

Federal Court



Cour fédérale

Date: 20250910

Docket: IMM-11929-24

Citation: 2025 FC 1496

Toronto, Ontario, September 10, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

THEESAN THEVARASA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Theesan Thevarasa, a 30-year-old Tamil refugee claimant from northern Sri Lanka, seeks judicial review of the decision refusing his application for a Pre-Removal Risk Assessment [PRRA], arguing that the decision is unreasonable. I agree and will allow his application.

II. Background

[2] Mr. Thevarasa is a citizen of Sri Lanka. He came to Canada in early 2019 and claimed refugee protection, alleging that he had fled Sri Lanka to escape ongoing acts of persecution by Sri Lankan authorities against his family and himself based on their Tamil identity.

[3] On June 15, 2021, the Refugee Protection Division [RPD] rejected his claim on credibility grounds. The RPD was particularly concerned about Mr. Thevarasa's omission of his exact travel route to Canada and the circumstances of his return to Sri Lanka from the Bahamas in 2016. The RPD also rejected Mr. Thevarasa's evidence that Sri Lankan authorities had arrested him in 2018. His application for leave for judicial review of the RPD decision was dismissed.

A. *PRRA application*

[4] Mr. Thevarasa applied for a PRRA on or around January 5, 2024. He argued that notwithstanding the RPD's credibility findings regarding his testimony in support of his refugee claim, he retained a well-founded fear of persecution in Sri Lanka as a Tamil on the basis of four intersecting aspects of his residual profile:

- a. He is a failed asylum-seeker;
- b. He was a participant at allegedly pro-LTTE (Liberation Tigers of Tamil Eelam) events such as Martyrs' Day and Mullivaikkal Remembrance Day;

c. He is returning from Canada, home of the largest Sri Lankan Tamil diaspora community; and

d. He is returning without a valid Sri Lankan passport or exit permit.

[5] Mr. Thevarasa supported his PRRA application with detailed submissions from the consultant who was representing him, citing jurisprudence from this Court and new evidence post-dating the rejection of his claim by the RPD. This included an affidavit from Mr. Thevarasa's father, deposing that representatives of the army, the Eelam People's Democratic Party (a paramilitary group), and the police (the Criminal Investigation Department [CID]) had all come to his home on several occasions to ask about Mr. Thevarasa, accusing him of supporting the LTTE and threatening him with arrest, torture and death if he ever returned.

[6] As well, Mr. Thevarasa provided his own affidavit adopting the evidence of his father and confirming his continuing fear of persecution in Sri Lanka, photos of himself attending a Tamil community event, three recent news reports, and 11 recent human rights reports from well-established sources including Amnesty International, Human Rights Watch, the Office of the United Nations High Commissioner for Human Rights, Freedom from Torture, the Australian Centre for International Justice, the U.S. Department of State, and the Research Directorate of the Immigration and Refugee Board [IRB].

B. *Decision under review*

[7] By decision dated May 7, 2024, a Senior Immigration Officer [the “Officer”] rejected Mr. Thevarasa’s PRRA application. The Officer determined that “very little information” had been provided to “address and overcome” the finding of the RPD that:

As a result of the key credibility concerns..., the claimant has failed to establish that he participated in protests and events in Sri Lanka and that he was arrested as a result of his alleged attendance at these events. Furthermore, the panel finds that the claimant has failed to establish that he was and continues to be pursued by Sri Lankan authorities on account of his alleged perceived connections to the Liberation Tigers of Tamil Eelam (“LTTE”).

[8] The Officer dismissed the jurisprudence put forward by Mr. Thevarasa, finding that “each case is decided on the particular facts and merits which are presented in each individual case,” and rejected Mr. Thevarasa’s affidavit as “not new” (*Immigration and Refugee Protection Act*, SC 2001, c 27, s 113(a) [IRPA]).

[9] After finding that Mr. Thevarasa’s father was “not necessarily a disinterested party,” the Officer assigned his affidavit “very little probative value” on the basis of the “insufficiency” of objective corroborating evidence and the RPD’s findings regarding “the allegations and fears” raised before the RPD.

[10] Next, the Officer assessed the risk of persecution based on involvement in Tamil diaspora events in Canada, including those that may be perceived as “pro-LTTE” events, and return from the country with the largest Tamil diaspora community. The Officer acknowledged a response to information report [RIR] from the IRB’s Research Directorate indicating that the Sri Lankan

government monitors the activities of Tamil diaspora communities, but found that Mr. Thevarasa had not established that he would be perceived as active in the diaspora or that his activities in Canada have been brought to the attention of the alleged agents of persecution.

[11] The Officer likewise rejected Mr. Thevarasa's allegation of risk as a returning failed refugee claimant without a valid Sri Lankan passport or exist stamp. The Officer started by noting that the RPD had previously found Mr. Thevarasa not to be at risk as a returning refugee claimant because he had previously returned to Sri Lanka without any issue. The Officer acknowledged the new RIR evidence that Tamil returnees who had been active in the diaspora would be "high, if not top" on the list of returnees selected for questioning at the airport and potential referral to the Criminal Investigation Department [CID], as well as a UK Home Office report (not submitted by Mr. Thevarasa) indicating that returnees travelling on emergency travel documents rather than their own passports were flagged and referred to police on arrival, but that claiming asylum abroad is not an offence and would not be a matter upon which they would be questioned. However, the Officer found that there was "insufficient evidence" to indicate that Mr. Thevarasa "fits or could be perceived to fit" these risk profiles. The Officer concluded:

Having considered the documentary evidence cumulatively, I acknowledge that persons suspected of having ties to the LTTE continue to be at risk of ill treatment from the authorities and other groups in Sri Lanka. However, having considered the applicant's noted risks cumulatively, as well as his profile or in this case the lack thereof and having reviewed the country information, I find that there is insufficient new objective evidence to indicate on a balance of probabilities that the applicant was or will be suspected as an LTTE supporter or be perceived as such. I further find that there is insufficient objective evidence to indicate that the applicant faces risk of persecution or risk from the Sri Lankan army, the CID or the Sri Lankan police by reason of his Tamil ethnicity and/or his perceived origins from the north of Sri Lanka

or as a failed refugee claimant. Additionally, the applicant has not rebutted any of the issues raised by the RPD.

[12] The Officer acknowledged Mr. Thevarasa's request for an oral hearing "in the event of a negative decision" but found a hearing was not required because "the applicant's submissions have been accepted and his credibility is not an issue" (IRPA, s 113(b)).

[13] After the decision was served on Mr. Thevarasa, the Canada Border Services Agency initiated removal arrangements, but the removal was ultimately stayed by order of this Court, per Justice Negar Azmudeh (*Thevarasa v. Canada (Citizenship and Immigration)*, 2024 FC 1123).

III. Issues

[14] Mr. Thevarasa asserts that the PRRA Officer made three errors:

- a. The PRRA Officer erred unreasonably in his/her assessment of the applicant's *sur place* cumulative profile, at times carving away portions of the profile.
- b. The PRRA Officer erred unreasonably and incorrectly by raising the issue of the applicant's "credibility" yet failing to convoke an oral hearing.
- c. The PRRA Officer conducted a highly-selective analysis of the objective country condition evidence.

[15] There is no dispute that the standard of review applicable to the PRRA decision is reasonableness. To qualify as reasonable, an administrative decision must be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law bearing upon it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at

para 85 [*Vavilov*]). The hallmarks of reasonableness are justification, intelligibility and transparency (*Vavilov* at paras 15, 100), and the principle at the heart of this standard is “responsive justification” (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 10, 76). Administrative decision-makers need not respond to every argument or line of possible analysis, but the failure to meaningfully grapple with key issues or central arguments may call into question whether the decision-maker was “actually alert and sensitive to the matter before it” (*Vavilov* at para 128). As the Supreme Court of Canada reminded us in *Vavilov*, “Where the impact of a decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes” (*Vavilov* at para 133). PRRA decisions engage with fundamental human rights and have potentially life and death consequences for applicants. The stakes are very high.

IV. Analysis

[16] Although the Officer relied on the RPD’s credibility findings regarding the allegations put forward in Mr. Thevarasa’s refugee claim, the Officer expressly accepted the credibility of the new evidence adduced with the PRRA application. That evidence established as fact Mr. Thevarasa’s risk profile as a Tamil failed asylum seeker who had participated in what the Sri Lankan government considers to be pro-LTTE events, such as Martyrs' Day and Mullivaikkal Remembrance Day, in Toronto, home of the largest Sri Lankan Tamil diaspora community, and as someone who would be returning to Sri Lanka without a valid Sri Lankan passport or exit stamp.

[17] Although this risk profile contains several elements, the duty of the Officer was to assess Mr. Thevarasa's cumulative, or intersectional, risk profile, against the objective evidence of country conditions, to determine whether he faces more than a mere possibility of persecution or a likelihood of torture or death upon return (*Topbas v. Canada (Public Safety and Emergency Preparedness)*, 2025 FC 1285 at para 25; *Vilvarajah v. Canada (Citizenship and Immigration)*, 2018 FC 349 at para 21; *Djubok v. Canada (Citizenship and Immigration)*, 2014 FC 497 at para 18; *Gorzsas v. Canada (Citizenship and Immigration)*, 2009 FC 458 at para 36).

[18] The Applicant argues that the Officer failed to do this, and I agree. Rather than considering the risk facing Mr. Thevarasa as "a sum of his parts," the Officer assessed his risk factors in discrete siloes to determine whether, on its own, any one element of his profile would place him at risk (*Rodriguez Ramos v. Canada (Citizenship and Immigration)*, 2022 FC 41 at para 21). This was unreasonable as it fails to account for the "general factual matrix" that bears on the decision (*Vavilov* at para 126). As the Supreme Court of Canada explained in *Vavilov* at paragraph 126: "The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it." That is what happened here.

[19] I am unpersuaded by the Respondent's submission that the Officer's approach was reasonable because the RPD had already dismissed risk based on elements of the same risk profile in 2021. I make no finding about whether it was reasonable for the RPD to have relied on Mr. Thevarasa's treatment on return from a short stay in the Bahamas four years earlier to find he was not at risk on return from Canada in 2021, as that question is not before me. I do find,

however, that the continued reliance on that 2017 return to find there is no risk in 2024 was unreasonable (*Kailajanathan v. Canada (Citizenship and Immigration)*, 2017 FC 970 at paras 12-13). Mr. Thevarasa's profile in 2017, as assessed by the RPD, cannot be reasonably compared to his 2024 profile before the PRRA Officer as a failed refugee claimant who resided in Canada (not the Bahamas) amongst a large and active Tamil diaspora with which he was actively involved.

[20] The Officer's error lies at the very foundation of the decision under review and vitiates the remainder of their reasons. As such, there is no need for this Court to address the remaining issues raised by the Applicant and I decline to do so. The decision must be set aside.

[21] The parties have not identified a serious question of general importance, and I agree that none arises.

JUDGMENT in IMM-11929-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The decision of the Senior Immigration Officer dated May 7, 2024, is set aside and the matter is returned for redetermination by a different officer in accordance with these reasons.
3. No question is general importance is certified.

"Andrew J. Brouwer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11929-24

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