

Federal Court



Cour fédérale

**Date: 20250218**

**Docket: IMM-10532-23**

**Citation: 2025 FC 309**

**Toronto, Ontario, February 18, 2025**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**SUKIRTHAN SUBAKARAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. In that decision, the RAD confirmed a determination of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] For the reasons that follow, I believe this application for judicial review should be granted. While many aspects of the RAD's decision were reasonable, two of its findings undermine the ultimate reasonableness of its conclusions.

## II. BACKGROUND

### A. *Facts*

[3] The Applicant – Sukirthan Subakaran – is a citizen of Sri Lanka. He is Tamil by ethnicity and Hindu by religion. He fears persecution as a result of his detention and ill-treatment at an army camp, as well as due to his Tamil ethnicity and his status as a failed refugee claimant. The alleged events that form the basis for his claim are as follows.

[4] On October 19, 2019, the Applicant was stopped by soldiers on his way home from school. He was blindfolded and taken to an army camp, where he was shown a photo and asked if he was the person in it. He denied it and was then beaten. The Applicant remained in detention for a week and continued to be asked whether he was in the photo. Each time he denied that he was, he was beaten. The Applicant was forced to sign a document in Sinhalese, which he did not understand.

[5] The Applicant was eventually released and left unconscious on the street, where he was found and taken to the hospital with multiple injuries requiring treatment. The Applicant's father, who had been informed of the Applicant's detention by other students and had spent a week searching for him, later found the Applicant at the hospital.

[6] The Applicant's father then arranged for him to leave Sri Lanka with the help of an agent. The Applicant came to Canada on January 25, 2020, and made a claim for refugee protection at the Vancouver port of entry. He was immediately detained and remained in custody for two weeks. The Minister intervened based on program integrity and credibility concerns.

[7] The RPD rejected the Applicant's claim for refugee protection. He appealed to the RAD.

B. *Decision under Review*

[8] The RAD confirmed the RPD's decision that the Applicant is neither a refugee nor a person in need of protection. The determinative issues were credibility and residual profile.

[9] The RAD confirmed a number of the RPD's negative credibility findings and came to the overall determination that the Applicant was not credible.

[10] The RAD independently assessed the Applicant's claim and the evidence tendered in support of his claim, and made several findings, including the following, which will be further considered below.

- The RPD had not erred in finding that the Applicant's testimony, particularly in respect of his arrest and his ability to understand those who arrested him, was evolving and lacked credibility.
- While the RPD erred in focusing on what a letter from the Applicant's father did not say, rather than what it did say, the letter warranted little weight because of the limited information contained in it.
- A medical report tendered by the Applicant also warranted little weight, as it did not indicate how the Applicant obtained the injuries described. Given the RAD's other credibility concerns, it is not of sufficient probative value to overcome those issues.

### III. ISSUES

[11] The Applicant raises a number of issues, some of which I do not find persuasive.

However, I will address the following issues:

1. Did the RAD err in its assessment of the Applicant's testimony related to his arrest?
2. Did the RAD err in its assessment of corroborative evidence, namely a sworn statement of the Applicant's father and a medical report outlining the Applicant's injuries?

### IV. STANDARD OF REVIEW

[12] It is common between the parties that the issues identified above should be reviewed on a standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23, 25 [Vavilov].

[13] While the Applicant also raises a concern with respect to the fairness of the RAD process, I need not consider this argument, as the substantive issues in this matter warrant judicial intervention. I will say, however, that I saw little merit in the Applicant's fairness arguments.

### V. ANALYSIS

#### A. *The Applicant's detention*

[14] The RPD found, and the RAD agreed, that the Applicant's Basis of Claim [BOC] narrative was inconsistent with his evolving testimony on the question of how he understood the demands of those who had arrested him. A review of the BOC and testimony, however, reveals this not to be the case.

[15] In his Basis of Claim form, the Applicant stated:

On the 15<sup>th</sup> Oct 2019, when I was returning after school around 2:30pm, two soldiers from the Sri Lankan Army stopped me and asked my name and whether I possess my ID card and then blindfolded me.

Then they forcibly took me to their Army Camp. They showed me a picture of a person and asked me whether it was me. They were repeating the same question as I denied that it was not me. At the entrance to the Army Camp they removed the blindfolding. Thereafter they put me in a dark room. The next my father came to the camp inquiring about me. They said I was not there. Then my father had left the camp. The soldiers often came and questioned me whether I was the same person on the photo. I kept on denying it. One day they came and asked me to sign on a document that had the picture of that individual. It was written in Sinhala language and hence I did not understand and was reluctant to sign, but they threatened me to shoot me and forced me to sign.

[16] When asked about this sequence of events at the RPD hearing, the Applicant testified as follows:

MEMBER: Okay, I want you to tell me when you encountered the military and what happened in that circumstance. Okay.

CLAIMANT: After I finished school, heading towards...I saw two (2) soldiers. They were with guns, that is beside a farm field. They stopped and asked, Mali where are you going? They asked me where are you going? What is your name? Where is your ID? When I gave the ID, that is standard procedure. One individual came around me and grabbed my hands and blindfolded me. By then I heard a vehicle breaking abruptly and I was pushed into that vehicle and said, get in. And I was verifying what is the reason for me to be arrested and why are you blindfolding me? I do not want to come with you guys. They were talking among themselves in Sinhala, which I did not understand and they were laughing.

MEMBER: Okay, did they say anything to you that you understood?

CLAIMANT: Because they were talking in Sinhala, I did not understand anything.

MEMBER: So, nothing that they said you understood?

CLAIMANT: When I was stopped and asked, Mali, where are you going? That is the only thing which I understood. Everything else I did not.

MEMBER: Okay, and you say in your Basis of Claim that they showed you a photograph. Can you tell me whose photograph, did you know the person in the picture?

CLAIMANT: And they ordered me to sign that I am the person depicted in that picture. And they threatened me to sign that.

MEMBER: How do you know if you did not understand their language?

CLAIMANT: They pointed out in that paper in English signature. That is where I should be doing it.

MEMBER: But how did you know? You just told me that you were ordered to sign that you were that person. How did you know detail?

CLAIMANT: They were ordering me to sign pointing out towards that paper, put like that. They were speaking in English that way.

MEMBER: Okay, your testimony is confusing me because you tell me that you do not understand anything that they say and then you tell me that you do understand them. So, which is it?

[17] The RPD found a material contradiction between these passages, because in his BOC the Applicant stated that he was asked about the photo of the individual, while in his testimony he indicated that he did not understand these people because they were speaking Sinhala. The RAD agreed with this finding.

[18] I find that both the RPD and the RPD misapprehended the evidence in arriving at this conclusion. It is important to note that in the Applicant's BOC, he never indicated in which language the soldiers communicated with him at the army base. He merely stated that he was

asked whether a picture in their possession was of him, and that he was later presented with a document to sign that was in the Sinhala language.

[19] It was only at the hearing that the Applicant indicated that when he was arrested, the arresting officers were speaking in Sinhala, which he did not understand. Later, when speaking about his interrogations, he indicated to the RAD member that he understood what he was being asked because the officers communicated to him in a combination of English and gestures, but that he did not understand when they spoke Sinhala. I frankly see no evolution in the Applicant's testimony in this regard. While he may have elaborated on his arrest and detention during the hearing, I do not view this important moment of testimony as contradicting anything in his BOC narrative. This is not a matter of reweighing evidence. Rather, it seems that both the RPD and the RAD may have misconstrued the evidence by conflating what the Applicant stated about the moment of his arrest (when the Officers were speaking in Sinhala) with his testimony about the interrogations he claims to have later experienced at the army base.

[20] While the RAD's error in this regard may not, on its own, have been fatal to the reasonableness of its conclusions, it does relate to a defining moment of the Applicant's claim for refugee protection, namely his arrest and mistreatment by the Sri Lankan military.

B. *The RAD's treatment of the Applicant's Corroborative Evidence*

(1) The Father's Sworn Statement

[21] The Applicant submits that the RAD erred in assigning little weight to the sworn statement from his father. Given that it accepted the genuineness of the document, it was

unreasonable, he argues, for the RAD to find that it was not “sufficiently probative or sufficient.” I agree.

[22] The sworn statement provided by the Applicant’s father was an important piece of evidence. In it, the Applicant’s father stated that:

- he was told directly by those who witnessed the Applicant’s arrest that he had been taken by the army;
- he immediately went to the army base, but was told his son was not there, following which he sought assistance from other state authorities to no avail;
- a week later, he was told that the Applicant was in the hospital, where he found his son bandaged and in severe pain due to an assault.

[23] The RAD found that the RPD had erred in its treatment of the father’s sworn statement. The error stemmed from the RPD’s focus on the fact that the letter did not refer to a subsequent visit from the army to the father’s home after the Applicant had left Sri Lanka. This, the RAD found, was incorrect because the RPD had overly focused on what the letter did not say, rather than what it did say. Despite this error, however, the RAD found that the RPD had not erred in affording the letter little weight, because of the limited information contained in it.

[24] I see no basis for the RAD to conclude that this letter was of limited probative value. While the RAD correctly noted that the Applicant’s father did not witness his arrest and, as such, aspects of the letter are based on hearsay, the RAD expressed no concerns about the genuineness of the father’s account. On the contrary, the RAD stated that “[t]here is no doubt that the affiant genuinely believes what he wrote.” This being the case, I take it that the RAD accepted: i) that the father was informed that his son had been arrested by the military; ii) that based on his belief



that this information was correct, the father went to the army base to find the Applicant, and followed up with various other officials over the next week to secure the Applicant's release; iii) that the Applicant remained missing for a week, with no explanation as to his whereabouts; iv) that after a week with no word on the Applicant's whereabouts, the father was informed that his son was in the hospital; v) that at the hospital he found his son bandaged and bleeding from his ear, moaning in pain, and was experiencing pain in the lumbar region due to being "kicked by foot."

[25] While the role of this Court is not to reweigh evidence duly considered by administrative decision-makers, *Vavilov* is clear that a decision will be considered unreasonable where it lacks adequate justification and a rational chain of analysis in relation to the facts. In this case, I have been convinced that the RAD's assessment of the probative value of the father's letter was the result of an unreasonable chain of analysis: *Vavilov* at paras 85-87.

(2) The Medical Evidence

[26] My concern with the RAD's consideration of the medical evidence co-mingles with my findings above. The RAD did not ignore this evidence, but again found that it warranted little weight. The RAD stated:

The fact remains that the report only can describe that injuries were sustained, but not who inflicted them and under what circumstances. Again, given the other credibility problems already identified, I find that this report simply does not carry enough probative value to overcome these issues.

[27] While it is true that the medical report does not indicate *who* inflicted the injuries on the Applicant, it nevertheless outlines serious injuries and indicates that at least one of the injuries was caused by kicking. To this extent, I find that the RAD fell victim to the same error that it had identified in the RPD's consideration of the father's sworn statement, namely it overly focused on what the report did not say (indeed *could not* say) rather than what it did say: *Belek v Canada (Citizenship and Immigration)*, 2016 FC 205 at para 21; *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 27.

[28] Moreover, the RAD's assessment of the medical report was that, while it did carry some probative value, it was insufficient to overcome the other credibility concerns that it had identified. As I have found that at least some of the RAD's other findings were unreasonable, it is impossible to know how this medical evidence would have been treated absent these errors. As a result, and given the rights at stake in refugee proceedings, I consider the RAD's findings with respect to the medical documentation to lack adequate justification. Put differently, had the RAD properly assessed the Applicant's testimony, and reasonably evaluated the probative value of the father's sworn statement, it may well be the case that the medical documentation could have overcome any other credibility concerns that arose.

## VI. CONCLUSION

[29] For the foregoing reasons, I believe this application for judicial review should be granted. The parties did not propose a question for certification, and I agree that none arises.

**JUDGMENT in IMM-10532-23**

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

1. The application for judicial review is granted.
2. The matter is remitted to the Refugee Appeal Division of the Immigration and Refugee Board for reconsideration.
3. No question is certified for appeal.

"Angus G. Grant"

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Judge

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

**DOCKET:** IMM-10532-23

**STYLE OF CAUSE:** SUKIRTHAN SUBAKARAN v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 8, 2025

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** FEBRUARY 18, 2025

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