

Federal Court



Cour fédérale

Date: 20250630

Docket: IMM-16367-23

Citation: 2025 FC 1171

Ottawa, Ontario, June 30, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

CHRISTY EMMANUEL ALFRED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Christy Emmanuel Alfred, is a citizen of Sri Lanka and seeks review of a Refugee Appeal Division (RAD) decision dated November 28, 2023 (Decision) refusing his refugee claim.

[2] In his judicial review application, the Applicant made allegations of incompetence against his previous immigration representative. A few days before the hearing, this immigration representative retained legal counsel who advised the Court that his client had not been served with the perfected application record in accordance with the *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings for Allegations against authorized representatives in Citizenship, Immigration and Refugee Cases before the Federal Court (Guidelines)*.

[3] At the hearing of this judicial review application, the Applicant conceded that he failed to follow the necessary steps outlined in the *Guidelines* and was therefore withdrawing the allegations against his former representative.

I. Background

[4] Moving on to the merits of this judicial review, and by way of background, the Applicant's refugee claim was rejected by the Refugee Protection Division (RPD) because of material omissions about the Sri Lanka Terrorism Investigation Department's (TID) questioning of the Applicant in 2021. The RPD drew a negative credibility inference on his claim that the TID questioned him about a client, AB, and AB's involvement with the Liberation Tigers of Tamil Eelam (LTTE). The RPD also found inconsistencies in the Applicant's narrative and testimony.

[5] The RAD upheld the RPD's findings, concluding that the Applicant lacked credibility and did not face a serious possibility of persecution upon return to his country.

[6] On a reasonableness review, this Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 15 [Vavilov]). 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).

II. Analysis

[7] The Applicant argues that the RAD failed to assess his residual profile as a Christian and as a member of an NGO (Lions Club). He notes that his evidence of membership was not challenged, and that the National Documentation Package (NDP) information for Sri Lanka indicates members of such groups are at risk. He submits that even if he did not directly raise these issues before the RPD or RAD, the RAD still had an obligation to consider these factors as part of his residual profile.

[8] The Applicant relies upon *Saalim v Canada (Citizenship and Immigration)* 2015 FC 841 at para 26, where Justice Southcott noted that the RAD is required to come to an independent assessment of whether a claimant is a Convention refugee or a person in need of protection, as

the RAD has expertise greater than or equal to the RPD in the interpretation of country condition evidence.

[9] In its Decision, the RAD considered the Applicant's residual profile and country condition evidence as follows

[37] The RPD found that the Appellant would not face a serious possibility of persecution based on his Tamil ethnicity or as a failed refugee claimant should he return to Sri Lanka.

[...]

[39] While the country conditions evidence regarding failed refugee claimants is mixed, I find that the RPD was correct in its conclusion about the Appellant's residual profile.

[40] I have already determined that the Appellant did not credibly establish that he was threatened by the TID or questioned about any LTTE connections or that they continue to seek him for the same. The country conditions evidence about airport stop lists states that at least one NGO believes that it is connected to the passport checking system and that former LTTE members may be on a watch list. The Appellant was never an LTTE member. The stop list includes names of those that have an extant court order, arrest warrant or order to impound their Sri Lankan passport. These circumstances do not apply to the Appellant. I find that, on a balance of probabilities, the Appellant's name is not on a stop list at the airport and he would not be arrested as he submits.

[...]

[43] The objective evidence states that upon arrival in Colombo, returnees are processed by Sri Lankan Immigration. They may be interviewed by the State Intelligence Service and the CID. It is noted that these agencies check travel documents and identity information against the immigration databases, intelligence databases and the records of outstanding criminal matters. The evidence further states that seeking protection abroad is not an offence in Sri Lanka and that even returnees that who have been absent a number of years would not be questioned on this. Also, there is no distinction between Tamil and Sinhalese returnees and

that ordinary Tamils are not being targeted, stopped or encountering difficulty at the airport. The UNHCR states that there have been no refugee returnees arrested/detained at the airport since 2017. A senior lecturer at the University of Jaffna, specializing in migration from Sri Lanka to Australia, indicates that the treatment of failed claimants has not changed since the presidential election in November 2019, and although there has been heightened scrutiny and surveillance of specific groups of people who have been publicly critical of authorities, the people undergoing this treatment are those that have been living in the country all along and not returnees from abroad.

[44] I agree with the RPD that simply living abroad as part of the diaspora does not in and of itself give rise to a serious possibility of persecution. The objective evidence shows that high-profile leaders of pro-LTTE diaspora groups may come to the attention of the authorities. There is no evidence in the record that the Appellant is politically active or participated in any diaspora activities at all, let alone held any leadership position in such a group.

[45] I find that there is insufficient evidence, based on the Appellant's circumstances and the country conditions documentation, to conclude that there is a serious possibility that he would be persecuted or that, on a balance of probabilities, he would face a personal risk in Sri Lanka based on his status as a Tamil who is a failed asylum seeker. [Footnotes omitted.]

[10] In the circumstances, I find that the RAD did consider the Applicant's residual profile and the country condition evidence to reasonably conclude that the Applicant did not face a serious possibility of persecution. As reasons above demonstrate, I am satisfied the RAD sufficiently addressed his residual profile.

[11] The Applicant also argues that the RAD (and the RPD) unreasonably dismissed his emotional and subjective feelings. He points to several references in the transcript to him being "scared" and "nervous". He argues that his emotional state was unreasonably dismissed.

[12] A review of the Decision demonstrates that the RAD specifically considered his nervousness and emotional state:

[16] ... At the heart of the Appellant's claim is that the TID suspect him of having links to the LTTE because AB was a client of his. Yet he omitted from his BOC that the TID came to his business and asked specifically about AB's LTTE connections.

[17] I have read the hearing transcript and listened to the hearing audio. I do not accept the Appellant's assertions that this error is due to his being highly emotional during the hearing or that he was confused. The RPD advised the Appellant that if a question was unclear to say so and it would rephrase. The RPD questions on this issue were short and succinct. There is nothing in the record to suggest that the Appellant was emotional or confused by the RPD questions on the issue. And in his testimony, the Appellant provided that he did not know how he omitted it from his BOC, he did not claim that his emotions or any confusion was the reason for the omission. The Appellant only had two significant incidents with the TID in a period of a month and a half, he did not encounter the TID on many occasions or over a lengthy period of time. I would expect that his evidence on these events would be consistent, especially when it is central to his allegation of being suspected of having LTTE links.

[...]

[22] The Appellant testified that upon his release, he was told that the TID would be in touch, not to say anything, and to come in when called. When asked about any threats, the Appellant provided that he was told that they would come again and not to go out anywhere, further, that he would be charged in court for having a connection with AB. When the RPD pointed out to the Appellant that his BOC indicated that he would be charged with running a narcotics network, the Appellant replied that he was sorry for omitting that but he was a little bit nervous.

[...]

[24] The Appellant agrees that the RPD findings about this incident are correct but states the reason for his inconsistent testimony are again due to his emotions and stress of the hearing. I do not agree. The RPD questioning was simple and straightforward. The Appellant did not advise the RPD of any

confusion or stress during the hearing, he only remarked that he was a little bit nervous after he was confronted with his omission of the TID threatening him with charges for running a narcotics network.

[13] I am satisfied that the RAD reasonably took the Applicant's emotional state into consideration, however, his nervousness or stress in the context of the RPD or RAD hearings did not account for the omission of a reference to events that were key elements of his claim.

III. Conclusion

[14] Overall, the RAD decision is reasonable and falls within the range of acceptable outcomes.

[15] This judicial review is dismissed.

JUDGMENT IN IMM-16367-23

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16367-23

STYLE OF CAUSE: ALFRED V MCI

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: MCDONALD J.

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