

BETWEEN: SIVAGANTHAN RASARATNAM Applicant - and - THE
MINISTER OF EMPLOYMENT AND IMMIGRATION Respondent

[Indexed as: Rasaratnam v. Canada (Minister of Employment and
Immigration)]

Federal Court of Appeal

1991 ACWSJ LEXIS 21836; 1991 ACWSJ 60016; 31 A.C.W.S. 3d
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December 5, 1991

KEYWORDS: [*1] IMMIGRATION -- Refugee status -- Requirements -- Board properly held that Sri Lankan Tamil could have found internal refuge where government controlled area of his residence, and was not shown to be persecuting Tamils there -- Fears from Tamil group were insufficient -- Internal flight alternative concept was inherent in definition of convention refugee(8 pp.)

COUNSEL: Mr. Lorne Waldman for the Applicant
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JUDGES: Mahoney, Stone and Linden JJ.A.

Mahoney, J.A.

[**1] This is an appeal from the decision of the Convention Refugee Determination Division of the Immigration and Refugee Board that the Applicant, a Sri Lankan Tamil, is not a Convention refugee. The issue concerns what is termed internal refuge, the internal flight alternative, or "IFA". The Board expressly resolved any doubts as to the Applicant's credibility in his favour and went on to find:

... that the claimant feel persecution in the Jaffna area at the hands of the LTTE That few has an objective basis. ... If Sri Lanka were a country [*2] controlled by the LTTE, I would have no difficulty in finding that the claimant had a well-founded fear of persecution. But it is not. The Sri Lanka government effectively controls the majority of the country, particularly the south. Colombo as situated in this area. The claimant Eyed in Colombo from June 1989 until December 1989 without incident The claimant stated that he few he would be arrested and possibly shot as soon as he arrived at Colombo airport. He provided no details as to why he believes this. The claimant departed from Colombo airport with his own passport without encountering any problems. There is

no mention in the numerous articles submitted by the claimant to support this contention of immediate arrest upon arrival. There is evidence that a large population of Tamil people live in Colombo. There is no evidence that this group is being persecuted by the government of Sri Lanka.

... I am unable to conclude that the claimant's subjective fear of persecution has an objective basis.

[**2] The LTTE are the so-called Tamil Tigers.

[**3] The Immigration Act defines "Convention refugee". (*1)

[**4] (*1) R.S.C. 1985. c. 1-Z & 2.

"Convention refugee means any [*3] person who

(a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(i) is outside the country of his nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, or

(ii) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country, and

(b) has not ceased to be a Convention refugee by virtue of subsection (2),

but does not include any person to whom the Convention does not apply pursuant to section E or F of Article 1 thereof, which sections are set out in the schedule to this Act;

[**5] The Appellant argues that the Board misapplied the test for IFA in finding that he did not have a well-founded fear of persecution because he could have sought internal refuge in Colombo. He also argues that it misconstrued the evidence regarding the possibility of IFA in Colombo.

[**6] The Appellant submits the following propositions as prerequisites to a finding that a claimant is not a Convention refugee because of an IFA. [*4]

First, the Board must be satisfied on the evidence before it that the circumstances in the part of the country to which the claimant could have fled are sufficiently secure to ensure that the appellant would be able "to enjoy the basic and fundamental human rights".

Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

Third, once a claimant has established a well-founded fear of persecution in one part of a country, the onus is no longer on the claimant to prove, on a balance of probabilities, that he or she is a Convention refugee but rather, the onus is on the Minister to satisfy the Board, on a balance of probabilities, that there is an IFA since finding an IFA is essentially the equivalent of finding a cessation of or exclusion from Convention refugee status.

[**7] It is said that the only reference to the IFA concept in this Court's jurisprudence is to be found in *Zalzali v M.E.I.* (*2) where Decary, J.A., said:

[**8] (*2) Rendered April 30,1991, file A-382-90. I do not have to decide here what is meant "government". I know that in principle persecution in [*5] a given region will not be persecution within the meaning of the Convention if the government of the country is capable of providing the necessary protection elsewhere in its territory, and if it may be reasonably expected dig taking into account all the circumstances, victims Will move to that part of the territory where they will be protected.

[**9] In a footnote referenced to that passage, Decary, J.A. referred to a number of decisions of the Immigration Appeal Board and to paragraph 91 of the U.N. Handbook, (*3) which reads:

[**10] (*3) Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees , Office of the United Nations High Commissioner for Refugees, Geneva, January, 1988. The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country.

[**11] The emphasis is in the original.

[**12] In my opinion, the IFA concept is inherent in the [*6] Convention refugee definition. That definition requires the claimant to be outside the country of nationality or former habitual residence and unable, or unwilling, to return to it by reason of a well-founded fear of persecution for one of the stated reasons: race, religion, nationality, membership in a particular social group or political opinion. I see no need to reach a concluded opinion that fear of persecution so circumscribed is necessarily coextensive with deprivation of the enjoyment of "the basic and fundamental human rights". I would, accordingly, restate the first proposition: the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.

[**13] I find no fault with the second proposition.

[**14] As to the third proposition, since by definition a Convention refugee must be a refugee from a country, not from some subdivision or region of a country, a claimant cannot be a Convention refugee if there is an IFA. It follows that the determination of whether or not there is an IFA is integral to the determination whether or not a claimant is a Convention [*7] refugee. I see no justification for departing from the norms established by the legislation and jurisprudence and treating an IFA question as though it were a cessation of or exclusion from Convention refugee status. For that reason, I would reject the Appellant's third proposition.

[**15] That said, however, a claimant is not to be expected to raise the question of an IFA nor is an allegation that none exists simply to be inferred from the claim itself. The question must be expressly raised at the hearing by the refugee bearing officer or the Board and the claimant afforded the opportunity to address it with evidence and argument.

[**16] In my opinion, in finding the IFA, the Board was required to be satisfied, on a balance of probabilities that there was no serious possibility of the Appellant being persecuted in Colombo and that, in all the circumstances including circumstances particular to hint, conditions in Colombo were such that it would not be unreasonable for the Appellant to seek refuge there.

[**17] The Appellant takes exception to the finding that

the claimant lived in Colombo from June 1989 until December 1989 without incident

[**18] and to the finding that [*8]

There is evidence that a large population of Tamil people live in Colombo. here is no evidence to suggest that this group has been persecuted by the government of Sri Lanka.

[**19] He says that the first ignores his evidence, found credible, that he did not leave his apartment at all during most of his six months in Colombo because of the presence of the LTTE there and that the latter ignores documentary evidence of persecution of Tamils by the Sri Lankan government. He further says that even if he could seek refuge in Colombo, it is not reasonable to expect him to do so because Tamils are in a minority there and the Sinhalese majority have, on occasion and with possible government complicity, oppressed them.

[**20] The evidence discloses three very different sets of conditions in different parts of Sri Lanka during the periods before, during and after the presence of the Indian Peace Keeping Force, the "IPKF". While the Appellant was in Colombo, the IMF was in Sri Lanka; it has since left. The Appellant testified to having had problems with the IPKF, not Sri Lankan authorities. After he had been in Colombo two months, he became aware of the presence there of the LTTE which [*9] was cooperating with the government to secure withdrawal of the IPKF. It was fear of the LTTE that kept him in his apartment. After withdrawal of the IPKF, the LTTE also withdrew from Colombo and is again operating against the government in the north and east of Sri Lanka, well away from Colombo. The evidence- is that the last large scale difficulties between Tamils and Sinhalese in Colombo was in 1983. It coincided with the outbreak of the Tamil violence in the north and east and the murder of Sinhalese soldiers by Tamil youths in Jaffna. The evidence is that, since withdrawal of the IPKF, violence in Sri Lanka has been concentrated in the north and east and not anywhere near Colombo.

[**21] It may have been somewhat misleading to say that the Appellant had lived in Colombo without incident inasmuch as his life style there was scarcely normal. That said, there was ample evidence upon which the Board could conclude that, at the time of its hearing, Colombo provided an IFA for Tamil refugees from Jaffna generally and that, in all the circumstances of the Appellant's case, it would not be unreasonable for him to seek refuge there. I am unable to deduce from the record that it adopted [*10] any wrong principle or otherwise erred in reaching that conclusion.

[**22] In my opinion, the Board did not err in concluding that the Appellant is not a Convention refugee. I would dismiss the appeal.

[**23] A.J. Stone, J.A. : I AGREE

[**24] A.M. Linden, J.A. : I AGREE