

Federal Court



Cour fédérale

**Date: 20130703**

**Docket: IMM-11121-12**

**Citation: 2013 FC 742**

**Ottawa, Ontario, July 3, 2013**

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

**BETWEEN:**

**THAYAPARAN VELUMMAYILUM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Following the dismissal of his refugee claim, largely because he was found not to be credible and may not even have been in Sri Lanka at the relevant time, Mr. Velummayilum applied for a pre-removal risk assessment (PRRA). Such an application is limited to new evidence that arose after the rejection or was not reasonably available.

[2] Mr. Velummayilum submitted that country conditions in Sri Lanka had deteriorated since his refugee claim had been dismissed, and that he is facing new risks.

[3] He would be returning to Sri Lanka as a failed refugee and as someone who had left Sri Lanka with a forged identity card, an offence under that country's law.

[4] The PRRA officer dismissed the application. The application for judicial review of that decision is hereby dismissed as well.

[5] Although conditions in Sri Lanka are far from ideal, particularly for young male Tamils from the north and the east, it cannot be said, on the balance of probabilities, that the situation has deteriorated so that the PRRA officer's decision was unreasonable.

[6] As to the new risk faced, that of a failed refugee, in reality Mr. Velummayilum is advancing a refugee sur place claim.

[7] Any decision on a refugee claim is forward looking. The Refugee Protection Division, of the Immigration and Refugee Board of Canada, has to decide whether there is a serious possibility of persecution on a United Nations ground under s. 96 of the *Immigration and Refugee Protection Act* (IRPA) or, under s. 97 on the balance of probabilities, a danger of torture or a risk to life or cruel and unusual treatment and punishment (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1, [2005] 3 FC 239, [2005] FCJ No 1 (QL)).

[8] Mr. Velummayilum relies on the recent decision of *Rathnavel v Canada (Minister of Citizenship and Immigration)*, 2013 FC 564, [2013] FCJ No 612 (QL). Either that decision is distinguishable because it focused entirely on credibility issues, or it is inconsistent with the great

deal of recent case law which has upheld the principle that it is no longer enough to fit the profile of a young male Tamil from the north or east Sri Lanka to be accorded refugee status. There must be something more. See *Canada (Minister of Citizenship and Immigration) v B380*, 2012 FC 1334, [2012] FCJ No 1657 (QL); *PM v Canada (Minister of Citizenship and Immigration)*, 2013 FC 77, [2013] FCJ No 136 (QL); *SQ v Canada (Minister of Citizenship and Immigration)*, 2013 FC 78, [2013] FCJ No 137 (QL); *Canada (Minister of Citizenship and Immigration) v B472*, 2013 FC 151, [2013] FCJ No 192 (QL); *Canada (Minister of Citizenship and Immigration) v B323*, 2013 FC 190, [2013] FCJ No 193 (QL); *Canada (Minister of Citizenship and Immigration) v 377*, 2013 FC 320, [2013] FCJ No 522 (QL); *Canada (Citizenship and Immigration) v B134*, order dated 8 April 2013, IMM-8010-12; *Canada (Minister of Citizenship and Immigration) v B344*, 2013 FC 447, [2013] FCJ No 547 (QL); *Canada (Citizenship and Immigration) v A011*, 2013 FC 580, [2013] FCJ No 685 (QL); and *Canada (Minister of Citizenship and Immigration) v B451*, 2013 FC 441, [2013] FCJ No 561 (QL).

[9] No doubt a failed refugee claimant will be questioned on arrival in Sri Lanka. However, Mr. Velummayilum has not been found to have any links with the Liberation Tigers of Tamil Eelam, and so the risk of persecution, although always present, is no more than a mere possibility.

[10] As to his forged identity card, if that serves as a basis for persecution, the persecution would be under s. 97 of IRPA, as it would not be based on the United Nations Convention ground. No evidence has been put forth to establish on the balance of probabilities a risk of torture or death.

[11] Consequently, the judicial review shall be dismissed.

**ORDER**

**FOR REASONS GIVEN;**

**THIS COURT ORDERS that**

1. This application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

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Judge

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

**DOCKET:** IMM-11121-12

**STYLE OF CAUSE:** THAYAPARAN VELUMMAYILUM v MCI

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** JUNE 26, 2013

**REASONS FOR ORDER  
AND ORDER:** HARRINGTON J.

**DATED:** JULY 3, 2013

**APPEARANCES:**

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