

Federal Court



Cour fédérale

**Date: 20220113**

**Docket: IMM-6097-20**

**Citation: 2022 FC 32**

**Ottawa, Ontario, January 13, 2022**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**GOPINATH PATHMANATHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Gopinath Pathmanathan, is a citizen of Sri Lanka. He seeks judicial review of a Pre-Removal Risk Assessment [PRRA] rendered on October 2, 2020, by a Senior Immigration Officer [Officer] with Citizenship and Immigration Canada [Decision]. The Officer denied the application, finding that the risks advanced by the Applicant were essentially the same as those previously considered by the Refugee Protection Division [RPD]. The Officer concluded that the Applicant was not a Convention refugee nor a person in need of protection

under subsections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] After a careful consideration of the record and the submissions of both parties, for the reasons that follow, I conclude that this application for judicial review must be dismissed.

I. Background

[3] The Applicant is a Sri Lankan of Tamil ethnicity. As per the Applicant's Record, he is not married, has no children, and works as a carpenter under the supervision of his uncle, in Canada. He resides with his sister and her family. His parents and remaining siblings live in Jaffna, Sri Lanka.

[4] The Applicant arrived in Canada as a passenger aboard the *MV Sun Sea* on August 13, 2010, and submitted a claim for refugee protection. He claimed protection on three grounds, race, nationality and membership in a particular social group. The Applicant claimed that he feared the Sri Lankan army, the police, the pro-government militant groups and the Liberation Tigers of Tamil Eelam [LTTE]. In a decision rendered on August 2, 2012, the RPD rejected the Applicant's claim. The Applicant applied for leave and judicial review of the RPD decision, but the leave application was denied in a decision dated February 18, 2013 (File IMM-8852-12).

[5] A removal order is in effect and in July 2019, the Applicant was provided with an opportunity to submit a PRRA Application. As noted by my colleague Justice Little, a PRRA is the last formal risk assessment provided to qualifying individuals before they are removed from

Canada (*Ghandi v Canada (Citizenship and Immigration)*, 2020 FC 1132 at para 10 [*Ghandi*]).

As Justice Little further explains:

[11] A PRRA determines whether, based on a change in country conditions or new evidence that has emerged since the RPD decision, there has been a change in the nature or degree of risk faced by the applicant if he or she is returned to his/her home country. The PRRA recognizes that the international law principle of non-refoulement (which prohibits the removal of refugees to a territory where they are at risk of human rights violations) is prospective, and that, in some cases given the delay between adjudication and removal, a second look at country conditions may be required to determine whether the circumstances have changed or new risks have arisen: *Kreishan v. Canada (Citizenship and Immigration)*, 2019 FCA 223 (Rennie JA), at paras 4, 116.

[12] A PRRA application by a failed refugee claimant is not an appeal or a reconsideration of the decision of the RPD to reject a claim for refugee protection. It may, however, require consideration of some or all of the same factual and legal issues as a claim for refugee protection: *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385 (Sharlow JA), at para 12...The PRRA officer must show deference to a negative decision by the RPD and may only depart from that principle on the basis of different circumstances or a new risk: *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96, 2016 4 FCR 230 (de Montigny JA), at para 47.

[6] The Applicant's PRRA application was received by Citizenship and Immigration Canada on August 8, 2019. Further submissions were received on October 28<sup>th</sup> and November 27<sup>th</sup>, 2019. The Applicant's application included new evidence in the form of an affidavit by the Applicant sworn on July 31, 2018, and country condition documentation that post-dated the RPD's decision.

[7] In his PRRA application, the Applicant claimed that he is at risk of being persecuted if removed to Sri Lanka because of his Tamil ethnicity, his perceived affiliation with the LTTE, his

status as a failed asylum seeker, his passage on the *MV Sun Sea*, and the fact that he is an involuntary returnee with a travel document. The Applicant does not have an actual affiliation with the LTTE, rather the concern is that by virtue of his ethnicity, his passage on the *MV Sun Sea*, and his failed claim in Canada, he will be perceived by the authorities as affiliated with the LTTE.

[8] In the Decision rendered on October 2, 2020, the Officer refused the PRRA application.

## II. The Decision

[9] The Officer summarized the Applicant's claim for protection before the RPD, noting that the Applicant had advanced several incidents in which he was questioned and mistreated by the authorities before he obtained a passport, and left for Thailand, where he ultimately boarded the *MV Sun Sea* to Canada.

[10] The Officer noted that the RPD found the Applicant to not be credible in his testimony. The Officer highlighted that the RPD noted that the Applicant was able to travel freely throughout Sri Lanka, obtain a genuine Sri Lankan passport without difficulty, and exit the country unimpeded with his passport. The RPD had therefore found that he was likely not suspected of involvement with the LTTE or was otherwise wanted by the Sri Lankan authorities. The Officer further noted that the RPD had found that there was no evidence to indicate that the Applicant's passage on the *MV Sun Sea* was known to the Sri Lankan government, but even if it were, that he would be treated differently given his complete lack of association with the LTTE. The RPD also considered the Applicant's fear of extortion to be a generalized risk.

[11] The Officer then listed the Applicant's alleged fears if removed: (i) Tamils continue to face discrimination in Sri Lanka; (ii) Failed refugee claimants are mistreated on or after arrival; (iii) Refugees are suspected of supporting the LTTE; (iv) Passengers of the *MV Sun Sea* face a particular risk of mistreatment; and (v) Military and paramilitary groups extort returnees.

[12] The Officer identified that by virtue of subsection 113(a) IRPA, he is constrained in his ability to assess new evidence, and determined that the risks advanced by the Applicant were essentially the same as those presented to, and rejected by, the RPD. The Officer found that the Applicant had not submitted evidence that he is perceived to be an LTTE member or supporter, or that he is "wanted by the Sri Lankan security forces for reasons pertaining to emigration, criminality or terrorism". The Officer determined that there was insufficient evidence that the Applicant's profile had changed since the RPD decision.

[13] The Officer considered new country documentation submitted by the Applicant, but stated that (i) he was not persuaded that the situation has deteriorated since the RPD decision for someone of the Applicant's profile, and (ii) he preferred more recent documentation in the National Documentation Package [NDP] finding it to be more accurate and reliable for the assessment of risk.

[14] After canvassing the country conditions documentation, which consisted of a report from the British Home Office, United Kingdom, dated January 20, 2020, and an Australian country information report dated November 4, 2019, the Officer found that (i) there is insufficient evidence that the Applicant would be perceived as an LTTE member, and (ii) even if he were

perceived as such country conditions indicate that mere membership in the group is insufficient to attract the scrutiny of the security authorities. The Officer further found that there was a low risk of extortion or kidnapping and no information regarding mistreatment of Tamils following the Easter bombings.

[15] The Officer concluded by finding that the evidence did not support the claim that “there is no more than a mere possibility that, upon removal to Sri Lanka, the application would be at risk of persecution on Convention grounds, pursuant to section 96 of the IRPA”, nor, on a balance of probabilities, was the Applicant “in danger of torture” or “likely fac[ing] a risk to his life or a risk of cruel and unusual treatment or punishment, as per section 97 of the IRPA.”

### III. Issues

[16] This application for judicial review raises the following issues:

A. *Was the Officer’s Decision unreasonable?*

B. *Was there a breach of procedural fairness?*

### IV. Analysis

(1) Was the Officer’s Decision Unreasonable?

[17] For the reviewing court to intervene, the challenging party must satisfy the court that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”, and that such alleged

shortcomings or flaws “must be more than merely superficial or peripheral to the merits of the decision” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 100). *Vavilov* instructs that the reviewing court should not approach the underlying decision with the intention of conducting a “line-by-line treasure hunt for error” (at para 102), but rather concern itself with whether “the decision as a whole is transparent, intelligible and justified” (at para 15).

[18] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Indeed, it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125; *Palumbo v Canada (Attorney General)*, 2005 FCA 117 at para 11).

[19] At the hearing and in his written submissions, the Applicant raised a number of issues. The first of which is that the Officer ought to have explicitly considered certain paragraphs Applicant’s affidavit dated July 31, 2018. The Applicant pleads that this is a fatal error as it is unknown whether the Officer considered this evidence and that in any event the decision is non-responsive to the evidence. In particular, the Applicant refers to paragraphs 18 and 19 of the Applicant’s affidavit wherein he states, among other things, that (i) his brother had been detained by the security forces in June 2017, and was questioned about the Applicant, after which his brother fled Sri Lanka twice, but was deported from Singapore and Turkey back to Sri Lanka,

and (ii) security forces had come to “our home and asked about me. They know I travelled to Canada on the Sun Sea. I am not sure of what was said or when this took place.”

[20] The Respondent pleads that the Officer reasonably assessed that there was insufficient evidence in order to demonstrate a forward looking risk. The Respondent pleads that other than the above phrase in the Affidavit, there is no evidence in the Affidavit or in the record that provides further details of the alleged interest of the security forces.

[21] I do not find that the Officer erred. There is a presumption that a decision maker has considered all the evidence brought before them, and a failure to mention a particular piece of evidence does not mean it was ignored (*Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 38). Reviewing courts cannot expect administrative decision makers to respond to every argument or line of possible analysis (*Vavilov* at paras 91 and 128). In this case, it is clear that the Officer read the Affidavit as the Officer acknowledges a number of the Applicant’s statements therein and summarizes portions thereof using similar, and at times identical, language to the Applicant’s affidavit. The Decision states on page 4:

“In his application, the applicant advances that Tamils continue to face discrimination, and that failed refugee claimants are mistreated on or after arrival, with returnees being suspected of supporting the LTTE. The applicant submits that he would be at risk, particularly as a passenger aboard the MV Sun Sea. The applicant submits that he continues to fear the Sri Lankan military and paramilitary groups, the EPDP and Karuna Group, who target returnees for extortion. The applicant also indicates that he “heard about” the AAVA group, who are purportedly attempting to rebuild the LTTE. The applicant mentions his brother who made multiple attempts of escaping the country, but was deported (once from Singapore and once from Turkey), taken to Negombo prison, and released only after having to pay a bribe..”



[22] The above paragraph reproduces information and language contained in paragraphs 18, 20, 21, and 22 of the Applicant's affidavit. There is no doubt that the Officer considered the Applicant's affidavit and the contents thereof. The fact that the Officer does not expressly refer to the statement in paragraph 19 of the Applicant's affidavit is not, as the Applicant pleads, "a fatal error".

[23] It is clear that the Officer was alert to the issue of whether the Applicant would be at risk by reason of a perception that he was or is an LTTE member or is wanted by the Sri Lankan security forces for reasons pertaining to "emigration, criminality or terrorism". The Officer stated "there is insufficient evidence that he is wanted by the Sri Lankan security forces for matters pertaining to emigration, criminality or terrorism, or that he is perceived to be an LTTE member". The Respondent focuses on the foregoing sentence with the word "insufficient". The Applicant focuses on the following statement by the Officer: "the applicant does not submit evidence that he is perceived to be an LTTE member or supporter, that he is wanted by Sri Lankan Sri Lankan security forces for matters pertaining to emigration, criminality or terrorism...". The Applicant relies on the use of the language "does not submit evidence" and pleads that there is a distinction between "no" evidence and "insufficient" evidence.

[24] Having reviewed the record, I am not persuaded that the Officer ignored relevant evidence. The Applicant's affidavit conveys that he had been told that security forces had come to the home and asked about him, but he states he does not know what was said or when this took place. The Affidavit contains no details as to what matters the visit pertained to. It appears from the Decision that the Officer considered the Applicant's affidavit and found there was

insufficient evidence. Whether I would have arrived at the same conclusion as the Officer is irrelevant. Based on my review of the Decision and the record before the Officer, I am not convinced that the Officer's finding was unreasonable as defined by the Supreme Court of Canada in *Vavilov*.

[25] In addition to the foregoing, the Applicant submits that the Officer disregarded or failed to address evidence at his disposal, namely a 2017 letter from Amnesty International concerning Tamil men returning to Sri Lanka who were suspected of having supported the LTTE and who were passengers on the *MV Sun Sea* or *MV Ocean Lady*. The Respondent pleads that the Officer expressly stated that he preferred more up-to-date NDP documents. Furthermore, the Respondent submits that the Amnesty International letter does not apply to someone of the Applicant's profile, being someone (i) who is not an LTTE supporter or (ii) who has not provided sufficient evidence that he has any perceived links to the LTTE. On judicial review, *Vavilov* is clear that courts must refrain from reweighing and reassessing the evidence considered by the decision-maker (para 125). The Officer's preference for the more recent NDP documents does not render his decision unreasonable.

[26] The Applicant submits that this matter is similar to *Jeyaredsagathas v Canada (Citizenship and Immigration)*, 2018 FC 1238 and that the Officer ought to have engaged with the Amnesty International letter. In *Jeyaredsagathas*, this Court found that the Amnesty International letter should not have been dismissed on the basis that it was "not neutral" and that it was unreasonable for the RPD to expect Mr. Jeyaredsagathas to misrepresent his past to immigration officials in Sri Lanka. In the matter at hand, the Officer does not proceed on the

basis that the Applicant would not be truthful with the authorities. Had the Officer expected the Applicant to not be forthright and honest about his voyage to Canada, that would have been a reviewable error (*Seeniyan v Canada (Citizenship and Immigration)*, 2019 FC 746 at para 13). Rather, the Officer considered that the Applicant would disclose his passage aboard the *MV Sun Sea*, and that even if he was perceived to have connections to the LTTE due to his passage aboard the vessel, mere membership in the group was not likely to attract the scrutiny of the security authorities. Unlike *Jeyaredsagathas*, the Officer states he has read the country documents submitted and prefers the more recent information on the basis that that he found it to be more accurate and reliable for the assessment of risk.

[27] The Applicant pleads that the Officer failed to consider that there had been an election in Sri Lanka in 2019, and that the results of this election, electing Gotabaya Rajapaksa, are such that the situation in Sri Lanka will deteriorate for Tamils. The material submitted by the Applicant refers on numerous occasions to “former LTTE combatants”. This point speaks to the Respondent’s overarching point, which is that the Applicant does not have the profile of someone associated with the LTTE, and as such, the Officer properly evaluated the risk.

[28] I agree with the Respondent, as based on the record before me, it was not unreasonable for the Officer to find that he was not persuaded that the situation had deteriorated for a person with the Applicant’s profile since the RPD rejected his claim in 2012. Much of what the Applicant raises are general country conditions, notably, the election in 2019, and the Easter bombing in 2019. The Respondent relies on *Gandhi v Canada (Citizenship and Immigration)*, 2020 FC 1132 [*Gandhi*], in which Justice Little states “[t]his Court has held that the applicant

bears the onus to establish a link between the general documentary evidence and the applicant's specific circumstances" (para 61). The Respondent submits that the Applicant has not established the required link. I agree with the Respondent. From a review of the excerpts highlighted by the Applicant, they refer to former LTTE members, those who fought for the LTTE, and those who were part of its civilian administration. Furthermore, the DFAT document states that the extent of government monitoring is tied to one's former seniority in the LTTE and ongoing involvement with politically sensitive issues, while those former LTTE members who have a lower profile are considered less vulnerable to monitoring. In the matter at hand, it is common ground that the Applicant was not involved with the LTTE. The Officer considered whether the Applicant's profile, notably his passage on the *MV Sun Sea*, would give rise to a perception that he is an LTTE member or supporter, and found, based on the information in the NDP, that there was insufficient evidence of a risk to the Applicant.

[29] The Applicant submits that the Officer ought to have considered all the risk factors together, notably, that he is a Tamil male, his passage on the *MV Sun Sea*, his alleged perceived support for the LTTE by virtue of his passage on the *MV Sun Sea*, his failed asylum claim, and his involuntary return on a temporary travel document. The Applicant submits that the failure to consider the combination of these factors as a whole is an error.

[30] *Vavilov* instructs the reviewing court to consider the Decision as a whole, rather than conducting a line-by-line treasure hunt for error (at paras 15 and 102). The Officer considered each of these risks factors. Considering the Officer's Decision as a whole, I do not find the Officer erred. This is not a case where an officer has excised key parts of an applicant's profile,

with the result that there is a failure to consider all aspects of an applicant's profile together (*Vilvarajah v Canada (Citizenship and Immigration)*, 2018 FC 349 at paras 21-23). I find in the matter at hand, the Officer in fact considered all aspects of the Applicant's profile along with the risks that had been raised by him.

(2) Was there a breach of procedural fairness?

[31] In his letter dated October 28, 2019, submitted as part of his PRRA Application, the Applicant noted that security measures had been imposed following the Easter bombings of 2019, and requested that he be informed if the emergency situation changes in Sri Lanka before his PRRA hearing. The Applicant also noted in his letter that as of July 22, 2019, the Emergency Regulations were extended a month.

[32] In the Decision, the Officer noted that the Emergency Regulations lapsed on August 22, 2019. The Officer also noted that there was no information submitted by the Applicant or in the country conditions documentation regarding the mistreatment of Tamils following the Easter bombings.

[33] The Applicant submits that Officer breached procedural fairness by failing to advise him that the emergency regulations put in place after the Easter 2019 bombing had lapsed. The Applicant does not provide any authority to support his position that the Officer had an obligation to advise him or respond to the request contained in the letter. Moreover, the Applicant's letter indicates that he was following the situation, and was aware that the emergency measures were extended a further month (i.e. until August 22, 2019).

[34] The Applicant further submits that the Officer erred because while the Emergency Regulations have lapsed, the *Prevention of Terrorism Act*, No. 48 of 1979 in Sri Lanka nevertheless permits the detention of persons allegedly involved in the 2019 Easter bombings. The Applicant, however, does not provide any indication as to how this pertains to him or someone of his profile. As noted above, the Applicant bears the onus of establishing a link between the general documentary evidence and the Applicant's specific circumstances (*Gandhi* at para 61). The Applicant was in Canada at the time of the bombings. The Officer considered the treatment of Tamils generally, including following the Easter bombings. Consequently, I do not find that the Officer breached procedural fairness as alleged by the Applicant.

[35] The Applicant submits that there was a further breach of procedural fairness on the basis that the Officer conducted an unreasonably selective reading of the documents. I do not find this to be the case. Many of the excerpts referred to by the Applicant refer to the arrest or detention of former LTTE combatants or individuals seeking to reform the LTTE. As noted above, it is common ground that the Applicant was not involved with the LTTE and had no actual links to the LTTE. Ultimately, Applicant's argument constitutes a request to reweigh the evidence that was before the Officer. Absent exceptional circumstances, it is not the role of this Court sitting in judicial review to reassess or reweigh the evidence considered by the Officer (*Vavilov* at para 125). I thus find there to be no breach of procedural fairness on the part of the Officer in his consideration of the country documentation.

V. Conclusion

[36] The Applicant has not established that the Officer's Decision is unreasonable or that the Officer breached procedural fairness. Consequently, and for the above reasons, this judicial review is dismissed.

[37] Neither party proposes a question to certify, and in my view, no such question arises in this case.

**JUDGMENT in IMM-6097-20**

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

1. The Applicant's application for judicial review is dismissed;
2. There is no question for certification.

"Vanessa Rochester"

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Judge



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

**DOCKET:** IMM-6097-20

**STYLE OF CAUSE:** GOPINATH PATHMANATHAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 29, 2021

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**DATED:** JANUARY 13, 2022

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