

Federal Court



Cour fédérale

**Date: 20101112**

**Docket: IMM-1175-10**

**Citation: 2010 FC 1131**

**Ottawa, Ontario, November 12, 2010**

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

**BETWEEN:**

**PUVANESWARAN NALLATHAMBY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Nallathamby seeks to set aside the decision of an officer denying his Pre-Removal Risk Assessment (PRRA) application. For the reasons that follow, his application is dismissed.

[2] The applicant is a 40 year-old man of Tamil background from Sri Lanka. He came to Canada on July 26, 1999 and made a claim for refugee protection. His claim was dismissed by the former Convention Refugee Determination Division on October 5, 2000, in part because of credibility issues relating to his identity.

[3] The applicant submitted a PRRA application on September 1, 2009, in which he made submissions and provided documents with respect to his identity. The PRRA submissions indicated that he fears returning to Sri Lanka despite the defeat of the Liberation Tigers of Tamil Eelam. The PRRA application also included a letter from a psychologist, Dr. Devins, outlining his assessment of the applicant's depressed mental state and the psychological risk the applicant would face if he was to return to Sri Lanka.

[4] The officer noted that because the applicant had not had a refugee determination under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, all of the documentation provided would be considered under the PRRA risk assessment.

[5] The officer also noted that the applicant was not named in any of the reports relating to the treatment of Tamils in Sri Lanka and that accordingly the articles would be considered as relating to general country conditions in Sri Lanka.

[6] The officer referred to a UK Home Office Country of Origin Report which indicated that since the end of the war, conditions in Sri Lanka, although still far from ideal, have continued to improve. The officer acknowledged that displaced Tamils continued to be held in large camps and that conditions in these camps have been criticized as being illegal. However, the officer noted BBC News reports indicating that both the United Nations and UK government had reported an improvement in the security situation and the recovery process in general.

[7] The officer also considered a UK Border Agency Country of Origin Report from August 2009 which considered the situation facing Tamils in Colombo since the end of the war. The officer observed that the report considered the security tactics used by the government, and specifically quoted a passage from the report referring to the treatment of Tamils returning from abroad at the Colombo airport. The officer also referred to documentation considering the feasibility of residence in Colombo for Tamils, which noted that Tamils constitute up to 20% of the capital's population.

[8] The officer specifically addressed the psychological report tendered by the applicant, reviewed the report's findings and acknowledged the medical conclusions of the psychologist. However, the officer noted that the report did not recommend treatment or therapy other than suggesting professional mental health treatment and freedom from the threat of deportation. The officer also noted that other than an interview, no tests or other diagnostic tools were used in the diagnosis. The officer found that the psychologist's comments with regard to the applicant's risk if returned to Sri Lanka were speculative and that no objective basis was provided for the diagnosis.

[9] The officer noted that the applicant has been away from Sri Lanka for ten years and that despite his profile as a Tamil male from northern Sri Lanka, given the change in country conditions and insufficiency of the evidence presented by the applicant, the applicant would not face more than a mere risk of persecution under s. 96 and removal from Canada would not subject the applicant to the dangers in s. 97 of the Act.

## **Residential Area**

[10] The applicant says that the officer erred in ignoring evidence about his residential area in Sri Lanka. While it was not mentioned by the officer, the fact that the officer did not specifically state that the applicant's residential area falls within a high-security zone is not a sufficient ground for upsetting the entire decision. I agree with the respondent that the officer very clearly considered the possibility of the applicant relocating to Colombo and cited documentary evidence in this regard.

### **Psychological Report**

[11] The applicant submits that the officer erred in his assessment of the evidence contained in the psychological report.

[12] The officer appears to have given the report little weight for two reasons. First, the officer observes that "other than an interview, no tests or other diagnostic tools were reportedly used in this diagnosis." There was nothing before the officer to indicate that other diagnostic tools were available or would be of assistance in coming to a valid diagnosis. Without such evidence the officer cannot properly assign less weight to the report solely because other tests were not performed. However, I agree with the respondent that it was open to the officer to take account of the fact that the report was based solely on information supplied by the applicant and to attribute little weight to it as a consequence. A fair reading of the decision as a whole satisfies me that the officer's weighing fell in this second scenario and not the first, and it is clear that the officer's finding regarding the lack of other diagnostic tools was only one factor in the weighing of the report.

[13] Second, the officer appears to have given the report little weight because the psychologist “has recommended no treatment or therapy for the applicant to assist the applicant in overcoming his illness other than suggesting “professional mental health treatment” that was awaiting confirmation of health coverage and freedom from the threat of deportation.” It is unclear what other treatment could be recommended and there was certainly no evidence that the treatment recommended was improper or inappropriate; however, it is true that it was a very general statement. There was no evidence before the officer that “professional mental health treatment” would not be available to the applicant in Sri Lanka. Furthermore, the finding that the applicant’s risk of suicide would increase if he were removed to Sri Lanka was again based solely on the applicant’s statement to that effect to the psychologist. While I may have attributed different weight to this evidence, it cannot be said that the weight assigned to it by the officer was unreasonable.

### **Weighing of Evidence**

[14] The applicant also submits that the officer dismissed relevant documents he submitted because he was not named in them. These documents were being relied on by the applicant to establish an objective basis for risk based on country conditions; accordingly, I do not accept the submission that the officer erred by assigning the documents no more weight than other country condition evidence.

[15] Furthermore, I do not agree with the applicant that the officer disregarded evidence that did not support the ultimate negative decision. Throughout the decision the officer referred to evidence of ongoing problems in Sri Lanka. As the respondent submitted, the officer engaged in a weighing of the evidence and the weight given to certain pieces of evidence is not a matter with which this

Court should interfere. I accept the respondent's submission that recent cases have confirmed the reasonableness of similar decisions addressing recent developments in Sri Lanka. In addition to *Sivabalasuntharampillai v. Canada (Minister of Citizenship and Immigration)* (27 January 2010), IMM-6701-09 (F.C.), Mosley J., and *Arumugam v. Canada (Minister of Citizenship and Immigration)* (1 March 2010), IMM-565-10 (F.C.), Russell J., cited by the applicant, the Court has come to similar determinations in *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 562, and *Sathivadivel v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 863.

### **Procedural Fairness**

[16] The applicant submits that the fact that the officer conducted his own research into country conditions without notifying him of the research indicating an improvement in country conditions was a breach of procedural fairness.

[17] The jurisprudence is clear that applicants need not be informed of publicly available documentation that became available after submissions were made to the decision-maker unless the information is "novel and significant" and evidences changes in the general country conditions that may affect the decision: *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461 (C.A.), *Lima v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 222. The documents the officer examined post-application simply do not meet this test. Nothing novel and significant was pointed to by the applicant and having reviewed the documents, I can find nothing that falls within that description.

[18] Lastly, the applicant submits that the officer erred by failing to articulate his or her findings regarding the evidence and by not acting in a transparent manner. While it would have been preferable for the officer to set out his or her reasoning in more detail, it is clear that the officer considered the evidence regarding continuing problems for Tamils in Sri Lanka but concluded that the situation did not rise to a level warranting protection under ss. 96 or 97 of the Act. Based on a full review of the decision and the record, this was not an unreasonable finding given the evidence considered by the officer.

[19] For these reasons the application is dismissed. Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that:**

1. This application is dismissed; and
2. No question is certified.

“Russel W. Zinn”

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Judge



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

**DOCKET:** IMM-1175-10

**STYLE OF CAUSE:** PUVANESWARAN NALLATHAMBY v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 3, 2010

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

**DATED:** November 12, 2010

**APPEARANCES:**

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