

Federal Court



Cour fédérale

Date: 20240626

Docket: IMM-7783-23

Citation: 2024 FC 991

Ottawa, Ontario, June 26, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

VAISNAVAN MANORANJAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated June 1, 2023 [Decision], in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] As explained below, this application is dismissed, because the Applicant has not established that the Decision is unreasonable or was made without requisite procedural fairness.

II. Background

[3] The Applicant claims to be a Sri Lankan citizen, born November 15, 1995. He sought protection in Canada based on fear of persecution by the Sri Lankan authorities due to a perceived affiliation with the Liberation Tigers of Tamil Eelam (LTTE).

[4] The Applicant claims that he left Sri Lanka on April 8, 2019, and entered the United States [US] on July 18, 2019, after travelling through Central America. The Applicant was detained in the US for several months. After his release, he travelled to Canada, entering on February 26, 2020. He subsequently made a claim for refugee protection.

[5] The Applicant's refugee claim was heard before the RPD in two hearings, on October 28, 2021, and January 28, 2022. His claim was denied by the RPD on October 24, 2022, on the grounds that he had not established his identity.

[6] The Applicant appealed to the RAD, the Decision of which is the subject of this application for judicial review.

III. Decision under Review

[7] As with the RPD, the determinative issue before the RAD was that the Applicant had failed to establish his identity.

[8] In arriving at that determination, the RAD considered the admissibility of several new pieces of evidence the Applicant submitted for the purpose of his appeal. It assessed the admissibility of the new evidence and found that two mental health reports and a set of email exchanges with his former counsel were admissible pursuant to subsection 110(4) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[9] The RAD found the remainder of the new evidence not to be admissible, primarily on the basis that it was not clear why the evidence had not been available to the Applicant to submit to the RPD. Also, some of the proposed new evidence was already part of the RPD record and therefore was not new evidence on appeal. This included a colour copy of the Applicant's Sri Lankan national identity card [NIC]. The Applicant had explained that the original NIC was sent to his RAD counsel from a law office in the US on December 12, 2022 (*i.e.*, after the RPD's decision). However, given that the Applicant had already provided a copy of this NIC to the RPD, the RAD found that the new colour copy and original card were not new evidence as contemplated by subsection 110(4).

[10] Given that the new evidence that had been accepted did not raise a serious credibility issue with respect to the Applicant, the RAD did not proceed with an oral hearing.

[11] The RAD considered the Applicant's arguments that the RPD erred in its assessment of his credibility and, in turn, in finding he did not establish his identity. The RAD was not persuaded by the Applicant's arguments and held the RPD correctly found that the Applicant was not a credible witness and did not provide sufficient credible and trustworthy evidence to establish his identity on a balance of probabilities.

[12] In arriving at these conclusions, the RAD first considered evidence surrounding the Applicant's passport. The Applicant had submitted a photocopy of the bio page of the Sri Lankan passport he allegedly used to exit Sri Lanka en route to Canada, and he testified that the smuggler who assisted him took the original passport during the voyage. The RPD had concluded that the Applicant's testimony about the circumstances of obtaining his passport was inconsistent and evolving, and it found his testimony that he could not recall when and how he obtained the photocopy to be unreasonable.

[13] The RAD considered the Applicant's argument that the RPD erred by rejecting his testimony and failing to give weight to the photocopy of the passport, given that he had provided medical evidence to corroborate that he has issues with his memory, as well as the Applicant's submission that the RAD erred in failing to accept his explanations and by relying on objective evidence establishing the prevalence of widespread document fraud in Sri Lanka to ground a negative credibility inference about his documents.

[14] Upon review of the testimony and evidence, including the new mental health reports, the RAD agreed with the RPD that the Applicant's inconsistent and evolving testimony about his passport and the copy of the passport bio page undermined his credibility and undermined the reliability of the copy of the passport provided in evidence. The RAD found the mental health reports did not explain the inconsistencies in the Applicant's evidence as to how he obtained the passport. These reports indicated the Applicant had self-reported as having memory issues with dates or names of places, but the credibility concerns were not primarily based on the Applicant's inability to recall dates or names of places. The RAD noted that while inconsistent recollection of dates was one issue identified by the RPD, the more significant issue was the

Applicant's detailed accounts of events that subsequently changed and evolved. The RAD found it was reasonable to expect that, if the Applicant was unable to recall particular details, he would have said so in his testimony, and it found that confusion about dates was not a reasonable explanation for the inconsistencies in his evidence.

[15] The RAD also considered the objective evidence, which indicated that Sri Lankan passport applicants must appear in person at a government passport office to be fingerprinted and must present an original birth certificate and NIC. The Applicant had testified that he was fingerprinted at a photo studio and he did not provide any secondary identity documents to support his passport application. The RAD found the Applicant's testimony about obtaining his passport indicated it was not legitimately obtained, which undermined its reliability and probative value in establishing the Applicant's identity. The RAD found it would be wrong to conclude the Applicant's passport was fraudulent simply based on the objective evidence about the prevalence of fraudulent documents, but it noted that in this case there were other concerns to suggest the passport was not legitimately obtained.

[16] The RAD also agreed with the RAD that the Applicant's testimony, that he could not recall when and how he obtained the photocopy of the passport, was not reasonable. The RAD reasoned that if the Applicant's original passport was taken from him in Panama, en route to Canada, then a copy must have been made before that and was either in his possession as he travelled to the US or was provided to him at some point after his arrival to the US. The RAD found it unreasonable that the Applicant was unable to provide any information about the origin of this copy, and the mental health reports did not sufficiently establish that he suffered from substantial memory deficits that would cause him to forget any details about its origin.

[17] In conclusion in relation to the Applicant's passport, the RAD agreed with the RPD that the Applicant's testimony about his original passport and the copy of the bio page undermined his credibility and the reliability of the copy of the passport. The RAD drew an adverse credibility inference and placed no weight on the passport in establishing the Applicant's identity.

[18] Next, the RAD considered the Applicant's NIC. The RPD found that the Applicant's testimony about the NIC was inconsistent and at times confusing, and it found that he did not provide credible evidence with respect to how and when he obtained the NIC, nor a reasonable explanation for failing to provide the original. As a result, the RPD placed little weight on the copy of the NIC in establishing the Appellant's identity.

[19] The RAD considered the Applicant's argument that his testimony about the NIC appeared inconsistent because of his memory problems and confusion due to his reference to two different NIC cards, as well as an argument that the RPD erred by failing to consider his psychological and cognitive issues when evaluating his testimony and by relying on objective evidence about widespread document fraud. For the reasons explained below, the RAD ultimately agreed with the RPD that the reliability of the NIC was undermined by the Applicant's inability to credibly explain how he obtained the card.

[20] In considering the Applicant's argument that his changing testimony concerning the NIC was due to a translation error, the RAD reviewed an independent transcript provided by the Applicant, which suggested he was consistent in his testimony. However, the RAD noted that the

transcript was not accompanied by a declaration by a translator, and it found the Applicant had not established that an error in translation occurred as alleged.

[21] The RAD also did not agree with the Applicant that it was unreasonable to draw an adverse inference from his inability to credibly describe how he obtained his NIC. The RAD found it was reasonable to expect the Applicant to consistently and credibly describe how and when he obtained important government-issued identity documents, and it found his inconsistent testimony undermined his credibility. The RAD also found the Applicant's testimony regarding how he obtained a replacement NIC was not consistent with the objective evidence, which indicates an applicant must submit an application supported by a certified copy of their birth certificate and pay a fee. Based on this inconsistency and the objective evidence of widespread document fraud in Sri Lanka, the RAD found the reliability and authenticity of the NIC provided by the Applicant to be impugned.

[22] The RAD considered the Applicant's submission that he now had the original NIC in his possession and his offer to produce it to the RAD. However, the RAD found that it was not necessary to examine the original NIC. The RAD reasoned that even if the NIC had the appearance of a genuine document, the evidence established on a balance of probabilities that it was not a legitimately issued document.

[23] Next, the RAD considered the Applicant's birth certificate. The Applicant argues that the RPD conducted an overly microscopic analysis of the copy of his birth certificate and erred by conducting a memory test when questioning him about the certificate, ignoring his memory issues. At the RPD hearing, the Applicant initially indicated the original birth certificate was

issued when he was a child, and the copy given to the RPD was of a replacement birth certificate obtained in 2015. However, the copy in evidence had an issuance date of 2019, which the Applicant then explained was because he was required to renew his birth certificate every six months. The RPD had found no such requirement in the objective evidence, and it noted the copy of the birth certificate had different dates of birth for the Applicant's parents than were indicated elsewhere in the record.

[24] The RAD considered the Applicant's arguments in defence of the birth certificate – that, although not a formal requirement, some Sri Lankan entities require a birth certificate issued in the last six months, and that the dates were entered incorrectly on the birth certificate due to his parents' lack of education.

[25] The RAD was not persuaded by the Applicant's arguments. It noted the Applicant's father's birthday was identified as April 24, 1971, which was significantly different than the date on his father's birth certificate, of June 3, 1971. The RAD found the Applicant's submission that the error was a result of a lack of education to be speculative. In relation to the confusion between 2015 and 2019 as the date on the birth certificate, the RAD accepted that confusion over dates could explain certain inconsistencies, but it found it significant that the Applicant only added details about having to renew the certificate every six months once confronted with the 2019 date by the RPD. The RAD found this undermined his credibility.

[26] The RAD noted that the birth certificate had an official stamp, which is a marker of authenticity, but also noted the failure of the Applicant to provide the original document, which he testified was in his mother's possession, as hampering the RAD's analysis. Ultimately, the

RAD found the inconsistencies in the Applicant's testimony and on the face of the document undermined its reliability, and it gave the copy of the birth certificate no weight in establishing the Applicant's identity.

[27] Finally, the RAD considered the Applicant's other supporting documents, including copies of his father's birth certificate, his parents' and siblings' NICs, and resettlement documents and IDs for his family [together, the Supporting Documents]. The RAD considered the Applicant's argument that the RPD erred in finding that even if the Supporting Documents established his personal identity, they did not establish his national identity. The Applicant argued that there was no logic in this finding, as many of these documents are only issued to Sri Lankan citizens, and the documents showed he was the child of Sri Lankan father and therefore would be entitled to Sri Lankan citizenship.

[28] The RAD agreed that if the Supporting Documents established the Applicant's personal identity, they would establish his national identity as well, but it found the Applicant had not established himself to be the person he says he is, or the person named in the documents. Given that the Applicant's inconsistent and evolving testimony undermined his overall credibility, as did his submission of personal identity documents that had been determined to be fraudulent or improperly obtained, the RAD concluded that the Supporting Documents did not have sufficient weight, individually or cumulatively, to overcome those concerns or to establish his identity on a balance of probabilities.

[29] In the result, the RAD agreed with the RPD that, as the Applicant had failed to provide sufficient credible and trustworthy evidence to establish his identity on a balance of probabilities standard, he had not shown that he was a Convention refugee or a person in need of protection.

IV. Issues and Standard of Review

[30] The Applicant's arguments raise the following issues for the Court's determination:

A. Did the RAD breach procedural fairness in the adjudication of his claim?

B. Is the Decision reasonable?

[31] Issues of procedural fairness are subject to judicial scrutiny to ensure that a fair and just process was followed, an exercise best reflected in the correctness standard even though, strictly speaking, no standard of review is being applied (see *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47).

[32] As suggested by its articulation, and as the parties agree, the second issue is governed by the standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

A. *Did the RAD breach procedural fairness in the adjudication of his claim?*

[33] At the hearing of this application, the Applicant's submissions focused on his procedural fairness argument. He argues that he was deprived of procedural fairness by the RAD's failure to

take up his offer to provide the original NIC, which the Applicant did not have available at the time of his hearing before the RPD. He argues that, by refusing to examine the original, the RAD closed its mind to the possibility that that the NIC could be genuine, and he was therefore deprived of procedural fairness because he was not afforded an opportunity to fully present his case.

[34] At the hearing of this application, I raised with counsel whether it was appropriate to examine the RAD's treatment of the original NIC through the lens of procedural fairness, employing a standard of review akin to correctness, or whether this issue should be examined as a decision by the RAD whether to admit new evidence, which the jurisprudence explains is subject to the reasonableness standard of review (see, e.g., *Faysal v Canada (Citizenship and Immigration)*, 2021 FC 324 at para 13). The Respondent took the position that the reasonableness standard should apply. The Applicant maintained his position that correctness was the appropriate standard, although arguing that the RAD's refusal to examine the original NIC was also unreasonable if that less deferential standard was applied.

[35] I need not adjudicate this dispute on the standard of review, as I find that the RAD's approach to the original NIC does not represent a reviewable error, regardless of which standard is applied.

[36] Approached from the perspective of reasonableness, the RAD's reasoning is clear and, in my view, logical. Based on both inconsistencies in the Applicant's evidence as to how he obtained his official identity documents (including the NIC) and inconsistencies between that evidence and the objective evidence as to the process to obtain such documents in Sri Lanka, the RAD determined that his official identity documents were fraudulent or improperly obtained. In

relation to the NIC, the RAD reasoned that it was unnecessary to examine the original because, even if it had the appearance of a genuine document, the evidence established on a balance of probabilities that it had not been legitimately issued. In my view, it is logical to conclude that, even if the document appeared genuine (or indeed if it was genuine in the sense that it was issued by official Sri Lankan authorities), such a finding would not assist the Applicant, given the conclusion that it had been improperly obtained.

[37] Similarly, considered from the perspective of procedural fairness, the Applicant was not deprived of an opportunity to present his case because, given the RAD's findings surrounding the provenance of the NIC, the original NIC was not evidence that was capable of assisting the Applicant in establishing his identity.

B. *Is the Decision reasonable?*

[38] I therefore turn to the Applicant's arguments on the merits of the Decision, which are reviewable on the reasonableness standard. The Applicant raised these arguments in written submissions and did not elaborate upon them at the hearing of this application. However, as he did not withdraw these arguments, I will address them briefly.

[39] The Applicant submits that the RAD unreasonably analysed the evidentiary value of his birth certificate. Based on inconsistencies in his parents' birth dates and his evidence as to when he obtained the birth certificate, the RAD gave the document no weight. He argues that, in the absence of a finding that the birth certificate was fraudulent, it proved his identity or at least should have been given substantial weight, and it was therefore unreasonable to afford the document no weight at all.

[40] I agree with the Respondent's submission that the Applicant's argument has no merit because, based on the inconsistencies in the Applicant's testimony surrounding the provenance of the document and the objective evidence of widespread document fraud in Sri Lanka, the RAD expressly found that the birth certificate was unreliable.

[41] The Applicant also argues that the RAD unreasonably analysed the evidentiary value of the bio page from his passport. He submits that, if any of his arguments related to the NIC or the birth certificate find favour with the Court, then this also impugns the RAD's analysis of his passport because of linkages between the documents. However, as the Court has rejected the Applicant's arguments related to the other official identity documents, this submission does not assist the Applicant.

[42] Also in relation to the passport, the Applicant notes the evidence as to his memory problems and argues that the RAD speculated as to how he would have responded if he could not recall something. In my view, this argument asks the Court to reweigh the evidence that was before the RAD, which is not the Court's role in judicial review.

[43] Finally, the Applicant submits that the RAD erred by failing to assess the weight of the Supporting Documents and explain why they were insufficient to establish his identity. I do not find a lack of intelligibility in this aspect of the Decision. The RAD reasoned that, given its adverse findings surrounding his overall credibility, due to the Applicant's inconsistent and evolving testimony and submission of official identity documents that had been determined to be fraudulent or improperly obtained, the remaining Supporting Documents did not have sufficient

weight to overcome those concerns. I recognize that the RAD did not set out in its reasons a granular analysis of the weight to be afforded to each of the Supporting Documents. However, it is clear that the RAD considered the Supporting Documents, and I do not regard the lack of a granular analysis to undermine the intelligibility of the Decision.

VI. Conclusion

[44] Having considered and rejected the Applicant's arguments, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-7783-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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