Cour fédérale  Federal Court

Date: 20100521

Docket: IMM-2484-10

Citation: 2010 FC 562

Ottawa, Ontario, May 21, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JOTHIRAVI SITTAMPALAM

Applicant

and

THE MINISTER OF CITIZENSHIPAND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] [9] The *IRPA* enacted a series of provisions intended to facilitate the removal of permanent residents who have engaged in serious criminality. This intent is reflected in the objectives of the *IRPA*, the provisions of the *IRPA* governing permanent residents and the legislative hearings preceding the enactment of the *IRPA*.

[10] The objectives as expressed in the *IRPA* indicate an intent to prioritize security. This objective is given effect by preventing the entry of applicants with criminal records, by removing applicants with such records from Canada, and by emphasizing the obligation of permanent residents to behave lawfully while in Canada. This marks a change from the focus in the predecessor statute, which emphasized the successful integration of applicants more than security: e.g., see s. 3(1)(*i*) of the *IRPA* versus s. 3(*j*) of the former Act; s. 3(1)(*e*) of the *IRPA* versus s.

> 3(*d*) of the former Act; s. 3(1)(*h*) of the *IRPA* versus s. 3(*i*) of the former Act. Viewed collectively, the objectives of the *IRPA* and its provisions concerning permanent residents, communicate a strong desire to treat criminals and security threats less leniently than under the former Act.
>
> …
>
> [12] In introducing the *IRPA*, the Minister emphasized that the purpose of provisions such as s. 64 was to remove the right to appeal by serious criminals. She voiced the concern that "those who pose a security risk to Canada be removed from our country as quickly as possible" … (Emphasis added).

(As was sated by the Rt. Honourable Chief Justice of Canada, Beverley McLachlin, in a unanimous judgment in *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 S.C.R. 539).

[2] 101 Every year this Honourable Court hears hundreds of stay applications. Although illegal, many applicants are hard working, law-abiding people who are simply here in order to improve their lives and the lives of their families. Nonetheless, in order to uphold the immigration scheme and the law, this Court is required to dismiss the motions of most of these would be immigrants. In the instant case, we have an immigrant who has had the opportunity to make a better life for himself in Canada and contribute to Canadian society. He chose not to do so, and instead engaged in serious and violent criminal activity, violating and putting at risk the peace and safety of the Canadian public. To grant a stay in these circumstances, in the Respondent's respectful submission, would be contrary to the spirit, principles, and objectives of the *IRPA*, not to mention the principles underlying this Court's discretion to grant the requested relief.

(As pronounced by Justice Robert Barnes of the Federal Court of Canada in *Thanabalasingham v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 486, 148 A.C.W.S. (3d) 103).

[3] [45] Finally both appellants raise *Charter* arguments. Medovarski claims that s. 196 violates her s. 7 rights to liberty and security of the person. She claims that

> deportation removes her liberty to make fundamental decisions that affect her personal life, including her choice to remain with her partner. Medovarski argues her security of the person is infringed by the state-imposed psychological stress of being deported. Medovarski further alleges that the process by which her appeal was extinguished was unfair, contrary to the principles of fundamental justice.
>
> [46] The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in Canada: *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711, at p. 733. Thus the deportation of a non-citizen in itself cannot implicate the liberty and security interests protected by s. 7 of the *Canadian Charter of Rights and Freedoms*.
>
> [47] Even if liberty and security of the person were engaged, the unfairness is inadequate to constitute a breach of the principles of fundamental justice. The humanitarian and compassionate grounds raised by Medovarski are considered under s. 25(1) of the *IRPA* in determining whether a non-citizen should be admitted to Canada. The *Charter* ensures that this decision is fair: e.g., *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. Moreover, *Chiarelli* held that the s. 7 principles of fundamental justice do not mandate the provision of a compassionate appeal from a decision to deport a permanent resident for serious criminality…

(*Medovarski*, above).

II. Introduction

[4] The Applicant, Mr. Jothiravi Sittampalam, is before this Court seeking a stay against the execution of a removal order. His within application for leave concerns the decision, for the third time, of the Minister's Delegate to *refoule* him to Sri Lanka. He received notice of the last decision of the Minister's Delegate on April 19, 2010. He seeks a stay of the execution of removal pending the determination of his application. Subsequent to an extension of time further to the April 19, 2010 decision, requested by his counsel for preparation of a motion for a stay of the execution of removal on behalf of the Applicant, the Applicant has been advised of a new deadline by counsel of the Respondents of May 18, 2010 which has been extended to May 21, 2010 (in an understanding in open Court between the Applicant and the Respondents. The counsel of the Applicant was told on

May 17, 2010, in open Court, in recognition of the delays which had already been granted in this file, to ensure that all arguments she presented in Court on that day would be final in respect of the deadline to which the decision had again been rescheduled, May 21, 2010. The counsel of the Applicant having heard that May 21st had been set as the next date on which a decision would be rendered, immediately, requested a further delay until after the weekend. She stated, if a negative decision ensued from the Federal Court in regard to her client, she would go to a different jurisdiction, an Ontario Court, to again renew a request for a stay. A discussion ensued, explaining the history of the file and the need to make a decision, based on the legal necessities and integrity of the *Immigration Act* and the Court system in Canada. The lawyer of the Applicant, then stated, if not granted a stay in the Federal Court on behalf of the Applicant, she did not want to look for a judge in another jurisdiction on the weekend; and, for that reason, again, requested a delay in the issuance of a decision. The same explanations were given to counsel of the Applicant, stressing the need for this Court to issue a decision, in recognition of the time that had elapsed in granting delays, stating that a full consideration of the matter had to be finally concluded with an issuance of a decision to uphold the principles on which the integrity of the *Immigration Act* and the Canadian legal system is based).

III. Background

[5] At the outset, it must be specified that every case must be considered on its own merits (cas d'espèce). Its subsequent decision must be seen in light of all the evidence: its own specific encyclopaedia of references, dictionary of terms and galleries of portraits, singularly, cognizant of the subjective and objective evidence of each case. It is only in that vein, on its own particular

merits, that the case and its judgment can be read, recognizing that the evidence determines the decision.

[6] Mr. Sittampalam was born on May 24, 1970 in Sri Lanka. He is Tamil from the north of the country. He came to Canada in February, 1990, was recognized as a refugee and was landed in Canada on July 17, 1992. He is not a Canadian citizen.

[7] Mr. Sittampalam was married in 1998. His wife, Pushpalatha Rajaratnam, nicknamed Mala, is a Canadian citizen, in Canada since 1988. They have two children, a son, Sahan, born September 5, 1999, and a daughter, Sahaania, born November 10, 2001. He maintained a relationship with his children by phone when he was detained from October 2001, and since his release in April 2007, he is living with his family. He lived under very strict conditions – virtual house arrest, always in the presence of a supervisor and subject to GPS monitoring; however, these have been relaxed on the consent of the Canada Border Services Agency (CBSA). He is no longer subject to supervision or house arrest.

[8] Mr. Sittampalam is under removal order issued on October 4, 2004, based on a conviction on July 8, 1996 for trafficking in narcotics (9 mg. of cocaine) in February 1993 and as per the immigration legislation that there were "reasonable grounds to believe" he was a member of organized criminality, the leader of the A.K. Kannan, a Tamil street gang.

[9] Mr. Sittampalam was the leader of a Tamil street gang, the A.K. Kannan, and was arrested as part of Project 1050, a joint operation of the Toronto Police Services and Canada Immigration. The Applicant has admitted to the police his involvement in the gang and admitted that his nickname is “A.K. Kannan”. Since 1992, shortly after arriving in Canada, Mr. Sittampalam has been convicted of various offences, including trafficking in a narcotic. He had been investigated for gang related occurrences dating back to 1993, which included murder, assault with a weapon, attempted murder, aggravated assault, extortion and trafficking. The gang of which he was a member was known to have terrorized members of the local Tamil community and to have been considered as a danger to the safety of the Canadian public.

[10] Mr. Sittampalam was held in detention from 2001 to 2007, before being released on electronic monitoring. He was ordered deported on the basis of serious criminality and organized criminality. Challenges to the Federal Court and the Federal Court of Appeal of that decision were dismissed. A Delegate of the Minister found the Applicant to be a danger to the Canadian public and to not be at risk upon return to Sri Lanka. A challenge to that decision upheld the danger finding but required solely the re-determination of the risk assessment. A different Minister’s Delegate concluded once again that Mr. Sittampalam is not at risk upon return to Sri Lanka. The Federal Court ordered a re-determination of the second risk assessment. Mr. Sittampalam once again challenges that decision.

[11] Mr. Sittampalam has been identified by the Toronto Police as the leader of A.K. Kannan, one of the two rival Tamil gangs operating in Toronto. Mr. Sittampalam did admit to his

involvement in the gang to police. He also admitted that his nickname is “A.K. Kannan” (2006 Danger Opinion, Applicant’s Motion Record at pp. 53-54). Mr. Sittampalam gave two sworn statements to the police, one on April 9, 2001 and the other on September 10, 2001. His statements took place subsequent to two public assassination attempts on his life on the streets in Toronto by rival V.V.T. gang members. (2006 Danger Opinion, Applicant’s Motion Record at p. 50).

[12] Mr. Sittampalam has the following convictions:

1992 Failure to Comply with Recognizance; sentence: time served;

1996 Trafficking in a Narcotic; sentence: 2 years less a day;

1998 Obstruct Peace Officer; sentence: 1 day + time served (5 months and 26 days) (2006 Danger Opinion, Applicant’s Motion Record at p. 47).

[13] In respect of the Danger Opinion in regard to Mr. Sittampalam, the following information is on record:

a. In December 1993, Mr. Sittampalam was charged with Attempted Murder, Aggravated Assault, Dangerous Weapons and Use of a Firearm during the Commission of an Indictable Offence. These charges stemmed from his participation in an attack on two persons in Toronto, on December 27, 1993, when two victims’ cars were surrounded by three cars and a number of males exited. The first victim was cut on the forearm with a machete, the second victim was also cut with a machete and ran away and was shot at 5 or 6 times. The first victim was shot in the shoulder. At the time, Mr. Sittampalam was under investigation for a shooting incident that had taken place a few days earlier;

b. Again in 1993, Mr. Sittampalam was charged with Attempted Murder and other offences. Mr. Sittampalam is described in police reports as leaving a coffee shop, approaching a victim, identifying himself as A.K. Kannan, and threatening to kill him. When leaving the shop, two victims were caught in a chase by a mob carrying guns, knives and machetes. The incident report indicated that Mr. Sittampalam "had a gun, was shooting, and was the leader, telling the others to shoot and vest the victim";

c. In 1998, Mr. Sittampalam and fellow gang members were identified as being involved in extorting a business owner in Scarborough. The victim reported to police that he had entered his place of business with two other men and stated: "You know who I am, I am A.K. Kannan" and that "you have to pay it back or you will lose your head".

Mr. Sittampalam then produced a ten to twelve-inch handgun and pointed it at the victim in front of another witness. Mr. Sittampalam told the victim he had to pay $3000 although he owed only $1200. A few days later the victim was again approached by Mr. Sittampalam and the two other males and confronted with firearms and threats. The victim initially reported the incident to police and identified Mr. Sittampalam through a photographic line-up; however, when police attempted to further investigate the occurrence, they were unable to locate the victim or the witness, but found that the victim's business had been closed down;

d. Mr. Sittampalam was also identified to have been a participant in the 1998 kidnapping and assault of the V.V.T. interim leader, Suresh Kanagalingam.

Mr. Sittampalam was clearly identified to police officials by an informant as being a participant in the kidnapping and beating; and

> e. When the immigration warrant was executed on Mr. Sittampalam on October 18, 2001, a search warrant of his residence was conducted. Located in his house, police found a large quantity of credit card blanks, a roll of coloured foil and a computer system, which contained templates for Ontario driver's licenses and Ontario health cards, and for which he was charged with Possession of the Instruments of Forgery".

(2006 Danger Opinion, Applicant's Motion Record at pp. 48-50).

[14] Targeted in two reported attempts to either kill or injure Mr. Sittampalam on September 9, 2001 and April 4, 2001, Police Occurrence Reports indicate that the assailants were members of the rival V.V.T. gang (2006 Danger Opinion, Applicant's Motion Record at p. 50).

[15] It is recalled and duly noted in the Danger Opinion that witnesses were often afraid to testify against gang members out of fear of reprisals. Police have been made aware that threats have been issued against potential witnesses. Witnesses or victims have then recanted their statements or subsequently stated that they do not remember what occurred.

[16] The Federal Court had previously specified that Mr. Sittampalam was arrested and detained in October 2004 as part of Project 1050 (as explained in *Canada (Minister of Citizenship and Immigration) v. Sittampalam*, 2004 FC 1756, 266 F.T.R. 113 at para. 9).

[17] Reported inadmissible to Canada under the former *Immigration Act*, R.S.C. 1985, c. I-2 (ss. 27(1) and 19(1)(*c*.2)) because of his conviction for drug trafficking and due to grounds to believe

that Mr. Sittampalam is a member of a criminal organization. An inquiry was commenced under the former *Immigration Act* in June 2002 and continued under the *Immigration and Refugee Protection Act, S.C. 2001, c. 27* (IRPA) in August 2004 (*Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1211, 279 F.T.R. 211).

[18] At this proceeding, Mr. Sittampalam conceded that he was inadmissible for serious criminality, but denied knowledge of or involvement in the A.K. Kannan gang. Extensive evidence regarding gang involvement was presented to the Immigration Division over the course of 25 hearing dates. The Reasons for Decision issued by the Immigration Division concluded that Mr. Sittampalam is inadmissible for both serious criminality and organized criminality (paragraphs 36(1)(*a*) and 37(1)(*a*) of the IRPA; *Sittampalam*, 2005 FC 1211, above).

[19] Mr. Sittampalam's challenge of Justice Roger Hughes' decision on inadmissibility to Canada for organized criminality was dismissed. Justice Hughes' decision was upheld by the Federal Court of Appeal on October 12, 2006 (*Sittampalam*, 2005 FC 1211, above; *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326, [2007] 3 F.C.R. 198).

[20] Held in detention from 2001 to 2007, as Mr. Sittampalam was found to be both a danger to the public and unlikely to appear for removal, twice ordered to be released in 2004, but both of those release decisions were overturned by this Court and on two other occasions, decisions to continue his detention were also overturned by this Court (*Sittampalam*, 2004 FC 1756 above;

Sittampalam v. Canada (Solicitor General), 2005 FC 1352, 143 A.C.W.S. (3d) 332; *Sittampalam v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1118, 300 F.T.R. 48).

[21] A Member of the Immigration Division ordered Mr. Sittampalam's release on terms and conditions on April 19, 2007. The decision to release was challenged in this Court. Mr. Sittampalam has remained out of detention on terms and conditions since that time. The Minister has twice brought applications to challenge changes to Mr. Sittampalam's condition of release which have been granted (*Canada (Minister of Public Safety and Emergency Preparedness) v. Sittampalam*, 2008 FC 1394, [2008] F.C.J. No. 1805 (QL); *Canada (Minister of Public Safety and Emergency Preparedness) v. Sittampalam*, 2009 FC 863, 350 F.T.R. 101).

[22] Mr. Sittampalam's appearances before this Court are as follows:

i. *Sittampalam*, 2004 FC 1756, above, Justice Pierre Blais: the Minister of Citizenship and Immigration challenged a decision to release Mr. Sittampalam from detention which was granted;

ii. *Sittampalam*, 2005 FC 1211, above, Justice Hughes: Mr. Sittampalam challenged the decision to issue a deportation order against him which was dismissed;

iii. *Sittampalam*, 2005 FC 1352, above, Justice Eleanor Dawson: Mr. Sittampalam challenged a decision to keep him in detention which was granted;

iv. *Sittampalam*, 2006 FC 1118, above, Justice James O'Reilly: Mr. Sittampalam challenged a decision to keep him in detention which was granted;

v. *Sittampalam*, 2006 FCA 326, above, Justice Allen Linden, Justice Marc Nadon and Justice Edgar Sexton: Mr. Sittampalam appealed the Court's decision upholding the decision to issue a deportation order against him which was dismissed.

vi. *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, Doc. No. IMM-4064-06, August 22, 2006, Justice Anne Mactavish: Mr. Sittampalam sought a stay of removal pending his challenge of a Danger Opinion decision against him which was granted;

vii. *Canada (Minister of Public Safety and Emergency Preparedness) v. Sittampalam*, Doc. No. IMM-1667-07, April 30, 2007, Justice Michel Beaudry; the Minister of Public Safety and Emergency Preparedness challenged a decision to release Mr. Sittampalam from detention which was dismissed;

viii. *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 687, 316 F.T.R. 142, Justice Judith Snider: Mr. Sittampalam challenged a Danger Opinion decision finding he was a danger to Canada and was not at risk if returned which was partially granted;

ix. *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 310, 165 A.C.W.S. (3d) 885, Justice Douglas Campbell: Mr. Sittampalam sought a stay of removal pending his challenge of the re-assessment of his risk in a Danger Opinion decision against him which also was partially granted;

x. *Sittampalam*, 2008 FC 1394, above, Justice Russel Zinn: the Minister of Public Safety and Emergency Preparedness challenged a decision to alter the terms and conditions of Mr. Sittampalam's release from detention which was granted;

xi. *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 65, 340 F.T.R. 53, Justice Leonard Mandamin: Mr. Sittampalam challenged the risk assessment portion of his Danger Opinion decision finding he was not at risk if returned which was granted;

xii. *Sittampalam*, 2009 FC 863, above, Justice Louis Tannenbaum: the Minister of Public Safety and Emergency Preparedness challenged a decision to change the terms and conditions of Mr. Sittampalam's release from custody which was granted.

[23] Mr. Sittampalam, as a Convention refugee, cannot be removed from Canada unless the Minister is of the opinion, pursuant to paragraph 115(2)(*a*) of the IRPA, that he is a danger to the public in Canada, or, pursuant to paragraph 115(2)(*b*), that he should not be allowed to remain in Canada on the basis of the nature and severity of the acts committed.

[24] A Minister's Delegate issued an opinion on July 6, 2006 under paragraphs 115(2)(*a*) and 115(2)(*b*) of the IRPA, concluding that Mr. Sittampalam poses a danger to the public in Canada and that the nature and severity of acts he committed are such that he should not be allowed to remain in Canada (Danger Opinion). The Minister's Delegate further determined that Mr. Sittampalam does not face a substantial risk of torture, a risk to life, or a risk of cruel and unusual treatment or punishment in Sri Lanka, and that his humanitarian considerations do not warrant favourable consideration to prevent his removal from Canada. Mr. Sittampalam challenged that decision.

[25] The judicial review was allowed in part by an Order of Justice Snider. The Court found error with the risk assessment portion of the Danger Opinion. The Court found no error in the danger assessment portion or any other part of the decision and, as such, only the risk assessment required re-determination (*Sittampalam*, 2007 FC 687, above).

[26] The Minister's Delgate issued a new risk assessment on January 11, 2008. Mr. Sittampalam challenged the risk assessment and by Order of Justice Mandamin, dated January 22, 2009, the judicial review was granted. Due to this matter's long history, Justice Mandamin directed the same Delegate to solely re-determine the risk assessment portion of the Danger Opinion (*Sittampalam*, 2009 FC 65, above).

IV. Issue

[27] Has the Applicant satisfied the test for a stay of removal as per the three pronged conjunctive test as specified in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302, 11 A.C.W.S. (3d) 440 (F.C.A.)?

[28] To obtain a stay of removal, an applicant must establish all three prongs at set out in *Toth*, above:

1. A serious question to be tried;
2. irreparable harm; and
3. the balance of convenience in his favour.

V. Analysis

A. Serious Issue

[29] No serious issue exists in respect of the leave application.

[30] The determination of risk on return to a particular country is, in large part, a fact-driven inquiry. As the Supreme Court held in *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3, such issues require much deference since they are largely outside the realm of expertise of the reviewing court (*Suresh* at paras. 29, 39 and 41).

[31] The Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v. Ragupathy*, 2006 FCA 151, [2007] 1 F.C.R. 490 pronounced itself on the adequacy of reasons of a Danger Opinion in the following terms:

> [15] … a reviewing court should be realistic in determining if a tribunal's reasons meet the legal standard of adequacy. Reasons should be read in their entirety, not parsed closely, clause by clause, for possible errors or omissions; they should be read with a view to understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression.

[32] The Supreme Court of Canada held that a Delegate's Danger Opinion is owed significant deference, and "… the weighing of relevant factors is not the function of a court reviewing the exercise of ministerial discretion." (*Suresh*, above, at para. 34).

[33] The focus on judicial review is whether evidence exists to support the Delegate's decision (*Suresh*, above, at paras. 39, 41, and 85). Mr. Sittampalam does not argue that no evidence exists

upon which the Delegate could have concluded as she did. Rather, Mr. Sittampalam's argument is that the Delegate should have preferred evidence that he would have her prefer.

[34] Evidence was not ignored nor has the Delegate failed to state why certain evidence was preferred over other evidence. The Delegate did demonstrate a consideration of the evidence that was before her. She examined all of Mr. Sittampalam's evidence recognizing the situation in Sri Lanka for what it is, based on the evidence as a whole. She also specified other evidence demonstrating that the situation is improving. The Delegate also provided key examples in respect of reconstruction and resettlement efforts (reference is also made to *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL); *Woolaston v. Canada (Minister of Manpower and Immigration)*, [1973] S.C.R. 102; Reasons, Applicant's Motion Record at pp. 17-24).

[35] The Delegate concluded that the situation is one where generalized risk does exist, with illegal detentions continuing and restrictions on travel in the north and east; however, on the basis of the interpretation of the immigration legislation and its application in regard to individuals adjudicated thereby, the evidence demonstrates that for other parts of the country, including that of the capital, Colombo, the situation is different and citizens go about their daily lives in a functional environment.

[36] The Delegate found that the evidence did not establish that Mr. Sittampalam would personally be at risk. In conclusion, the Delegate provided a balanced review of the documentary

evidence. The Delegate has demonstrated a consideration of all the evidence (*Florea*, above; *Woolaston*, above).

[37] Mr. Sittampalam has failed to establish on a balance of probabilities that he would be at risk in Sri Lanka. The Delegate's lengthy reasons specify that the civil war is over, conditions are slowly improving and have changed since 2006, the reports identifying Mr. Sittampalam as a leader of the A.K. Kannan are dated.

[38] Mr. Sittampalam continues to deny his membership and leadership in the A.K. Kannan. In this regard, it might also be noted that he previously alleged that he would also be at risk from the Liberation Tigers of Tamil Eelam (LTTE) because of allegedly erroneous reports indicating that he supported Tamil groups opposed to the LTTE (2006 Danger Opinion, Applicant's Motion Record at p. 59; Mater Affidavit, Respondents' Motion Record, Exhibit B at paras. 7 and 8). In that case, the Sri Lankan authorities would have no reason to oppose him in this regard.

[39] A reviewable error does not arise out of the Minister's compliance with the specific terms of a Federal Court Order. Following the Federal Court's decision to allow the judicial review regarding Mr. Sittampalam's 2008 risk assessment, the Court specifically ordered a re-determination of Mr. Sittampalam's risk before carrying out the balancing exercise:

> **THIS COURT ORDERS AND ADJUDGES that:**
>
> 1. The application for judicial review is granted.
>
> 2. The matter is remitted back to the same Minister's Delegate for re-determination on the same terms as Justice Snider's Order being:

1. The matter is remitted for the sole purpose of re-assessing the risk to the Applicant if he were returned to Sri Lanka;

2. In the event that the Delegate concludes that the Applicant would be at substantial risk, the Delegate is to carry out a balancing exercise as contemplated by *Suresh*.

3. No question of general importance is certified.

(Emphasis added).

[40] Mr. Sittampalam raised this same issue in submission before Justice Mandamin; nevertheless, the reassessment on the same terms as Justice Snider (Respondents' Motion Record, Applicant's Further Memorandum of Argument, Exhibit "A" of the Mater Affidavit).

[41] Mr. Sittampalam's argument represents opposition to the decisions of Justice Snider and Justice Mandamin. The finding that Mr. Sittampalam is a danger to the public has been decided and upheld in its final conclusion; nevertheless, Mr. Sittampalam attempts to advance this argument again.

[42] As Mr. Sittampalam has failed to raise a serious issue, this motion can be dismissed on this basis alone.

B. Irreparable Harm

[43] Irreparable harm involves a high threshold. The Court must be satisfied that irreparable harm will occur if the stay is not granted (*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, 132 A.C.W.S. (3d) 261 at paras. 12-20; *Stampp v. Canada (Minister*

of Citizenship and Immigration) (1997), 127 F.T.R. 107, 69 A.C.W.S. (3d) 901 at paras. 15-16; *Atakora v. Canada (Minister of Employment and Immigration)* (1993), 68 F.T.R. 122, 42 A.C.W.S. (3d) 486 at paras. 11-12 (T.D.); *Legrand v. Canada (Minister of Citizenship and Immigration)* (1994), 27 Imm. L.R. (2d) 259, 52 A.C.W.S. (3d) 1301 at para. 5 (F.C.T.D.); *Akyol v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 931, 124 A.C.W.S. (3d) 1119 at para. 7).

[44] Jurisprudence from the Federal Court of Appeal makes clear that mootness in itself cannot establish irreparable harm. If it were otherwise, it would deny the Court the discretion to assess irreparable harm on a case-by-case basis (*El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42, 137 A.C.W.S. (3d) 161 at para. 8; *Palka v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 165, 167 A.C.W.S. (3d) 570 at paras. 18-20; *Selliah*, above, at para. 20; *Ryan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1413, 110 A.C.W.S. (3d) 890 at para. 8; *Akyol*, above, at par. 11).

[45] Discretion is retained to hear appeals that are technically moot and a discretion exists in favour of hearing appeals after stays have been dismissed. The Federal Court of Appeal's decision in *Perez* which concerned a negative Pre-Removal Risk Assessment (PRRA) decision, follows the *Borowski* decision, criteria for determining whether the Court should entertain a case despite its mootness (*Perez v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 171, 82 Imm. L.R. (3d) 167, at paras. 3 and 7; *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 92 N.R. 10; reference is also made to *Palka*, above, at paras. 18-20).

[46] An applicant may continue his litigation by instructing counsel from abroad. Based on the jurisprudence, removal while an applicant's application is pending does not constitute irreparable harm (*Selliah*, above; *Ariyaratnam v. MCI*, IMM-8121-04, September 28, 2004; *Hussein v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1266, 162 A.C.W.S. (3d) 647 at para. 11).

[47] Mr. Sittampalam has not substantiated his allegation of irreparable harm neither because he is a Tamil male nor because of his activities in Canada.

[48] This Court and the Federal Court of Appeal have dismissed a substantial number of stays brought by Tamils, including stays of young Tamil males, who argue that they would be at risk if returned to Sri Lanka (Reference is made to: *Selliah*, above, *Sivananthem v. MCI*, IMM-3948-04, May 3, 2004); *Sivagnanansuntharam v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 70, 129 A.C.W.S. (3d) 567; *Nagalingam v. MCI* , IMM-6447-05, December 2, 2005; FCA refused to entertain stay motion, December 3, 2005; *Thanabalasingham*, 2006 FC 486, above; *Thanabalasingham v. MPSEP*, IMM-1649-06, March 27, 2006; *Ariyaratnam*, above; *Rajalingam v. MCI*, IMM-5783-05, September 27, 2005; *Kathiravelu v. MCI*, IMM4359-06, August 15, 2006; *Naganathan v. MPSEP*, IMM-1422-06, March 20, 2006; *Jeyakumar v. MCI*, IMM-2619-06, June 6, 2006; *Archarige v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 240, 146 A.C.W.S. (3d) 532; *Sornalingam v. MCI*, IMM-3366-06; *Poopalasingam v. MCI*, IMM-1547-06; *Vidnusingam v. MCI*, IMM-2984-06; *Tharmaratnam v. MPSEP*, IMM-3208-06; *Tharmaratnam v. MCI*, IMM-2934-06; *Saravanapavananthan v. MPSEP*, IMM-1689-06; *Saravanapavananthan v. MPSEP*, IMM-1352-06; *Manohararaj v. MPSEP*, IMM-1509-06; *Sellatharai v. MCI*, IMM-2620-

06, *Thangasivam v. MCI*, IMM-1824-06; *Figurado v. Canada (Solicitor General)*, 2004 FC 241, 129 A.C.W.S. (3d) 374; *Thuraisingam v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 72; 145 A.C.W.S. (3d) 888; *Sebamalaimuthu v. MCI*, IMM-4379-04 May 17, 2004; *Jesudhasmanohararaj v. Canada (Solicitor General)*, 2004 FC 596, 130 A.C.W.S. (3d) 987; *Thurairajah v. MCI*, IMM-7478-03, December 12, 2003); *Thileepan v. MCI*, IMM-8535-03, November 20, 2003; *Thangasivam v. MCI*, IMM-8986-03).

[49] This Court has also held that the improving conditions in Sri Lanka cannot form the basis of irreparable harm, even for a young Tamil male from the north. As Justice Richard Mosley held in a stay motion brought earlier this year involving a young Tamil male from the north, from Jaffna, who was a television and radio producer in Canada, and whose father was a journalist at a Sri Lankan-based Tamil newspaper:

> The applicant has failed to persuade me on the evidence on a balance of probabilities that he will likely suffer irreparable harm if a stay is not now granted and he is returned to Sri Lanka. I accept that there continue to be serious human rights issues in Sri Lanka but from the evidence in the records, the situation appears to be improving.

(*Sivabalasuntharampillai v. MCI*, IMM-6702-09, January 27, 2010, at p. 3).

[50] No irreparable harm in *Sivabalasuntharampillai* was found due to improving conditions in Sri Lanka. Justice James Russell dismissed the stay motion in *Arumugam*, wherein a young Tamil male from the north brought a stay motion on a negative PRRA (*Arumugam v. MCI*, IMM-565-10, March 1, 2010).

[51] While the situation in Sri Lanka remains a work in progress, the real question is whether Mr. Sittampalam has demonstrated on a balance of probabilities that the situation in Sri Lanka is such that he would be personally targeted for harm if he were returned.

[52] Mr. Sittampalam has had his alleged risk upon return to Sri Lanka assessed by the Minister's Delgate. Expertise of this nature has been recognized by the Supreme Court of Canada in *Suresh*, above.

[53] The Respondents have filed evidence from immigration officials pertaining to the situation faced by ordinary and high-profile returnees to Sri Lanka. This evidence provides first-hand accounts of the return of other high-profile Tamil gang members and LTTE members. Consistent with the 2009 Report from the UK Home Office referenced in the Delegate's reasons, and with the end of the civil war, the situation is now different.

[54] In the last few years, this Court has dismissed stays from several Tamil gang members, including high-profile members in leadership positions, who alleged that they would be perceived as having ties to the LTTE and would therefore experience harm (*Ariyarathnam*, above; reference is also made to *Canada (Minister of Citizenship and Immigration) v. Ariyarathnam*, 2002 FCT 48, 215 F.T.R. 255; *Thamotharampillai v. Canada (Solicitor General)*, 2004 FC 583, 130 A.C.W.S. (3d) 986 at para. 9; *Nagalingam v. MCI*, IMM-6447-05, December 2, 2005; for further context, see *Nagalingam v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 229, [2008] 1 F.C.R. 87 at paras. 14-16; *Nagalingam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1397,

134 A.C.W.S. (3d) 489; *Canada (Minister of Citizenship and Immigration) v. Nagalingam*, 2004 FC 1757, 136 A.C.W.S. (3d) 115; *Thuraisingam*, above; *Thanabalasingham*, above, at para. 11).

[55] The Court also notes the eight-member decision of the European Court of Human Rights in *Thampibillai v. The Netherlands*, rendered on February 17, 2004. In that case, the applicant's father had been shot dead by the Sri Lankan army, his brother was an LTTE fighter, and he had been repeatedly beaten and abused by the army. Nonetheless, the European Court found there was insufficient evidence to establish that the applicant could face a real risk of being subjected to treatment contrary to Article 3. The applicant had left Sri Lanka in 1994 and the climate in Sri Lanka had changed in the intervening 10 years so as to no longer put him at risk (*Thampibillai v. The Netherlands*, European Court of Human Rights (Application No. 61350/00, February 17, 2004)). It is reasonable to say that, with the end of the civil war, Tamils suspected of having LTTE links are even less at risk than they were in 2004.

[56] Mr. Sittampalam has included in his Motion Record a letter from Mr. Nagalingam's counsel and a statement by Mr. Thanabalasingham alleging that the two gang members were mistreated upon their return to Sri Lanka. These documents, however, do not establish that Mr. Sittampalam himself would experience irreparable harm. The letter from Mr. Nagalingam's counsel indicates that, aside from being questioned on two occasions (at the airport upon arrival and later at an army checkpoint), Mr. Nagalingam resided in Sri Lanka between December 2005 and January 2009 without serious incident. The motivation for the alleged incident that took place in January 2009 is described by counsel as follows: "[i]t appears that the motivation for his arrest may have been his

alleged ties to the Tamil gang in Toronto" (Letter from Counsel for Mr. Nagalingam, Applicant's Motion Record at p. 475). It is speculation to attempt to fathom why Sri Lankan authorities acted the way they did after a period of three years.

[57] Similarly, little or no weight can be placed on the statement from Mr. Thanabalasingham, witnessed by his wife. Both he and his family have repeatedly made misrepresentations during the course of his immigration proceedings in Canada. In dismissing Mr. Thanabalasingham's stay motion, Justice Barnes placed little weight on his affidavits "given the past propensity of the Applicant and some of his supporters for misrepresentation." He noted some of the findings made by the Immigration Appeal Division (IAD) when it dismissed Mr. Thanabalasingham's appeal:

> …
>
> a. The Applicant acknowledged numerous instances of perjury in his efforts to gain release from detention. When he was ultimately successful in that regard, he did nothing to correct the record as his case proceeded through the various Court reviews …
>
> b. The Applicant continued to minimize his gang ties in testimony before the Board and, in that respect, he lacked credibility.
>
> c. The Applicant's testimony was often evasive and, as an example, he professed an inability to remember if he had ever pulled his machete on anyone beyond the time he had used it for an assault.
>
> …
>
> d. Members of the Applicant's family had lied on his behalf in earlier immigration proceedings.

(*Thanabalasingham v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 486, 148 A.C.W.S. (3d) 103 at paras. 5 and 12; reference is also made to *Thanabalasingham v.*

Canada (Minister of Public Safety and Emergency Preparedness), 2007 FC 599, 315 F.T.R. 40, where Justice Johanne Gauthier noted that Mr. Thanabalasingham "committed perjury on numerous occasions prior to the hearing before the IAD." at para. 16).

[58] The civil war has ended. The changed conditions mean that the alleged experiences of Mr. Nagalingam and Mr. Thanabalasingham cannot be used as a barometer of what Mr. Sittampalam will experience.

[59] In addition to the above evidence about specific risks, the objective documentary evidence demonstrates that Tamils are not targeted simply because they are Tamil or may support the LTTE, as suggested by Mr. Sittampalam. Tamils make up between 9 and 16% of the population of Sri Lanka, and the Tamil National Alliance, a pro-LTTE party, won 14 seats in the April 2010 Parliamentary elections (down from 22) (Mater Affidavit, Respondents' Motion Record, Exhibit E (first article) and Exhibit F at pp. 9 and 37-44). Moreover, the Sri Lankan government continues to release detained LTTE cadres once it is determined that they are not hardcore terrorists or wanted for serious crimes.

[60] For all of these reasons, Mr. Sittampalam has failed to demonstrate on a balance of probabilities that he would experience harm if returned to Sri Lanka.

[61] Each failure of a business or economic loss as a consequence of removal does not amount to irreparable harm (*Selliah*, above at para. 15; *Kerrutt v. Canada (Minister of Citizenship and*

Immigration) (1992), 53 F.T.R. 93, 32 A.C.W.S. (3d) 621 at paras. 15-16; *Simoes v. Canada (Minister of Citizenship and Immigration)* (2000), 187 F.T.R. 219, 98 A.C.W.S. (3d) 422 at paras. 18-19).

[62] Mr. Sittampalam has shown he has been under an enforceable removal order since October 2004. Knowing he was subject to an enforceable removal order and a pending Danger Opinion, Mr. Sittampalam could have acted accordingly, e.g. in preparing a back-up plan for someone to take care of his exotic bird business.

[63] With respect to Mr. Sittampalam's argument that his removal would result in harm to others, the weight of the jurisprudence provides that irreparable harm must be harm to the individual seeking the stay and not to third parties. (*RJR- MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at para. 58; *Csanyi v. Canada (Minister of Citizenship and Immigration)* (2000), 97 A.C.W.S. (3d) 1192, [2000] F.C.J. No. 758 (QL); *Perry v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 378, 146 A.C.W.S. (3d) 1036 at para. 30; *Mariona v. Canada (Minister of Citizenship and Immigration)* (2000), 100 A.C.W.S. (3d) 302, 9 Imm. L.R. (3d) 58; *Tulina-Litvin v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 105, 155 A.C.W.S. (3d) 383 at para. 37). Even where separation caused by removal may produce substantial economic hardship to the family unit, the test remains whether an applicant himself will suffer irreparable harm.

[64] It is well-established that dislocation and disruption are the normal consequences of deportation. Whether Mr. Sittampalam's family remain in Canada or accompany him, those stresses are faced by everyone who is required to leave Canada involuntarily. They do not amount to irreparable harm. This principle was recognized by the Federal Court of Appeal in *Selliah*, above, and *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, 79 Imm. L.R. (3d) 157. In *Selliah*, Justice John Maxwell Evans commented as follows:

> [13] The removal of persons who have remained in Canada without status will always disrupt the lives that they have succeeded in building here. This is likely to be particularly true of young children who have no memory of the country that they left. Nonetheless, the kinds of hardship typically occasioned by removal cannot, in my view, constitute irreparable harm for the purpose of the *Toth* rule, otherwise stays would have to be granted in most cases, provided only that there is a serious issue to be tried: *Melo v. Canada (Minister of Citizenship and Immigration)* (2000), 188 F.T.R. 29.

(Reference is also made to *Sklarzyk v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 336, 105 A.C.W.S. (3d) 116 at para. 17; *Simoes*, above, at paras. 18-19).

[65] A contextual factor in this case should be highlighted. While it is understandable that Mr. Sittampalam would like to remain in Canada with his wife and children, Mr. Sittampalam was in detention from October 2001 until April 2007, and so his family was living apart from him and without his support for all that time.

[66] Mr. Sittampalam also argues that it is discriminatory to require an applicant to show that harm is more than "the normal consequences of deportation" to establish irreparable harm. He argues that this test is discriminatory to non-citizens. The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the

country. As the Supreme Court of Canada set out in *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711, the government of Canada has the right to deport non-citizens, who do not have an unqualified right to remain. As such, it is not discriminatory to treat non-citizens differently than citizens or to require them to demonstrate that harm beyond deportation is to befall them. (As also specified unanimously, in *Medovarski*, above, by the Supreme Court of Canada in 2005).

[67] In conclusion Mr. Sittampalam has failed to establish that he would suffer irreparable harm if the stay were not granted.

C. Balance of Convenience

[68] The considerations pertinent to assessing balance of convenience are set out by Justice Andrew MacKay:

> Absent evidence of irreparable harm, it is strictly speaking unnecessary to consider the question of the balance of convenience. Nevertheless, it is useful to recall that in discussing the test for a stay or an interlocutory injunction in the Metropolitan Stores case Mr. Justice Beetz stressed the importance of giving appropriate weight to the public interest in a case where a stay is sought against a body acting under public statutes and regulations which have not yet been determined to be invalid or inapplicable to the case at hand. That public interest supports the maintenance of statutory programs and the efforts of those responsible for carrying them out. Only in exceptional cases will the individual's interest, which on the evidence is likely to suffer irreparable harm, outweigh the public interest… (Emphasis added).

(*Dugonitsch v. Canada (Minister of Employment and Immigration)* (1992), 53 F.T.R. 314, 32 A.C.W.S. (3d) 314).

[69] The comments of Justice Evans in *Selliah*, above are also applicable:

> [21] Counsel says that since the appellants have no criminal record, are not security concerns, and are financially established and socially integrated in Canada, the balance of convenience favours maintaining the *status quo* until their appeal is decided.
>
> [22] I do not agree. They have had three negative administrative decisions, which have all been upheld by the Federal Court. It is nearly four years since they first arrived here. In my view, the balance of convenience does not favour delaying further the discharge of either their duty, as persons subject to an enforceable removal order, to leave Canada immediately, or the Minister's duty to remove them as soon as reasonably practicable: IRPA, subsection 48(2). This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control. (Emphasis added).

[70] This Court has recognized that, where an applicant has been convicted of criminal offences, the balance of convenience weighs heavily in the Minister's favour:

> **[7]** With respect to the balance of convenience test, I am in agreement with the reasoning of Rothstein J. in Mahadeo v. Canada (Secretary of State), October 31, 1994, (unreported), Court File IMM-4647-94 (F.C.T.D). In that case, Rothstein J. stated that when the applicant is guilty of welfare fraud or has been convicted of a criminal offence in Canada, the balance of convenience weighs heavily in favour of the respondent. In this case the applicant was convicted of assault causing bodily harm, which I find to outweigh any consideration of the emotional devastation of the applicant's family. I therefore find that the balance of convenience in this case lies with the respondent. (Emphasis added).

(*Gomes v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 199 (QL), 91 F.T.R. 264; reference is also made to *Townsend v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 247, 53 A.C.W.S. (3d) 358 at para. 6; *Thamotharampillai*, above, at para. 10; *Moncrieffe v. Canada (Minister of Citizenship and Immigration)* (1995), 62 A.C.W.S. (3d) 964; [1995] F.C.J. No. 1576 (QL) T.D. at para. 13; *Grant v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 141, 112 A.C.W.S. (3d)128 at para. 10).

[71] The comments of Justice Evans of the Federal Court of Appeal in *Tesoro v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148, [2005] 4 F.C.R. 210, where the applicant had been convicted of serious property fraud offences and had sought a stay of removal, are equally applicable:

> [47] However, if I had determined that Mr. Tesoro's removal would cause irreparable harm, on the ground that the effects of family separation were more than mere inconveniences, I would have located the harm at the less serious end of the range, and concluded that, on the balance of convenience, it was outweighed by the public interest in the prompt removal from Canada of those found to be inadmissible for serious criminality. If the administration of immigration law is to be credible, the prompt removal of those ordered deported must be the rule, and the grant of a stay pending the disposition of legal proceedings, the exception. (Emphasis added).

[72] The Court must consider that Mr. Sittampalam is defined as a danger to the public in Canada. If a person is a danger to the public, the public interest and the balance of convenience favours not staying removal from Canada (*Jama v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 374, 166 A.C.W.S. (3d) 297 at paras. 8, 10, 24-25 and 32; *Choubaev v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 816, 115 A.C.W.S. (3d) 854 at para. 17).

[73] It is reiterated that in n upholding section 196 of the IRPA in *Medovarski*, above, the Supreme Court of Canada held that the intent of the IRPA is to prioritize the security of Canada. This intent is reflected in the scheme to facilitate the removal of permanent residents who have engaged in serious criminality, and the IRPA's emphasis on the obligation of permanent residents to behave lawfully while in Canada. The Rt. Honourable Chief Justice of Canada, Beverley McLachlin, in speaking for a unanimous Court, wrote the following:

> [9] The *IRPA* enacted a series of provisions intended to facilitate the removal of permanent residents who have engaged in serious criminality. This intent is reflected in the objectives of the *IRPA*, the provisions of the *IRPA* governing permanent residents and the legislative hearings preceding the enactment of the *IRPA*.
>
> [10] The objectives as expressed in the *IRPA* indicate an intent to prioritize security. This objective is given effect by preventing the entry of applicants with criminal records, by removing applicants with such records from Canada, and by emphasizing the obligation of permanent residents to behave lawfully while in Canada. This marks a change from the focus in the predecessor statute, which emphasized the successful integration of applicants more than security: e.g., see s. 3(1)(*i*) of the *IRPA* versus s. 3(*j*) of the former Act; s. 3(1)(*e*) of the *IRPA* versus s. 3(*d*) of the former Act; s. 3(1)(*h*) of the *IRPA* versus s. 3(*i*) of the former Act. Viewed collectively, the objectives of the *IRPA* and its provisions concerning permanent residents, communicate a strong desire to treat criminals and security threats less leniently than under the former Act.
>
> …
>
> [12] In introducing the *IRPA*, the Minister emphasized that the purpose of provisions such as s. 64 was to remove the right to appeal by serious criminals. She voiced the concern that "those who pose a security risk to Canada be removed from our country as quickly as possible" … (Emphasis added).

[74] In the instant case, there can be little doubt that the balance of convenience favours the Minister. Mr. Sittampalam is and was regarded in previous decisions as a danger to the Canadian public, and his continued presence calls into question the integrity of our immigration system. Any inconvenience that Mr. Sittampalam may suffer as a result of his removal from Canada does not outweigh the public interest in executing the removal order as soon as reasonably practicable.

[75] In dismissing the motion for a stay of removal brought by Mr. Thanabalasingham, a leader of the rival V.V.T. gang, Justice Barnes stated:

> [19] In conclusion, I would adopt the position advanced by counsel for the Respondent on this motion where he stated:

> 101 Every year this Honourable Court hears hundreds of stay applications. Although illegal, many applicants are hard working, law-abiding people who are simply here in order to improve their lives and the lives of their families. Nonetheless, in order to uphold the immigration scheme and the law, this Court is required to dismiss the motions of most of these would be immigrants. In the instant case, we have an immigrant who has had the opportunity to make a better life for himself in Canada and contribute to Canadian society. He chose not to do so, and instead engaged in serious and violent criminal activity, violating and putting at risk the peace and safety of the Canadian public. To grant a stay in these circumstances, in the Respondent's respectful submission, would be contrary to the spirit, principles, and objectives of the *IRPA*, not to mention the principles underlying this Court's discretion to grant the requested relief.

(*Thanabalasingham*, above).

[76] Mr. Sittampalam has been before the Federal Courts on a number of occasions. As Justice Donna McGillis stated in *Sinnappu*: "it must be recognized that, at some point in the system, there has to be finality." (*Sinnappu v. Canada (Minister of Citizenship and Immigration)* (1997), 2 F.C. 791 (T.D.) at para. 73).

VI. Conclusion

[77] For all of the above reasons, the Applicant's application for a stay of the execution of his removal is denied.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for a stay of execution of the removal order be denied. No question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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