

Federal Court



Cour fédérale

Date: 20250217

Docket: IMM-13184-23

Citation: 2025 FC 302

Toronto, Ontario, February 17, 2025

PRESENT: Madam Justice Go

BETWEEN:

SANOJAN SURESH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Sanojan Suresh [Applicant] claims that he is a citizen of Sri Lanka. He came to Canada in 2021, fearing persecution because he is perceived to be a member of the Liberation Tigers of Tamil Eelam.

[2] To establish his identity, the Applicant provided to the Refugee Protection Division [RPD] a photocopy of the biographical page of his passport that the Applicant alleges was stolen, and a photocopy of his birth certificate. The Applicant did not provide a copy of his Sri Lankan National Identity Card [NIC].

[3] The RPD refused the Applicant's claim for refugee protection, finding the Applicant failed to establish his identity with credible and trustworthy evidence [RPD Decision]. Specifically, the RPD was not satisfied that it was possible for the Applicant to have acquired a genuine Sri Lankan passport in the way he described, the photocopy of his birth certificate was missing security features, and he failed to provide a copy of his Sri Lankan NIC.

[4] On appeal, the Refugee Appeal Division [RAD] upheld the RPD Decision, concluding that the Applicant did not provide sufficient credible and trustworthy evidence to attest to his identity and to the fact that he is a national of Sri Lanka [Decision].

[5] The Applicant now brings this application for judicial review. I dismiss the application as I find the Decision reasonable.

II. Preliminary Issues

[6] The Applicant's name in the style of case should be reversed. I grant the Applicant's request to amend the style of cause.

III. Issues and Standard of Review

[7] The Applicant raises two issues to challenge the reasonableness of the Decision:

- a. The RAD erred in its assessment of the Applicant's birth certificate; and
- b. The RAD unreasonably impugned his passport as fraudulent.

[8] The parties agree that the reasonableness standard applies when reviewing the merits of the Decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

IV. Analysis

A. *The RAD did not commit reviewable errors with respect to its assessment of the Applicant's birth certificate*

[9] The Applicant submits that the RAD adopted an erroneous statement from the RPD Decision that was inaccurate. Specifically, the RPD stated at paragraph 20 of its decision that the Applicant stated that he had not received the original birth certificate. In fact, when asked, the Applicant confirmed he had received the original of his birth certificate fairly recently. The Applicant argues this is a material error in the RPD's, and consequently, the RAD's reasoning

that renders the Decision unreasonable. Even setting that aside, the Applicant submits he was never asked to provide his birth certificate.

[10] I reject the Applicant's arguments.

[11] While the RAD may have incorporated the RPD's misstatement into the Decision by adopting the RPD's findings regarding the Applicant's failure to reasonably explain why he neglected to provide the original document, the RAD went on to provide its own reasons for its own findings. More to the point, I disagree with the Applicant's submission that, had the RAD not made this error of fact, the outcome of the appeal would have been different.

[12] The RAD's finding on identity did not depend on the RPD's "erroneous" finding that the Applicant had not received his birth certificate. Rather the RAD's concerns focused on the Applicant's failure to provide the original document to the RPD, along with any evidence to support that someone had sent him the original in the mail. These concerns would remain regardless of whether the Applicant's birth certificate was not in his possession, as the RPD found, or in his possession but the Applicant failed to provide it to the RPD.

[13] Moreover, the RAD provided other reasons for its assessment of the Applicant's failure to provide his original birth certificate, noting, among other things, that the Applicant was represented by counsel, that the Applicant was questioned about the whereabouts of the birth certificate, and that the RPD's concerns about the photocopy was known to the Applicant. The RAD also addressed the lack of security features and the lack of a date of issue on the birth

certificate. While at the hearing, counsel for the Applicant submitted the documentary evidence is unclear as to whether these features apply to older birth certificates issued before April 2019, I note that the RAD did take that into consideration but noted that the Applicant's copy has a stamp dated September 29, 2020 and resembles the new form of birth certificate in other ways, but is missing the security features.

[14] In other words, the RAD had issues with the Applicant's birth certificate not only because he did not provide the original copy to the RPD. The RAD cited additional reasons for finding why it gave the birth certificate no weight. Thus, whether or not the RAD may have adopted the RPD's misapprehension of one aspect of the Applicant's evidence does not undermine the reasonableness of the Decision as a whole. The flaw, if it can be described as such, was not sufficiently central or significant to render the Decision unreasonable: *Vavilov* at para 100.

[15] Finally, I am not persuaded by the Applicant's argument that because the Applicant attended a virtual hearing, and not an in-person hearing, it would have been impossible for him to produce the original passport, and that there was an obligation on the RPD to ask the Applicant to show his original passport when he indicated that it was in his possession.

[16] The onus is on the Applicant to establish his identity. Rule 42(1) of the *Refugee Protection Division Rules*, SOR/2012-256 requires that a party who has provided a copy of a document to the RPD must provide the original to the RPD: (a) on written request of the RPD; or (b) where there is no request, at the beginning of the proceeding where the document will be

used. This rule applies whether or not the hearing was conducted virtually or in-person. There was no reason why the Applicant could not produce his passport during the hearing despite being conducted virtually, especially given that the Applicant was aware that the establishment of his identity was at issue regarding his refugee claim.

B. *The RAD's finding that the passport was fraudulent was reasonable*

[17] The Applicant raises two arguments to challenge the RAD's finding that his passport was fraudulent.

[18] First, the Applicant submits the RAD unreasonably impugned the submitted copy of his passport when there were no issues with the information on the biographical data page. He submits that an official document issued by a foreign country is *prima facie* genuine:

Ramalingam v Canada (Citizenship and Immigration), [1998] FCJ No 10, 1998 CanLII 7241

[*Ramalingam*] at para 5 (quoting a 1971 decision of the Immigration Appeal Board). The

Applicant goes on to say a finding that a document is fraudulent must be approached cautiously because of the consequences for an applicant's claim: *Bahati v Canada (Citizenship and Immigration)*, 2018 FC 1071 at para 34.

[19] Second, the Applicant submits the RAD unreasonably relied on the National Documentation Package [NDP] to say that numerous documents in Sri Lanka are fraudulent, when the NDP is silent on the issue of fraudulent passports. The Applicant contends that nothing in the NDP says fraudulent passports are commonplace in Sri Lanka, but rather, that other fraudulent documents are pervasive and used to obtain genuine travel documents. He submits

that a mere suspicion that documents are fraudulent, relying solely on the general prevalence of fraudulent documents in a given country, constitutes a misapprehension of the evidence: *Moin v Canada (Citizenship and Immigration)*, 2007 FC 473 [*Moin*] at para 42. Since neither the RPD nor the RAD took issue with what the copy of his passport page looked like, the Applicant argues it was unreasonable to extrapolate generally pervasive document fraud in Sri Lanka to passport fraud being similarly pervasive.

[20] I do not find the Applicant's arguments persuasive.

[21] To start, *Ramalingam* does not assist the Applicant as there was no indication that the applicant in that case provided only copies of his identity documents but not the original: *Ramalingam* at paras 2, 5. Moreover, the Court in *Ramalingam* found the board's decision challenging the validity of the birth certificate to be an error because the board did so "without adducing any evidence in support of its contention:" *Ramalingam* at para 6. Here, not only did the Applicant not provide the original passport, but the RAD also cited other evidence in support of its finding about the authenticity of the passport.

[22] More importantly, and contrary to the Applicant's submission, the RAD did not rely simply on the fact that "other fraudulent documents are persuasive" to find the Applicant's passport fraudulent. The RAD came to this finding based on its assessment of the Applicant's evidence, as well as the objective country conditions evidence about the process for obtaining a passport.

[23] The RAD referred to the Applicant's testimony that his mother obtained the passport on his behalf. He stated that he only had to take photographs at a studio and then signed the documents, which he believed his mother sent to Colombo for processing. When the RPD pointed out to the Applicant that the Applicant's evidence contradicts the NDP evidence stating that applicants must submit their own application and be fingerprinted at the designated offices, and the applications must be submitted in person, the Applicant explained that only his mother knew how it was obtained and he could not go out because of the issues he faced.

[24] The RAD also assessed the objective country conditions documents and found that there is only one office at which passport applications in Sri Lanka are processed. The RAD noted that the Applicant's mother did not clarify how she was able to obtain a passport for the Applicant in her support letter. The RAD further noted that the Applicant was over the age of 16 at the time of the passport application, which is the age beyond which fingerprinting is required. The RAD found the fact that the Applicant was never fingerprinted demonstrates that the passport was not authentic. The RAD noted these were not minor concerns as the Applicant suggested, given that a passport is the best evidence of identity.

[25] More importantly, the RAD considered the very argument that the Applicant now advances before the Court and specifically noted that it was not wrong for the RPD to find that objective regarding the widespread availability of fraudulent documents in Sri Lanka was relevant here. The RAD noted the conclusion about the authenticity of the Applicant's passport was "not made solely based on this information, but also because there were other reasons to

question the document or the [Applicant's] credibility in light of the above irregularities regarding how it was issued, which were not reasonably explained.”

[26] As the Respondent submits, and I agree, this Court in *George v Canada (Citizenship and Immigration)*, 2022 FC 1065 [*George*] at para 44 confirmed that the RAD may rely on the inconsistency between the Applicants’ testimony and the objective documentary evidence to support a negative credibility inference with regard to an identity document. While the facts in *George* differ, I find the same principle applies here.

[27] I also find *Moin*, the case cited by the Applicant, distinguishable on the facts. The Court in *Moin* described the applicant’s testimony as “extremely detailed, and generally consistent” with extensive documentary evidence: *Moin* at para 44. This is not the case here.

V. Conclusion

[28] The application for judicial review is dismissed.

[29] There is no question to certify.

JUDGMENT in IMM-13184-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The Style of Cause is amended to reflect the correct name of the Applicant.
3. There is no question to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13184-23

STYLE OF CAUSE: SANOJAN SURESH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 10, 2025

JUDGMENT AND REASONS: GO J.

DATED: FEBRUARY 17, 2025

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