Federal Court  Cour fédérale

Date: 20180911

Docket: IMM-3934-17

Citation: 2018 FC 909

Toronto, Ontario, September 11, 2018

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

SATHIYARAJANI PERAMPALAM AND RUWINI SUBANI ANTON ROHAN PERERA (BY HER LITIGATION GUARDIAN SATHIYARAJANI PERAMPALAM)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Sathiyarajani Perampalam, the Principal Applicant, and her daughter (together, the Applicants) seek judicial review of a decision (Decision) by a senior immigration officer to deny their application for a Pre-Removal Risk Assessment (PRRA). This application is brought

pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] The Applicants seek judicial review of the Decision on the bases that: (1) it was rendered in a manner procedurally unfair, particularly in the officer's treatment of the Applicants' evidence and in the failure by the officer to permit the Applicants an oral hearing; and (2) the decision itself was unreasonable. For the reasons that follow, I find that the Applicants' rights to procedural fairness were not breached during the PRRA process. However, the officer's findings in the Decision regarding the affidavit of the Principal Applicant's sister lack transparency and intelligibility. As a result and in light of the importance of the affidavit to the Applicants' PRRA application, I find that the Decision was not reasonable. The application will be allowed.

II. Background

[3] The Applicants are ethnic Tamils from Sri Lanka. The Principal Applicant is married to a Sinhalese man and has two children. The Applicants left Sri Lanka for Canada on March 30, 2010. The Principal Applicant's husband and son remained in Sri Lanka, intending to follow at a later date. Other members of the Applicants' family have come to Canada as refugees and now live in Canada.

[4] The Applicants applied for refugee status in 2010. The refugee claim was based on the Applicants' ethnic Tamil status and the Principal Applicant's interracial marriage. The Principal Applicant testified to a number of violent incidents involving Sri Lankan security forces prior to

her departure from Sri Lanka, stating that the incidents occurred due to suspicion that she and her husband were supporting the Liberation Tigers of Tamil Eelam (LTTE).

[5] The Applicants' refugee claim was rejected by the Refugee Protection Division (RPD) on September 17, 2013 due to the Principal Applicant's inconsistent testimony. The RPD found that the Principal Applicant was not credible. The panel did not believe that the specific incidents recounted by the Principal Applicant occurred as described. The RPD also concluded that there was no residual profile upon which to find the Applicants in need of protection.

[6] In 2017, in support of the Applicants' PRRA application, the Principal Applicant submitted that her circumstances had materially changed since the RPD's refusal of the refugee claim. The Principal Applicant stated that she is estranged from her husband, who has become a powerful political person in his region in Sri Lanka. Further, she has entered into a relationship with a man in Canada and has unsuccessfully sought a divorce from her husband. The Principal Applicant provided an affidavit from her sister who states that she travelled to Sri Lanka to intervene with the Principal Applicant's husband. The husband reacted furiously and threatened to destroy the family should they return to Sri Lanka. The Principal Applicant fears her husband would retaliate with impunity should she and her daughter return to Sri Lanka.

III. The Decision

[7] The Decision is dated August 29, 2017. The PRRA officer found that the Applicants had not demonstrated a personal and objectively identifiable risk in Sri Lanka. They had not

established more than a mere possibility of persecution were they to return to Sri Lanka nor a risk of torture, threat to life or risk of cruel and unusual treatment or punishment in Sri Lanka.

[8] The PRRA officer reviewed at some length the 2013 RPD decision refusing the Applicants' refugee claim. She then reviewed the new facts upon which the Applicants based their PRRA application: the Principal Applicant's estrangement from her now powerful Sri Lankan husband, her new relationship in Canada and inability to secure a divorce, and her fear of violence from her husband should she return to Sri Lanka. The PRRA officer questioned the absence of corroborating evidence regarding the Principal Applicant's Canadian relationship and her assertions that her husband had become a powerful person in Sri Lanka.

[9] The PRRA officer considered the affidavit of the Principal Applicant's sister and made two findings. First, the officer found that the affidavit related to facts previously determined not credible by the RPD. Second, with respect to the sister's 2016 trip to Sri Lanka and confrontation with the Principal Applicant's husband, the PRRA officer questioned the lack of corroborating evidence regarding the trip. As a result, the PRRA officer did not give probative value to the sister's affidavit.

[10] The PRRA officer concluded that the Applicants had enumerated the same risks that were presented to the RPD and had provided insufficient objective evidence of subsequent risk developments, stating that "the proof submitted by the applicant does not refute the conclusions of the RPD, who considered that the applicants had no significant profile or history that would warrant negative attention upon their return".

[11] The PRRA officer then reviewed the objective country evidence regarding Sri Lanka, referencing reports from 2013 through 2016. She concluded that the Applicants had not met their burden of submitting sufficient evidence demonstrating they would be personally at risk in Sri Lanka.

[12] An Addendum to the Decision notes the submission by the Applicants on August 21, 2017 of additional documentary proof regarding the situation in Sri Lanka. The PRRA officer found that the additional documents did not refute the RPD's conclusion that the Applicants had no significant profile or history that would warrant attention if they were returned to Sri Lanka. In addition, she found that the new documentation did not provide any evidence as to the status of the Principal Applicant's estranged husband as a powerful man who would pose a threat to the Applicants.

IV. Issues

[13] The Applicants raise a number of issues in this application. They characterize certain of those issues as breaches of procedural fairness. They also argue that the Decision itself was unreasonable. I will review the majority of the Applicants' arguments relating to procedural fairness together in one section of this judgment. My analysis is organized as follows:

(1) Did the PRRA officer breach the Applicants' rights to procedural fairness?

(2) Did the PRRA officer properly consider the Applicants' affidavit evidence? In addition, did the PRRA officer make a veiled credibility finding in her consideration of the affidavit of the Principal Applicant's sister?

(3) Was the PRRA officer's consideration of the Applicants' risk profile reasonable?

V. Standard of Review

[14] The decision of a PRRA officer is reviewed by this Court against the reasonableness standard of review, other than any review of the decision centering on issues of procedural fairness (*Yang v Canada (Citizenship and Immigration)*, 2018 FC 496 at para 14; *Korkmaz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1124 at para 9 (*Korkmaz*); *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at para 10 (*Raza*)). Considerable deference is owed to the factual determinations and risk assessments made by a PRRA officer, including the officer's evaluation of the weight or value to be accorded to new evidence adduced in support of a PRRA application (*Korkmaz*; *Raza*; *Aladenika v Canada (Citizenship and Immigration)*, 2018 FC 528 at para 11). The Court will only interfere if the decision lacks justification, transparency, or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[15] The Court is required to review issues of procedural fairness for correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34). The Court's review focusses on procedure and whether, taking into account the substantive rights in the particular case and the other contextual factors identified by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28, the process followed by the PRRA officer was just and fair.

[16] The Applicants submit that the PRRA officer made a veiled credibility finding in respect of the affidavit of the Principal Applicant's sister and should have convened an oral hearing in accordance with subsection 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations). Recent authority of this Court supports the conclusion that this issue involves a question of mixed fact and law and is governed by the standard of reasonableness, particularly if the extent to which the PRRA decision was based on a credibility determination is in question (*Haji v Canada (Citizenship and Immigration)*, 2018 FC 474 at paras 6-10; *Boakye v Canada (Citizenship and Immigration)*, 2018 FC 831 at para 16).

VI. Analysis

[17] Pursuant to subsection 112(1) of the IRPA, a person who is subject to a removal order may apply to the Minister for protection, subject to certain exceptions. A PRRA application involves a factual evaluation of submissions and new evidence presented to a PRRA officer by an applicant and the onus is on the applicant to establish the need for protection. As the PRRA officer noted in the Decision, a PRRA application is not an appeal of the rejection of a refugee claim. It is an evaluation of whether new facts, evidence and risks have arisen since the refugee claim that would give rise to the need for protection of the applicant(s).

(1) Did the PRRA officer breach the Applicants' rights to procedural fairness?

[18] In their written submissions, the Applicants raise a number of procedural fairness arguments which I will address in this section. In oral submissions, the Applicants focussed on

the PRRA officer's treatment of the affidavits of the Principal Applicant and her sister. I will address these arguments in the next section of this judgment.

[19] The Applicants first submit that the Decision must be quashed because it is not a decision on the Applicants' case. They argue that the PRRA officer relied on the decision of the RPD to an extent that fettered her jurisdiction. In addition, the PRRA officer refused to consider the evidence of the Applicants and based her decision on irrelevant evidence. Therefore, the Applicants' right to be heard was violated and a breach of procedural fairness occurred.

[20] I find the Applicants' arguments without merit. The Decision is a decision based on the evidence submitted to the PRRA officer by the Applicants. It is not accurate to state that the PRRA officer relied on the RPD decision to make the decision nor is it accurate to state that the PRRA officer refused to consider the evidence brought forward by the Applicants. The PRRA officer set out the credibility findings and conclusions of the RPD in the Decision. She did so in part to address the first 16 paragraphs of the Principal Applicant's affidavit in support of the PRRA application. Those paragraphs recounted the time period and claims that were before the RPD. The PRRA Officer was entitled to rely on the RPD's prior negative credibility findings in relation to such claims. She did not fetter her discretion in reviewing the RPD decision or in accepting the RPD's conclusions regarding the Applicants' failed refugee claim.

[21] The PRRA officer correctly addressed the parameters of her PRRA determination, noting she was to assess whether new factual and risk developments demonstrated the Applicants were presently at risk. The officer reviewed the altered circumstances of the Applicants which were

the proper subject matter of the PRRA application. She recounted and considered the submissions made by both the Principal Applicant and her sister in their affidavits. There was no refusal to consider the evidence and the PRRA officer committed no breach of procedural fairness in this regard. Whether her consideration and conclusions regarding the Applicants' affidavit evidence were reasonable is addressed separately in this judgment.

[22] The Applicants argue that the PRRA officer considered inadmissible evidence consisting of country condition reports from 2011 and 2013. They argue that such consideration was not merely unreasonable but was barred by section 113 of the IRPA and was so egregious as to constitute a breach of procedural fairness. Again, I do not agree.

[23] An applicant is permitted to make submissions in support of his or her PRRA application in accordance with section 161 of the Regulations. In making submissions, the applicant must identify the evidence relied on in support of his or her allegations and the evidence must meet the requirements of subsection 113(a) of the IRPA. Subsection 113(a) restricts the evidence an applicant may submit to new evidence that arose after the rejection of the applicant's refugee claim or evidence that was not reasonably available to the applicant at the time of the refugee proceedings. Subsection 113(a) does not prohibit a PRRA officer from relying on documentary evidence that predates a failed refugee claim. The criteria set out in the subsection apply only to the evidence an applicant may submit.

[24] The Applicants also argue that the 2011 and 2013 country documents referenced by the PRRA officer were extrinsic evidence. However, the documents were a part of the objective

documentary evidence regarding Sri Lanka. They were dated but the PRRA officer also relied on US Department of State documents from 2015 and 2016 and a UK Home Office report from 2015. The Applicants do not point to more recent country reports or documentary evidence in the record which contradict the evidence cited by the PRRA officer. Further, the Applicants provide no explanation of how the earlier reports were extrinsic to the officer's PRRA assessment nor have they established that the PRRA officer's reliance on those reports, in conjunction with more recent country documentation, was so improper as to constitute a breach of procedural fairness.

(2) Did the PRRA officer properly consider the Applicants' affidavit evidence? In addition, did the PRRA officer make a veiled credibility finding in her consideration of the affidavit of the Principal Applicant's sister?

[25] The Applicants submit that the PRRA officer improperly rejected the affidavit of both the Principal Applicant and the Principal Applicant's sister. As the Applicants' arguments regarding the officer's treatment of the two affidavits are fundamental to this application, it is helpful to lay out in full the PRRA officer's conclusions:

> I note that [the sister's] affidavit refers to facts already judged not credible by the IRB. In addition, I note that the applicant does not bring any other document pertaining to her sister's trip to Sri Lanka; for example copies of ticket flights, passport stamps, affidavits or letters from the friends she spoke to when coming back to Canada. Because this affidavit relates to facts already judged not credible by the IRB, along with the lack of accompanying documents, and because this comes from a person very close to the applicant, thus having an interest in the present application, I cannot give probative value to this document to demonstrate the risks alleged by the applicant.
>
> Furthermore, the applicant says she is in a relationship with a man in Canada, whom she is very serious about, and whom she would like to marry, and that is why her husband in Sri Lanka is allegedly mad at her. I note that the applicant does not submit any document concerning this man (affidavit from the applicant's partner, photographs…etc.)

> The applicant claims that her husband in Sri Lanka became a powerful man while she was in Canada, she however, does not bring any proof aside of her sister's affidavit, to demonstrate her claim.

A. Affidavit of the Principal Applicant

[26] The Applicants submit that the PRRA officer rejected the Principal Applicant's affidavit by implication on the basis that it related facts found to be not credible by the RPD. The Applicants also state that the PRRA officer treated the content of the affidavit as submissions and not as evidence and failed to make a credibility finding on the affidavit evidence. In the absence of such a finding, the Applicants submit that the Officer's refusal to consider the Principal Applicant's affidavit as evidence was a breach of procedural fairness.

[27] The Respondent submits that the PRRA officer carefully considered the Principal Applicant's affidavit. While the officer did not refer to the Principal Applicant's evidence as an affidavit, she reviewed the content of the affidavit as evidence and reasonably found that it did not establish the Applicants' claims. Further, the Respondent argues that the PRRA officer was not required to assess the credibility of the Principal Applicant's affidavit. The PRRA application process is not a quasi-judicial hearing where the credibility of an applicant's oral evidence is tested. It was reasonable for the PRRA officer to conclude that there was insufficient evidence to corroborate the Principal Applicant's claims that she was involved in a relationship in Canada and that she feared retribution from her husband upon a return to Sri Lanka.

[28] The PRRA officer described in the Decision each of the Principal Applicant's claims in her affidavit, namely her husband's threats, the fact that he had become an influential person and

his refusal to grant the Principal Applicant a divorce. The information set forth by the PRRA officer was clearly derived from the Principal Applicant's affidavit. There was no refusal to consider the evidence and no breach of the Applicants' right to procedural fairness. Rather, the PRRA officer considered the Principal Applicant's evidence in the affidavit and found that it did not establish her PRRA claims. The question before me is whether the PRRA officer's consideration of the affidavit was reasonable.

[29] The Applicants argue, and I agree, that the PRRA officer did not assess the credibility of the evidence provided by the Principal Applicant in her affidavit. The Applicants submit that the PRRA officer committed a reviewable error in failing to conduct such an assessment (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228).

[30] Despite the absence of a credibility assessment, I find that the PRRA officer made no reviewable error in her consideration of the Principal Applicant's affidavit. Prior jurisprudence of this Court establishes that the PRRA officer was permitted to assess the weight to be accorded to the evidence before her without making a credibility finding (*Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 26 (*Ferguson*); *Ozomma v Canada (Citizenship and Immigration)*, 2012 FC 1167 at para 52 (*Ozomma*)).

[31] As stated above, the PRRA officer summarized the evidence of the Principal Applicant in her affidavit. The officer made no credibility finding, stating only in conclusion that the evidence submitted by the Applicants had not established a risk profile different from that assessed by the RPD in 2013. The PRRA officer's finding regarding the Principal Applicant's affidavit centred

on the weight to be accorded to the evidence contained in the affidavit. She found that the evidence was not sufficient to establish either that the Principal Applicant was in a serious relationship with a Canadian man, which was the reason given for her Sri Lankan husband's anger and likely reprisals, or that her husband was now a powerful man in Sri Lanka. I find that it was reasonable for the PRRA officer to reach these conclusions. The weight to be accorded to the evidence presented in a PRRA application is within the expertise and purview of the PRRA officer and is owed considerable deference. The officer provided reasons for her conclusions regarding the Principal Applicant's affidavit that were transparent, intelligible and reasonable.

[32] The Applicants argue that the PRRA officer erred in failing to accept the evidence of the Principal Applicant as set forth in her affidavit, and as corroborated by the evidence in her sister's affidavit, in contravention of the decision in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) (*Maldonado*). The principle in *Maldonado*, that where an applicant swears to the truth of certain allegations, the allegations are presumed to be true, relates to issues of credibility. The full statement of the principle by the Federal Court of Appeal (FCA) is instructive (*Maldonado* at para 5):

> **5.** It is my opinion that the Board acted arbitrarily in choosing without valid reasons, to doubt the applicant's credibility concerning the sworn statements made by him and referred to supra. When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness. On this record, I am unable to discover valid reasons for the Board doubting the truth of the applicant's allegations above referred to.

[33] In *Maldonado*, the FCA found that the board in question had drawn a conclusion which ignored the uncontroverted statement of the applicant. The board gave no reason for implicitly

impugning the applicant's credibility. In the present case, the PRRA officer made no credibility finding and drew no conclusion which contradicted the Principal Applicant's evidence. The officer required further, corroborative evidence to establish the central claims made by the Principal Applicant. The PRRA officer pointed to evidence that would provide persuasive corroboration of one of the Principal Applicant's central claims, her new relationship in Canada, and that would be easily accessible to the Principal Applicant. The Principal Applicant's corroborative evidence regarding her Sri Lankan husband's conduct and influence was her sister's affidavit which was ascribed no probative value by the PRRA officer. I discuss the officer's treatment of the sister's affidavit next in this judgment.

B. Affidavit of the Principal Applicant's Sister

[34] The Applicants raise two interrelated issues regarding the PRRA officer's treatment of the affidavit of the Principal Applicant's sister. First, they argue that the officer rejected the affidavit "wholesale", thereby breaching the presumption of the truthfulness of sworn evidence set forth in *Maldonado*. Second, the Applicants argue that the PRRA officer made a veiled credibility finding in assessing the sister's affidavit. They state that, although the officer framed her analysis of the affidavit as one of weight and not of credibility, the officer rejected the truth of the sister's statements, thereby questioning her credibility and defeating the transparency requirement of reasonableness.

[35] The Respondent argues that the PRRA officer properly weighed all of the evidence tendered by the Applicants, including the sister's affidavit. He submits that the officer was entitled to attribute no weight to the affidavit without first making a credibility finding due to the

lack of corroboration and the familial connection identified by the officer. The Respondent relies on the decision of this Court in *Ullah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 221 at para 30 (*Ullah*), in which Justice O'Keefe stated that "[s]imply because the officer in this case made a finding that the applicant had presented insufficient evidence, does not necessarily mean that he made a negative credibility finding".

[36] For ease of reference, the PRRA officer's conclusions regarding the sister's affidavit are as follows:

> I note that [the sister's] affidavit refers to facts already judged not credible by the IRB. In addition, I note that the applicant does not bring any other document pertaining to her sister's trip to Sri Lanka; for example copies of ticket flights, passport stamps, affidavits or letters from the friends she spoke to when coming back to Canada. Because this affidavit relates to facts already judged not credible by the IRB, along with the lack of accompanying documents, and because this comes from a person very close to the applicant, thus having an interest in the present application, I cannot give probative value to this document to demonstrate the risks alleged by the applicant.

[37] I find that the PRRA officer did not reject the affidavit of the Principal Applicant's sister in its entirety. The PRRA officer made no reviewable error in this regard. She considered the affidavit and made a determination as to its probative value. However, I also find that the PRRA officer's reasons for her decision to accord the affidavit no probative value were not transparent and intelligible.

[38] The PRRA officer based her decision regarding probative value in part on the fact that the sister's affidavit relays facts that were previously found not credible by the RPD. While a PRRA officer may determine weight without making a credibility assessment (*Ferguson* at

para 26; *Ullah* at paras 29-30), he or she is not permitted to make an implicit or veiled credibility finding in the guise of assessing weight. The PRRA officer's reference to the inclusion in the sister's affidavit of facts that were not credible suggests that an element of credibility informed the officer's decision to attribute no weight to the affidavit. The effect of this factor on the PRRA officer's conclusion regarding the probative value of the affidavit is not clear in the Decision.

[39] I am unable to determine on the words used whether the inclusion of the non-credible facts in the sister's affidavit coloured the PRRA officer's evaluation of the affidavit and her conclusion as to its lack of probative value. More importantly, the Applicants are unable to determine whether their PRRA application was rejected due to credibility concerns or due to the other factors noted by the officer. This lack of transparency and intelligibility alone renders the Decision unreasonable and requires a redetermination of the Applicants' PRRA application.

[40] In reaching this conclusion, I have considered the Decision as a whole. Unfortunately, the PRRA officer's conclusions regarding the sister's affidavit are very brief. It is not possible to divorce the officer's statement regarding the non-credible facts set forth in the affidavit from the other factors relevant to weight that were identified by the PRRA officer. The sister's affidavit was a critical element of the evidence tendered by the Applicants and its treatment is fundamental to a proper determination of the Applicants' PRRA application. If, on redetermination, the sister's affidavit is assessed for credibility, the new PRRA officer must make a clear credibility finding and, in so doing, may be required to convene an oral hearing if the factors set forth in subsection 167(1) of the Regulations are implicated**.**

[41] The parties also made submissions regarding the appropriate treatment of the negative credibility findings of the RPD and the continued assertion of the impugned facts in the affidavits submitted by the Applicants. Both the Principal Applicant and, to a lesser extent, her sister describe in their respective affidavits facts which the RPD discounted in reaching its 2013 decision.

[42] The PRRA officer did not err in referring in the Decision to the reasons and conclusions of the RPD regarding the facts which formed the basis of the Applicants' refugee claim. The findings of the RPD stand unless refuted by subsequent, probative evidence. The repetition of those facts by the Principal Applicant and by her sister does not constitute such evidence. However, the fact that the Applicant and her sister continue to describe facts found not credible in the RPD hearing should not be used to impugn their credibility in the PRRA application. To do so would lead to a conundrum. The credibility of the two women could be impugned because they continue to insist on facts that the RPD did not believe. Alternatively, if the Principal Applicant described a different set of facts relating to the time period relevant to the refugee claim, her inconsistent stories could lead to a negative credibility inference. In my opinion, the facts relayed in each of the affidavits that relate to the time period and events considered by the RPD are of little import in the PRRA application. If a credibility assessment of the Principal Applicant or her sister is made on redetermination, it should focus on the events and evidence relating to the Applicants' changed personal situation and risks that underlie the PRRA application.

[43] With respect to the other factors identified by the PRRA officer in determining the probative value of the sister's affidavit, I find no error in her reliance on the lack of corroboration and the fact that the affidavit was provided by a close family member with a personal interest in the outcome of the PRRA application. In *Ferguson*, the Court held that evidence tendered by witnesses with a personal interest in a matter may be examined for weight before considering credibility because this type of evidence typically requires corroboration to have probative value. Justice Zinn stated (*Ferguson* at para 27):

> [27] Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidenced requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on a balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying that the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[44] The Applicants argue that the PRRA officer's requirement for corroboration from the sister regarding the details of her trip to Sri Lanka derogates from the *Maldonado* presumption of truthfulness of a sworn statement. They cite the case of *Ortega Ayala v Canada (Minister of Citizenship & Immigration)*, 2011 FC 611 at paragraphs 20-21, for the principle that corroboration may rehabilitate a questionable statement but it is an error to require it in order to establish the truth of a statement in the absence of any reason to do so.

[45] I find that the PRRA officer's requirement for corroborative evidence in this case was reasonable and supported by jurisprudence of this Court. First, the officer's reference to lack of corroboration was not made in the context of and did not result in an adverse credibility finding, whether explicit or implicit. Second, as is clear from Justice Zinn's decision in *Ferguson*, statements made by a family member with an interest in a PRRA application may require corroboration in order to satisfy the applicant's burden of establishing the facts relied on. The case law does not state that all such affidavits will be ignored without corroboration. The position is more nuanced. An affidavit from a close family member may be examined for weight and may require corroboration to establish the facts in question on a balance of probabilities. Such a requirement impacts the *Maldonado* principle but the principle is stated as a presumption and is subject to modification for valid reasons (*Maldonado* at para 5). The requirement in certain cases for corroboration of a sworn statement by a family member with a clear and personal interest in the case in order to discharge an applicant's burden of proof is both logical and reasonable. In this case, the PRRA officer pointed to easily accessible, corroborative evidence of the sister's trip to Sri Lanka. The provision of such documentary evidence by the Applicants in the context of this PRRA application was reasonable and would not place an undue burden on the Applicants.

(3) Was the PRRA officer's consideration of the Applicants' risk profile reasonable?

[46] The Applicants submit that the PRRA officer refused to consider the Principal Applicant's new circumstances. The basis of the Applicants' PRRA application was described as follows (Affidavit of Principal Applicant at para 23):

> 23. While the risks to me in Sri Lanka as a Tamil woman are similar to the ones in my refugee claim, my situation has changed. I am now afraid that, if returned to Sri Lanka, I would either be forced to live as a single woman with the enmity of my estranged husband, or to go back to him to protect myself and my daughter. I have no doubt that he would punish me for what he sees as my transgressions, and he has the influence to do so with impunity.

[47] The Principal Applicant acknowledges that, as a Tamil woman returning to Sri Lanka, she faces the same risks that were assessed by the RPD. The additional or changed risks she asserts in the PRRA application are:

(a) the risk of living as a single woman with the enmity of her estranged husband; and,

(b) the risk of living with the estranged husband to protect herself and her daughter,

(c) in each case, being subject to punishment by the husband with impunity due to his status as a powerful person in their region of Sri Lanka.

[48] The PRRA officer concluded in the Decision that the Applicants had not established their changed circumstances and risk profile since the RPD decision in 2013. She did not assess the risk to the Applicants of the misuse of power by the estranged husband because the Applicants had not established this risk in their evidence. The PRRA officer had concluded that there was insufficient evidence to establish that the Principal Applicant's profile was that of a returning, single Tamil woman fearing her powerful, estranged husband who could act against her with impunity. Her evaluation of the country documentation was consistent with her factual findings. I find that the PRRA officer did not refuse to consider the new risk profile asserted by the Applicants; she found it not to be established.

[49] The PRRA officer considered the same risk profile that was before the RPD against updated country documentation. She reviewed the country documentation submitted by the Applicants in support of the PRRA application. In the Addendum to the Decision, she noted the additional country documentation submitted by the Applicants and its discussion of torture, arbitrary arrests, and the situation of women and of Tamils. The PRRA officer also stated that the additional documentation did not establish that the Principal Applicant's husband had become a powerful person and would pose a threat to her and her daughter.

[50] The PRRA officer cited a number of credible reports from 2013 through 2016. The officer detailed the situation facing returning Tamils and women generally in Sri Lanka. She acknowledged that the situation was not perfect but was improving. The officer did not engage in detail with the general issue of discrimination against women in Sri Lanka but was aware of the issue and made specific reference to the situation of women in the Addendum. As the Principal Applicant's risk profile assessed by the PRRA officer was that of a returning Tamil woman with a child, a general profile only, I find the officer's review of the country documentation was reasonable. On redetermination, if the new PRRA officer determines that the Applicants establish their changed risk profile, he or she would be required to consider the Principal Applicant's new profile as a single Tamil woman returning to Sri Lanka with a child and facing threats from a powerful, estranged Sinhalese husband.

VII. Conclusion

[51] The PRRA officer failed to provide transparent reasons for her decision to give no probative value to the affidavit of the Principal Applicant's sister, specifically as it related to

facts previously before the RPD and found to be not credible. In light of the importance of the affidavit to the Applicants' PRRA application, I find that the Decision was unreasonable and the application is allowed.

VIII. Certified Question

[52] The Respondent posed no question for certification. The Applicants submitted that, if their application is dismissed, I should certify a question regarding the need for corroboration of a sworn affidavit by a close family member of the applicant(s) in a PRRA application. Counsel for the Applicants argued that the jurisprudence of the Court diverges on this issue and improperly derogates from the *Maldonado* presumption of truth of a sworn affidavit, a fundamental principle in Canadian immigration law. The Respondent argues that there is no divergence in the jurisprudence of the Court. The cases were decided on their specific facts in each instance and the Court has consistently held that there must be good reason to depart from the *Maldonado* principle.

[53] In *Lunyamila v Canada (Public Safety and Emergency Preparedness*), 2018 FCA 22 at paragraph 46, the Federal Court of Appeal summarized the criteria for certification of a question pursuant to subsection 74(d) of the IRPA:

> [46] This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a

> properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness),* 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para.10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration),* 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).

[54] In the present case, I have allowed the application due to a lack of clarity in the PRRA officer's assessment of the weight as opposed to the credibility of the evidence contained in the affidavit of the Principal Applicant's sister. The issue of corroboration of the sister's affidavit has no bearing on the outcome of this application (*Ozomma* at paras 73-74). Therefore, the question raised by the Applicants is not dispositive of the application and no question will be certified.

JUDGMENT in IMM-3934-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The decision of the PRRA officer is set aside and the matter is remitted for redetermination by a different officer.

3. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3934-17
STYLE OF CAUSE:	SATHIYARAJANI PERAMPALAM AND RUWINI SUBANI ANTON ROHAN PERERA (BY HER LITIGATION GUARDIAN SATHIYARAJANI PERAMPALAM) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 18, 2018
JUDGMENT AND REASONS:	WALKER J.
DATED:	SEPTEMBER 11, 2018

APPEARANCES:

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Neeta Logsetty	FOR THE RESPONDENT

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