

Federal Court



Cour fédérale

**Date: 20200205**

**Docket: IMM-207-19**

**Citation: 2020 FC 207**

**Toronto, Ontario, February 5, 2020**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**CHARLES RASASOORI**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the Bench in Toronto, Ontario on February 5, 2020  
and edited for syntax, grammar and case citations)**

[1] The Applicant, Charles Rasasoori, seeks judicial review of a decision by a Canada Border Services Agency [CBSA] Inland Enforcement Officer [Officer] dated January 13, 2019, refusing to defer his removal from Canada.

[2] The Applicant is a citizen of Sri Lanka. In March 2014, he entered Canada and claimed refugee protection based on his fear of the Sri Lankan authorities. He claimed they wrongly suspected he was a supporter of the Liberation Tigers of Tamil Eelam [LTTE].

[3] The Refugee Protection Division [RPD] rejected the Applicant's claim in August 2014, finding that his alleged fear of the Sri Lankan authorities was not credible, and that he was not at risk based on his profile as a young Tamil male who was refused asylum. He appealed to the Refugee Appeal Division [RAD], but he did not perfect his appeal, so the RAD dismissed the appeal on October 21, 2014.

[4] The Applicant then applied for a pre-removal risk assessment [PRRA] that was refused in February 2016. The PRRA officer found insufficient evidence to establish that the Applicant was at risk based on his profile as a young Tamil male from northern Sri Lanka and as a failed asylum seeker. The Applicant sought to challenge this decision on judicial review, but this Court denied leave in July 2016.

[5] The Applicant then filed an application for permanent residence on humanitarian and compassionate [H&C] considerations. The application was rejected in June 2017.

[6] The Applicant filed a second H&C application in September 2018. He married a Canadian citizen in November 2018, and the couple filed a spousal sponsorship application shortly afterwards.

[7] In December 2018, the Applicant was served a Direction to Report for removal from Canada on January 19, 2019. On December 31, 2018, he filed a deferral request pending the outcome of either of his two (2) applications. In the alternative, he asked for a deferral of two (2) months so that he could investigate concerns surrounding the competence of the representation he received from his former counsel in 2014 before the RPD and the RAD.

[8] The Officer refused the Applicant's deferral request on January 13, 2019. Noting that the deferral process is intended to address temporary practical impediments and not meant to be a long-term reprieve, the Officer concluded that counsel had not established that a deferral of removal was warranted.

[9] The Applicant now seeks judicial review of this decision. On January 17, 2019, the Court granted him a stay of removal pending the outcome of this proceeding.

[10] Although the Applicant raises several issues in his memorandum of argument, the determinative issue is whether the incomplete Certified Tribunal Record [CTR] constitutes a breach of procedural fairness.

[11] Where issues of procedural fairness arise, the role of this Court is to determine whether the procedure is fair considering all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 79). The approach to be followed when considering issues of procedural fairness appears

to be unaffected by the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[12] I agree with the Applicant that his January 8, 2019 update is missing from the CTR. He has adduced evidence demonstrating that the documentation was successfully faxed to the CBSA prior to the Officer rendering his decision.

[13] In *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 [*Togtokh*], Justice Keith M. Boswell summarized the case law on procedural fairness flowing from a deficient CTR as follows:

[16] ... The case law in this Court has dealt with at least three distinct types of scenarios raised by a deficient CTR, including the following:

1. A document does not appear in the CTR and it is unknown whether it was submitted by an applicant. In cases such as these, the Court will presume that the materials in the CTR were the materials before the immigration officer, barring some evidence to the contrary ...
2. A document is known to have been properly submitted by an applicant but is not in the CTR, and it is not clear whether that document, for reasons beyond an applicant's control, was before the decision-maker. In this situation, the case law suggests that the decision should be overturned ...
3. A document is known to have been before the tribunal but is not before the Court and cannot be reviewed. In such a case, unless the document is otherwise available to the Court, such as in an applicant's record ... the Court will be unable to determine the legality of the decision and the decision will be set aside if the missing document was central to the finding under review ...

(*Togtokh* at para 16; see also *Prasla v Canada (Citizenship and Immigration)*, 2019 FC 56 at paras 16-17; *Akram v Canada*

*(Citizenship and Immigration)*, 2018 FC 1105 [*Akram*] at paras 21-23; *Vulevic v Canada (Citizenship and Immigration)*, 2014 FC 872 at para 6)

[14] In my view, the circumstances of this case fall into the second category, since the Applicant has included the missing documents in his Applicant's Record at pages 333 to 345. As noted earlier, the Applicant has demonstrated that the documentation was sent to the CBSA by fax. However, it is not in the CTR. Its absence strongly suggests that the CTR was incomplete and that the Officer did not have all of the relevant documentation to arrive at his or her written decision. The Officer does not mention the January 8, 2019 update or its contents.

[15] The Respondent contends that it is likely the Officer would have reached the same result.

[16] While that may be so, it is not open to this Court to speculate how this information may have affected the Officer's decision. Upon review of the missing documents, I am satisfied that there is a possibility that the missing update may have altered the outcome of the Officer's decision.

[17] As this Court noted in *Akram*, procedural fairness provides the right to be heard. When a decision has been made based on the erroneous belief that the application was complete, the right to be heard has been compromised (*Akram* at para 22).

[18] For these reasons, the application for judicial review is allowed. The decision is set aside and the matter is remitted back to a different Officer for redetermination.

[19] No questions of general importance were proposed for certification and I agree that none arise.

**JUDGMENT in IMM-207-19**

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

1. The application for judicial review is allowed;
2. The decision is set aside and the matter is remitted back to a different Officer for redetermination; and
3. No question of general importance is certified.

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"Sylvie E. Roussel"  
Judge

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

**DOCKET:** IMM-207-19

**STYLE OF CAUSE:** CHARLES RASASOORI v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 5, 2020

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** FEBRUARY 5, 2020

**APPEARANCES:**

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