



Kanthasamy v Canada (Citizenship and Immigration)

2015 SCC 61

Country: Canada

Region: Americas

Year: 2015

Court: The Supreme Court of Canada

Health Topics: Child and adolescent health, Disasters and emergencies, Health care and health services, Mental health, Prisons, Violence

Human Rights: Freedom of movement and residence, Right to liberty and security of person

Facts

The appellant was a 17 year old boy who applied for permanent residence from within Canada, having previously landed as a refugee claimant. He travelled to Canada to escape threatened violence from the army and police in Sri Lanka, his native country after he was detained and questioned by the Sri Lankan police and army. His application for refugee protection was denied, and he subsequently sought permanent resident status on humanitarian and compassionate grounds. He was assessed by a psychologist and diagnosed with post-traumatic stress disorder and adjustment disorder stemming from his experiences in Sri Lanka. His application for permanent residence was denied on the basis that there was insufficient evidence that his deportation to Sri Lanka would result in unusual and undeserved or disproportionate hardship.

A series of appeals in the lower courts resulted in a holding that the denial of the appellant's application for permanent residence was reasonable. He then appealed to the Supreme Court of Canada.

Decision and Reasoning

The court allowed the appeal. It held that the denial of the appellant's permanent residence application was unreasonable. The best interests of children must be considered in the analysis, both independently and as a factor modifying analysis of the child's other circumstances.

The officer assessing the appellant's application for permanent residence failed to take into account the appellant's age, his mental health, and evidence of likely discrimination should he return to Sri Lanka. The officer ignored the effect deportation would have on his mental health, focusing instead on the availability of treatment in Sri Lanka to justify denying his application. The officer also incorrectly concluded that there was no proof of discrimination because the appellant could not demonstrate that he would be personally targeted. An applicant need not prove that he or she is personally targeted; discrimination against a particular group of which the applicant is a part must be taken into account.

The court set aside the officer's decision and remitted the matter for reconsideration.

The dissenting judges stated that the majority opinion erred in giving the phrase "justified by humanitarian and compassionate considerations" a broad interpretation as it would lead to a separate freestanding immigration process, which they stated clearly goes against the intention of the parliament.

Decision Excerpts

"Having accepted the psychological diagnosis, it is unclear why the Officer would nonetheless have required Jeyakannan Kanthasamy to adduce additional evidence about whether he did or did not seek treatment, whether any was even available, or what treatment was or was not available in Sri Lanka. Once she accepted that he had post-traumatic stress disorder, adjustment disorder, and depression based on his experiences in Sri Lanka, requiring further evidence of the availability of treatment, either in Canada or in Sri Lanka, undermined the diagnosis and had the problematic effect of making it a conditional rather than a significant factor." (Para 47)

"Moreover, in her exclusive focus on whether treatment was available in Sri Lanka, the Officer ignored what the effect of removal from Canada would be on his mental health. As the Guidelines indicate, health considerations in addition to medical inadequacies in the country of origin, may be relevant: Inland

Processing, s. 5.11. As a result, the very fact that Jeyakannan Kanthasamy's mental health would likely worsen if he were to be removed to Sri Lanka is a relevant consideration that must be identified and weighed regardless of whether there is treatment available in Sri Lanka to help treat his condition: *Davis v. Canada (Minister of Citizenship and Immigration)* (2011), 2011 FC 97 (CanLII), 96 Imm. L.R. (3d) 267 (F.C.); *Martinez v. Canada (Minister of Citizenship and Immigration)* (2012), 2012 FC 1295 (CanLII), 14 Imm. L.R. (4th) 66 (F.C.). As previously noted, Jeyakannan Kanthasamy was arrested, detained and beaten by the Sri Lankan police which left psychological scars. Yet despite the clear and uncontradicted evidence of such harm in the psychological report, in applying the "unusual and undeserved or disproportionate hardship" standard to the individual factor of the availability of medical care in Sri Lanka and finding that seeking such care would not meet that threshold the Officer discounted Jeyakannan Kanthasamy's health problems in her analysis. (Para 48)

And while the Officer did not dispute the psychological report presented, she found that the medical officer's rest[ed] mainly on hearsay because the psychologist was not a witness of the events that led to the anxiety experienced by the applicant. This disregards the unavoidable reality that psychological reports like the one in this case will necessarily be based to some degree on hearsay. Only rarely will a mental health professional personally witness the events for which a patient seeks professional assistance. To suggest that applicants for relief on humanitarian and compassionate grounds may only file expert reports from professionals who have witnessed the facts or events underlying their findings, is unrealistic and results in the absence of significant evidence. In any event, a psychologist need not be an expert on country conditions in a particular country to provide expert information about the probable psychological effect of removal from Canada. (Para 49)

Finally, even though Jeyakannan Kanthasamy's current age makes this issue one that no longer requires intervention, the Officer's analysis of the "best interests" factor cannot be characterized as anything other than perfunctory. She simply stated, in a single paragraph, that Jeyakannan Kanthasamy's best interests lay in returning to Sri Lanka where he had grown up and where his immediate family continued to reside. In my view, this fails to accord with the "serious weight and consideration" this Court in *Baker* identified as essential to a proper appreciation of a child's best interests: para. 65. (Para 57)