

Date: 20080110

Docket: IMM-4030-06

Citation: 2008 FC 34

Ottawa, Ontario, January 10, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MATHIVANNAN THANABALASINGAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, a 32-year old Tamil from Sri Lanka at the time of his application, made a claim for refugee protection which was dismissed on the basis that his story of persecution of himself and his family was not credible.

[2] The central issue in this case was whether the Refugee Protection Division (RPD) should have considered the objective risks faced by the Applicant as a Tamil male in Sri Lanka, despite its negative credibility finding.

[3] The RPD decision attacks a number of aspects of the Applicant's story. Having found inconsistencies, absence of corroboration and doubts as to authenticity of documents, the RPD concluded that the Applicant was not credible, that he had not established his employment as a journalist, that he had been in Sri Lanka after 1999 and that he did not have a well-founded fear. All of these findings related to the subjective aspect of his claim.

[4] However, there was no question that he was a male Tamil from Sri Lanka. There was evidence that male Tamils in Sri Lanka can be at risk of harm. The RPD undertook no examination of these objective aspects of the case nor did it consider such issues as a viable internal flight alternative.

[5] The finding of credibility on the subjective elements is not so linked to the objective elements of risk that the Applicant's failure could be said to discharge the RPD's obligation to consider the objective risk under s. 97 of the *Immigration and Refugee Protection Act*.

[6] In *Balakumar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 20, I held that the RPD had an obligation to consider s. 97 even where it had rejected subjective s. 96 evidence.

The present case is virtually identical in this respect to that in *Balakumar*. The result will be the same.

[7] For these reasons, this application for judicial review will be granted, the RPD's decision quashed and the matter referred back to the RPD for a new determination by a differently constituted panel.

[8] There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be granted, the RPD's decision is quashed and the matter is to be referred back to the RPD for a new determination by a differently constituted panel.

“Michael L. Phelan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4030-06

STYLE OF CAUSE: MATHIVANNAN THANABALASINGAM
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 15, 2007

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

DATED: January 10, 2008

APPEARANCES:

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Mr. Tamrat Gebeyehu FOR THE RESPONDENT

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