

Federal Court



Cour fédérale

**Date: 20250520**

**Docket: IMM-8094-24**

**Citation: 2025 FC 911**

**Toronto, Ontario, May 20, 2025**

**PRESENT: Mr. Justice Brouwer**

**BETWEEN:**

**JAYAMURUGAN SHANMUGAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant sought refugee protection in Canada on the basis that he was at risk from two opposing politicians and police in India. Though he alleged to be an Indian national from Tamil Nadu, he had no original documents to prove his nationality or identity—just photocopies and letters of support. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected the Applicant’s claim on the basis that he had not established his identity,

declining to examine further his allegations of risk in India. The IRB's Refugee Appeal Division [RAD] upheld the RPD's decision. Although several grounds were raised and dismissed on that appeal, the only issue raised before this Court relates to the RAD's treatment of the copy of an identity document adduced by the Applicant and rejected as fraudulent by the RPD and the RAD. For the reasons set out below, I find that the RAD decision was unreasonable, and I grant the application.

## II. **BACKGROUND**

[2] The Applicant asserts that he is a citizen of India from Chennai, Tamil Nadu. He testified that he entered Canada with a fake Indian passport on February 4, 2020, to seek refugee protection. The basis of his refugee claim is that he is at risk of persecution from two warring political parties in India: the All India Anna Dravida Munnetra Kazhagam (AIADMK) and the Dravid Munnetra Kazhagam (DMK). According to the Applicant, he witnessed a hit-and-run in which a Member of the Legislative Assembly (MLA) from the AIADMK ran over and killed a cousin of a DMK member. The Applicant testified that he was warned by the MLA to not report the incident or identify him as the culprit, but said he subsequently received a threatening demand from the victim's cousin, who was also with the DMK, to report the full details of what had happened. Caught between pressures from both political parties and fearing the police as well, he fled India

[3] Upon arrival in Canada, according to the Applicant, he was met by a man named Ibrahim who took possession of the fake passport, and shortly afterward, while staying at a temple in

Toronto, his authentic expired passport was stolen. He had photocopies of his expired passport and other identity documents, but did not submit any originals with his refugee claim.

[4] The Minister of Immigration, Refugees and Citizenship Canada intervened before the RPD, challenging the credibility of the Applicant's claims regarding his identity and travel history.

### **RPD Decision**

[5] Following an oral hearing, the RPD rejected the Applicant's claim on the sole basis that he had not credibly established his identity. The RPD Member laid out four "areas of concern" justifying this conclusion, relating to:

- the Applicant's decision to travel to Canada on a false passport rather than renewing his authentic one;
- the Applicant's inconsistent and inaccurate testimony regarding his entry to Canada;
- the poor quality of the photocopy of the Applicant's expired passport and his failure to seek a new one to prove his identity after arriving in Canada; and
- discrepancies between the copy of the Applicant's Indian ID document, called an Aadhaar letter, and a sample Aadhaar letter attached to a Response to Information Request [RIR] produced by the IRB's Research Directorate in May 2021.

[6] On appeal to the RAD, the Applicant challenged the RPD's identity determination on multiple fronts. He alleged that in rejecting the Applicant's evidence on credibility grounds, the RPD had erred by relying on unfounded plausibility determinations, ignoring or misconstruing the evidence before it, and preferring the Minister's evidence over the Applicant's without sufficient justification. He complained that the RPD erred in rejecting the Applicant's explanation for not applying for a new passport after entering Canada and alleged that the RPD had erroneously rejected the copy of the Applicant's Aadhaar letter as "forged", drawing a "negative inference" from this finding and applying it to reject the copies of his driver's license and voter identity card as well.

#### **Decision under review**

[7] By decision dated April 24, 2024, a Member of the RAD rejected the Applicant's appeal. The Member confirmed the RPD's assessment of the Applicant's Aadhaar letter, noting some additional discrepancies between the Applicant's letter and the sample attached to the RIR. The RAD Member rejected the Applicant's argument on appeal that such discrepancies can be explained by differences in language or region of issuance, pointing out that the Applicant had failed to adduce any evidence to support his argument. The Member found:

More significant, in my view, is that the differences observed are not linguistic but relate to the placement of a visual code and alignment of text, the formatting of punctuation in English, and the inclusion of contact information to obtain assistance or make an enquiry. These are not simple linguistic changes, but significant visual and content disparities that are unexplained by either the Appellant or the country evidence. As a result, I agree with the RPD that the Aadhaar document submitted by the Appellant

is likely a forgery and is not authentic. I draw a significant negative credibility inference, specifically with respect to identity, based on the Appellant's use of a fraudulent identification document.

[8] The Member also agreed with the RPD that "the broad availability of false identity documents is described in the country evidence and tends to support that this irregular document is likely fraudulent."

[9] The RAD Member then proceeded to confirm the RPD's other credibility and implausibility findings regarding the Applicant's identity, including with respect to his failure to seek a new passport after entering Canada and initiating a refugee claim. Concluding that the question of identity was determinative of the refugee claim, the Member dismissed the appeal.

### III. **ISSUES**

[10] On judicial review, the Applicant has limited his challenge to the treatment of the Aadhaar letter. Specifically, he alleges that the RAD Member's findings regarding the letter were unreasonable and were reached in a manner that was procedurally unfair. He does not challenge any of the RAD Member's other identity and credibility findings.

#### **Standard of review**

[11] The parties agree, as do I, that while no deference is owed to the RAD's procedural choices, the standard of review applicable to the RAD's determination is reasonableness.

[12] Reasonableness review requires “sensitive and respectful, but robust, evaluation of administrative decisions” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 12 [*Vavilov*]). While reviewing Courts avoid stepping into the role of the decision maker or reweighing the evidence to reach different conclusions, we are obliged to consider the outcome of a given decision and the decision maker’s reasoning to ensure that the decision, as a whole, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is justified in light of the evidentiary record and the central arguments raised before the decision maker (*Vavilov* at paras 127-128). As the Supreme Court of Canada reminded us in *Vavilov*, “Where the impact of a decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes” (*Vavilov* at para 133).

[13] While reasonableness review is a single standard, it takes its colour from the context in which the decision is made; every decision “must be both justified by the administrative body and evaluated by reviewing courts in relation to its own particular context” (*Vavilov* at paras 89-90).

[14] The context and stakes of the decision under review are significant. The RAD’s decisions have potentially life and death consequences for the people that come before it. A final decision by the RAD rejecting a refugee claim clears the path for the person’s removal from Canada with no further statutory risk assessment if the removal takes place within 12 months (*Immigration and Refugee Protection Act*, SC 2001, c 2, s 112(2) (b.1)). The RAD must therefore render every decision it makes as if it is giving the final word on risk. The stakes are very high.

[15] In this case, the analysis of the RPD and the RAD began and ended on the preliminary question of identity. While it is open to refugee decision makers to dismiss claims on the basis that identity has not been proven on a balance of probabilities (*Edobor v. Canada (Citizenship and Immigration)*, 2019 FC 1064 at paras 8-10; *Elmi v. Canada (Citizenship and Immigration)*, 2008 FC 773 at para 4), such decisions should be made cautiously and must be justified given that their effect is to deprive claimants of an assessment of their risk allegations by the IRB. Reasonableness review in these circumstances requires the Court also to keep this context front of mind, evaluating the RAD's findings respectfully but robustly to ensure that the RAD's reasoning reflects these stakes. The duty to "safeguard the legality, rationality and fairness of the administrative process" requires nothing less (*Vavilov* at para 13).

#### IV. ANALYSIS

[16] With the above approach to the standard of review in mind, I must conclude that the RAD Member's finding that the Applicant's Aadhaar letter was forged was unreasonable. The Member's reliance on minor differences between the Applicant's Aadhaar letter and the sample appended to the 2021 RIR was neither intelligible nor sufficiently justified in the circumstances.

[17] The RIR to which the sample was attached reports that Aadhaar documents can take multiple forms: letters, identity cards, or electronic documents. They are issued by local offices throughout India, a country of over 1.2 billion people with almost two dozen official languages spoken in 28 states and territories. Once an Aadhaar has been issued it can also be downloaded as an "e-Aadhaar letter" which has the same validity as the original letter.

[18] The sample Aadhaar letter is not identified in the RIR as the universal format of Aadhaar letters produced throughout India. Nor does the RIR provide any information about whether and how Aadhaar letters may differ between regions, languages, or over time. Indeed, the RIR provides no insight into whether and how the sample should be used by the tribunal when seeking to evaluate the authenticity of Aadhaar documents. All the RIR says about the sample is: “A sample of an Aadhaar letter, provided on the UIDAI's website, is attached to this Response.”

[19] While at first glance the Applicant's Aadhaar letter looks broadly similar to the sample, the differences identified by the RPD and RAD Members are evident on the face of the documents. Some of the differences are linguistic, some typographical, and some are formatting issues including the precise placement of the QR code and spacing issues. There are also content differences, such as the contact information for seeking help, and the use of a heading “information” on one and “instructions” on the other.

[20] If the IRB's research directorate had identified the sample as the precise, universal model Aadhaar letter and indicated that any variation was a sign of inauthenticity, it might well have been reasonable for the RAD Member to rely on it to conclude as it did. But the RIR does no such thing.

[21] I acknowledge the RAD's established expertise in evaluating documentary evidence, and its entitlement to find some documents to be untrustworthy on their face, even where, as here, the documents in question benefit from a rebuttable presumption of authenticity (*Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at paras 85-90). But the tribunal's general expertise



in such matters does not shield it from reasonableness review. Its findings must be based on evidence and be adequately justified, taking the stakes of the decision into account. In this case, the RAD Member's sole reliance on the RIR sample to find the Applicant's Aadhaar letter had been forged was unreasonable, as it was based on an assumption about the sample that was simply not supported by evidence.

[22] In making this determination I am very mindful of the Respondent's submission that the Aadhaar letter was only one among several bases for the RAD Member's finding that the Applicant had not established his identity, and the Applicant did not challenge any of the other grounds. The Respondent suggests the decision would have stood even without the finding regarding the Aadhaar letter.

[23] I have some sympathy for the Respondent's position. The RAD Member upheld several negative credibility findings of the RPD that on their face appear quite damning regarding the Applicant's identity, and the Applicant has made no attempt to rebut them. This is concerning. However, I am unable to allow the decision to stand with the unreasonable Aadhaar letter finding in place because it affected the RAD Member's treatment of the remaining evidence as well. As the Member stated: "I draw a significant negative credibility inference, specifically with respect to identity, based on the Appellant's use of a fraudulent identification document." It cannot be said with any confidence that the outcome of the decision would have been the same without the impugned finding.

[24] As for the Applicant's additional argument that the RAD breached procedural fairness by failing to give him an opportunity to respond to the additional concerns of the RAD regarding

further discrepancies between the Applicant's Aadhaar letter and the sample, I decline to make a finding as I have already determined that the decision was unreasonable and the Applicant's appeal therefore must be remitted to the RAD for redetermination by a different panel.

V. **CONCLUSION**

[25] The RAD's decision dated April 24, 2024, is unreasonable and this application is therefore granted.

**JUDGMENT in file IMM-8094-24**

**THIS COURT’S JUDGMENT is that:**

1. The Application for Judicial Review is granted.
2. The decision of the Refugee Appeal Division is quashed, and the matter is  
remitted to that Division for redetermination by a different panel.
3. There is no question for certification.

“Andrew J. Brouwer”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8094-24

**STYLE OF CAUSE:** JAYAMURUGAN SHANMUGAM v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 15, 2025

**JUDGMENT AND REASONS:** BROUWER J.

**DATED:** MAY 20, 2025

**APPEARANCES:**

Micheal Crane	FOR THE APPLICANT
Zofia Rogowska	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Michael Crane Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT