Federal Court  Cour fédérale

Date: 20221220

Docket: IMM-5752-21

Citation: 2022 FC 1768

Toronto, Ontario, December 20, 2022

PRESENT: Madam Justice Go

BETWEEN:

Sathieskumar SUNDRALINGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Sathieskumar Sundralingam [Applicant], born in Sri Lanka, applied for a Pre-Removal Risk Assessment [PRRA] under subsection 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicant alleges fear of persecution in Sri Lanka because of imputed political opinion as a Tamil male from Trincomalee in eastern Sri Lanka, and as a failed refugee claimant returning from Canada. In a decision dated January 4, 2021, a PRRA

officer [Officer] rejected his application after finding that the Applicant would not be subject to risk of persecution if returned to Sri Lanka [Decision].

[2] In his teenage years, the Applicant was detained and interrogated several times by Sri Lankan officials, who accused him of being involved with the Liberation Tigers of Tamil Eelam [LTTE].

[3] The Applicant travelled to Germany to make a claim for refugee protection under a false name. The Applicant committed offences while in Germany. The Applicant served his time and was deported back to Sri Lanka in January 2007.

[4] The Applicant came to Canada in 2007 and initiated a claim for refugee protection against Sri Lanka but did not disclose his previous history in Germany. The Applicant was accepted as a *Convention* refugee by the Refugee Protection Division [RPD] in 2008 without a hearing. In 2015, a Minister's representative sought to have the Applicant's refugee status vacated due to misrepresentation. The RPD allowed the Minister's application and vacated the Applicant's refugee status as well as his permanent resident status in 2019.

[5] Currently, the Applicant is married. His wife and their three children all live in Canada.

[6] The Applicant filed a PRRA application in February 2020, which was rejected on January 4, 2021 under both sections 96 and 97 of *IRPA*. The Applicant seeks judicial review of the Decision.

[7] For the reasons set out below, I find the Officer made veiled credibility findings and erred by failing to hold an oral hearing. I also find the Officer's assessment of the Applicant's personal evidence and country conditions evidence unreasonable. I therefore grant the application.

II. Issues and Standard of Review

[8] The Applicant's main arguments can be summarized as follows:

A. The Officer erred by making veiled credibility findings and not holding an oral hearing; and

B. The Officer's reasons failed to demonstrate a rational chain of analysis in light of the personal evidence and country condition evidence

[9] The Applicant submits that the standard of review for the issues surrounding the veiled credibility findings and requirement of an oral hearing is one of correctness, as the Officer must get "right, not possibly right", given the severity of the consequences to the person in this instance: *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177 [*Singh*] at paras 58, 23-24, 57, 70, 103; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 76-77; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79.

[10] The Respondent contends that determinations of PRRA Officers on applications, including on whether to hold an oral hearing, are to be reviewed on a reasonableness standard: *Gandhi v Canada (Citizenship and Immigration)*, 2020 FC 1132 [*Gandhi*] at paras 23-27; *Oliveros Rubiano v Canada (Citizenship and Immigration)*, 2011 FC 106 at para 28; *Matano v Canada (Citizenship and Immigration)*, 2010 FC 1290 at paras 10-12.

[11] As Justice Strickland noted in *Hare v Canada (Citizenship and Immigration)*, 2020 FC 763 [*Hare*], "the jurisprudence may remain unsettled as to the question of whether granting an oral hearing is one of procedural fairness, requiring correctness as the standard of review, or one of mixed fact and law, attracting the standard of reasonableness": at paras 11-12. In *Hare*, the Court applied the reasonableness standard; this was followed by *Gandhi*, at para 25.

[12] Other decisions from this Court maintain however that whether to hold an oral hearing is a procedural fairness issue and as such the correctness standard applies: *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 [*Zmari*] at paras 10-13; *Nadarajan v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 403 at paras 12-17; *Nur v Canada (Citizenship and Immigration)*, 2019 FC 951 at para 8; *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 at paras 16-20.

[13] There appears to be a third approach as reflected in Justice Manson's comment in *Mamand v Canada (Citizenship and Immigration)*, 2021 FC 818 at para 19, citing *AB v Canada (Citizenship and Immigration)*, 2020 FC 498 at para 68, which frames the standard of review as one of "fairness" and "fundamental justice."

[14] I need not weigh in on this doctrinal debate at this moment, as I find the Officer erred irrespective of the applicable standard of review.

[15] For the second issue on the reasonableness of the Decision, the parties agree that the reasonableness standard applies, per *Vavilov*.

[16] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the decision is unreasonable: *Vavilov* at para 100. To set aside a decision on this basis, "the reviewing court must be satisfied 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": *Vavilov* at para 100.

III. Analysis

A. *The Officer erred by making veiled credibility findings and not holding an oral hearing*

The Officer made veiled credibility findings

[17] The Applicant submits that the Officer's rejection of the PRRA application based on insufficient evidence was an implicit or veiled credibility finding: *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 653 at para 17; *Zokai v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1103 at para 12; *Zmari* at paras 18-20; *Abusaninah v Canada (Citizenship and Immigration)*, 2015 FC 234 at paras 54-57. The Applicant contends that the Officer's reasons failed to clearly separate the issues of sufficiency and credibility: *Latifi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388 at paras 60-62.

[18] Specifically, the Applicant argues that the Officer made several findings touching on the factors enumerated in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] when he rejected the following evidence:

a) The Applicant's sworn testimony that he was tortured in 1996 and 1997 and forced to sign a false confession;

b) The Applicant's sworn testimony about his wife's interactions with border officials in 2010, including their accusation that the Applicant was involved with the LTTE; and

c) The mother's sworn statement about the Criminal Investigation Department's [CID] visits in 2011 and content of the note left with the mother.

[19] The Respondent asserts that the PRRA Officer had the discretion to weigh the evidence and that the Decision was appropriately based on findings of weight and sufficiency, not credibility. The Respondent submits that the Officer did not have to make explicit credibility findings on each piece of evidence adduced, contrary to the Applicant's contention: *Semykin v Canada (Citizenship and Immigration)*, 2019 FC 496 at para 19.

[20] The Respondent also argues that the Officer appropriately assessed the weight and probative value of the evidence first, without considering credibility, since credibility is irrelevant if little weight is to be given: *Ruszo v Canada (Citizenship and Immigration)*, 2017 FC 788 at para 14; *AB v Canada (Citizenship and Immigration)*, 2017 FC 629 at para 33; *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at paras 33 and 50; *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 23-24.

[21] I begin my analysis with a review of the Applicant's sworn affidavit, which depicts in great detail incidents of interrogation and detention that occurred in Sri Lanka in 1996 and 1997 [Affidavit], due to his suspected links to the LTTE.

[22] One incident occurred in November 1996 after a suicide bomber's attack on a senior military or police vehicle. After this incident, the Applicant was detained for eight days and was tortured. After his release on condition, the Applicant was treated at the hospital.

[23] The Applicant also recalls in his Affidavit that after a bomb blast occurred in 1997, the Applicant was again taken to an army camp for interrogation. The Applicant recounts being approached, questioned, held, and eventually tortured by President Chandrika Kumaratunga's son-in-law, Major Rohan. The Applicant reports in his Affidavit what the army officials did to him at the army camp:

> They beat me until my lip was swollen and bleeding. They pulled my hair and kept me in a headlock. They beat me on the heat with a baton. I passed out from the pain.

[24] The Applicant states that Major Rohan and the other army officials attempted to force him to sign a confession stating the Applicant had planned to assassinate Major Rohan. When he refused, they beat him up badly and said they would not stop until the Applicant signed it. The Applicant eventually agreed and signed the document. It was following this incident that the Applicant fled Sri Lanka and ended up in Germany.

[25] The Officer accepted that when the Applicant was a teenager he was "detained on a number of occasions during which he was sometimes mistreated." The Officer found the Applicant's description of torture in November 1996 and in 1997 "vague." The Officer conducted their own search and found the President's son-in-law, Rohan Daluwatte was a Commander, and not in the rank of Major in 1997. Accordingly, the Officer found that the Applicant's sworn statement and supporting evidence had insufficient probative value to

establish on a balance of probabilities, that a) the Applicant's "mistreatment" meets the definition of torture; b) Major Rohan was involved in the 1997 interrogation; and c) the Applicant signed a confession related to a assassination attempt against Major Rohan.

[26] While acknowledging the Applicant had to sign "a document" in 1997, because the Applicant was released and was not questioned by authorities in subsequent trips, the Officer found the authorities of Sri Lanka "do not view him as associated with the LLTE or that he is otherwise against the Sri Lankan government."

[27] The question before me is whether the Officer's finding was one of insufficiency of evidence, or a veiled credibility concern.

[28] As Justice Diner explained in *Jystina v Canada (Citizenship and Immigration)*, 2020 FC 912, a finding of insufficient evidence and one of veiled credibility may be difficult to distinguish from one another; nevertheless, the two remain distinct: at para 22.

[29] Justice Gascon's decision in *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 41 explains the distinctions:

> [41] The term "credibility" is often erroneously used in a broader sense of insufficiency or lack of persuasive value. However, these are two different concepts. A credibility assessment goes to the reliability of the evidence. When there is a finding that the evidence is not credible, it is a determination that the source of the evidence (for example, an applicant's testimony) is not reliable. The reliability of the evidence is one thing, but the evidence must also have sufficient probative value to meet the applicable standard of proof. A sufficiency assessment goes to the nature and quality of the evidence needed to be brought forward by an applicant in order to

> obtain relief, to its probative value, and to the weight to be given to the evidence by the trier of fact, be it a court or an administrative decision-maker. The law of evidence operates a binary system in which only two possibilities exist: a fact either happened or it did not. If the trier of fact is left in doubt, the doubt is resolved by the rule that one party carries the burden of proof and must ensure that there is sufficient evidence of the existence or non-existence of the fact to satisfy the applicable standard of proof. In *FH v McDougall*, 2008 SCC 53 [*McDougall*], the Supreme Court established that there is only one civil standard of proof in Canada, the balance of probabilities: evidence "must be scrutinized with care by the trial judge" and "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall* at paras 45-46). In all civil cases, it is up to the trier of fact to "scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred" (*McDougall* at para 49).

[30] In this case, I find the Officer made a veiled credibility finding when the Officer concluded there is "little evidence" beyond the Applicant's "unexplained assertion" that President Chandrika Kumaratunga's son-in-law was involved in the 1997 incident, and that the sworn statement has "insufficient probative value" to establish the incidents occurred as described.

[31] I say this for two reasons.

[32] First, the Officer provided no explanation for why they found the Applicant's sworn Affidavit insufficient to establish that his "mistreatment" meets the definition of torture. The only clue for this conclusion was found in the Officer's finding that the Applicant's accounts of torture was "vague." Yet, the Decision did not explain why the Applicant's accounts of being beaten up until his lip was swollen and bleeding, having his hair pulled, being kept in a headlock, and being beaten on the head with a baton during the 1997 detention was "vague." Nor did the

Decision clarify what was vague about the Applicant's statement that he was beaten up when he refused to sign the confession in 1997.

[33] I acknowledge that the use of the term "vague" by an officer does not always denote a finding of credibility. Here, given the explicit and detailed description provided by the Applicant, I conclude that the Officer was making a finding about the reliability of the source of the evidence of torture, as opposed to the sufficiency of the evidence itself, when they found the mistreatment did not amount to torture.

[34] My conclusion is further reinforced by the Officer's rejection of the Applicant's account concerning Major Rohan. Based on the Officer's own research regarding Rohan's military rank in 1997, the Officer concluded the Applicant's allegation that Major Rohan was one of his torturers was not established. In my view, the Officer simply disbelieved the Applicant without offering the Applicant an opportunity to clarify his understanding of Rohan's rank.

[35] The Officer's veiled credibility findings resulted in the rejection of the Applicant's claim, bringing this case closer to the one cited by the Applicant, *Bozik v Canada (Citizenship and Immigration)*, 2017 FC 961 [*Bozik*] at para 18, as opposed to those relied on by the Respondent, *Don v Canada (Citizenship and Immigration)*, 2015 FC 829 at para 1 and *Aboud v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1019 at para 35.

Oral hearing was required

[36] The Applicant asserts that he has a well-founded fear of persecution grounded in Sri Lankan authorities' perception that he is associated with the LTTE. The Applicant argues therefore that by rejecting this asserted perception on credibility grounds, an oral hearing was required to meet procedural fairness: *Bozik* at para 20.

[37] I acknowledge, as the Respondent submits, that PRRA officers can weigh evidence and make findings on probative value and sufficiency of evidence without being required to hold an oral hearing: *Mudiyanselage v Canada (Citizenship and Immigration)*, 2018 FC 749 at para 31; *Mosavat v Canada (Citizenship and Immigration)*, 2011 FC 647 at para 13; *Parchment v Canada (Citizenship and Immigration)*, 2008 FC 1140 at paras 18-19.

[38] In this case, however, having found that the Officer made veiled credibility findings against the Applicant, I find that the Officer ought to have held an oral hearing, pursuant to subsection 113(b) of *IRPA*.

[39] Under subsection 113(b) of *IRPA*, officers may decide to hold a hearing for a PRRA application if they are of the opinion that one is required based on the factors enumerated in section 167 of the *IRPR*:

a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

b) whether the evidence is central to the decision with respect to the application for protection; and

c) whether the evidence, if accepted, would justify allowing the application for protection.

[40] I find that all three factors are met in this case.

[41] The Officer had credibility concerns about the Applicant's Affidavit alleging his experience of torture as a suspected LTTE supporter. These credibility findings led the Officer to conclude that what the Applicant endured did not meet the definition of torture, which in part informed the Officer's conclusion that the Applicant would not face risk should he return to Sri Lanka. The evidence in question therefore raises a serious issue of the Applicant's credibility and is directly related to the factors set out in sections 96 and 97 of *IRPA*.

[42] The evidence is also central to the Decision with respect to the Applicant's application for protection. If accepted, the evidence would potentially justify allowing the Applicant's PRRA application.

[43] I am also persuaded that there is heightened importance for holding an oral hearing in this case because the Applicant was recognized as a refugee in the past without an oral hearing. As the Applicant submits, the PRRA application would be the only legal process that considered his alleged risks since his RPD decision in 2008: *Singh* at paras 107-108; *Zmari* at para 18; *Majali v Canada (Citizenship and Immigration)*, 2017 FC 275 [*Majali*] at paras 18 and 42.

[44] In light of the all of the above, I find that the Officer ought to have given the Applicant an opportunity to address the Officer's credibility concerns by holding an oral hearing.

B. *The Officer's assessment of the personal evidence and country condition evidence was unreasonable*

[45] While I am of the view that the first issue regarding the need for an oral hearing is determinative of the case, I will address some aspects of the reasonableness of the Decision with a view to providing further guidance for the new decision maker.

[46] As the Respondent points out, the Applicant bore the onus to establish allegations of risk according to the legal standards under sections 96 and 97 of *IRPA* and to provide full evidence on the necessary elements of the PRRA application for the Officer to make a decision: *Luse v Canada (Citizenship and Immigration)*, 2017 FC 464 at para 5.

[47] I find the Decision was unreasonable as the Officer committed several reviewable errors when assessing the Applicant's personal evidence as well as the country condition evidence.

Personal Evidence

[48] As a starting point, this Court has confirmed that evidence contained in sworn statements given under oath are presumed to be true unless there is a valid reason to doubt its truthfulness: *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (FCA) at para 5; *Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 738 [*Chekroun*] at para 65; *Ogunrinde v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 760 at para 38; *Anni v Canada (Citizenship and Immigration)*, 2016 FC 941 at paras 17-18.

[49] I find the Officer unreasonably doubted the Applicant's Affidavit evidence, and unreasonably rejected the Affidavit provided by the Applicant's mother [Mother's Affidavit].

[50] With respect to the Applicant's Affidavit evidence, I have already noted my concern with regard to the Officer's unreasonable finding that the Applicant's allegation of torture was "vague", in light of the detailed description to the contrary found in the Affidavit. I also find unreasonable the Officer's conclusion that the "mistreatment" as described in the Applicant's Affidavit did not arise to the level of torture, in light of an absence of explanation.

[51] The Respondent submits the Officer was entitled to weigh the evidence where the source is not impartial, or where the evidence is vague, inconsistent, or lacks corroboration: *Kopalapillai v Canada (Citizenship and Immigration)*, 2019 FC 501 at para 27 [*Kopalapillai*]. The ratio in *Kopalapillai* does not apply here in view of the Applicant's detailed description of his experiences with torture and the Officer's acceptance that the Applicant had received "mistreatment."

[52] In addition to the above, I find that the Officer erred by dismissing the Applicant's accounts of torture in 1996 and 1997 on the basis that his Mother's Affidavit did not corroborate these claims by describing any harm to the Applicant prior to 2011.

[53] In the Mother's Affidavit, the mother stated that she was visited by the Sri Lankan CID after the Applicant's brief visit in 2011 following her sudden hospitalization. The Applicant's mother also stated that the CID asked for the Applicant's address and other personal details, accused him of playing a role in the Tamil's initiatives against the Sri Lankan government in Canada, and stated that they knew he returned to Sri Lanka to take on such activities. The Applicant's mother testified that the CID gave her a note the next day, which included the

Applicant's details, and which said that the Applicant is to attend the CID's office if he returns to Sri Lanka [CID Note]. Finally, the Applicant's mother stated that she sought legal advice about the CID Note, and informed the Applicant about it.

[54] The Mother's Affidavit focused on the events that took place in 2011, yet the Officer relied on it to discredit the Applicant's claims of torture in the years 1996 and 1997. Officers are required to consider the evidence for what it does say, rather than discount it for what it does not: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 49; *Majali* at para 20. In my view, the Officer committed this very error by placing weight on what was missing in the Mother's Affidavit regarding events prior to 2011 despite it not being the focus behind why it was sworn.

[55] The Officer also took issue with the evidence in the Mother's Affidavit that the CID visited her home, placing weight on the fact that the Applicant failed to adduce the CID Note as physical evidence.

[56] The Respondent asserts that the presumption of truthfulness and reliability of refugee claimants' sworn statements cannot be equated with a presumption of sufficiency, and that sufficiency is to be determined by the trier of fact: *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at paras 55 and 57; *Blidee v Canada (Citizenship and Immigration)*, 2019 FC 244 at para 16. The Respondent argues that simply stating an event occurred is insufficient to establish that it did occur on a balance of probabilities. The Respondent maintains that the Officer's reasons demonstrate findings of weight and sufficiency.

[57] I find the Respondent's submissions have some sway when it comes to the Officer's weighing of the Mother's Affidavit concerning the 2011 events. However, I note that in *Nadarajah v Canada (Citizenship and Immigration)*, 2022 FC 171 [*Nadarajah*], a case cited by the Respondent, the Court took issue with the officer's finding that the applicant did not provide sufficient evidence to indicate he would fit or perceive to fit the claimed risk profiles. At para 13, the Court noted:

> A decision-maker can only require corroborative evidence if: 1) the decision-maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant's credibility, implausibility of the applicant's testimony, or the fact that a large portion of the claim is based on hearsay; and 2) the evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it [*Senadheerage v. Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 36].

[58] The Officer in this case did not make any specific credibility findings about the Mother's Affidavit, nor was the evidence based on hearsay. The event in question took place over a decade ago and it is unclear whether the documents in question are still available. In any event, the Officer never provided the Applicant an opportunity to present the CID Note or to provide an explanation for not obtaining it. On that basis, the Officer's finding of insufficiency of personal evidence cannot stand: *Nadarajah* at para 18.

[59] Finally, I note that the Officer ultimately did not make any explicit findings as to whether or not they accepted that the CID visited the mother in 2011. The Officer's reasoning in this regard was not transparent nor intelligible.

<u>Country condition evidence</u>

[60] The Officer accepted that the Applicant was born in Trincomalee and that Tamils face discrimination and harassment in Sri Lanka. However, the Officer relied on various documentary reports to find that the Applicant's identity as a person of Tamil ethnicity, as a male, and as a middle-aged person does not subject him to a risk of persecution. The Officer found that the serious human rights abuses committed by the Sri Lankan authorities are against those who are suspected to be LTTE supporters, and that the Applicant would not be perceived as an LTTE supporter.

[61] I find several reviewable errors in the Officer's assessment of the country condition evidence.

[62] First, I agree with the Applicant that the Officer's reasons were flawed with respect to the violence against the Tamil population by the Sri Lankan government.

[63] The Officer noted in the Decision:

> Overall, I accept that documentary evidence establishes the continued existence of human rights violations, censorship, police brutality, corruption, surveillance, crime, and discrimination against minorities in Sri Lanka. I concede that ethnic tensions sometimes result in violence as well as that the government does not always take adequate measures to prevent or contain it.

[64] Yet, the Officer went on to state, "it does not appear to me that the government of Sri Lanka is gratuitously directing violence at the Tamil population as a whole." Given Tamils are part of the "minorities" who are, by the Officer's own concession, subject to human rights abuses

and various forms of violence, the Officer's conclusion was contradicted by the documentary evidence they cited and accepted.

[65] I also find the Officer erred by failing to consider the Applicant's claim of risk from the perspective of the agent of persecution. Case law confirms this perspective is what determines whether an individual justifiably fears persecution on a *Convention* ground: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 92; *Marino Gonzalez v Canada (Citizenship and Immigration)*, 2011 FC 389 at para 62; *Parizi v Canada (Minister of Citizenship & Immigration)*, [1994] FCJ No 1977 (TD) at para 14; *Chekroun* at para 55.

[66] The Applicant cites *Gopalapillai v Canada (Citizenship and Immigration)*, 2019 FC 228 where the Court found the RDP "misse[d] the mark" by concluding that the applicant, who did nothing to support the LTTE, did not fit any of the profiles of persons who were at risk of persecution in Sri Lanka. As the Court noted at para 12: "A well-founded fear of persecution need not be based on actual political opinion. A perceived political opinion suffices."

[67] Similarly, in this case, the Officer first erred in their assessment with regard to the alleged risks to the Applicant due to his suspected ties with the LTTE. The Officer then further erred by failing to consider the Applicant's claim of risk from the perspective of the agent of persecution.

[68] I agree with the Respondent that it is insufficient for the Applicant to merely point to documentary evidence of country conditions without linking them to the Applicant's personal

situation to establish personal risk: *Li v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1225 at paras 26-27.

[69] However, there is no dispute that the Applicant is a Tamil male from the eastern region of Sri Lanka who, as a teenager, was subject to detention and interrogation due to suspected LTTE ties. The documentary evidence accepted by the Officer confirms ongoing human rights abuses and violence against the Tamil population. The Officer erred, not only by making an unreasonable assessment of the Applicant's personal evidence, but also by failing to consider the risks the Applicant would face based on perceived political opinion.

[70] In conclusion, I find the Officer's reasons surrounding evidentiary issues were not justifiable, transparent, nor intelligible, and therefore did not demonstrate a rational chain of analysis: *Vavilov* at para 102.

IV. Conclusion

[71] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision maker.

[72] There is no question for certification.

JUDGMENT in IMM-5752-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The matter is referred back for redetermination by a different decision maker.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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