

Federal Court



Cour fédérale

**Date: 20100127**

**Docket: IMM-3722-09**

**Citation: 2010 FC 92**

**Ottawa, Ontario, January 27, 2010**

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

**BETWEEN:**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**UDAYAKUMARAN BARANIROOBASINGAM**

**Respondent**

**REASONS FOR ORDER**

**HARRINGTON J.**

[1] Although the Minister has standing to seek judicial review of decisions of the Immigration and Refugee Board of Canada, he usually does not do so except in cases where the Board disagrees with his position that the individual was covered by section F of Article 1 of *United Nations Convention Relating to the Status of Refugees*, or was inadmissible. Mr. Baraniroobasingam is no

longer one who is suspected of war crimes, or crimes against humanity. He is a middle-aged Tamil from the north of Sri Lanka who was granted refugee status. The Minister submits that in this judicial review that decision should be set aside. I agree.

[2] While one may be both a liar and a refugee (*Canada (Public Safety and Emergency Preparedness) v. Gunasingam*, 2008 FC 181, 73 Imm. L.R. (3d) 151), it is difficult to pin down an applicant's subjective fear of persecution if one has no confidence in what actually happened to him. In this case, on the latest version of events, Mr. Baraniroobasingam left Sri Lanka in 2001. He claims that he is at risk of persecution by the Tamil Tigers (LTTE) because he refused to join their ranks and by the Sri Lankan Government because he is suspected of having collaborated with the LTTE. Counsel for the Minister intervened at the hearing before the Refugee Protection Division (RPD) on the grounds that there was a serious possibility that paragraphs (a) and (c) of sections F of Article 1 of the *Refugee Convention* applied in that he may have participated in crimes of war, crimes against humanity or acts contrary to the purposes and principles of the United Nations. However, the Minister's counsel withdrew from the case before the hearing was completed because of Mr. Baraniroobasingam's lack of credibility.

[3] The RPD of the Immigration and Refugee Board of Canada was not impressed with his credibility either. The decision maker stated:

[7] In the course of the claimant's quest to obtain asylum in France or in Canada, he gave four different versions; one to the French authorities that was judged not credible, a different version at the point of entry in Canada, another one in his first narrative and a final one where he admitted that more than half of the first PIF's version was false.

[8] Questioned about changing his allegations, the claimant was a very poor witness. His testimony was often very confusing. He was

contradicting himself, adding facts that he omitted in his PIF and changing many times the facts of his narrative. Questioned about when he started being targeted by the LTEE, he said successively 1995, 1996 and 1999. It was impossible to understand.

[9] Hence, I conclude to the lack of credibility of most of his allegations. I certainly do not believe the claimant was involved with the LTTE, which is on Canada's list of terrorist organisations.

[4] Nevertheless, Mr. Baraniroobasingam was determined to be a Convention refugee as he had established a serious possibility of persecution as a member of a particular social group, Tamil males from the north of Sri Lanka.

[5] The decision was made following the defeat of the LTTE and in a context where there is undoubtedly grave concern with respect to human rights abuses in Sri Lanka. The United Nations High Commissioner for Refugees (UNHCR) reported objective evidence of frequent and persistent human rights violations against Tamils from the north and opined that there is a reasonable possibility a Tamil asylum seeker from the north would experience serious harm if returned to Sri Lanka.

[6] Regardless, there must be some evidence of both a subjective and objective fear. The circumstances in which Mr. Baraniroobasingam left Sri Lanka were not analyzed. This Court has held on many occasions that country conditions alone are not enough. The situation is not such that the Minister has put a moratorium on returns of Tamils, and so there must be an individual analysis. In addition to *Gunasingham*, above, reference may be had to *Alexibich v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 53; *Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 471; *Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409; *Kaba v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 259, 55 Imm. L.R. (3d)

189; *Subramanian v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 684; and *Tharmalingam v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 727.

[7] Counsel for Mr. Baraniroobasingam submitted that there had been an individual analysis in that it was noted that he would be returning from Canada, known to be a hot-bed of fundraising for the LTTE, and that he had been suspected of being a LTTE sympathizer. Furthermore, the RPD member accepted as credible that Mr. Baraniroobasingam's brother had been recently killed. I cannot accept this last contention. A statement of an alleged fact does not imply credibility.

[8] Although one does not have to allow oneself to be killed in order to prove one's point, I cannot accept that the reasons were sufficiently individualized. It is not enough to simply accord refugee status simply on the basis of country conditions. Even applicants from countries on whom the Minister has placed a moratorium of return, such as Somalia, are not automatically granted Convention refugee status.

[9] Mr. Baraniroobasingam shall have until Thursday, February 4, 2010 to pose a serious question of general importance which could serve as the basis of an appeal. The Minister shall have until Tuesday, February 9, 2010 to respond.

“Sean Harrington”

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Judge

Ottawa, Ontario  
January 27, 2009

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

**DOCKET:** IMM-3722-09

**STYLE OF CAUSE:** MPSEP v. Udayakumaran Baranirroobasingam

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 21, 2010

**REASONS FOR ORDER:** HARRINGTON J.

**DATED:** January 27, 2010

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