

**Date: 20080709**

**Docket: IMM-5297-07**

**Citation: 2008 FC 854**

**Toronto, Ontario, July 9, 2008**

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

**BETWEEN:**

**SIVARAJAH KARTHIGESU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a refugee claimant who is a Tamil from the north of Sri Lanka. After going through the immigration process in resolution of his claim, the Applicant is required to return to Sri Lanka.

[2] The Pre-Removal-Risk Assessment (PRRA) decision presently under review with respect to the Applicant's removal from Canada is required to be focussed on the question of whether there is more than a mere possibility that he will be persecuted should he be returned to Sri Lanka. Without debate, the PRRA Officer determined that, if the Applicant were to return to the north of Sri Lanka

he would suffer such risk of persecution. Therefore, the issue before the PRRA Officer was whether, on the facts of the Applicant's life history as a Sri Lankan, there is more than a mere possibility that the Applicant would be required to reside in the north upon his return.

[3] Counsel for the Applicant argued before the PRRA Officer that, as the Applicant was a resident of the north before he left Sri Lanka, he would be identified as a citizen of the north upon his return, and, as a consequence, there is more than a mere possibility that he would be required to reside in the north upon his return. In making this argument, Counsel for the Applicant specifically referred to a Human Rights Watch document, dated June 8, 2007, which states in part as follows:

On June 1, 2007 Colombo Police Inspector-General Victor Perera told reporters, "Those who are loitering in Colombo will be sent home. We will give them transport". ...According to media reports, thousands more Tamils from the north and east have been asked to leave Colombo if they do not have the permits required to travel to and remain in the city. ...Citizens from the north and east, where Tamils are in the majority, are required to obtain a pass to travel to the rest of the country and specify for how long they will stay. This permit system was restored after the collapse last year of a ceasefire signed in 2002 between the Sri Lankan government and the LTTE. The renewed hostilities have displaced tens of thousands and claimed more than 4,000 lives. More than 70,000 people have been killed since an armed conflict over a separate Tamil homeland broke out two decades ago.

[Emphasis in the original]

(Applicant's Application Record, p. 31)

[4] In my opinion, the PRRA Officer failed to come to grips with the Applicant's argument. Instead of focusing on the possibility of the Applicant's return to the north, the PRRA Officer spent a good deal of effort to reach the conclusion that the Applicant would have an internal flight

alternative in parts of Sri Lanka controlled by the government, and in particular, found that the Applicant would have an internal flight alternative in the cities of Colombo and Kandy. In my opinion, this approach discloses a reviewable error.

[5] In presenting his claim for protection, the Applicant is required to prove that, on a balance of probabilities, no internal flight alternative exists in Sri Lanka. According to the Applicant's argument, this evidentiary burden is met by proving that more than a mere possibility exists that he will be returned to the north of Sri Lanka, and more than a mere possibility exists that he will not obtain a pass to travel to any other location in the country. I agree with Counsel for the Applicant that the Human Rights Watch article quoted above provides cogent evidence in support of this argument. I find that the PRRA Officer simply did not address the argument as it was framed, and which he was required to do.

**ORDER**

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for re-determination.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-5297-07

**STYLE OF CAUSE:** SIVARAJAH KARTHIGESU v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 9, 2008

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** JULY 9, 2008

**APPEARANCES:**

Micheal Crane FOR THE APPLICANT

Bernard Assan FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Micheal Crane  
Barrister and Solicitor  
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR THE RESPONDENT