

Federal Court



Cour fédérale

**Date: 20150317**

**Docket: IMM-7985-13**

**Citation: 2015 FC 319**

**Ottawa, Ontario, March 17, 2015**

**PRESENT: The Honourable Mr. Justice S. Noël**

**BETWEEN:**

**MATHAVAKUMARAN RAMANATHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application by Mathava Kumaran Ramanathan [the Applicant] for leave to commence an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [RPD] dated November 13, 2013. The RPD held that the Applicant was neither a

Convention Refugee nor a person in need of protection within the meaning of sections 96 and 97 of IRPA.

## II. Facts

[2] The Applicant is a 35-year-old Tamil and a citizen of Sri Lanka.

[3] The Applicant claimed that he was a member of the Hindu Young Men's Association [the Association] with whom he helped collect money for families that fled the areas under the control of the Liberation Tigers of Tamil Eelam [LTTE] in 2005. The Special Task Forces Army [STF] learned of the Association's activities. The Applicant alleged that the STF arrested him and took him to the Karaitivu camp where he was beaten and asked him to sign a statement confirming that he collected money for the LTTE. He was released a week after his arrest.

[4] In that same year, the Applicant claimed that he and his father were arrested by the Karuna group. After paying the requested sum of money by the Karuna group, they were released.

[5] In August 2008, the Applicant alleged that he and his wife were assaulted by a militant group. In July 2009, the Applicant claimed that the Pillaiyan group took the Applicant from his house and demanded 600,000 rupees in exchange for his release. The Applicant's father-in-law paid 400,000 rupees and the Applicant was released. In August 2010, the Karuna group is said to have asked the Applicant to turn over his house.

[6] In May 2011, the Applicant alleged to being arrested by the Criminal Investigation Department [CID] to be questioned on the involvement of a former employee from his jewellery business with the LTTE. He claimed to have been released after paying 1.5 million rupees. Upon his release, the CID is said to have advised the Applicant to leave the country.

[7] On June 3, 2011, assisted by an agent, the Applicant left Sri Lanka and went to Singapore for about two weeks. He then went to Cuba, where he stayed for about two weeks, before reaching Mexico, where he also stayed for another two weeks. On his own, the Applicant then left for the United States of America [USA] on July 19, 2011, where he was detained for about 55 days upon his arrival. He claimed refugee protection in the USA, but left 12 days after, abandoning his refugee claim. He arrived in Canada on September 27, 2011, and claimed refugee protection on September 28, 2011. The RPD dismissed the Applicant's refugee claim on November 13, 2013. This is the decision under review.

### III. Impugned Decision

[8] The RPD identified a credibility issue since the Applicant could not identify STF as an agent of persecution without being prompted by his counsel. The RPD also determined that the Applicant did not have a well-founded fear of persecution if he were to return to Sri Lanka because of a lack of evidence supporting the Applicant's claim. The RPD also wrote that the Applicant was trying to embellish his story with regards to the allegations of being arrested and tortured by the CID.

[9] The RPD assessed the Applicant's refugee claim based on the *Eligibility Guidelines for Assessing the International Protection Needs for Asylum Seekers from Sri Lanka* of the United Nations High Commissioner for Refugees [UNHCR Guidelines]. It determined that the Applicant did not fit any of the risk profiles identified by the UNHCR Guidelines. The RPD added that there is insufficient evidence to conclude that the Applicant would be targeted upon his return to Sri Lanka. The RPD also determined that the Applicant lacked a subjective fear of persecution because he abandoned his refugee claim in the United States to come to Canada because he was staying in a small house in the USA and that he could get help with housing in Canada.

[10] The RPD also assessed the possibility of an Internal Flight Alternative [IFA]. It concluded that the Applicant did not provide evidence that the authorities or the paramilitaries continue to have any interest in him and that if he were to return to a city in the South of Sri Lanka, such as Colombo, he would not face a serious possibility of persecution.

[11] Lastly, the RPD determined that the Applicant was not a person in need of protection under subsection 97(1) of IRPA since the risk of extortion is a generalized risk faced by all members of the Tamil community in Sri Lanka. The RPD therefore concluded that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of IRPA.

#### IV. Parties' Submissions

[12] The Applicant submits that the RPD applied the incorrect test under section 96 of IRPA because the RPD wrote “heightened risk” in its analysis. The Respondent replies by saying that various expressions of the test are permissible, as long as the RPD’s decision, read as a whole, shows that the Applicant was not put to an unduly onerous burden of proof. Furthermore, the Applicant submits that another wrong test was applied when the RPD said, at paragraph 19 of its decision that: “... he would be targeted upon his return”. Counsel for the Respondent admits that this is problematic, but that in reality, the RPD applied the appropriate test (i.e. “serious possibility”).

[13] The Applicant also submits that the RPD erred in its credibility assessment of the Applicant since it failed to specify what it believed and what it did not believe in terms of credibility issues in its decision. The Respondent responds to this argument by saying that it was reasonable for the RPD to expect that an individual who fears persecution to be able to identify who he fears without being prompted by his or her counsel. Also, the Applicant submits that it was wrong for the RPD to draw a negative finding from the identification of the agent of persecution at first being the army and later adding the STF. For the Applicant, these two components are the same. He added that it was also erroneous for the RPD to impugn the credibility of the Applicant because there was no corroborative evidence in support of the Defence Secretary’s Intelligence Group. The Respondent replies that the Defence Secretary’s Intelligence Group was significant to the Applicant’s claim and he should have therefore presented objective documents on this group.

[14] The Applicant further argues that the RPD erred in ignoring evidence that contradicted its conclusion that the Applicant would not face a serious possibility of persecution if returned to Sri Lanka. The Respondent, on the other hand, argues that a reading of the decision shows that the RPD did not ignore evidence and that the RPD is presumed to have considered the evidence from the record in rendering its decision.

[15] The Applicant also argues that the RPD determination that he lacked a subjective fear because he failed to proceed with his asylum application in the USA is an error since jurisprudence from this Court says that refugee claimants are not obligated to seek asylum in the first country they reach. The Respondent is however of the opinion that if the Applicant truly feared returning to Sri Lanka; he would have claimed refugee protection at the first opportunity and would have not abandoned it to seek it elsewhere. In addition, he would not have been looking for better housing in Canada when compared to a “small house” in the USA.

[16] The Applicant is also of the opinion that the RPD erred in its assessment of an IFA in Colombo based on the documentary evidence provided explaining that Colombo would not be a viable IFA. The Respondent replies that the RPD’s conclusion was reasonable because the Applicant failed to demonstrate that the proposed IFA is unreasonable.

[17] The Applicant lastly submits that the RPD erred in its finding with respect to generalized risk because the Applicant did not fear extortion *per se* but rather the persecutory consequences of having failed to agree to extortion demands. The Respondent responds that the RPD’s

conclusion of the generalised risk faced by the Applicant is reasonable and supported by the evidence.

V. Issues

[18] I have reviewed the parties' submissions and respective records and frame the issues as follows:

1. Did the RPD apply the proper test under section 96 of IRPA?
2. Did the RPD make a proper credibility determination?
3. Is the RPD's analysis of an IFA in Colombo reasonable?
4. Is the RPD's assessment that extortion is a generalised risk reasonable?

VI. Standard of Review

[19] The issues of whether the RPD applied the proper test under section 96 of IRPA and whether the RPD's assessment of a generalized risk of extortion is reasonable are questions of law and should be reviewed under the correctness standard (*Gopalarasa v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1138 at para 22). The issues of whether the RPD made a proper credibility determination and properly assessed the possibility of an IFA in Colombo is to be reviewed on the reasonableness standard (*Gopalarasa*, above at para 39).

VII. Analysis

A. *Did the RPD apply the proper test under section 96 of IRPA?*

[20] Justice Yves de Montigny has recently summarized the test for a Convention refugee claim in *Canada (Minister of Citizenship and Immigration) v B272*, 2013 FC 870 at para 78:

It is well settled law that in order to establish a Convention refugee claim, a claimant must establish the facts of his case on a balance of probabilities. The Supreme Court of Canada explained in *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, that “both the existence of the subjective fear and the fact that the fear is objectively well-founded must be established on a balance of probabilities”. The claimant must also show that there is a “serious possibility, or more than a mere possibility, that the claimant will be persecuted if the claimant returns to his or her country: see *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (CA), at paras 5-6; *Lopez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1156.

[21] Whether the RPD has applied the proper test and how to assess such a situation in a judicial review has also been previously addressed in the jurisprudence of this Court:

While the burden of proof of a claimant for refugee protection is well-known and widely accepted, it is notoriously difficult to express in simple terms. Justice Mark MacGuigan stated the proper test in *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680, [1989] F.C.J. No. 67 (C.A) (QL):

It was common ground that the objective test is not so stringent as to require a probability of persecution. In other words, although an applicant has to establish his case on a balance of probabilities, he does not nevertheless have to prove that persecution would be more likely than not.

[...]

What is evidently indicated by phrases such as “good grounds” or “reasonable chance” is, on the one hand, that there need not be more than a 50%



chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility. We believe this can also be expressed as a “reasonable” or even a “serious possibility”, as opposed to a mere possibility” (At p. 683).

This is an awkward standard of proof to articulate. This Court has recognized that various expressions of this standard are acceptable, so long as the Board’s reasons taken as a whole indicate that the claimant was not put to an unduly onerous burden of proof. [...] (*Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 at paras 5-6; see similar analysis in *IF v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1472 at paras 23-24; *Pararajasingham v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1416 at paras 46-49; *Paramsothy v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1000 at paras 24-25) (my emphasis).

[22] Reading the decision as a whole, it is apparent that the RPD applied the proper test and even stated the proper test in its decision when assessing whether the Applicant would face a “serious possibility of persecution” (Applicant’s Record [AR] page 12 at para 21 and page 13 at para 25). The RPD’s single mention of “heightened risk” does not render the whole decision unreasonable. When reading the decision, it is apparent that the RPD considered the Applicant’s testimony, counsel’s submissions and the documentary evidence presented in its assessment of the facts of the case and whether there is a serious possibility of persecution if the Applicant were to return to Sri Lanka. It is thus based on the proper test that the RPD concluded that the Applicant was not a Convention refugee. As for the reference to the requirement of personalized targeting at the end of paragraph 19 of the decision, my reading of the whole paragraph indicates that, in essence, the RPD really applied the test of “serious possibility”

[23] I now turn to the RPD’s assessment of the Applicant’s well-founded fear of persecution. The Applicant’s main argument is that the RPD ignored documentary evidence contradicting its

conclusion that the Applicant would not be at risk of persecution if returned to Sri Lanka. I do not agree. When it comes to documentary evidence, the RPD is presumed to have considered all of the evidence and is not required to refer to every document presented (*Gallegos v Canada (Minister of Citizenship and Immigration)*, 2014 FC 807 at para 8, citing *Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 946, 147 NR 317 and *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598).

[24] In the case at bar, a reading of the decision demonstrates that the RPD did consider the documentary evidence presented. The RPD examined the Applicant's profile as a "young Tamil male from the East and a returnee" within the "socio-political context in Sri Lanka since the end of the war in May 2009" (AR page 11 at para 19 and page 10 at para 17). This is the profile discussed in the documentary evidence said to have been ignored by the RPD. The RPD therefore did not ignore the documentary evidence and assessed the Applicant's refugee claim by considering the UNHCR Guidelines that address asylum seekers from Sri Lanka. Only then did the RPD conclude that:

The claimant did not indicate any further contact with the paramilitaries or the authorities, and testified that no one in his family, including his siblings, have experienced any problems. The panel finds that the claimant does not possess any of the risk profiles identified by the UNHCR and that there is insufficient evidence to conclude that he would be targeted upon his return. The panel therefore finds that he does not have a well-founded fear of persecution (AR page 11 at para 19).

[25] Moreover, in coming to its conclusion that the Applicant lacked a well-founded fear of persecution, the RPD also considered that the Applicant did not mention the STF as an agent of persecution without being prompted by his counsel. The RPD also took into account the

Applicant's reason for abandoning his refugee claim in the USA, namely because the house he was staying in was very small and that Canada could help with housing. The case law cited by the Applicant also does not support his argument that refugee claimants do not have to seek asylum in the first country they reach. Contrary to the decision *Navarrete Menjivar v Canada (Minister of Citizenship and Immigration)*, 2006 FC 11, the Applicant, in the case at bar, did claim refugee protection in the USA. The Applicant also cites the non-published order in *Vasanthanayagam v Canada (Minister of Citizenship and Immigration)*, IMM-3966-12, which states that the RPD ignored the Applicant's explanation that he had no intention of residing in the USA because he had family in Canada and was forced to make a refugee claim while in detention. Also in *Vasanthanayagam*, as soon as the Applicant was released from detention, he made his way in Canada to claim refugee protection. The facts of the present case are different. The Applicant never claimed to have family in Canada or said that he wanted to be reunited with his family in Canada. He only discussed his family and friends in Canada when questioned by the RPD as to why the Applicant answered that he did not have family or friends that could assist him financially in Canada when questioned by the Canadian authorities (CTR page 100). The Applicant explained that his family and friends in Canada could help him in "other ways" than financially (CTR page 391 at line 30 and following). However, he later stated that he only has distant relatives, but no "blood relatives" in Canada (CTR page 396 at line 45). Considering that the Applicant was already staying with a friend in the USA and that he abandoned the refugee claim for better housing in Canada, it was open to the RPD to determine that the Applicant lacks both a subjective fear and a well-founded fear of persecution. Based on all of the above, the RPD's analysis of the Applicant's Convention refugee claim is reasonable. The intervention of the Court is not warranted.

B. *Did the RPD make a proper credibility determination?*

[26] The Applicant takes issue with the RPD's credibility assessment of the Applicant by saying that the RPD failed to specify what it did and did not believe in its credibility assessment. I disagree. The RPD did identify what it had difficulty believing, which is that the Applicant could not identify the STF as an agent of persecution until prompted by his counsel. The RPD's credibility determination on this issue is thus reasonable. On the second matter, I note that there is a difference between the army and the STF and that it was open to the RPD to draw a negative reference on this point. As for the Defense Secretary's Intelligence Group, its role is important to the Applicant's claim and again it was open to the RPD to say that it would have required further objective evidence on this important matter.

C. *Is the RPD's analysis of an IFA in Colombo reasonable?*

[27] The RPD stated at the beginning of the hearing that it would assess the possibility of an IFA in Sri Lanka and questioned the Applicant on the possibility of moving to Colombo (CTR pages 394-395). The burden of proof to demonstrate that no IFA exists in Colombo lies with the Applicant (*Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1210 at para 24). The RPD determined that there was no evidence that the authorities or the paramilitaries continue to have any interest in the Applicant and that he would not face a serious risk of persecution if he were to return to a city in the south of Sri Lanka, such as Colombo. This was a reasonable determination that the RPD could make.

D. *Was the RPD's assessment that extortion is a generalised risk reasonable?*

[28] In the case at bar, the RPD assessed the threat of extortion that the Applicant could face if returned to Sri Lanka and determined that it was a generalised risk. At the hearing, the RPD questioned the Applicant as to understand whether other business people, such as the Applicant, were also extorted. The Applicant answered yes. The RPD explained in its decision that the Applicant mentioned that Tamils were the ones targeted, and no other people. The RPD in coming to a determination of a generalized risk took into consideration the evidence provided and determined that extortion was faced by all members of the Tamil communities in Sri Lanka. Moreover, the RPD referred to the documentary evidence in coming to this conclusion, which mentions that paramilitary groups are targeting business people for money (CTR page 214), which seems to be what might have happened to the Applicant based on his story in support of this refugee claim. The RPD thus made a reasonable determination as to this generalised risk.

#### VIII. Conclusion

[29] The decision of the RPD, read as a whole, is reasonable. The RPD applied the proper test in determining whether the Applicant was a Convention refugee and it made a proper credibility determination along with an adequate IFA determination. It also reasonably concluded that the Applicant faced a generalised risk of extortion in Sri Lanka.

[30] The parties were invited to submit questions for certification, but none were proposed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to be certified.

“Simon Noël”

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Judge

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

**DOCKET:** IMM-7985-13

**STYLE OF CAUSE:** MATHAVAKUMARAN RAMANATHAN v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 12, 2015

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**DATED:** MARCH 17, 2015

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