

Federal Court



Cour fédérale

Date: 20250528

Docket: IMM-13376-23

Citation: 2025 FC 959

Toronto, Ontario, May 28, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

GAYAN NISHANTHA BOGAHAWATHAGE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Mr. Gayan Nishantha Bogahawathage, is a citizen of Sri Lanka. He seeks judicial review of a decision of the Refugee Appeal Division [RAD]. In that decision, the RAD dismissed his appeal and confirmed the decision of the Refugee Protection Division [RPD] to reject his claim for refugee protection.

[2] For the following reasons, I have concluded that the RAD's decision was reasonable, and I therefore dismiss this application for judicial review.

II. BACKGROUND

A. *Facts*

[3] The Applicant is a Sinhalese Buddhist from Colombo, Sri Lanka. In 2018, Mr. Bogahawathage took over his father's taxi business, MC Cabs, which operated in Colombo and the Northern and Eastern provinces. In June of that year, he hired four Tamil drivers. In November, two drivers from a local competitor, Rino Cab Services ("Rino"), asked him to employ some of their former colleagues. He told the men that he had no positions available, but that he would donate to their organization, the Welfare Association of Fallen Heroes. They refused his donation, but the following day, the Applicant received a phone call from an army officer who accused him of insulting war heroes by refusing to hire the former Rino drivers.

[4] Soon after, in December 2018, the Applicant was stopped by two men on his way home from work. The men said they were from the Criminal Investigation Department [CID], accused the Applicant of engaging in illegal activities through his taxi business, and told him to go to police headquarters to give a statement and to bring his vehicle ownership books to the competitor, Rino. The next day, he went to the local police station to make a complaint against the officers, but the police would not take his complaint. They instead advised him to go to Colombo headquarters. He did not go to Colombo headquarters as he felt it might be a trap.

[5] Due to his problems with the taxi business, the Applicant decided to resume his marine career instead and went to India for training from January 30, 2019, to February 6, 2019. Upon returning at the airport in Sri Lanka, he alleges that he was questioned by immigration and the police for two hours.

[6] Soon after Mr. Bogahawathage returned to Sri Lanka, two of his Tamil drivers were detained on terrorism charges. Additionally, he was summoned there to answer questions about employing “unrehabilitated” former members of the Liberation of Tamil Tigers Eelam [LTTE]. He did not appear, out of fear that he would be implicated in the charges against his employees. Afraid to return home, the Applicant went to stay with a friend. Two days later, two officers visited the Applicant’s home, and told his wife that he had failed to appear as required. Mr. Bogahawathage left Sri Lanka for Canada shortly thereafter, and initiated a claim for refugee protection.

[7] In rejecting his claim, the RPD found that the Applicant failed to establish the existence of the owner of the rival taxi service, let alone his alleged links to the Sri Lankan army. The RPD also concluded that the arrest of the Tamil employees never occurred. In arriving at this conclusion, it referred to documentary evidence which indicated that the chance of coming across non-rehabilitated LTTE members was exceedingly small, and to inconsistencies in the Applicant’s testimony.

B. *The RAD's Decision*

[8] The Applicant appealed to the RAD, which upheld the RPD's findings that he was neither a Convention refugee nor a protected person, due to credibility concerns and insufficient evidence of his prospective risk.

[9] The RAD accepted, for the purposes of its analysis, that the Applicant and his father operated a taxi company in Sri Lanka and that they hired Tamil drivers. However, the RAD agreed with the RPD that there was no evidence that the authorities have had any interest in him in over four and a half years.

[10] The RAD also noted that the Applicant was only involved in the business for a short period of time, from June 2018 until February 2019. It was his father that had started the taxi business, and resumed operating it when the Applicant left for India. His father was involved in hiring the two Tamil drivers that were arrested; yet, he has had no problems with the authorities, even though he resides at the same home where the Applicant resided, prior to leaving Sri Lanka. After the Applicant left the country, his father closed the business. Thus, any harm that any of the family members may have faced from Rino and its employees was extinguished, given the closure of the business.

[11] Finally, the RAD agreed with the RPD that the applicant would not face a risk of harm as a result of returning to Sri Lanka as a failed refugee claimant. The Applicant is of the dominant Sinhala ethnicity; he did not have connections with the LTTE, or a criminal record. Indeed, he never had problems with the authorities prior to the encounter with Rino employees in 2018.

While the RAD agreed with the Applicant that simply being Sinhalese does not protect him from government suspicion or abuse, it found that he had not credibly established his allegations relating to being targeted by authorities because he had hired drivers who were non-rehabilitated LTTE members.

[12] The RAD conducted an independent assessment of the objective evidence, and noted that most returnees, including failed claimants, are not monitored, although some sources have indicated that those returning to the North and East, especially with suspected LTTE links, have been visited in their homes and received calls from officials. The RAD acknowledged that there is a ‘possibility’ of monitoring, if the individual is deemed to have done something against the government. However, as the RAD found that the Applicant is not wanted in Sri Lanka, he is not likely to be a person of interest when he returns there. Moreover, the objective evidence states that claiming asylum abroad is not an offence. The Applicant may be subjected to a higher level of screening at the airport in the form of questioning because of his claim in Canada; however, this treatment would not amount to persecution.

C. *Issues*

[13] The Applicant originally raised the following issues in support of his application for judicial review:

1. Did the RAD err in basing its decision on unreasonable speculation about the actions of the Sri Lankan authorities?
2. Did the RAD conduct an unreasonable assessment of the Applicant's *sur place* claim?

[14] However, at the hearing into this matter, the Applicant indicated that he wanted to abandon the first of these issues, and pursue only the question of the RAD's *sur place* assessment. The parties do not dispute that the standard of review applicable to this issue is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [Mason].

III. ANALYSIS

A. *Did the RAD conduct an unreasonable assessment of the Applicant's sur place claim?*

[15] The Applicant argued before the RPD and the RAD that the authorities in Sri Lanka would find out about his claim in Canada, as he would tell them the truth, and that this puts him at risk.

[16] The RAD disagreed, primarily because it had already rejected the allegation that he would be perceived to be an LTTE supporter based on the drivers he hired. The RAD went on to find, based on its own review of the documentary evidence, that “most returnees, including failed claimants, are not monitored, although some sources have indicated that those returning to the North and East, especially with suspected LTTE links, have been visited in their homes and received calls from the CID.” In arriving at this conclusion, the RAD also reiterated that the Applicant is ethnically Sinhalese, that he has had no previous problems with the authorities, that he has no connections to the LTTE, and that as a marine engineer, he entered and exited Sri Lanka frequently, and over many years.

[17] The Applicant submits that the RAD failed to articulate the relevance of the above aspects of his identity to his risk as a failed asylum seeker. This being the case, the Applicant argues that the RAD's findings lack justification and transparency: *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11.

[18] The Applicant further suggests that the RAD erred in referring to his Sinhalese identity, because the evidence did not establish that the mere fact of being Sinhala eliminates all risks of mistreatment.

[19] Third, the Applicant states that his lack of a criminal record is irrelevant to his risk of return as a failed asylum seeker.

[20] Fourth, the Applicant maintains that, as he had hired the Tamil drivers, the RAD's determination that he has no connection to the LTTE was unreasonable, because it ignored an important aspect of his profile.

[21] Finally, the Applicant points to *Iyampillai v Canada (Citizenship and Immigration)*, 2022 FC 1150, for the proposition that "credibility concerns cannot determine the issue of whether there is a serious possibility of persecution of the claimant in his capacity as a failed refugee claimant returnee": at para 26. In light of the country documents regarding the risk of serious mistreatment of returned failed refugee claimants in Sri Lanka, the Applicant argues that it was an error for the tribunal to find that no such risk exists because it "did not believe the applicant was targeted by the authorities for a perceived association to the LTTE."

[22] I find that the RAD reasonably assessed the *sur place* claim, based on the Applicant's return to Sri Lanka as a returned asylum seeker.

[23] On the question of ethnicity, the Applicant argued before the RAD that the RPD had erred in finding that his Sinhalese identity would prevent him from being persecuted. The RAD agreed with this assertion, but found this to be of little consequence, as the Applicant had not credibly established a central element of his claim, which is that he would be perceived to have connection to, or targeted by the authorities because, he hired drivers who were non-rehabilitated LTTE members. I see nothing unreasonable in this conclusion.

[24] Second, while it is true that the RAD observed the Applicant does not have a criminal record, this was not an irrelevant consideration. While perhaps not determinative, the RAD referred to documentary evidence suggesting that outstanding criminal records may be checked upon return to Sri Lanka.

[25] Third, the Applicant misstates which aspects of his claim the RAD accepted. The RAD did accept, for the sake of its analysis, that the Applicant had hired Tamil drivers. It did not accept that they were affiliated with LTTE, or that the Applicant came to be wanted by the authorities because of any ensuing perception that he was affiliated with the LTTE. This being the case, it was not contradictory for the RAD to find that there would similarly be no perceived LTTE connection upon return to Sri Lanka.

[26] Finally, while I agree that an individual's profile must be considered in evaluating a claimant's risk upon return to their country of origin as a failed asylum seeker, this does not

mean that credibility findings are irrelevant to this analysis. For instance, credibility findings that impact the individual's perceived or real profile are inherently relevant to the analysis. In this case, the RAD's credibility findings related to the Applicant's claim that he was thought to have assisted un-rehabilitated LTTE members. This finding went directly to the perceived political profile that the Applicant claimed would attract risk upon his return to Sri Lanka as an unsuccessful asylum seeker. As a result, it was not an error for the RAD to rely on these findings in concluding that the Applicant had failed to establish a serious possibility of such risk.

[27] Ultimately, much of the Applicant's criticisms of the RAD's findings go to the weight that it placed on the documentary evidence. This is outside the scope of judicial review: *Akinde v Canada (Citizenship and Immigration)*, 2023 FC 1278 at para 40, citing *Vavilov* at para 125.

IV. CONCLUSION

[28] For the above reasons, I have found that the Applicant has not identified any reviewable errors in the RAD's decision. As a result, I must dismiss this application for judicial review. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-13376-23

THIS COURT'S JUDGMENT is that:

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

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13376-23

STYLE OF CAUSE: GAYAN NISHANTHA BOGAHAWATHAGE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: APRIL 22, 2025

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APPEARANCES:

Elnaz Dast Parvardeh	FOR THE APPLICANT
John Loncar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Korman & Korman LLP Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT