Federal Court  Cour fédérale

**Date: 20250205**

**Docket: IMM-8114-23**

**Citation: 2025 FC 231**

**Ottawa, Ontario, February 5, 2025**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**JANANEY JAYARATNARAJAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Ms. Jananey Jayaratnarajah (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the "RAD"), affirming the decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"). The RPD had found that the Applicant is not a Convention refugee nor a person in need of protection within the scope of section 96 and subsection 97(1), respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a Tamil citizen of Sri Lanka. She lived in the United Arab Emirates between 2011 and 2021, and her husband still works there.

[3] The Applicant owned paddy lands in Northern Sri Lanka. She also owns an apartment in Colombo, Sri Lanka.

[4] In 2016, the Applicant rented the paddy lands and her apartment. During the pandemic, she advised the tenant that she would be terminating the tenancy and returning to Sri Lanka. The tenant, in turn, responded that he would only leave the apartment if she gave the paddy lands to him and one of his cousins.

[5] The Applicant claims that she "threatened" the tenant that she would return to Sri Lanka and evict him. The tenant then threatened to kill the Applicant and harm her children.

[6] The Applicant gave up the paddy lands but the tenant did not give up his occupancy of the apartment.

[7] The Applicant confirmed a connection between the tenant and the Bodu Bala Sena (the "BBS"), an extremist group in Sri Lanka.

[8] The Applicant entered Canada on a visitor's visa in December 2021, together with her two Canadian born children.

[9] In December 2021, the Applicant was told by a friend that she had been approached by members of the BBS when checking on the Applicant's apartment. The friend was then threatened by armed members of BBS, claiming they would kill him if he interfered in the apartment matter**.**

[10] The Applicant claimed refugee protection in Canada in January 2022.

[11] The RPD denied the Applicant's claim on several grounds, including the availability of an Internal Flight Alternative ("IFA") in Matara.

[12] The determinative issue for the RAD was the IFA.

[13] The Applicant raises many arguments. It is not necessary to repeat them in detail since they are known to the parties. However, where necessary, reference will be made to specific submissions.

[14] The Minister of Citizenship and Immigration (the "Respondent") submits that the RAD made no reviewable errors.

[15] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, the decision of the RAD is reviewable on the standard of reasonableness.

[16] In considering reasonableness, the Court is to ask if the decision under review "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 that decision"; see *Vavilov*, *supra* at paragraph 99.

[17] Reasonableness is concerned with “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”, see *Vavilov*, *supra* at paragraph 86.

[18] The test for an IFA was set out by the Federal Court of Appeal in Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 at 710-711 (F.C.A.). The test is two-part and provides as follows:

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA.
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[19] The Applicant argues, in general, that the RAD misapprehended the evidence she submitted. She submits that the RAD preferred its inferences to hers, thereby misunderstanding her experience as a Tamil woman of the Hindu religion. She argues that the RAD misunderstood the first prong of the IFA test. The Applicant further submits that the RAD misapplied the Gender Guidelines.

[20] The Applicant complains that the RAD acted unreasonably by preferring its inferences from the evidence to those she presented.

[21] I see no merit in this argument.

[22] According to the decision in *Huruglica v. Canada (Minister of Citizenship and Immigration)*, [2014] 4 F.C.R. 811 (F.C.), the RAD is authorized to review decisions of the RPD on a correctness standard. It is authorized to conduct its own assessment of the evidence. In my opinion, this means that is authorized to draw its own "inferences" from the evidence.

[23] The Applicant argues that the RAD applied an "excessive" view for its IFA finding and took a narrow view of the grounds of her alleged persecution. She submits that the RAD failed to understand the nature of the persecution she claimed, as the female head of a household who is a Tamil Hindu without relatives in Sri Lanka.

[24] The Applicant argues that the RAD misapplied the Gender Guidelines, that the fact that she is highly educated does not protect her from persecution.

[25] The Applicant further contends that the RAD engaged in speculation to find that the tenant lacked motivation to continue his acts of persecution. She also argues that the RAD improperly assessed her ability that she could end the persecution by conceding the apartment to the tenant. She submits that such concession is not part of the IFA test.

[26] The Respondent argues that the RAD made no reviewable errors as alleged by the Applicant. He submits that the decision was reasonable.

[27] The Applicant based her claim for protection upon a fear of harm from the tenant and the BBS, a national extremist Sinhalese/ Buddhist, due to the links between the tenant with that group. She also alleges fear of persecution on the basis of her status as a Tamil, Hindu woman due to ethnicity, gender and race.

[28] The RPD found that the Applicant has a viable IFA in Matara. The RAD confirmed this finding, after its independent review of the evidence and submissions.

[29] In its decision, the RAD addressed the two parts of the IFA test, as set out in *Rasaratnam*, *supra*. In considering the first past of the test, the RAD concluded that the Applicant had failed to show that the agents of persecution, either the tenant alone or the BBS, were motivated to find her in the proposed IFA.

[30] Notwithstanding its conclusion on motivation, the RAD also considered if the agents of persecution had the means to locate the Applicant in the proposed IFA. It paid particular attention to the role that could be played by the BBS in pursuing the Applicant. It acknowledged that the BBS has support of the government but this does not mean that the government would give access to resources that would allow the BBS to find the Applicant.

[31] The RAD addressed part two of the IFA test and concluded that the Applicant failed to show that the proposed IFA was unreasonable, even for a person with her profile, that is female, Tamil, Hindu, single head of the household.

[32] The RAD noted that the Applicant's husband is working in the United Arab Emirates and continues to support the Applicant and her children while they are in Canada. It noted that the Applicant is well educated and that she did not testify that she would be unable to find employment.

[33] The RAD confirmed that a viable IFA is available to the Applicant.

[34] The Applicant seem to argue that a determination should have been made upon her claim under section 96 before the RAD entertained the availability of an IFA. I refer to the decision in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration) (C.A.)*, [1994] 1 F.C. 589 where the Court of Appeal said the following at page 599:

> […] requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country

[35] Assessment of a claim for refugee protection precedes consideration of an IFA. If a person can safely relocate to another part of the country against which protection is sought, there is no basis for convention refugee protection.

[36] The Applicant pleads reviewable error by the RAD because it suggested that she give up her interest in the apartment. There was no error by the RAD in this regard. I refer to the decision in *Malik v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 955 at paragraphs 25 and 26.

[37] The RAD's finding on this issue is reasonable.

[38] The Applicant also challenges the manner in which the RAD applied the Gender Guidelines. There is nothing unreasonable here. The RAD assessed the objective country condition documents in considering the Applicant's personal circumstances and referenced the Gender Guidelines while doing so.

[39] I agree with the Respondent that the RAD indeed took into account the Applicant's personal characteristics and circumstances in assessing her claim. The RAD did not apply an "excessive" test for an IFA. It followed the relevant jurisprudence. It properly considered each part of the two-part test.

[40] The RAD carefully went through the elements of the first part of the IFA test, that is whether the agents of persecution had the motivation and the means to pursue the Applicant to the proposed IFA. Its conclusions are reasonable, in light of the evidence.

[41] Although it found that the Applicant had failed to meet the motivation part of the test, it went on to consider whether the agents of persecution had the means to find her in the proposed IFA.

[42] In my view, the RAD reasonably concluded that the BBS would not have access to government documents, in order to help them find the Applicant in the proposed IFA. The RAD based its conclusion upon its review of the country condition documents and the lack of evidence from the Applicant, supporting her argument.

[43] The RAD acknowledged that the Applicant's friend had been threatened by men who said they were members of the BBS. It explained why the ability to find the friend, in an area where the tenant worked, did not show an ability to trace people throughout the country.

[44] The RAD's decision meets the applicable standard of review and there is no basis for judicial intervention. Accordingly, the application for judicial review will be dismissed.

[45] The Applicant was given the opportunity to submit proposed questions for certification.

[46] By letter dated July 12, 2024, the Applicant submitted the following question for certification:

> Must a refugee claimant establish that relocating or travelling to an IFA location would jeopardize that person's life and safety in order to establish that the IFA is unreasonable?

[47] The Respondent filed his response to this proposed question by letter dated September 16, 2024 and opposed certification, on the basis that the proposed question did not meet the test for certification as discussed by the Federal Court of Appeal in *Lunyamila v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FCA 22, at paragraph 46, as follows:

> This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, [2018] 2 F.C.R. 229, at paragraph 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211, at paragraph 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186, at paragraphs 15, 35).

[48] The Applicant, by way of a letter dated September 26, 2024, responded to the Respondent's submissions.

[49] Subsection 74 (d) of the Act provides as follows:

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| (d) subject to section 87.01, an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question. | d) sous réserve de l’article 87.01, le jugement consécutif au contrôle judiciaire n’est susceptible d’appel en Cour d’appel fédérale que si le juge certifie que l’affaire soulève une question grave de portée générale et énonce celle-ci |

[50] I agree with the position of the Respondent, that the proposed question does not meet the statutory test for certification. I also agree with the Respondent that the proposed question has been addressed in the decisions in *Rasaratnan*, *supra* and *Thirunavukkarasu*, *supra*, among others.

[51] The proposed question will not be certified.

**JUDGMENT IN IMM-8114-23**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

No question will be certified.

"E. Heneghan"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-8114-23 |
| **STYLE OF CAUSE:** | JANANEY JAYARATNARAJAH v. MCI |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEOCONFERENCE BETWEEN TORONTO, ONTARIO, OTTAWA, ONTARIO, AND FREDERICTON, NEW BRUNSWICK |
| **DATE OF HEARING:** | JULY 8, 2024<br><br>FURTHER WRITTEN SUBMISSIONS ON JULY 12, 2024, SEPTEMBER 16, 2024 AND SEPTEMBER 26, 2024 |
| **REASONS AND JUDGMENT:** | HENEGHAN J. |
| **DATED:** | FEBRUARY 5, 2025 |

**APPEARANCES:**

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| Barbara Jackman | FOR THE APPLICANT |
| Antonietta Raviele | FOR THE RESPONDENT |

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