

Federal Court



Cour fédérale

**Date: 20160620**

**Docket: IMM-3822-15**

**Citation: 2016 FC 691**

**Ottawa, Ontario, June 20, 2016**

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

**BETWEEN:**

**SURESTHIRANAGAM SOORASINGAM**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUGEMENT AND REASONS**

**I. Overview**

[1] Mr. Suresthiranagam Soorasingam, a Tamil male from Sri Lanka, challenges a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada issued on June 29, 2015, determining that he was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27. Mr. Soorasingam had sought refugee protection on the basis of his fear of persecution or harm in Sri Lanka, his country of nationality. The RPD rejected Mr. Soorasingam's claim as it found that his fear of persecution and allegations were not credible.

[2] Mr. Soorasingam contends that the RPD's decision was unreasonable. He asks this Court to quash the decision and to order another panel of the RPD to reconsider his claim.

[3] The only issue to be determined is whether it was reasonable for the RPD to reject Mr. Soorasingam's claim for refugee protection on the basis that it lacked credibility. Counsel for Mr. Soorasingam confirmed at the hearing before this Court that this was the only issue being pursued in this judicial review despite the fact that other submissions had been made before the RPD.

[4] For the reasons that follow, Mr. Soorasingam's application for judicial review is dismissed. Having considered the decision, the evidence before the RPD and the applicable law, I find no basis for overturning the RPD's findings. The decision thoroughly reviewed the evidence and the RPD's conclusions fall within the range of possible, acceptable outcomes based on the facts and the law.

## II. Background

### A. *Facts*

[5] Mr. Soorasingam is from Point Pedro, in the northern Tamil region of Sri Lanka, and is of “mixed” heritage, his father being Sinhalese and his mother Tamil. Mr. Soorasingam alleges that, in September 2006, he and his father were approached by militants of the **Eelam People's Democratic Party** [EPDP], who demanded that they pay them five lakh rupees. Mr. Soorasingam and his father refused, stating they did not have the money to pay. In October 2006, two men on a motorbike allegedly came to Mr. Soorasingam’s family home, calling his name. When Mr. Soorasingam and his father went outside, the men began to shoot at them, killing Mr. Soorasingam’s father.

[6] Almost five years later, in September 2011, Mr. Soorasingam says that he was abducted by EPDP militants and was subsequently beaten and tortured. To secure his release, the militants demanded that Mr. Soorasingam pay them five lakh rupees. Mr. Soorasingam claims that he was eventually released on September 27, 2011, on the promise that he would collect the money required to pay the ransom. In December 2011, Mr. Soorasingam fled to Colombo, where he went into hiding. He then left Sri Lanka in January 2012, travelling first to Mexico and then crossing the border illegally into the United States in February 2012.

[7] Mr. Soorasingam was detained by the American authorities soon after, and claimed refugee protection in the United States. However, he did not wait for the determination of his claim in the United States, and instead came to Canada where he sought refugee protection.

**B. *The RPD decision***

[8] In its decision, the RPD held that Mr. Soorasingam's credibility was undermined by a series of omissions, contradictions and implausibilities in his testimony.

[9] First, the RPD found that Mr. Soorasingam was unable to explain a number of his actions, including why he waited almost six years from the time of his father's shooting to flee Sri Lanka, given his testimony that this event had spurred his desire to leave the country, and why he waited two months after his release to flee Point Pedro for Colombo. On this latter point, the RPD further held that it was implausible that his kidnappers would not have come looking for Mr. Soorasingam during the period after his release, given that they only released him to allow him to collect the necessary funds to pay the demanded ransom.

[10] Second, the RPD identified a number of inconsistencies in Mr. Soorasingam's statements that he was unable to satisfactorily explain, including:

- Mr. Soorasingam's testimony that he received treatment for injuries he suffered during his kidnapping soon after he was released, despite stating in his narrative that he only received treatment for his injuries once he arrived in Colombo, two months after he was injured;
- Mr. Soorasingam's testimony that he remained in hiding for the entire period he was in Colombo, despite stating in his Basis of Claim [BOC] that he continued to work as a fisherman until his departure from Sri Lanka;
- Mr. Soorasingam's testimony that he gave up his passport upon arrival in Mexico, despite stating earlier to the Canadian authorities that he gave up his passport while crossing a river in Mexico.

[11] Based on these inconsistencies and omissions, the RPD concluded that Mr. Soorasingam lacked credibility, and that this finding was sufficient to dismiss his claim for refugee protection.

[12] In coming to this conclusion, the RPD ascribed little weight to Mr. Soorasingam's father's death certificate, finding that there was no credible evidence to connect the death certificate to Mr. Soorasingam's claim that his father was killed by EPDP militants. Similarly, the RPD placed no weight on letters provided by Mr. Soorasingam's alleged employer and Mr. Soorasingam's wife, finding that Mr. Soorasingam was unable to explain how the author of the former letter would have had knowledge of the events described, and finding that the latter letter was self-serving.

[13] The RPD also noted that Mr. Soorasingam presented photographic evidence of scarring following attempts to remove his tattoos allegedly linking him to the Liberation Tigers of Tamil Eelam organisation. However, because the RPD had held that Mr. Soorasingam lacked credibility, it was unable to draw any connection between this evidence and Mr. Soorasingam's claims.

[14] The RPD also held that Mr. Soorasingam's decision to leave the United States prior to the final determination of his claim for refugee protection was inconsistent with the expected behaviour of a person who fears persecution in his country of nationality. Moreover, the RPD found that Mr. Soorasingam's explanation for his decision – that he did not know anyone in the United States and had family in Canada – was unsatisfactory. The RPD determined that a person seeking refugee protection is expected to claim refugee status as soon as possible, and that the

failure to do so may indicate that the claim is not genuine. The RPD found that Mr. Soorasingam's failure to remain in the United States until the determination of his application demonstrated the lack of seriousness to his refugee claim.

### **C. *The standard of review***

[15] It is well settled that when it comes to the credibility or plausibility of a refugee claimant's story or fears of persecution, the RPD's findings are factual in nature and, given the RPD's role as a trier of fact, are owed a significant amount of deference (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*] at para 59; *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155 [*Lawal*] at para 9; *Martinez Giron v Canada (Minister of Citizenship and Immigration)*, 2013 FC 7 [*Martinez Giron*] at para 14; *Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55 at para 17).

[16] Credibility findings have been described as the "heartland" of the RPD's jurisdiction, in that they are essentially pure findings of fact (*Pepaj v Canada (Minister of Citizenship and Immigration)*, 2014 FC 938 at para 13; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 [*Lubana*] at paras 7-8). The RPD is thus better placed to assess the credibility of a refugee claimant as the panel member can see the witness at the hearing, observe the witness' demeanour and hear his or her testimony. The RPD has the opportunity and ability to assess the witness in respect of frankness, readiness to answer, coherence and consistency of oral testimony before it (*Navaratnam v Canada (Minister of Citizenship and Immigration)*, 2011 FC 856 at para 23). In addition, the RPD benefits from the specialized knowledge of its members

to assess evidence relating to facts stemming from their field of expertise (*El-Khatib v Canada (Citizenship and Immigration)*, 2016 FC 471 at para 6).

[17] Since these are questions of mixed facts and law, the RPD's assessments of credibility and plausibility are to be reviewed on a standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] 160 NR 315 (FCA) at para 4; *Bikoko v Canada (Citizenship and Immigration)*, 2015 FC 1313 at para 8). On such credibility and plausibility questions, a reviewing court can neither substitute its own view of a preferable outcome, nor can it reweigh the evidence (*Khosa* at para 59; *Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 385 at paras 32-33; *Diallo v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1062 at para 30). The Court must not intervene with the RPD's decision so long as it came to a conclusion that is transparent, justifiable, intelligible, and within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47). It is sufficient if the reasons permit the Court to understand why the decision was made and determine whether the conclusion falls within the range of possible, acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 16).

[18] The reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Dunsmuir* at para 47). If needed to determine the reasonableness of a decision, not only can the Court review the reasons but it can also look at the underlying record (*Newfoundland Nurses* at para 15). That said, a

judicial review is not a “line-by-line treasure hunt for error” (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should approach the reasons with a view to “understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression” (*Canada (Citizenship and Immigration v Ragupathy*, 2006 FCA 151 at para 15).

[19] The analysis of the credibility of a refugee claimant must be transparent and intelligible, and the RPD’s reasons must therefore constitute an assessment of the claimant’s credibility “in clear and unmistakable terms” (*Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236 (FCA) [*Hilo*] at para 6; *Lubana* at para 9). Conversely, an analysis just merely casting a “nebulous cloud over its reliability” will be insufficient as the RPD must draw more than generalized and vague conclusions but state why and how such credibility is impugned or lacking (*Hilo* at para 6).

### **III. Analysis**

[20] Mr. Soorasingam submits that the RPD’s determination on his lack of credibility is unreasonable, as the RPD’s findings misconstrued elements of his evidence and ignored other portions of it. More specifically, Mr. Soorasingam submits it is a reviewable error for the RPD to ignore material evidence or base its findings on irrelevant evidence (*Suduwelik v Canada (Minister of Citizenship and Immigration)*, 2007 FC 326 at para 21), and that it is also an error to base an adverse credibility determination on such evidence (*Lai v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 906 (CA); *Rezaei v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 40 (CA)).



[21] First, Mr. Soorasingam argues that the RPD erred by relying on the fact that he did not flee Sri Lanka until six years after his father's death, as his fear of persecution arose after he was kidnapped, not after his father's death. Second, Mr. Soorasingam contends that the RPD ignored or misconstrued his testimony regarding his delay in fleeing Point Pedro for Colombo, as he was conflicted about leaving his family. Third, Mr. Soorsingam submits that the RPD engaged in unfounded speculation in finding that it was implausible for Mr. Soorasingam's kidnappers to leave him alone after his release. Fourth, Mr. Soorasingam claims that the RPD erred by placing no weight on the evidence of the attempted removal of his tattoos. Fifth, Mr. Soorasingam states that the RPD engaged in an overly microscopic assessment of evidence in finding that he gave inconsistent testimony regarding the timing of his medical treatment, his work after fleeing to Colombo and the release of his passport in Mexico. This, according to Mr. Soorasingam, demonstrates the RPD's excessive desire to find contradictions in his testimony where none exists (*Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (FCA) [*Attakora*] at para 1). Finally, Mr. Soorasingam argues that his explanation for why he did not wait for his refugee claim in the United States to be determined – that he has family in Canada – is reasonable, and has previously been accepted by this Court (*Soueidan v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 956 at para 32).

[22] I disagree with Mr. Soorasingam as his arguments all boil down to a reassessment of the evidence. I instead find that the RPD's determinations regarding Mr. Soorasingam's credibility are reasonable and are entitled to significant deference on judicial review. The RPD provided detailed reasons stating why Mr. Soorasingam's testimony was being rejected in light of the evidence. On all credibility and plausibility issues, Mr. Soorasingam is simply inviting the Court

to reweigh the evidence. It is not the role of the Court to do so when conducting a reasonableness review of factual findings.

[23] It is well accepted that the RPD is best positioned to assess an applicant's credibility, as it has the benefit of seeing the applicant's testimony (*Jin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 595 at para 10). The RPD is entitled to make a negative credibility finding where the applicant's testimony is inconsistent or contradictory (*Lawal* at para 9), or where the RPD is unsatisfied with the applicant's explanation for those inconsistencies (*Lin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 183 at para 19). Even if some elements could be insufficient when considered individually or in isolation, cumulative inconsistencies, omissions and contradictions can, as a whole, undermine the overall credibility of a claimant (*Sary c Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2016 CF 178 at para 20; *Quintero Cienfuegos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262 at para 1; *Asashi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 102 at para 8). In addition, a decision-maker is entitled to make findings based on implausibilities, common sense and rationality, and can reject uncontradicted evidence if it is not consistent with the probabilities affecting the case as a whole (*Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 415 (FCA) at para 2; *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1379 at para 25).

[24] This is precisely what occurred in this case. The RPD identified numerous inconsistencies and contradictions in Mr. Soorasingam's evidence, was unsatisfied with his explanations for them and, as a result, found that Mr. Soorasingam's evidence lacked credibility.

Mr. Soorasingam's arguments amount to little more than a disagreement with the RPD's assessment of his testimony and the RPD's weighing of the evidence. This is insufficient to grant a judicial review (*Samseen v Canada (Minister of Citizenship and Immigration)*, 2006 FC 542 at para 31; *Islam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1422 at para 11).

[25] More specifically, a review of the record confirms that Mr. Soorasingam gave inconsistent testimony regarding when he received treatment for the injuries he suffered during his kidnapping and when he gave up his passport after his arrival in Mexico. It was also open to the RPD to find implausible the explanations of Mr. Soorasingam on his six-year delay to fear persecution or on the elapsed time to flee to Colombo.

[26] The RPD may not have referred to some evidence as clearly as Mr. Soorasingam would have preferred, but this is not a ground for judicial review. For example, the decision may not provide much detail on the evidence that Mr. Soorasingam's fear of persecution was caused by his kidnapping rather than his father's murder, and or on the fact that he waited to flee Point Pedro because he did not want to place his wife and children in danger. But I am satisfied that, overall, the RPD's implausibility findings on these points do not tumble outside the scope of acceptable outcomes.

[27] I also reject Mr. Soorasingam's suggestion that the RPD's analysis was unreasonably "microscopic" or overzealous. I acknowledge that not every kind of inconsistency or implausibility in a refugee claimant's evidence will reasonably support negative findings on overall credibility. It is not proper for the RPD to base its findings on extensive or overly minute

examination of issues and inconsistencies that are irrelevant or peripheral to the claim, thereby ignoring serious incidents central to the evidence (*Attakora* at para 9; *Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 442 (FCA) at para 2; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2014 FC 713 at para 27). But this is not a situation where the RPD erroneously applied a “microscopic examination” of Mr. Soorasingam’s testimony or relied on “peripheral discrepancies” to discredit the claimant. An analysis does not become microscopic because it is comprehensive. The factors looked at by the RPD were not issues secondary to the claim of persecution of Mr. Soorasingam; they were in fact highly relevant and went to the very essence of his claim.

[28] Conversely, a lack of credibility on the central elements of a refugee claim can extend to all the evidence submitted (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (FCA) at para 8).

[29] I am mindful that caution is required regarding implausibility findings in refugee cases (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7). Implausibility findings should be made only in the clearest of cases, and the RDP must always sufficiently set out its reasons for making such findings (*Kiyarath v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1269 at para 22). Otherwise, the implausibility finding can be seen as arbitrary and unreasonable (*Yu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 167 at paras 10, 12; *Martinez Giron* at para 24). I am not persuaded that the RPD’s findings on Mr. Soorasingam’s story fall in that category. On the contrary, the RPD’s

assessment was made in clear and unmistakable terms with detailed conclusions on why Mr. Soorasingam's was lacking.

[30] There is also no basis for an inference that the RPD ignored material evidence that squarely contradicted his conclusions (*Canada (Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 at para 22). As I stated in *Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at para 25, a tribunal is presumed to have considered all the evidence and is not required to refer to each constituent element of that evidence (*Newfoundland Nurses* at para 16; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1; *Hassan v Canada (Minister of Citizenship and Immigration)*, [1992] FCJ No 946 (FCA) at para 3). A failure to mention a particular piece of evidence does not mean that this was ignored or that all the evidence was not considered (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at paras 16-17). It is only when a tribunal is silent on evidence clearly pointing to the opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact. This is not the case here.

[31] In summary, I find the analysis by the RPD to be transparent, justifiable and intelligible. Any reader can know exactly why the RPD did not believe Mr. Soorasingam. The negative credibility finding "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47). I also conclude that the RPD engaged in a thorough and detailed assessment of the totality of the evidence. There is no fatal flaw in its reasoning and I find the ultimate result reasonable considering the applicable legal principles.

#### **IV. Conclusion**

[32] The RPD thoroughly reviewed the evidence submitted by Mr. Soorasingam in support of his claim and found it implausible that he would face a risk of persecution if he returned to Sri Lanka. The conclusion was not unreasonable and represented a defensible outcome based on the law and the evidence before the RPD. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within the range of acceptable, possible outcomes which are defensible in respect of the facts and the law. Therefore, I must dismiss this application for judicial review.

[33] Neither party has proposed a question of general importance to certify, and I agree there is none.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed, without costs;
2. No question of general importance is certified.

"Denis Gascon"

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Judge

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

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