

Federal Court



Cour fédérale

**Date: 20200326**

**Docket: IMM-2884-19**

**Citation: 2020 FC 429**

**Ottawa, Ontario, March 26, 2020**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**SUTHARSAN JAYAKANTHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondents**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant, Sutharsan Jayakanthan, applies for judicial review of a April 15, 2019 Refugee Appeal Division [RAD] decision pursuant to s. 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. There, the RAD confirmed a Refugee Protection Division [RPD] decision that the Applicant was not entitled to refugee protection under IRPA ss. 96 or 97.

## II. Background

[2] The Applicant is a 24-year-old Tamil male from Sri Lanka. He came to Canada on July 14, 2017 and claimed protection under sections 96 and 97 of the *IRPA* on the grounds of his nationality, ethnicity and perceived or imputed political opinion.

[3] The RPD rejected the Applicant's claim in an oral decision on October 24, 2017. The panel found that the Applicant was generally lacking in credibility and drew negative credibility inferences from problems with his evidence regarding detentions in 2008, 2009, 2013, 2015 and 2016. The RPD gave the Applicant's supporting documentary evidence little weight for several reasons and concluded that it was insufficient to overcome the Applicant's poor credibility.

[4] The RPD dismissed the Applicant's *sur place* claim and residual profile, i.e., his Tamil ethnicity and being a failed refugee claimant returning to Sri Lanka. While there were risk profiles that may warrant protection, such as for journalists, LTTE sympathizers, religious minorities and activists, the RPD found that the Applicant did not fall within any of them. There was a risk profile for failed refugee claimants known to Sri Lankan authorities, but there was no evidence that the Applicant was known to them as having past perceived or real links to the LTTE.

[5] The RAD confirmed the RPD's decision on April 15, 2019 finding that the RPD did not err in its credibility assessment, its assessment of the *sur place* claim or his residual profile. The RAD accepted four news articles as new evidence pursuant to *IRPA* s 110(4). It confirmed the

RPD's findings with one exception; a plausibility finding relating to the Applicant's release from detention in 2015. The RAD confirmed the RPD's findings regarding the documentary evidence.

[6] The RAD found that the Applicant failed to establish on a balance of probabilities that Sri Lankan authorities:

1. perceive him as an LTTE sympathizer,
2. have arrested or harmed him in Sri Lanka due to suspected LTTE membership, activities, or affiliation, or;
3. are interested in him

[7] With regard to his profile, the RAD found that the documentary evidence about risks to Sri Lankan returnees was mixed but Tamils were subject to the same screening process as everyone else. It confirmed the RPD's view that the Applicant fell into none of the risk factors identified in the documentary evidence. The new evidence did not assist the Applicant because it was about men who had been accused of being affiliated with the LTTE. He had failed to establish that he was suspected of such affiliation.

### III. Issues

[8] The Applicant argues that the RAD afforded excessive deference to the RPD's credibility findings and failed to conduct an independent assessment of the objective risk faced by the Applicant.

[9] The issue is whether the RAD's decision, as a whole, is reasonable.

#### IV. Analysis

##### A. *Standard of Review*

[10] Written argument on this matter was submitted prior to the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. As the parties concurred at the hearing that the reasonableness standard continued to apply, no post-hearing written submissions were requested and counsel did not ask for such an opportunity. Some observations about the impact of *Vavilov* were offered at the hearing.

[11] Having reviewed the Supreme Court's decision and in particular, paras 16-17, 65-68, I see no reason to rebut the presumption of reasonableness in this case. In considering the matter, I have applied the new articulation of what reasonableness review entails. The mark of a reasonable decision, as noted by the majority in *Vavilov* at para 85, is that it is "justified in relation to the facts and law that constrain the decision maker". I have also reflected on the Supreme Court's comments on the importance of reasons, particularly at para 96.

##### B. *Was the RAD's decision reasonable?*

###### (1) Credibility findings

[12] The RAD applied a correctness standard in its assessment of the RPD's decision applying *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103. The Applicant argues that the RAD gave excessive deference to the RPD's credibility findings, citing *Rozas del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 105-106. The Applicant

further argues that the RAD conducted a microscopic analysis of his credibility which this Court has found to be unreasonable: *Francois v Canada (Citizenship and Immigration)*, 2018 FC 687; *N'kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121.

[13] The RAD did state that it approved of the RPD's conclusions with respect to the Applicant's credibility; however, this did not rise to the level of undue deference. The RAD demonstrated its independent assessment in several respects, notably between paragraphs 23-26 of its reasons where it disagrees with part of the RPD's analysis about the plausibility of the Applicant's release from his 2015 detention. The analysis was thorough but not microscopic. Overall, I find that the RAD's credibility conclusions were reasonable.

(2) Assessment of the objective basis for the refugee claim

[14] This issue is to be assessed on a standard of reasonableness. It is concerned with the reasoning process through which the RAD arrived at its findings. The reasoning process must display a coherent chain of reasoning and avoid logical errors. Further, the errors must be more than minor missteps: *Vavilov* at paras 99–100.

[15] This is the stronger of the arguments advanced by the Applicant. He contends that the RAD failed to adequately assess the factors that establish the risk profile upon which his *sur place* claim rests. These are that he:

1. is an ethnic Tamil male,
2. is from Vavuniya, in the Northern Province of Sri Lanka (an area of LTTE activity),

3. fled Sri Lanka illegally,
4. is in Canada amongst many other displaced Tamils,
5. is a failed asylum seeker, and
6. is poised to return to Sri Lanka as a failed refugee.

[16] A number of decisions of this Court have held that profile evidence of this nature is highly relevant to the residual or *sur place* claim: *Jeyakumar v Canada (Citizenship and Immigration)*, 2019 FC 87 [*Jeyakumar*]; *Jesuthasan v Canada (Citizenship and Immigration)*, 2018 FC 142; *Pillay v Canada (Citizenship and Immigration)*, 2014 FC 160 and *Ghimire v Canada (Citizenship and Immigration)*, 2018 FC 89.

[17] The RAD erred, the Applicant argues, by conducting a highly selective objective risk assessment contrary to decisions such as *Bozik v Canada (Citizenship and Immigration)*, 2017 FC 920; *Kailajanathan v Canada (Citizenship and Immigration)*, 2017 FC 970 at paras 18-21 .

[18] The Applicant argued before the RAD that he would “certainly come to the attention of the State authorities who may very well suspect him of potential LTTE links.” In doing so, he was inviting the RAD to speculate on how his characteristics might lead to a heightened risk. This is not what the RAD is required to do.

[19] The RAD noted that Tamils without ties to the LTTE, such as the Applicant as he had testified at the RPD hearing, face a possibility of persecution. However, there is no longer a presumption of eligibility for refugee protection for Tamils with origins in the north of Sri

Lanka. The RAD concluded, on a balance of probabilities, that the Applicant would not be exposed to a serious possibility of persecution if returned to Sri Lanka.

[20] In *Velummayilum v Canada (Citizenship and Immigration)*, 2013 FC 742 at paras 8-9, Justice Harrington cited a large number of this Court's decisions to the effect that something more is required to qualify for protection than simply being a young male Tamil from the north or east of Sri Lanka. Further, he notes at para 9 "[n]o doubt a failed refugee claimant will be questioned on arrival in Sri Lanka. However, [the applicant] has not been found to have any links with the Liberation Tigers of Tamil Eelam, and so the risk of persecution, although always present, is no more than a mere possibility."

[21] In *Jeyakumar*, above, Justice Russel found at paras 54-55 that the Officer appears to have assumed that the applicant would not face persecution under s 96 or s 97 just because he has had no involvement with the LTTE and did not have some of the other profiles referenced in the decision. In light of that it was a reviewable error for the Officer not to address evidence that was in conflict with his own conclusions.

[22] Unlike in *Jeyakumar*, the RAD acknowledged that the evidence was mixed and did not assume that the Applicant would be completely free of risk of harm if returned to Sri Lanka because he did not have ties to the LTTE.

[23] The RAD conducted a thorough assessment evaluating the risk factors applicable to the Applicant in light of the documentary evidence. These were that the Applicant is (a) a Sri

Lankan who has been absent for a long time, (b) a failed refugee claimant, (c) a person living abroad in a place with a large diaspora of LTTE-associated people. The RAD weighed the evidence and came to a conclusion that did not favour the Applicant, specifically that while he may face some harassment upon return to Sri Lanka, it would not be sufficiently serious to amount to a serious possibility of persecution.

V. **Conclusion**

[24] It is not for the Court to reweigh the evidence in the Applicant's favour. I see no reason to interfere with the RAD's decision. In light of this, the judicial review is dismissed.

[25] No serious questions of general importance were proposed and none will be certified.

**JUDGMENT IN IMM-2884-19**

**THIS COURT'S JUDGMENT is that** the application is dismissed. No questions are certified.

"Richard G. Mosley"

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Judge

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

**DOCKET:** IMM-2884-19

**STYLE OF CAUSE:** SUTHARSAN JAYAKANTHAN V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 11, 2020

**JUDGMENT AND REASONS:** MOSLEY J.

**DATED:** MARCH 26, 2020

**APPEARANCES:**

Robert Israel Blanshay FOR THE APPLICANT

David Knapp FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Blanshay Law FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario