

Federal Court



Cour fédérale

Date: 20240322

Docket: IMM-3053-23

Citation: 2024 FC 457

Ottawa, Ontario, March 22, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

RASAMALAR KANTHASAMY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Rasamalar Kanthasamy, is a citizen of Sri Lanka. Originally arriving in Canada on a “super visa” to visit her daughters who were sponsored to Canada by their spouses, the Applicant later claimed protection on the bases of: (i) being perceived by the army as a supporter of the (anti-government) Liberation Tigers of Tamil Eelam [LTTE]; (ii) Tamil ethnicity; and (iii) gender-based violence in Sri Lanka.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected the Applicant's claim, finding that she is neither a Convention refugee nor a person in need of protection, as contemplated by section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Refugee Appeal Division [RAD] of the IRB upheld the RPD decision, holding that credibility was the determinative issue for the claims under both section 96 and subsection 97(1) [Decision]. See Annex "A" for relevant legislative provisions.

[3] The Applicant seeks to have the Decision set aside and the matter redetermined by a different RAD panel.

[4] The sole issue in this matter is whether the Decision is reasonable. The Court must ask itself whether the Decision is intelligible, transparent and justified in the context of the applicable factual and legal constraints, further to the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25, 90, 99. I find that none of the situations rebutting this presumption (*Vavilov*, above at para 17) is present here. Further, the party challenging an administrative decision has the burden of showing that it is unreasonable: *Vavilov*, above at para 100.

[5] I am not satisfied that the Applicant here has met her onus. As I will explain in these reasons, the Applicant's arguments expect a level of perfection in the RAD's reasons that is not warranted, and further, they involve a line-by-line treasure hunt for errors, neither of which is countenanced in *Vavilov's* guidance to reviewing courts (paras 91, 102).

[6] The Applicant's judicial review application thus will be dismissed.

II. Analysis

[7] I am not persuaded that the Decision is unreasonable or, as suggested by the Applicant, that dismissing this judicial review application will have the effect of adding an additional burden or layer regarding the information refugee claimants must include in their Basis of Claim [BOC] narrative. In my view, the outcome of this judicial review is contextual and fact-specific.

[8] At the oral hearing, the Applicant's arguments about reasonableness were distilled to the following specific issues: (i) the RAD's treatment of the omission from the Applicant's BOC that she destroyed documents, including photos, corroborating the existence of her sister; and (ii) the RAD's treatment of her neighbour's letter.

BOC Omission

[9] Based on the unique facts of this matter, I am not convinced of the premise put forward by the Applicant. The Applicant argues that the Decision imposes on refugee claimants an obligation to describe in a BOC instances where they have no documents to support an assertion, and to grant the judicial review will enshrine this obligation judicially. I disagree.

[10] Here, the Applicant asserts that she has a sister who was recruited forcibly by the LTTE. Initial searches by the family of LTTE camps over a period of six months were fruitless. A subsequent letter from the sister confirmed that she was with the LTTE. Years later, at her

father's request, the Applicant again searched for her sister and at one point was required by the army to attend at one of their camps to sign a document written in Sinhala to support a complaint about her missing sister. She states that when she indicated that she did not understand Sinhala, she was told that the document acknowledges her sister is a member of the LTTE and that she is missing. According to the Applicant, she signed the complaint because she was told that the army would not accept it if she did not sign it.

[11] The Applicant asserts that her fear of the army started with the above incident, but did not rise to a level that would cause her to claim refugee protection until she received a phone call and then a letter from her neighbour describing two visits by the army to the Applicant's home. At the time, the Applicant was in Canada on a super visa visiting her two daughters who were sponsored by their spouses before the above incident. She was sad following the death of her father in 2019 and her daughters suggested that she come for a visit.

[12] When asked at the RPD hearing if she had any documents, such as photographs, school documents or a birth certificate for her sister, the Applicant answered that they "were scared of the army, they will come and check the house so we burned all her documents." When asked by the RPD member when this occurred, the Applicant explained that after her father died in March 2019, she was living alone and scared that the army might come to search her home; so, she took all the documents, including photographs, and burned them.

[13] The RPD member then asked why she did not mention this in her BOC, and the Applicant indicated that she was scared and did not know what to write.

[14] With this background in mind, the RAD found it was inconsistent for the Applicant to allege it was reasonable to have destroyed her sister's documentation, but at the same time to maintain it was an immaterial act that did not need to be included in the BOC. The RAD noted that the Applicant was represented by counsel.

[15] The RAD further found that, because the Applicant "based her claim on the existence of an LTTE-affiliated sister, the action of destroying all documentation which might establish the sister's existence, is by definition, an important and material element of the Applicant's claim." The RAD therefore determined that the Applicant's attempt to justify an inability to substantiate her sister's existence because she destroyed the relevant documentation undermined the Applicant's credibility.

[16] In my view, the RAD's reasons disclose a logical chain of analysis that is internally coherent and justified in relation to the applicable factual matrix. In other words, I am satisfied that it was open to the RAD to make the credibility determination that it did. That the RAD could have come to another conclusion based on the record before it does not mean, in itself, that the Decision is unreasonable: *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 43.

[17] Further, I find that the Decision does not give rise to a general requirement to say that there are no corroborating documents. Rather, in these particular circumstances, the RAD indicated several times that it was the act of destroying the documents, an act central to the Applicant's fear of the army, that should have been disclosed.

Neighbour's Letter

[18] I agree with the Respondent that the Applicant's arguments about the RAD's treatment of the neighbour's letter are tantamount to a request to reweigh this piece of evidence, which is not the role of a reviewing court: *Vavilov*, above at para 125.

[19] In my view, the RAD reasonably explains that the neighbour's letter is insufficient evidence to overcome credibility issues relating to the existence of the sister, for two reasons. First, the neighbour recounts what was told to her by the Applicant about the sister (i.e. this is second-hand information). Second, the RAD's own credibility assessment is rooted in the BOC omission (i.e. the Applicant's omission of the act of destroying documents corroborating the sister's existence). The RAD thus assigns little weight to this part of the neighbour's letter.

[20] While the RAD accepts the neighbour's first-hand account of two visits by the military to the Applicant's home, and that the neighbour told the Applicant by phone of these visits, the RAD assigns little weight to this information in part because of the lack of other details to connect the visits to the whereabouts of the Applicant's sister. The RAD adds that the first-hand information is insufficient to overcome independent credibility findings arising from the RAD's consideration of the BOC omission and the Applicant's inconsistencies.

[21] I am not persuaded that the RAD's rationale is unreasonable when viewed in the context of the factual and legal constraints applicable to this Applicant.

III. Conclusion

[22] For the above reasons, this judicial review application will be dismissed.

[23] Neither party proposes a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-3053-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is dismissed.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

*Immigration and Refugee Protection Act, SC 2001, c 27.
Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27.*

<p>Convention refugee</p> <p>96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>Définition de réfugié</p> <p>96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p>Person in need of protection</p> <p>97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in</p>	<p>Personne à protéger</p> <p>97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p>a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,</p> <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles</p>

disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

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