

Federal Court



Cour fédérale

Date: 20250502

Docket: IMM-9970-24

Citation: 2025 FC 801

Toronto, Ontario, May 2, 2025

PRESENT: Madam Justice Go

BETWEEN:

Mathanraj SREECANTHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mathanraj Sreecanthan [Applicant], a citizen of Sri Lanka, filed a refugee claim due to his alleged fear of persecution by the Sri Lankan military, intelligence, and government after being apprehended in 2022 for attending a protest against a member of parliament. The Applicant further alleges risk of persecution as he is perceived to be connected to the Liberation Tigers of Tamil Eelam [LTTE].

[2] The Applicant alleges that after taking part in the protest, he was arrested and detained on two separate occasions, during which time he was beaten and questioned. Thereafter, the Applicant received a phone call, from someone claiming to be a military intelligence officer, ordering the Applicant to report for questioning. The Applicant did not report. A few days later, while the Applicant was out, two military intelligence officers went to the Applicant's home to ask why he did not report.

[3] Following this incident, the Applicant fled Sri Lanka in November 2022. After transiting through several countries, including the United States, the Applicant entered Canada in February 2023 and sought refugee protection. The Applicant's refugee claim was referred to the Refugee Protection Division [RPD] as an exception to the Safe Third Country Agreement [STCA].

[4] The RPD rejected the Applicant's refugee claim, finding that the Applicant was neither a Convention refugee nor a person in need of protection [Decision]. The determinative issue was the viability of an Internal Flight Alternative [IFA].

[5] The Applicant now brings this application for judicial review. For the reasons set out below, I grant the application.

II. Issue and Standard of Review

[6] The Applicant raises the following issues:

- a. Was the RPD's assessment of a viable IFA reasonable?

- b. Was the RPD's analysis of the Applicant's residual profile and *sur place* claim reasonable?

[7] The parties agree, as do I, that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25. The Court should assess whether the decision bears the requisite hallmarks of justification, transparency and intelligibility: *Vavilov* at para 99. The Applicant bears the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

III. Analysis

[8] In order to find that an IFA is a viable option for the Applicant, the RPD must be satisfied on a balance of probabilities that: (1) there is no serious possibility of the Applicant facing persecution in the IFA; and (2) the conditions in the IFA are such that it would not be unreasonable, in all the circumstances, for the Applicant to seek refuge there: *Rasaratnam v Canada (Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) at 711; *Thirunavukkarasu v Canada (Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA) at 592-593.

[9] The Applicant submits that the RPD's findings and reasons regarding the viability of an IFA in Sri Lanka were unreasonable. Specifically, the Applicant argues that the RPD failed to truly consider the Applicant's profile and misapprehended the evidence, including the relevant evidence within the National Documentation Package [NDP] that did not support its findings. The Applicant further submits that the RPD failed to analyze the Applicant's residual profile/*sur place* claim.

[10] I find the determinative issue is the RPD's failure to consider and analyze the Applicant's profile when it concluded that the Applicant has not established that there is a serious possibility of being persecuted in the proposed IFAs.

[11] In his narrative for his refugee claim, the Applicant presented himself as a Tamil born in Jaffna who was accused of being a LTTE supporter. The Applicant outlined the incidents leading to his arrest and the subsequent calls and visits from the military officials to his home. The Applicant also stated he learned from his father, after he came to Canada, that the Sri Lankan army came looking for him at his home twice in late 2022. After his father told the officers the Applicant had gone to visit his sisters in Canada, the officers accused the Applicant of leaving without reporting and of being a part of the LTTE in Canada. The officers also told the Applicant's father that the Applicant should report immediately upon returning to Sri Lanka. The Applicant submitted a letter to the RPD from his father confirming the same.

[12] The RPD did not make any negative credibility findings with respect to the Applicant's evidence, noting that it "did not find any major inconsistencies or contradictions with his testimony."

[13] With respect to the proposed IFA, the Applicant's then counsel submitted that the Applicant would not be safe anywhere in Sri Lanka given that the agent of persecution is the state. Counsel further argued that being a failed asylum claimant or a returnee exacerbates the risk the Applicant would face upon return to Sri Lanka.

[14] In considering the first prong of the IFA test, the RPD began by noting that the objective evidence from the NDP of Sri Lanka provides that military organizations, when motivated, have the means to locate people throughout the whole geographic area of Sri Lanka. The RPD acknowledged that the agent of harm demonstrated their ability to intimidate the Applicant. The RPD also found that, if motivated, the agent of harm can have access to the means to locate the Applicant in Sri Lanka.

[15] However, the RPD did not believe that “an individual in a small community would be targeted by a group of individuals who operate in a city elsewhere,” finding that “rogue officers” were involved in the Applicant’s detentions.

[16] The RPD went on to conclude:

Having considered all of the evidence before it, this panel finds that the [Applicant] has not established that there is a serious possibility of being persecuted in the proposed IFAs... **Its conclusion is based on the profile of the [Applicant], the scope of the agents of persecution and the panel’s finding that this group would not have the motivation or means to locate the [Applicant].**

[Emphasis added]

[17] I find several reviewable errors arising from the RPD’s findings and conclusion.

[18] First, while the RPD stated that its conclusion was based on the profile of the Applicant, the Decision did not reveal the RPD’s analysis with respect to the Applicant’s profile. The RPD did not indicate one way or another, whether it accepted the Applicant’s profile, as highlighted in

his claim, as a Tamil from the northern part of Sri Lanka with perceived link to the LTTE, and as a failed refugee claimant returnee based on submission from the Applicant's then counsel.

[19] The only mention the RPD made of the Applicant's profile was in the context of considering the Applicant's profile as a returnee. There, the RPD noted that while the UNHCR Guidelines make reference to problems faced by some Tamil returnees, "it does not include [the Applicant] as a profile in its list of risk profiles." The RPD went on to acknowledge that there is documentary evidence indicating that past involvement or association with the LTTE is key in terms of bringing returnees to the adverse attention of the authorities but found "insufficient evidence of this with respect to [the Applicant]."

[20] As the Applicant rightly points out, the RPD did not explain which UNHCR Guidelines it was relying on. In addition, I note that the RPD did not provide its basis for finding that the Applicant's profile is not within the list of risk profiles contained in the UNHCR Guidelines.

[21] Second, I also find the RPD erred when it acknowledged the documentary evidence indicating that "past involvement or association with the LTTE is key in terms of bringing returnees to the adverse attention of the authorities" but found "insufficient evidence of this with respect to the [Applicant]." The Applicant submits this finding was unreasonable as he credibly alleges that he was accused of being a LTTE supporter. I agree with the Applicant that the finding was unreasonable, but for different reasons. In my view, the RPD erred by misconstruing the Applicant's profile. In finding there was insufficient evidence showing that the Applicant had "past involvement or association with the LTTE," the RPD was looking for evidence confirming

the Applicant's past involvement or association with the LTTE, while the Applicant's claim was based on him being a perceived – not an actual – supporter of the LTTE.

[22] Third, I also find unreasonable the RPD's conclusion that the agent of harm "would not have the motivation **or means** to locate the [Applicant]:" Decision at para 29 [emphasis added]. This conclusion directly contradicts the RPD's earlier finding that the agent of harm demonstrated their ability to intimidate the Applicant, and that, if motivated, the agent of harm can have access to the means to locate the Applicant in Sri Lanka: Decision at para 22.

[23] The Respondent submits that the RPD "implicitly" made a finding about the Applicant's profile. The Respondent argues that, read as a whole, the Decision made it clear that the RPD considered the full circumstances of the Applicant's treatment to conclude he does not hold the profile of suspected LTTE affiliation. These findings include the RPD's findings about the lack of an arrest warrant, the Applicant's ability to go through the airport, and the Applicant's family not having had any problems since 2022, before concluding that the past persecution of the Applicant in his own area was not a result of state persecution, but the actions of rogue officers.

[24] I do not find the Respondent's argument persuasive. None of the findings the Respondent highlights addressed whether the RPD accepted or rejected the Applicant's profile as a perceived supporter of the LTTE. At best, these findings explain the RPD's conclusion that the Applicant's past treatment was a result of rogue officers. Nowhere in the Decision did the RPD ever conclude that the Applicant does not hold the profile as a perceived LTTE supporter. The

Respondent's argument amounts to asking the Court to fill in the gaps with crucial links that were otherwise missing in the RPD's chain of analysis.

[25] As the RPD justified its conclusion on the first prong of the IFA in part on the Applicant's profile, the absence of any meaningful analysis concerning the Applicant's profile undermines the justification, transparency and intelligibility of the Decision: *Vavilov* at para 81; *Thevarajah v Canada (Citizenship and Immigration)*, 2018 FC 458 at para 11.

[26] The negative decision of the RPD has serious consequences to the Applicant. This is so particularly since the Applicant does not have the benefit from an appeal to the Refugee Appeal Division, as his claim was referred as an exception to the STCA. Given the severe impact on the Applicant, the reasons provided by the RPD must reflect the stakes: *Vavilov* at para 133. I agree with the Applicant that he deserves to know why his claim was rejected, especially given the RPD found the Applicant has credibly established his past persecution. The RPD's failure to engage with the central issues and concerns raised by the Applicant runs counter to the principle of responsive justification: *Vavilov* at para 133. For this reason, the Decision was reasonable and must be set aside.

[27] I need not address the remaining arguments of the Applicant, including the argument that the RPD failed to consider objective country conditions evidence in the NDP that runs contrary to the Decision. However, I observe that rather than identifying the specific items it was relying on in the NDP, the RPD made vague references to item 14, which consists of multiple subitems, making it difficult to appreciate both the source and the content of the objective evidence that the

RPD was relying on. I find it to be yet another example of the lack of transparency that undermines the reasonableness of the Decision.

IV. Conclusion

[28] The application for judicial review is allowed.

[29] There is no question to certify.

JUDGMENT in IMM-9970-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.
3. There is no question to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9970-24

STYLE OF CAUSE: MATHANRAJ SREECANTHAN v THE MINISTER OF
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