

Suresh v. Canada (Minister of Citizenship and Immigration), 1998 CanLII 7261 (F.C.)

Date: 1998-01-16
Docket: IMM-117-98
Parallel citations: (1998), 141 F.T.R. 152
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[Reflex Record](#) (noteup and cited decisions)

Date: 19980116

Docket: IMM-117-98

BETWEEN:

MANICKAVASAGAM SURESH,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

TREMBLAY-LAMER J.:

[1] This is an application to stay removal of the Applicant from Canada pending determination of his application for leave and for judicial review.

[2] In his application for leave and for judicial review, the Applicant seeks to challenge the Minister's decision pursuant to section 53(1)(b) of the *Immigration Act*¹ ("Act"), that she is of the opinion that the Applicant constitutes a danger to the public, and her decision to remove him to Sri Lanka, his country of origin. It is the latter decision which gives rise to this application for a stay.

[3] The Applicant, a Tamil from Sri Lanka, came to Canada on October 5, 1990 and was granted refugee status in April 1991. In 1995, the Solicitor General of Canada and the Minister of Citizenship and

Immigration certified pursuant to section 40.1(1) of the Act that the Applicant was inadmissible to Canada on security grounds, as he was a person described in sections 19(1)(e)(iv)(C), 19(1)(f)(ii) and 19(1)(f)(iii)(B) of the Act.

[4] **The Ministers' opinion was based on a security intelligence report provided by the Canadian Security Intelligence Service (CSIS), which advised the Ministers that there were reasonable grounds to believe that the Applicant was a member of the Liberation Tigers of Tamil Eelam (LTTE).**

[5] **Because of the certificate issued against him, the Applicant was detained under section 40.1 of the Act. He was also made the subject of a hearing before Mr. Justice Teitelbaum, who concluded that the issuance of the certificate against the Applicant was reasonable. As a result of the Court's decision, the Applicant was made the subject of an inquiry and ordered deported on September 17, 1997.**

[6] **The Applicant was also notified that the Minister of Citizenship and Immigration's representatives intended to request the opinion of the Minister, pursuant to section 53(1) of the Act, that the Applicant constitutes a danger to the security of Canada. The notice advised him that he was entitled to make submissions, which he did. The Applicant was informed orally on January 8, 1998 that the Minister was of the opinion that he was a threat to the security of Canada and that he would be returned to Sri Lanka.**

[7] **In order for the applicant to be successful in this application to stay his removal, he must meet the three-fold test set out in *Toth v. Minister of Employment and Immigration*.¹**

[8] **The Applicant must first establish that there is a serious issue to be tried on his application for leave and for judicial review. This involves a preliminary assessment of the merits and the threshold to satisfy this part of the test is low.**

[9] **The application raises a number of issues. In particular, the Applicant alleges that his removal to Sri Lanka violates his rights under sections 7 and 12 of the Charter because he faces a serious risk of harm in his country of citizenship.**

[10] **In *Kindler v. Canada (Minister of Justice)*¹, the Supreme Court of Canada decided that the extradition of an individual to a country where he faces the death penalty does not infringe the Charter. At first glance, I fail to see how the deportation of a terrorist to a country where he faces a lesser risk of harm as indicated later in these reasons, would infringe the Charter.**

[11] **Nevertheless, based on the Federal Court of Appeal's decision in *Sivakumar v. Canada (Minister of Citizenship and Immigration)*¹, I am ready to assume that there is a serious issue.**

[12] **As for the second part of the test, I am unable to find that the Applicant would suffer irreparable harm in light of the assurance given by the High Commissioner of Sri Lanka, the highest ranking Sri Lankan official in**

Canada, that the Applicant would not be tortured or killed if returned to Sri Lanka.

[13] **Counsel for the Applicant urges the Court not to give any weight to this assurance considering Sri Lanka's overall human rights record. I disagree. In my view, the high profile media attention given to the Sri Lankan government's commitment puts its international reputation at stake and as such, it is reasonable to conclude that the authorities would take the necessary measures to ensure that their commitment is respected.**

[14] **Finally, I agree with my colleague, Muldoon J., that "Canada is not intended to be a haven for terrorists".¹ The public's interest in executing deportation orders of individuals found to be a danger to the security of the country clearly outweighs the private interests of the Applicant.**

[15] **Consequently, the application for a stay of the deportation order is dismissed.**

"Danièle Tremblay-Lamer"

JUDGE

Toronto, Ontario

January 16, 1998

[1]

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

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STYLE OF CAUSE: MANICKAVASAGAM SURESH

- and -

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

DATE OF HEARING: JANUARY 15, 1998

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REASONS FOR ORDER BY: TREMBLAY-LAMER, J.

DATED: JANUARY 16, 1998

APPEARANCES:

Ms. Barbara Jackman

For the Applicant

Ms. Cheryl D. Mitchell

For the Respondent

SOLICITORS OF RECORD:

Jackman, Waldman & Associates

Barristers and Solicitors

281 Eglinton Avenue East

Toronto, Ontario

M4P 1L3

For the Applicant

George Thomson

Deputy Attorney General
of Canada
For the Respondent

FEDERAL COURT OF CANADA

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R.S.C. 1985, c. I-2.

(1988), 86 N.R. 302 (F.C.A.).

"1991 > 2 S.C.R. 779.

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Tejinder Pal Singh v. Minister of Citizenship and Immigration (December 22, 1997), IMM-5294-97 at 1 (F.C.T.D.).

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