

Federal Court



Cour fédérale

Date: 20200323

Docket: IMM-4097-16

Citation: 2020 FC 403

Ottawa, Ontario, March 23, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

MAJURAN SRIKANTHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD], dated August 24, 2016 [Decision], denying the Applicant's refugee and person in need of protection claim under ss 96 and 97 of the IRPA.

II. BACKGROUND

[2] The Applicant is a citizen of Sri Lanka of Tamil ethnicity. He moved to India when he was seventeen years old and subsequently returned to Sri Lanka in August 2015.

[3] Shortly after his return to Sri Lanka, the Applicant attended seaman courses in Colombo from August 2015 until October 2015. He provided several documents confirming the dates and titles of the courses he took. Notably, one of the course certificates states that the Applicant completed a course and was issued a certificate in “proficiency in security awareness” on October 29, 2015. The Applicant noted that, during these courses, he lived in a hostel in Colombo that was associated with the school he was attending.

[4] The Applicant says that he left Colombo on October 24, 2015 to visit his uncle in Thondamanaru, which is approximately six hours away by bus. On the day of his arrival, October 25, 2015, the Applicant says that his uncle was killed by gunshot. The Applicant suspected that army officials were responsible for his uncle’s death and says that he made inquiries about the death at a nearby Sri Lankan army camp. The Applicant claims that he was then detained and threatened with death by army officials on October 29, 2015. The Applicant says that the officials accused him of being involved in his uncle’s death as a way of diverting blame from the responsible parties.

[5] Approximately five weeks later, the Applicant complained to the local Grama Niladhari about the incident on December 2, 2015, claiming that the “army and intelligence” were

threatening him. The Applicant also made a complaint on December 3, 2015 to the local Human Rights Commission stating that “the Army will connect [him] with the murder of [his] uncle.”

[6] On January 18, 2016, the Applicant left Sri Lanka for the United States of America [USA] using his own genuine passport. In April 2016, he crossed the border on foot into Canada and subsequently made a refugee and person in need of protection claim pursuant to ss 96 and 97 of the *IRPA*.

[7] Following two hearings on June 8, 2016 and August 10, 2016, the RPD found that, on a balance of probabilities, there was not more than a mere possibility that the Applicant would be persecuted, and that it was unlikely that the Applicant would personally face a risk to his life or a risk of cruel and unusual treatment or punishment.

[8] The Applicant attempted to appeal the RPD’s Decision to the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD]. The appeal was dismissed in October 2016 for a lack of jurisdiction pursuant to s 110(2)(d) of the *IRPA*, which prohibits persons arriving in Canada via land border crossing from a country designated by regulation, or a party to the Safe Third Country Agreement (i.e. the United States of America), from having recourse to the RAD.

[9] The Applicant sought judicial review of the RPD’s Decision denying his refugee and person in need of protection claim under ss 96 and 97 of the *IRPA* (the subject of the present application for judicial review) as well as the decision of the RAD to dismiss his appeal (the

subject of IMM-4547-16). Both matters were put into abeyance. On September 6, 2019, the Applicant discontinued the application for judicial review of the RAD's decision (IMM-4547-16).

III. DECISION UNDER REVIEW

[10] The RPD rejected the Applicant's refugee and person in need of protection claim finding that he lacked credibility. More specifically, the RPD based this finding on: (a) the inconsistencies between the Applicant's testimony and his seamen course documentation concerning his whereabouts on October 29, 2015; (b) his lack of general credibility as a result of his "stilted and confused" testimony concerning events following the deliverance of his uncle's body, as well as his return to Thondamanaru despite his alleged fear that the authorities would find him; and (c) his ability to leave Sri Lanka without incident while using his own genuine passport.

A. *Whereabouts on October 29, 2015*

[11] The Applicant testified that he left Colombo on October 24, 2015 and was detained and threatened by army officials four days following his uncle's death in Thondamanaru on October 29, 2015. However, the RPD noted that his course certificate for "proficiency in security awareness" indicates that he completed the six-hour course in Colombo on October 29, 2015.

[12] The Applicant explained in his testimony that he took the course on October 24, 2015, and that October 29, 2015, was erroneously listed as the date of completion as it was the school's

closing date before the holidays. Nevertheless, given the Applicant's inability to provide supporting documentation and his inability to name the holiday for which the school closed, the RPD found that his testimony on this discrepancy was not credible. As such, the RPD drew a negative credibility inference, which cast doubt on the Applicant's entire story.

B. *General Credibility*

[13] The RPD also found that the Applicant's testimony lacked general credibility. First, the RPD noted that his testimony concerning the events following the deliverance of his uncle's body was "stilted and confused." The Applicant stated that 50-60 people were at his uncle's house when his uncle's body was cremated but the RPD noted that, despite being asked several times, he was unable to explain how these people were alerted to his uncle's death or how they came to be at the house.

[14] Second, the RPD noted that the Applicant returned to his uncle's house several times in Thondamanaru following his alleged detention on October 29, 2015. When asked why he kept returning to his uncle's house where the army officials could easily locate him and why nothing subsequently happened to him there, the RPD noted that the Applicant could not provide an explanation, despite being asked several times. As such, the RPD found that his testimony on this point was "confused and illogical."

[15] As a result of these issues with the Applicant's testimony, the RPD drew general negative credibility inferences. Although the RPD acknowledged the difficulties of testifying in "an

unfamiliar milieu through an interpreter,” it noted that the Applicant “is not an uneducated, unsophisticated or untravelled man.”

C. *Ability to Leave Sri Lanka*

[16] Finally, the RPD found that, had the authorities been interested in the Applicant, he would not have been allowed to leave Sri Lanka via airplane while using his own passport, let alone be released from detention on October 29, 2015. The RPD relied on a report by the UK Home Office in the National Documentation Package which states that the Sri Lankan authorities have the ability to access an alert list to flag passengers who are wanted. The RPD found that “this detail goes to the heart of [the Applicant’s] claim because his agents of fear are the army and police officials, both state authorities.”

[17] Although the RPD acknowledged that the Applicant did file complaints with the Grama Niladhari of the village and the local Human Rights Commission, the RPD found that these were not made immediately following the alleged incidents and were likely made “in order to obtain documents to support a refugee claim and for no other purpose.”

[18] For these reasons, the RPD found that, on a balance of probabilities, the Applicant did not face more than a mere possibility of persecution and that it was unlikely that he would be subject to a risk of life or cruel and unusual treatment.

IV. ISSUES

[19] The issues raised in the present application are as follows:

1. Did the RPD err in its credibility finding?
2. Did the RPD err by ignoring relevant corroborating evidence?

V. STANDARD OF REVIEW

[20] The memoranda of the parties in this case were provided prior to the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. The parties' submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [Dunsmuir] framework. At the hearing of this matter, the Court asked the parties whether they wished to modify their submissions on the applicable standards of review in this matter. Neither party suggested significant modifications. I have applied the *Vavilov* framework in my consideration of the application and found that, in comparison to an analysis under the *Dunsmuir* framework, the applicable standard of review has not changed in this case nor have my conclusions.

[21] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set

aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[22] There is nothing to rebut the presumption that the standard of reasonableness applies in this case. The application of the standard of reasonableness to these issues is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See, for example, *Omoijiade v Canada (Citizenship and Immigration)*, 2019 FC 1533 at para 32 concerning this Court's review of the RPD's credibility findings, and *Wickramasinghe Arachchige Dona v Canada (Citizenship and Immigration)*, 2019 FC 419 at para 15 regarding the review of the RPD's assessment of the evidence.

[23] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and “takes its colour from the context” (*Vavilov*, at para 89 citing *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 59). These contextual constraints “dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt” (*Vavilov*, at para 90). Put in another way, the Court should intervene only when “there are sufficiently serious shortcomings in the decision such that it

cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker’s reasoning process; and (2) untenability “in light of the relevant factual and legal constraints that bear on it” (*Vavilov*, at para 101).

VI. STATUTORY PROVISIONS

[24] The following statutory provisions of the *IRPA* are relevant to this application for judicial review:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays ;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture ;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

VII. ARGUMENTS

A. *Applicant*

[25] The Applicant submits that the RPD made numerous fatal errors in its assessment of his credibility and ignored important relevant evidence that corroborated his claim and refuted the RPD's negative credibility findings. The Applicant therefore asks this Court to allow this application for judicial review.

(1) Credibility Findings

[26] The Applicant argues that the RPD made numerous determinative errors in its credibility findings. In particular, the Applicant says that the RPD erred by: (1) unreasonably rejecting out of hand his explanation for the perceived inconsistency regarding his whereabouts on October 29, 2015; (2) failing to provide examples of why the Applicant's testimony concerning the events after his uncle's death was "stilted and confused"; (3) applying "Western standards" when assessing the logic and plausibility of the Applicant's testimony as to why he avoided Colombo and not Thondamanaru; and (4) failing to assess the Applicant's departure from Sri Lanka according to the realities of extrajudicial mistreatment and according to the entire context of the UK Home Office Report.

[27] First, the Applicant says that he clearly explained why there was a discrepancy between the date noted in the course certificate and the date on which he completed the course. The Applicant notes that his answers on this issue were "straightforward and consistent" and were

certainly not implausible. As such, the Applicant states that the RPD erred by simply rejecting his explanation “out of hand.”

[28] Second, the Applicant notes that the RPD failed to provide examples to support its assertion that his testimony concerning the events after his uncle’s death was “stilted and confused.” He says that the RPD was clearly preoccupied with how 50-60 people would have been made aware of his uncle’s death despite the fact that he explained that the news was distributed in the small village by a relative he called shortly after learning what had occurred. As such, it was unreasonable for the RPD to find that his testimony on this issue was “stilted and confused.” The Federal Court of Appeal has held that a person may appear to be hesitant but may nevertheless be telling the truth about painful events, citing *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 at para 6 [*Hilo*].

[29] Third, the Applicant says that the RPD erred by failing to provide examples of any confusion about his decision to avoid Colombo in favour of Thondamanaru, and by assessing the decision according to “Western standards” of logic and implausibility. The Applicant notes that he clearly testified that he remained in Thondamanaru because his family members advised him to stay there. See *Miwa v Canada (Minister of Citizenship and Immigration)*, [1999] 171 FTR 294 at paras 20-22 [*Miwa*].

[30] Fourth, the Applicant argues that the RPD erroneously assessed his departure from Sri Lanka by making speculative implausibility findings that were not based on the context or the evidence submitted. The Applicant notes that the RPD failed to consider that the evidence

concerning the ability of the Sri Lankan authorities to prevent wanted individuals from leaving the country by airplane does not apply to instances where the persecution derives from extrajudicial mistreatment. Regardless, the Applicant notes that he does not have the burden of demonstrating that his persecutors are rational.

[31] Moreover, the Applicant notes that the evidence in the National Documentation Package relied upon by the RPD refers to the treatment of returning individuals rather than one's departing and explicitly mentions that there is "no concrete evidence to affirm that the database contains information on every individual who has been detained by the police or army." The Applicant submits that this case is analogous to this Court's decision in *Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 [*Yoosuff*], where this Court noted:

[9] The SLA has been known to arrest and detain innocent persons for questioning. It has also been known to extort bribes from detainees. It may not have had grounds to arrest Mr. Yousuff as an LTTE supporter, but it might have thought that doing so would stop him from selling his wares to the LTTE. As for Mr. Yousuff's easy emigration from Sri Lanka, there was no evidence before the Board suggesting that the SLA and border control authorities shared information about wanted persons (see: *Abdul v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 352 (T.D.)(QL)).

(2) Assessment of Corroborating Evidence

[32] The Applicant also argues that the RPD ignored relevant evidence that corroborated his claim of persecution and risk of harm and, as such, was not responsive to his submissions.

[33] More specifically, the Applicant says that the RPD failed to even mention relevant evidence such as: (1) the newspaper article confirming that his uncle was killed by gunshot and

that his body was taken by the army; (2) the statements he made to the USA authorities; (3) the letter from the Grama Niladhari; and (4) his uncle's death certificate. The Applicant notes that this evidence clearly corroborates his claim and contradicts the RPD's credibility findings.

[34] Moreover, the Applicant argues that the RPD erroneously dismissed his complaints to the Grama Niladhari and the Human Rights Commission due to delay. The Applicant notes that he made these complaints merely five weeks after his detention and only left Sri Lanka approximately six weeks later.

B. *Respondent*

[35] The Respondent submits that: (1) the RPD's credibility findings were reasonable as they were based on the evidence submitted and were clearly set out in its Decision; and (2) the RPD reasonably assessed the entirety of the evidence at hand and did not ignore any evidence that contradicted its credibility findings. The Respondent submits that this Court should therefore dismiss this application for judicial review.

(1) *Credibility Findings*

[36] The Respondent argues that the RPD conducted a reasonable analysis of the Applicant's claim and it was open for it to conclude that the claim lacked sufficient credibility. In particular, the Respondent notes that the RPD's credibility findings were reasonable as the RPD:

(1) reasonably preferred the documentary evidence concerning the Applicant's whereabouts on October 29, 2015, over his unconvincing testimony; (2) clearly provided specific examples as to

why it found the Applicant's testimony to be "stilted and confused"; (3) explicitly considered the Applicant's personal characteristics when assessing his testimony; and (4) reasonably based its findings concerning the Applicant's ability to leave Sri Lanka on the evidence at hand and the relevant jurisprudence.

[37] First, the Respondent notes that the Applicant submitted documentary evidence that directly contradicted his claim that he was detained in Thondamanaru on October 29, 2015. The Applicant was given ample opportunity to explain the discrepancy as he submitted the contradictory course certificate at the first hearing in June 2016, was provided with multiple occasions to explain the discrepancy at the second hearing on August 10, 2016, and had until August 24, 2016, to submit post-hearing evidence capable of confirming that the certificate was misdated or to establish the holiday for which the school was allegedly closed. Given the circumstances, the Respondent notes that it was entirely reasonable for the RPD to prefer the documentary evidence submitted by the Applicant and to base its finding on such.

[38] Second, the Respondent says that the RPD clearly provided examples to justify its finding that the Applicant's testimony was "stilted and confused." The Respondent points to the RPD's explicit mention of the failure of the Applicant to explain the events that took place following the deliverance of his uncle's body, as well as the Applicant's explanation as to why he remained in Thondamanaru following his alleged detention.

[39] Third, the Respondent holds that the RPD did not err by assessing the Applicant's testimony according to "Western standards." In fact, the Respondent notes that the RPD

explicitly considered the Applicant's testimony according to his personal characteristics as required by this Court in *Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429. It was therefore reasonable for the RPD to find that his testimony explaining why he remained in Thondamanaru was illogical as the Applicant failed to explain why his family members wanted him to stay there despite the obvious risk to his safety.

[40] Fourth, the Respondent argues that the RPD reasonably found that the Applicant's ability to leave Sri Lanka by airplane while using his own genuine passport undermined the entirety of his claim. The Respondent notes that, unlike this Court's decision in *Yoosuff*, the RPD had clear evidence before it that demonstrated the ability of Sri Lankan authorities to prevent wanted individuals from leaving by airplane. The Respondent also notes that the RPD's finding is consistent with this Court's decisions in *Mahalingam v Canada (Citizenship and Immigration)*, 2015 FC 470 at para 12[*Mahalingam*]; *Sugirtha Fernando v Canada (Citizenship and Immigration)*, 2013 FC 392 at paras 9-10; *Suppaiah v Canada (Citizenship and Immigration)*, 2013 FC 429 at para 36 [*Suppaiah*]; and *SK v Canada (Citizenship and Immigration)*, 2013 FC 78 at para 19 [*SK*].

(2) Assessment of Corroborating Evidence

[41] The Respondent submits that the RPD's assessment of the evidence in this case was complete and reasonable.

[42] The Respondent notes that it is trite law that "decision-makers are presumed to have considered all of the evidence presented unless the contrary is shown" and that a "failure to

mention a particular piece of evidence does not mean it was ignored.” The Respondent cites in support *Galamb v Canada (Citizenship and Immigration)*, 2016 FC 1230 at para 48.

[43] Regarding the uncle’s death certificate and the newspaper article confirming his death by gunshot, the Respondent notes that the RPD never questioned the fact that his uncle was killed. The RPD instead questioned whether the Applicant was targeted based upon his uncle’s death. As for the statements made by the Applicant to the USA authorities and the letter from the Grama Niladhari, the Respondent notes that this evidence is essentially based on self-reported evidence by the Applicant and, as such, does not contradict the RPD’s findings concerning the Applicant’s credibility.

[44] Finally, concerning the Applicant’s complaints to the Grama Niladhari and the Human Rights Commission, the Respondent notes that the Applicant does not dispute the RPD’s timeline of the events and does not specify why the RPD’s conclusions were unreasonable.

VIII. ANALYSIS

[45] The Applicant has raised several issues for review. The Decision is based upon a series of negative credibility inferences. However, it is also important to bear in mind the general context in which the RPD assessed the Applicant’s credibility. The Applicant said he had been questioned on one occasion by the army concerning the death of his uncle but, as the RPD points out in para 24 of the Decision, “if army authorities were concerned about the claimant’s actions, they would not have released him from detention.” This was a significant negative credibility inference.

[46] The Applicant said he feared the authorities in Sri Lanka would implicate him in the death of his uncle. However, after he was questioned at the army camp and released, there is no evidence that the authorities in Sri Lanka attempted to locate the Applicant or that they have any continuing interest in him. This required the RPD to question the Applicant very thoroughly regarding the basis of his fears. The negative credibility inferences were the result of this thorough questioning.

A. *Inconsistent Documentary Evidence*

[47] The Applicant said he had been questioned by authorities in Thondamanaru on October 29, 2015, yet his seamen course certificate indicates that he had attended a six-hour course in Colombo on that same date.

[48] When the Applicant was questioned on this apparent discrepancy, he testified that the date on the certificate was wrong and that, in fact, the last day he had attended the seamen course was on October 24, 2015, and that the certificate date (October 29, 2015) was the last day of school before it closed for the holidays. The RPD found that the date on the certificate “cast[ed] doubt on the claimant’s entire story” and that “his explanations of the dates [did] not make sense.”

[49] The Applicant now says that it was unreasonable for the RPD to reject his explanation “out of hand.” He says that, without hesitation, he gave answers that were “straightforward and consistent” and that his explanation was not implausible.

[50] The RPD reasoned as follows:

[14] The panel confirmed to the claimant that the day he was picked up by army officials was four days after his uncle died and confirmed that day was October 29, 2015. The claimant agreed.

[15] The panel then asked the claimant why, if he was in Thondamanaru being questioned by army officials on October 29, 2015, does one of his seaman's course certificates state that he was on course in Colombo for six hours on October 29, 2015.

[16] The claimant then stated that the school booked a later date for a course he had studied earlier. The panel asked how he knew this and he said they told him they would put the date of issue and that what had been taught earlier they dated later. The panel remarked that the certificate shows the date of course completion as well as the date of issue of the certificate. Both show October 29, 2015.

[17] The panel asked whether the dates were incorrect on the other certificates and the claimant said just the last certificate. He also testified that the last day he took courses was October 24, 2015. The panel asked again why the certificate dated October 29th is the wrong date and all the other certificates contain the correct date. The claimant said because it is the closing date, the exams were held before and when issued, the certificate gave the closing date. When asked what he meant by closing date, the claimant said school was closing for the holidays. His counsel asked him what holidays and the claimant said he did not know. Counsel asked for the dates of the holidays and the claimant said he did not know.

[18] The panel notes that the claimant disclosed these documents at the first sitting on June 8, 2016. He did not provide any accompanying note stating that the date on the last course certificate is incorrect.

[19] The panel does not find the claimant's explanation of the certificate date to be credible or reasonable and draws a negative credibility inference. The panel finds that the October 29, 2015, certificate casts doubt on the claimant's entire story and finds further that his explanations of the dates do not make sense.

[51] Firstly, following a simple review of these paragraphs, I do not think it can be said that the RPD rejected the Applicant's explanations "out of hand."

[52] Secondly, the Applicant's explanation evolves from the school having booked a later date for a course he had studied earlier to the school having instead noted the closing date.

[53] When asked what he meant by the "closing date" he said that it was the date the school closed for the holidays. Yet, the Appellant could not identify which holidays when asked by his counsel, and could not provide dates for the holidays.

[54] The Applicant failed to substantiate his explanation in any way, even though he submitted the certificates at the first sitting of the hearing in June 2016 without explanation for the date discrepancy, and made no attempt post-hearing to substantiate his explanation by having the school confirm that the certificate was misdated or that the school had closed for the holidays on October 29, 2015.

[55] The Applicant characterizes this as an unreasonable plausibility finding, but as the RPD explains, it is simply a contradiction in the Applicant's own evidence that he fails to explain or substantiate and which, taken alone, does not defeat his whole claim but does cast "doubt on his entire story." I do not think the RPD's concerns or its conclusions on this issue were unreasonable. The Applicant was given an opportunity to explain a contradiction over dates and he was unable to provide a satisfactory explanation.

B. *Stilted and Confused Testimony*

[56] The RPD made the following findings about the Applicant's fear of being harmed by the Sri Lankan authorities:

[20] The panel had difficulty understanding the account of the claimant's behavior following the deliverance of his uncle's body. His testimony was stilted and confused. He testified that his uncle's body was delivered to the home by army officers who said they found it. The claimant then said the body was cremated and that 50-60 people were at the house. The claimant could not, however, explain how those people were alerted to the uncle's death or how they came to be at the house. The claimant was asked several times by the panel and by counsel to explain step by step what happened after soldiers dropped the body off. The claimant was unable to do that and the panel draws a negative credibility inference.

[21] The claimant testified that he was afraid to stay in Colombo because he feared army officials would find him there. Yet the panel notes that the claimant kept returning to Thondamanaru to exactly where the army officials knew where to find him. The claimant was asked several times why he feared army officials in Colombo given his testimony that nothing happened to him there and that the army knew where to find him at his uncle's house. The claimant was unable to provide an explanation. The panel finds the testimony concerning the claimant's fear of officials to be confused and illogical and draws a negative credibility inference.

[22] The claimant insisted he was too frightened to stay in Colombo because he feared army officials would find him, yet instead he kept returning to the house in Thondamanaru where his uncle lived and where the army officials had seen him (when they returned his uncle's body).

[57] Relying upon *Hilo*, above, the Applicant objects to the RPD's use of the words "stilted" and "confused" and says that the RPD does not give any examples of what it means.

[58] The Applicant is asking the Court to question the RPD's assessment even though the RPD saw the Applicant testify and the Court did not. The Applicant is also saying that the RPD should have clarified the meaning of the two words when the obvious problem for the RPD was that the Applicant could not explain in a satisfactory way – even when asked by his own counsel – what happened after the soldiers delivered his uncle's body.

[59] However, the main problem was that the Applicant alleged that he feared army officials but “kept returning to Thondamanaru to exactly where the army officials knew where to find him.” This is why his testimony that he feared army officials was deemed “confused and illogical.” This is also, in my reading of the Decision, what the RPD means by “stilted” and “confused.” The Applicant could not explain the contradiction between his stated fear and his actions in Sri Lanka.

C. *Western Standards*

[60] The Applicant questions the RPD's use of the word “illogical” by saying that the RPD applied Western standards. This is no more than a bald assertion. The Applicant does not refer to any Sri Lankan standard or custom that would make sense of his decision to place himself in danger from the very people he claims to fear. He said that his family members told him to stick to Thondamanaru but does not explain why they would tell him to do so if it placed him in danger nor what Sri Lankan standard or custom caused them to give him such illogical advice, by Western standards. He also fails to explain why he would follow that advice if he was genuinely fearful.

[61] The Applicant also says that the RPD applied Western standards “regarding the manner of his testimony.” Once again, the Applicant fails to mention which Sri Lankan standards should have been considered and applied and/or how they differ from Western standards.

[62] The Applicant relies upon *Bains v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 437 (FCA) and *Miwa*, above. However, I do not see how the facts or the basis for these decisions have any application to the case before me. The Applicant says that he “provided an explanation as to how the news was distributed” and that “in a small area when a noteworthy event occurs, word could plausibly spread quickly without the Applicant having anything to do with it.”

[63] The Applicant appears to be referring to the RPD comments in paragraph 20 of the Decision to the effect that:

... He testified that his uncle’s body was delivered to the home by army officers who said they found it. The claimant then said the body was cremated and that 50-60 people were at the house. The claimant could not, however, explain how those people were alerted to the uncle’s death or how they came to be at the house. The claimant was asked several times by the panel and by counsel to explain step by step what happened after soldiers dropped the body off. The claimant was unable to do that and the panel draws a negative credibility inference.

[64] I have reviewed the Certified Tribunal Record [CTR] sequences where both the RPD and the Applicant’s own counsel attempted to elicit details to substantiate the Applicant’s story. I do not think that the RPD’s summary of these sequences in paragraph 20 of the Decision is inaccurate or unreasonable and, once again, it was the RPD who saw and heard the Applicant testify, not the Court.

[65] The real issue for the RPD in this context was the discrepancy between the Applicant's stated fears and his actions in failing to remove himself from the stated source of danger. In dealing with this issue, the RPD shows it is fully aware, and has taken into account, the difficulties that the Applicant might have in explaining himself in an unfamiliar environment:

[23] The panel acknowledges the difficulties of testifying in an unfamiliar milieu through an interpreter. The panel does note however, that the claimant is not an uneducated, unsophisticated or untraveled man: He has worked in India as an auto mechanic, he successfully completed the seaman's course in Sri Lanka, he travelled from India to Sri Lanka on his own, he travelled to Canada through Qatar, Mexico, the United States, and he is a mature adult. The panel therefore finds his testimony concerning his fear of staying in Colombo does not have the ring of truth given that no army authorities approached him in Colombo. He lived and studied there without incident. He obtained his passport there and picked up his seaman's book and all his course certificates. He did not live with family there, but on his own at accommodations associated with his school.

[24] The panel notes that the claimant was released by army officials whom he says are interested in him owing to the suspicious death of his uncle. The panel finds on balance that if army authorities were concerned about the claimant's actions, they would not have released him from detention.

[66] The Applicant also says that it was unreasonable to conclude that he was "sophisticated."

[67] In paragraph 23, the RPD says that the Applicant is not "an uneducated, unsophisticated, or untraveled man." It may be that "unsophisticated" is not a very precise way of conveying the overall idea the RPD states in paragraph 23, when read as a whole. Clearly, the RPD means that this level of education and experience in the world does not suggest that the Applicant is the kind of person who would not be able to explain adequately his fear in remaining in Colombo given his uneventful experience there. The Applicant is being too microscopic.

D. *Leaving Sri Lanka on his Own Passport*

[68] The Applicant relies heavily upon the RPD's treatment of this issue as a ground for unreasonableness:

13. See para 27, (Record page 12): The RPD found that because the Applicant left Sri Lanka on his own passport, and because he was not apprehended at the airport, the authorities did not want to arrest him. The RPD is being unreasonable in that the evidence that the RPD refers to does not refer to extra judicial mistreatment, only to legal processes. In *Padilla*, (1991), 13 Imm.L.R. (Zd) 1 (F.C.A.), the Court of Appeal ruled that a Board noted the difference between legal processes and extra-judicial mistreatment and held that the Board must consider extra-judicial penalties which might be imposed.

14. Moreover, the Applicant did not have the burden of demonstrating that the authorities are rational.

15. A relevant authority is the *Lachowski* decision. The Court, in *Lachowski* (1992), 18 Imm.L.R. (Zd) 134, 59 F.T.R. 44, found the ease with which the claimant left the country was consistent with the Argentinian government's desire to be rid of the claimant:

...since it is apparent that those persecuting him wished was to have him refrain from any further anti-government or anti-military forces activity, which he was unwilling to do, it is reasonable to assume that they would be delighted to get rid of him by having him leave the country....The ease with which he left the country therefore certainly cannot be said to cast doubt on the credibility of his evidence.

16. Moreover, the document that the RPD quotes is at CTR, p. 132. The RPD erred because in context the passage is referring to the treatment of returnees, as the passage follows a discussion of the UK report which clearly refers to returnees.

17. In the alternative, the RPD erred because the quote, in the last line, states that there is no concrete evidence that the database contains information on every individual who has been detained. The RPD erred in finding that every person who was of interest to the authorities would be recorded on the database at the airport.

18. If the Court is persuaded that there is an error, the error is fatal since the RPD found that this finding went to the heart of the claim (see para 28).

19. See para 28, page 12: the RPD found that if the Applicant were wanted by the authorities he would not have been permitted to leave legally using his own passport. With respect the RPD is speculating. The RPD's implausibility finding is not based on any evidence that the RPD refers to. The Applicant cannot guess if there is any evidence that informs the RPD's finding (see Chen decision and authorities cited including Valtchev). The Applicant also relies on the Yoosuff decision, relevant passages highlighted. This is a fatal error: the RPD found that this went to the "heart" of the claim. Speculation is never reasonable, it should go without saying.

...

[Emphasis in original, references omitted.]

[69] There is a significant amount of fairly recent case law in this Court that says it is reasonable for the RPD to draw a negative inference from the fact that a claimant was able to leave Sri Lanka using his or her own passport. See, for example, *Mahalingam*; *Suppaiah*; *SK*, all above. However, this does not mean that the Court was reviewing the same evidence that was relied upon by the RPD in the present case.

[70] The Applicant relies upon *Yoosuff*, above, but that was a case where the Court found that there was evidence before the RPD that the Sri Lankan army and border control authorities shared information about the wanted persons. In the present case, the RPD relied upon an updated 2018 Response to Information Request that was contained in the National Documentation Package:

[26] The claimant was asked what document he used to leave Sri Lanka in January 2016 and he testified that he used his own

passport which he had obtained from officials in Colombo in January 2016.

[27] The panel finds that the claimant left Sri Lanka using his own genuine passport. The panel finds that if Sri Lankan authorities had any interest in arresting the claimant, they could have done so at the airport in Colombo.

The UK Home Office report also contains information on the verification of passengers' prior criminal offenses and indicates that the Department of Immigration and Emigration (DIE) has access to an alert list. This list is said to contain "information relating to court orders, warrants of arrest, jumping bail, escaping from detention as well as information from Interpol and the SIS computer system." According to the report, the DIE computer database has an alert system based on this list, but the alert system does not detail the reason for the alert, since the alert simply indicates that DIE staff must refer passengers who are flagged to the CID or the SIS. The August 2009 UK *Operational Guidance Note* states that immigration officers at BIA use a computer system that flags those who are "on the wanted or stop list," but that there is no concrete evidence to affirm that the database contains information on every individual who has been detained by the police or army.

[28] The panel finds that this detail goes to the heart of his claim because his agents of fear are the army and police officials, both state authorities. The panel finds if the claimant were indeed wanted by authorities he would not have been permitted to leave legally using his own passport which he testified that he did do.

[71] The Applicant questions whether the Home Office Report relied upon is applicable to those leaving Sri Lanka. He suggests that it only refers to returnees, but my review of the passage relied on suggests that it refers to anyone placed upon an alert list and that an electronic system flags those on the "wanted or stop list." The alert list is said to contain "information

relating to Court orders, warrants of arrest, jumping bail, escaping from detention [...]” This sounds internal to me.

[72] The RPD’s findings in this regard also have to be considered with the following:

[24] The panel notes that the claimant was released by army officials whom he says are interested in him owing to the suspicious death of his uncle. The panel finds on balance that if army authorities were concerned about the claimant’s actions, they would not have released him from detention.

[73] The Applicant does not say that this finding was unreasonable.

[74] In essence, the Applicant says he was questioned by the authorities, then released and allowed to leave Sri Lanka on his own passport without any issue at the airport.

[75] The Applicant relies upon *Lachowski v Canada (Minister of Employment and Immigration)*, (1992) 18 Imm LR (2d) 134 (FCT). That being said, the Applicant in the present case was not engaging in anti-government and anti-military forces activity, and there is no reason to assume that the authorities would have been delighted to get rid of the Applicant because of his particular profile.

[76] In my view, the only material point that the Applicant makes is that the document relied upon and quoted by the RPD does say that “there is no concrete evidence to affirm that the database contains information on every individual who has been detained by the police or army” [emphasis added].

[77] The RPD is clearly aware of this provision because it is included in the passage relied upon.

[78] When the Decision is read as a whole, I think it is clear that the RPD is saying that the Applicant has not shown that the Sri Lankan authorities have any interest in detaining him if he returned to Sri Lanka because he was released after questioning and left in the country on his own passport without any problems. If the Applicant was not on the list when he left, he is not likely to be on the list when he returns. He simply has not shown that he is someone in whom the authorities have an interest. Given the Applicant's whole profile and the amount of time he spent outside Sri Lanka in India (2007-2015) he only offers one reason why the authorities might be interested in him. He says that, after his uncle was killed, he was questioned by army officials and accused of being involved in his uncle's death. The army officials obviously satisfied themselves that he was not involved because they released him after questioning and there is no evidence that they have tried to locate him since. There is no evidence of any continuing interest in him; the fact that he was able to leave Sri Lanka on his own passport further suggests this. The wanted or stop list may, or may not, contain information on every individual who has been detained by the police or the army, but if the Applicant is not on the list then there is no other evidence to support his assertion that the police or the army have any interest in him. In this general context, and even if there is no guarantee that the list is complete, an adverse inference is not unreasonable.

E. *Corroborative Documentation*

[79] The Applicant says that the RPD erred in giving “short shrift” to various pieces of corroborative documentation.

(1) Complaint to Human Rights Commission

[80] The Applicant says that the RPD was unreasonable in finding that his human rights complaints were made to bolster his claims. He says that his uncle was killed on October 25, 2015, and his complaints were made about five weeks later.

[81] In support of this argument, the Applicant said that he was questioned by the authorities on October 29, 2015, and that he did not complain until December 2, 2015. He then left Sri Lanka on January 18, 2016.

[82] It was not just the timing that caused the RPD to draw a negative inference on this issue:

[30] The panel notes the document provided by the human rights commission which indicates that the claimant made a complaint on December 3, 2016. The complaint states that the claimant fears “that the Army will connect me with the murder of my uncle.”

[31] The panel finds these documents indicate that the claimant waited until just before he left Thondamanaru to complain, that he did not make a complaint when he was first questioned, and that he does not ask for any means of redress. The panel finds, on a balance of probabilities and given the various credibility concerns, that the claimant made these complaints in order to obtain documents to support a refugee claim and for no other purpose.

[83] The Applicant has not established that these findings and conclusions were unreasonable.

(2) Evidence to USA Authorities

[84] The Applicant complains that the RPD failed to explain what it made of his evidence to USA authorities and erred because it was unresponsive to counsel's argument that the Applicant's claim in Canada was consistent with his evidence to the USA authorities.

[85] The fact that the Applicant was consistent in his claim to USA authorities corroborates nothing except that he made the same claim to USA authorities. The RPD is assumed to have read all of the documentation before it and I see no reason why it would need to refer to the USA documentation. Given the significant negative credibility issues raised, I do not think that the Applicant's consistency in the USA documents refutes or materially alleviates those concerns. Hence, I do not think that specific mention by the RPD in its Decision was required.

(3) Letter from Sri Lankan the Grama Niladhari

[86] Applicant's counsel also argued that the letter from the Grama Niladhari corroborated the Applicant's claim but the RPD did not explain what it made of that document.

[87] The Applicant does not explain how the letter corroborated his claim or how the failure to mention it was a material error. The RPD is presumed to have reviewed all of the evidence and, unless the letter materially contradicts the RPD's findings and conclusions, it does not have to be specifically mentioned. The RPD's concern was the timing of the Applicant's human rights

complaints and the Grama Niladhari letter reveals a preliminary step that the Applicant took in a process that led to the human rights complaints. Once again, there was no need for the RPD to specifically reference the Grama Niladhari letter.

(4) Death Certificate

[88] The Applicant says that the RPD erred by failing to mention his uncle's death certificate, which was also corroborative.

[89] The RPD did not dispute that the Applicant's uncle had died. Meanwhile, the death certificate did not corroborate anything the Applicant said had happened to him, or corroborate that the Sri Lankan authorities continue to have any interest in him.

F. *Conclusions*

[90] I cannot find anything unreasonable about the Decision. The Applicant was questioned once by the army in relation to his uncle's death. He was then released. From that point, there is no evidence to suggest that the army or the Sri Lankan authorities are seeking him or have any further interest in him. Against this general background, the RPD was inevitably suspicious of his claims that the authorities had an interest in him and provided reasonable and sufficient reasons to support its conclusions that the Applicant's claim was not credible.

IX. CERTIFICATION

[91] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT IN IMM-4097-16

THIS COURT'S JUDGMENT is that

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

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4097-16

STYLE OF CAUSE: MAJURAN SRIKANTHAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: MARCH 23, 2020

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