

# **Jeyarajah v. Canada (Minister of Citizenship and Immigration)**

Between  
Vijayamalini Jeyarajah, applicant, and  
The Minister [of Citizenship and Immigration], respondent

[1999] F.C.J. No. 369  
Court File No. IMM-2473-98

**Federal Court of Canada - Trial Division**  
**Montréal, Quebec**  
**Denault J.**

Heard: March 11, 1999  
Judgment: March 17, 1999  
(4 pp.)

## **Counsel:**

Martin Forget, for the applicant.  
Marie Nicole Moreau, for the respondent.

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1 **DENAULT J.** (Reasons for Decision):— The applicant, a Tamil citizen of Sri Lanka, is seeking judicial review of a decision of the Convention Refugee Determination Division of the Employment and Immigration Commission, which determined she was not a Convention refugee.

2 The applicant's claim was based on the five grounds set out in the definition of Convention refugee. A native of Jaffna in northern Sri Lanka, she claims that on numerous occasions she and her husband were victims of extortion by the Liberation Tigers of Tamil Eelam (LTTE). She testified that when they refused to co-operate, they were threatened, beaten or imprisoned. They took refuge first in Kilinochi and later in Colombo in June 1996.

3 Fifteen days after their arrival in Colombo, they were detained by police, who suspected the applicant's husband of associating with the Tamil Tigers. The police allegedly questioned and humiliated the applicant and interrogated and beat her husband. She was released after four days and her husband after ten days. After this incident, the police kept calling on them.

4 The applicant came to Canada on August 14, 1996, leaving her family in Sri Lanka. Her husband left Sri Lanka in February 1997 to come to Canada. At the time of the hearing before the Refugee Division, she still did not know if he was in Canada.

5 Although the Refugee Division acknowledged that the applicant had a well-founded fear of persecution in northern Sri Lanka, it nevertheless found that she had an internal flight alternative in Colombo. In fact, the panel stressed that the plaintiff had not personally been targeted by the police in the past - she had merely suffered the backlash of the suspicions against her husband - and this was not likely to happen in the future as her husband had left Sri Lanka to come to Canada.

6 The applicant submits that she did not have to establish that she was personally targeted by the police, as her claim was based on her membership in a particular social group, namely the family. She criticizes the Refugee Division for not having assessed her claim on this basis, namely as the wife of a person who was targeted by both the LTTE and the police.

7 The argument raised by counsel for the applicant is ambiguous. His argument is inadmissible with respect to his attempt, on the one hand, to establish that the applicant is a refugee as the wife of a person who has a fear of persecution. First, the spouse's refugee status has not yet been established. In addition, the concept of indirect persecution he seems to be arguing runs directly counter to the decision of the Federal Court of Appeal in *Rizkallah v. Canada (Minister of Employment and Immigration)* (1994), 156 N.R. 1.<sup>1</sup>

8 On the other hand, while it is true that the case law recognizes the family as a particular social group, a person is not a refugee solely because a member of his or her family is being persecuted. As Mr. Justice Nadon stated in *Casetellanos v. Canada (Solicitor General)*,<sup>2</sup> ". . . [t]here has to be a clear nexus between the persecution that is being levelled against one of the family members and that which is taking place against the others". The judge rejected the claim for refugee status in that case, as he considered that

. . .the Board was correct in its finding that the fear of persecution felt by the female applicants was insufficient to draw the required nexus. The Board found that there was no evidence whatsoever that any persecutory activities had been levelled against the mother or her daughters, let alone any based upon their being members of Mr. Casetellanos's family. For that matter, there was no evidence presented that the female applicants could be the subject of future persecution by virtue of being part of Mr. Casetellanos's family if they were returned to Cuba, either. Their claims can therefore not be founded on the basis that they are persecuted members of a social group, and I must uphold the Board's finding in this regard.

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<sup>1</sup> See also *Pour-Shariati v. Min. of Employment and Immigration* (1998), 39 Imm.L.R. (2d) 103.

<sup>2</sup> [1995] 2 F.C. 190 (T.D.), at pages 204 and 205.

9 In the instant case, the panel found that no persecutory activities had been levelled against the applicant by the police in Colombo, and that her detention and subsequent problems did not constitute persecution. Further, insofar as the applicant was detained by the police because of their suspicions with respect to her husband, the panel believed that the applicant would not suffer persecution in the future as her husband had now left Sri Lanka. As for the Tamil Tigers, the applicant stated that she did not fear them in Colombo and accordingly did not demonstrate a fear of persecution with respect to them.

10 For these reasons, the application for judicial review must be dismissed. This case does not raise any serious question of general importance.

Certified true translation: M. Iveson