. As stated in paragraph 2 of the Applicants memorandum, the issues raised are:

*2. It is respectfully submitted that there are two issues in this Application, the particulars of which are as follows:*

*(a) The Board erred at law by failing to provide a clear evidentiary basis for critical findings. These findings, therefore, amount to nothing more than sheer speculation on the part of the respondent.*

*(b) The Board erred at law by conducting a highly selective analysis of the objective documentary evidence concerning the risk to the applicant in Sri Lanka, and by perversely ignoring supportive of the applicant's fear.*

[4] The type of review sought by the Applicant requires that the Court be guided by two factors. One is that as set out by the Supreme Court of Canada in *Suresh v. Canada (MCI)* [2003] 1 S.C.R. 3 at paragraph 39 that the Court is not to reweigh the evidence and can only intervene if a finding of the Board is not supported by the evidence or if appropriate factors have not been considered:

*39 This brings us to the question of the standard of review of the Minister's decision on whether the refugee faces a substantial risk of torture upon deportation. This question is characterized as constitutional by Robertson J.A., to the extent that the Minister's decision to deport to torture must ultimately conform to s. 7 of the Charter: see *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779, per La Forest J.; and *United States v. Burns*, [2001] 1 S.C.R. 283, 2001 SCC 7, at para.*

32. *As mentioned earlier, whether there is a substantial risk of torture if Suresh is deported is a threshold question. The threshold question here is in large part a fact-driven inquiry. It requires consideration of the human rights record of the home state, the personal risk faced by the claimant, any assurances that the claimant will not be tortured and their worth and, in that respect, the ability of the home state to control its own security forces, and more. It may also involve a reassessment of the refugee's initial claim and a determination of whether a third country is willing to accept the refugee. Such issues are largely outside the realm of expertise of reviewing courts and possess a negligible legal dimension. We are accordingly of the view that the threshold finding of whether Suresh faces a substantial risk of torture, as an aspect of the larger s. 53(1)(b) opinion, attracts deference by the reviewing court to the Minister's decision. The court may not reweigh the factors considered by the Minister, but may intervene if the decision is not supported by the evidence or fails to consider the appropriate factors. It must be recognized that the nature of the evidence required may be limited by the nature of the inquiry. This is consistent with the reasoning of this Court in Kindler, supra, at pp. 836-37, where considerable deference was shown to ministerial decisions involving similar considerations in the context of a constitutional revision, [page29] that is in the context of a decision where the s. 7 interest was engaged.*

[5] The second is that established by the Supreme Court of Canada in *Boulis v. Canada (MCI)*, [1974] S.C.R. 875 at page 885 that the reasons given by the Board are not to be examined microscopically, it is enough to show a grasp of the issues and the evidence them without requiring detailed references.

[6] In the present case, in addition to completion of the standard form, the PRRA officer provided over four pages of detailed reasons, indicating that the materials provided by the Applicant's counsel had been considered and that other publicly available materials which have been itemized by the officer as having been considered.

[7] Applicant's counsel raised a number of arguments, only two of which require particular discussion. The first is whether the PRRA Officer gave sufficient consideration to the Applicant's concern that he could be targeted by the army or police were he to return to Sri Lanka. The officer stated at pages 5-6 of her reasons:

*“While the country research indicates that the Sri Lankan authorities do on occasion examine Tamil citizens, I find that this is in the interest of state security and I am not persuaded that there is persecution. Moreover, the applicant has not provided objective evidence that he would be a person of interest to the Sri Lankan authorities.”*

[8] Since the Applicant is to be deported by reason of criminality, he is only entitled to a consideration of risk under section 97 of the *Immigration and Refugee Protection Act (IRPA)*. That risk must be one that is personal to the Applicant. The Applicant bears the burden to provide persuasive evidence that is beyond that which is merely generalized in nature. It is clear from the record that the Applicant failed to provide evidence of specific risk to him and that it was not unreasonable for the officer, on the whole of the evidence, to conclude that there was nothing to support the conclusion that such personalized risk from state authorities such as they army or police, existed. As Dawson J. of this Court said in *Uthayakumar v. Canada (MPSEP)*, 2007 FC 998 at paragraph 18:

*18 The evidence of risk provided to the officer was evidence of the generalized risk faced by Tamils in Sri Lanka (for example, there was evidence that a bus carrying civilians was hit when a mine exploded so that three of the bus' passengers were wounded). The officer considered the evidence of risk and observed that there was no suspension or moratorium on removals to Sri Lanka. While her choice of words was poor, the officer was saying, in effect, that the generalized conditions in Sri Lanka were not such as to trigger Canada's international obligations and preclude Mr. Uthayakumar's removal to Sri Lanka. Based on the evidence and submissions presented to the officer, it was not patently unreasonable for her to have assessed the evidence of generalized risk as being insufficient to warrant a deferral of removal.*

I find no reviewable error in this regard.

[9] The second issue is whether the officer should have conducted an oral hearing. Applicant's counsel made a request for such hearing but none was held.

[10] The Applicant's request for a hearing was, at best, cursory. There was no credibility issues raised nor were any other issues as set out in section 167 of IRPA put before the officer, or this Court, that would justify an oral hearing. No reviewable error was made in this regard.

[11] Therefore, the application will be dismissed. No question will be certified. There is no order as to costs.

**JUDGMENT**

**For the Reasons given;**

**THIS COURT ADJUDGES that:**

1. The application is dismissed;
2. There is no question for certification;
3. There is no Order as to costs.

"Roger T. Hughes"

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Judge

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

**DOCKET:** IMM-4805-06

**STYLE OF CAUSE:** VIBULARAJ KANAGARAJAH

Applicant

and

MINISTER CITIZENSHIP AND IMMIGRATION

Respondents

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 23, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** HUGHES J

**DATED:** October 23, 2007

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