

Federal Court



Cour fédérale

Date: 20220426

Docket: IMM-6547-21

Citation: 2022 FC 604

Ottawa, Ontario, April 26, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

THUSYANTHAN ARUMAITHURAI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated August 6, 2021 wherein the RPD found the Applicant not to be 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 [IRPA].

[2] For the reasons that follow, the application is dismissed.

II. **Background**

A. *Facts*

[3] The Applicant is a citizen of Sri Lanka of Tamil ethnicity born in 1984. In January 2019 he joined a local neighbourhood watch in his home village near Jaffna because of a rise in criminal activity due largely to the Aava Group. The Aava Group were believed to be connected to the Sri Lankan authorities. The Applicant's one and only watch was on January 19, 2019. An altercation with members of the Aava Group occurred during which the Applicant was attacked and identified as the brother of Lathees.

[4] The Applicant subsequently saw some of the Aava Group in contact with members of the Sri Lankan military. About a week later, members of the group came to his home demanding to know where Lathees was. He was told to report to the local camp of the Criminal Investigation Division the next day. Instead, the Applicant went into hiding and made arrangements to leave Sri Lanka with the aid of a human smuggler who bribed a security officer at the Colombo airport. He travelled on his own passport out of Sri Lanka on May 3, 2019 and travelled through several countries on his way to Canada, including the United States where he was detained.

[5] The Applicant's brother, Lathees, was granted Convention Refugee status in Canada on June 15, 2015. A second brother, Nishantan, was granted Convention Refugee status in Canada on August 23, 2010. Nishantan was one of those who fled to Canada aboard the MV Sun Sea.

Their claims were determined by the same member who heard the Applicant's claim. The family name of the three brothers is the same as that of an unrelated individual reputed to be an arms smuggler for the LTTE who was also one of the passengers on the MV Sun Sea.

B. Decision under Review

[6] On April 23, 2021 the RPD found that the Applicant was neither a Convention refugee nor a person in need of protection.

[7] The RPD found that the Applicant's claims were not credible due to material contradictions, inconsistencies, and omissions in his evidence. The RPD also found the Applicant had no credible corroborative documentation to support his claim. Among the reasons for these findings were contradictions between what the Applicant had told the US authorities and the Canadian border agents and what he stated in his Basis of Claim narrative. In addition, the RPD found that the Applicant's testimony was vague and that he was unable to answer questions about whom he feared in Sri Lanka despite being repeatedly asked.

[8] The RPD considered whether the Applicant's identity as a 37 year old Tamil male would provide a basis for a well-founded fear of persecution in Sri Lanka. On the objective basis of the claim, the Member found that the Applicant did not have the profile that would put him at risk. He did not fit the persecuted profile of those at risk such as activists, journalists and former or suspected LTTE members. Based on the current country conditions documents, he would not be at risk upon return including as a failed refugee claimant. His status as a family member of persons who have obtained refugee protection in Canada and may have imputed links to the

LTTE did not, in the Member's view, elevate his risk of harm. Any risk that he might face was a generalized risk faced by other individuals in Sri Lanka.

[9] The Applicant had submitted one document in support of his claim, a letter from a Tamil community centre. The RPD found that it did not corroborate the Applicant's claim as it repeated information provided to the centre by the Applicant's wife and contained substantial discrepancies with respect to his basis of claim narrative.

[10] The Member acknowledged that the Applicant would likely be interviewed at the airport, a process that may take days, and he may also later be questioned by the police at his home. Based on the Applicant's lack of a criminal record and lack of association as a member or supporter of the LTTE, and the fact that the Applicant had left the country legally through the international airport on his own passport, the Member considered that he would not likely face harsher treatment than interrogation upon his return.

III. **Issues and Standard of Review**

[11] The sole issue is whether the RPD's decision is reasonable.

[12] Reasonableness is the presumptive standard of review of administrative decisions on their merits: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. There is no basis for departure from that presumption in this matter.

[13] To determine whether the decision is reasonable, the reviewing court must ask “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”: *Vavilov* at paras 86 and 99. Thus, a decision-maker’s findings should not be disturbed as long as the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

[14] In conducting a reasonableness review of factual findings, deference is warranted and it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor: *Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 112 [*Kanhasamy*]; *Vavilov* at para 96. Perfection is not the standard. It is not for the Court to transform a review on the reasonableness standard to correctness review: *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at paras 36-40. The party challenging the decision bears the burden of showing that it is unreasonable: *Vavilov* at para 100. Respect for the role of the administrative decision maker requires a reviewing court to adopt a posture of restraint on review: *Vavilov*, paras 24, 75.

IV. Analysis

[15] Both in his written argument and oral submissions, the Applicant has focussed his attention on one ground in particular: the failure of the RPD to explain how his situation upon his return to Sri Lanka would be different from that of his brother Lathees. The same RPD member had found Lathees to be at risk of facing greater scrutiny, and thus the possibility of torture, upon his return as his other brother, Nishantan, was suspected of being a former LTTE member

because of his passage on the MV Sun Sea. In her decision on Lathees's claim, the RPD member had found that those with family links to former LTTE members are likely to be at risk of torture in Sri Lanka.

[16] While I appreciate that the Applicant may be somewhat bewildered by the fact that his claim, unlike those of his two brothers, did not receive a favourable outcome before the same tribunal, the Member was not bound by her previous decisions. The principle of *stare decisis* does not apply horizontally with respect to decisions of administrative tribunals such as the RPD: *Vavilov* at para 129; *Weber v Ontario Hydro*, [1995] 2 SCR 929 at para 14.

[17] In *Canada (Attorney General) v Zone3-XXXVI Inc*, 2016 FCA 242 at para 41, the Federal Court of Appeal held that “an administrative decision-maker must take into account the applicable law and specific circumstances of each case, and not consider to what extent the case under review may resemble a past situation”: citing *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 6; *Altus Group Ltd v Calgary (City)*, 2015 ABCA 86 at para 16; Paul Daly, “The Principle of Stare Decisis in Canadian Administrative Law,” (2016) 49:1 RJT 757 at 767 et seq.

[18] The fact that the RPD did not articulate how a previous decision of the RPD differed from the present case does not render the decision unreasonable, as the RPD was not required to engage in such an analysis. Any flaw or shortcoming in the reasons of the RPD in this regard was not “sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para 100.

[19] The Applicant's case had to be determined on its own merits. In my view, they were not strong. The Applicant had only a minimal amount of contact with the alleged agents of persecution. He had continued to live in his community without difficulty following the departure of his brothers and had, himself, no direct or imputed links to the LTTE. While the brothers were seeking refugee protection in Canada, he had routine interactions with Sri Lankan authorities. His family, apart from the brothers in Canada, continues to live there.

[20] There are material differences between the Member's findings in respect of the two brothers and the Applicant's case. The Member implicitly took into account the distinguishing characteristics between the Applicant's case and those of his brothers. In finding that the Applicant faced no elevated risk of harm she noted that he regularly had interactions with the Sri Lankan government when he travelled to Qatar for work and back to Sri Lanka to visit his family between 2007 and 2016. On those occasions he was never stopped by the authorities as he passed through airport security clearances. And he was never questioned about his two brothers in all the time he had lived in Sri Lanka following their departure.

[21] It was open to the RPD to find, based on the country condition evidence, that circumstances had changed since Lathees had been accepted as a Convention refugee. The RPD sufficiently justified its distinction between the circumstances of the Applicant and those of his brothers. The rationale is justified, transparent and intelligible. With regard to the question of heightened risk for the Applicant as a returned refugee claimant, the RPD sufficiently justified its conclusion by citing statistics that no returning refugee claimants had been arrested or detained in Sri Lanka between 2017 and 2019.

V. **Conclusion**

[22] The RPD's credibility findings were reasonable in light of the contradictions between the Applicant's testimony, his basis of claim narrative and his answers to the US and Canadian border officials regarding the alleged agent of harm. It was open to the RPD who heard him directly to find that his testimony was vague and inconsistent.

[23] As discussed above, I see no reason to intervene in this matter because of the different outcomes between the Applicant's claim and those of his brothers.

[24] No serious questions of general importance were proposed and none will be certified.

JUDGMENT IN IMM-6547-21

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6547-21

STYLE OF CAUSE: THUSYANTHAN ARUMAITHURAI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE VANCOUVER,
BRITISH COLUMBIA

DATE OF HEARING: APRIL 13, 2022

JUDGMENT AND REASONS: MOSLEY J.

DATED: APRIL 26, 2022

APPEARANCES:

Shepherd Moss FOR THE APPLICANT

Brett J. Nash FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chand and Company FOR THE APPLICANT
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia