

Federal Court



Cour fédérale

Date: 20260107

Docket: IMM-15178-24

Citation: 2026 FC 12

Ottawa, Ontario, January 7, 2026

PRESENT: Justice Andrew D. Little

BETWEEN:

MATHUSANSAKKARAVARTHI RATHNALINGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant requests that the Court set aside a decision of the Refugee Appeal Division (the “RAD”) dated July 31, 2024. The RAD dismissed the applicant’s appeal from a decision of the Refugee Protection Division (the “RPD”) dated December 20, 2023. Both decisions concluded that the applicant had not proven his identity and therefore rejected his claim for protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “IRPA”).

[2] For the following reasons, this application for judicial review will be dismissed. The applicant has not shown that the RAD's decision was unreasonable or that the RAD deprived him of procedural fairness.

I. Events leading to this Application

[3] The applicant alleges that he is a citizen of Sri Lanka. In March 2021, he arrived in Canada from the United States. In June 2021, he made a claim for refugee protection.

[4] The RPD rejected the applicant's claim. The RPD held that the determinative issues were identity and the applicant's credibility as it related to identity. The RPD found that the applicant had not provided sufficient trustworthy and credible evidence to show his identity.

[5] The applicant did not provide his passport, or a complete copy of it, to the RPD. He testified that he had a genuine passport from Sri Lanka, but it had been taken by smugglers while he was en route to Canada. He provided a partial copy of the biographical page of his alleged passport, which did not include a photograph. He testified about how he obtained the passport in Sri Lanka – he provided his National Identity Card (“NIC”) and birth certificate to the village officer where he lived, who sent it to the proper authorities for processing. He had his photograph taken when he delivered the passport application materials to the village officer.

[6] The RPD found that the applicant's testimony was not credible. The way he obtained his passport was inconsistent with the National Documentation Package for Sri Lanka (the “NDP”), which advised that passport applications had to be submitted in person at designated offices and

that, since 2015, the government collected biometric data (fingerprints and a digital face image) of individual passport applicants, again at a designated office. The panel also had concerns about the applicant's motivation and timing of obtaining the passport.

[7] The RPD found that the applicant did not obtain a passport through official sources, as he alleged. Given the prevalence of fraudulent documents in Sri Lanka, the RPD found that the submitted copy of the passport biographical page was fraudulent and gave it no weight in establishing the applicant's identity. The document and the testimony also undermined the applicant's overall credibility in relation to his identity.

[8] The RPD found that it could not verify the authenticity of the copy of the NIC filed by the applicant, as the original was not in evidence as required by Rule 42 of the *Refugee Protection Division Rules*, SOR/2012-256 (the "RPD Rules"). The copy itself was of low quality and the RPD was unable to confirm that the person in the photograph was the applicant. The RPD also could not confirm that the card contained the expected security features (photograph, biographical data, fingerprints and blood group) which would confirm the applicant's identity.

[9] The RPD concluded that the copy of the NIC was not sufficient proof of the applicant's identity because it could not verify the document's authenticity or that it belonged to the applicant.

[10] The RPD found that a birth certificate filed by the applicant did not bear security features mentioned in the NDP, which called into question whether it was genuine. The RPD gave the birth certificate no weight.

[11] After considering additional evidence including a letter from a Justice of the Peace in Sri Lanka, the RPD concluded that the applicant had not provided sufficient credible and trustworthy evidence to establish his personal and national identity as a citizen of Sri Lanka. The RPD therefore dismissed his claim for refugee protection.

[12] The applicant appealed to the RAD, which dismissed his appeal.

[13] The RAD first considered the applicant's request to adduce new evidence, including a photograph of the first two pages of his Sri Lankan passport, a photograph of his NIC, his affidavit and an affidavit from an interpreter. The RAD concluded that these materials did not meet the statutory criteria for new evidence in subsection 110(4) of the *IRPA* and the applicable case law.

[14] The RAD agreed with the RPD that the applicant's evidence on how he obtained his passport was not credible, referring to the inconsistency between his testimony about delivering the passport application to the village officer and the objective evidence about in-person delivery in the NDP. The RAD found also that the applicant's evidence was inconsistent on when he obtained his passport.

[15] The RAD concluded that the passport pages were fraudulent and carried no weight in establishing the applicant's identity because the NDP indicated that fraudulent documents were easily obtained in Sri Lanka, the method of obtaining the passport was not credible, and the applicant's inconsistency on when and why he obtained the passport was not credible.

[16] The RAD concluded that the copy of the applicant's NIC did not establish his identity. The RAD agreed with the RPD that the NIC should be given no weight because it was not authentic. The RAD noted that the copy of the NIC was of poor quality. The RAD relied on the RPD's inability to find that the applicant was the person depicted in the NIC. The RAD found there was no way to determine if the copy was a reproduction of an original NIC as the original with its security features was not in evidence. The RAD repeated that fraudulent documents were easy to obtain in Sri Lanka. For these reasons, the RAD found that the NIC was fraudulent. Accordingly, the RAD held that the RPD correctly gave it no weight.

[17] The RAD considered the additional evidence filed by the applicant to show his identity, including the birth certificate. This evidence was insufficient to show his identity.

[18] The RAD concluded that the four primary documents filed by the applicant – the copy of the biographical page of the passport, the copy of the NIC, the birth certificate and the letter from a Justice of the Peace – were not sufficient to establish the applicant's identity. As the applicant had not proven his personal or national identity, the RAD dismissed the appeal.

[19] On this judicial review application, the applicant seeks to set aside the RAD's decision.

II. Analysis

[20] The applicant made three principal arguments to support his position that the RAD's decision should be set aside. First, the applicant submitted that the RAD made a reviewable error by failing to admit his new evidence on appeal. Second, the applicant contended that the RAD raised a new issue when it concluded that the NIC was fraudulent, but the RAD failed to give him notice of the issue and an opportunity to make submissions. Third, the applicant argued that the RAD erred in concluding that the passport pages were fraudulent.

[21] I will address these issues in turn.

A. *New Evidence on Appeal to the RAD*

[22] The parties submitted, and I agree, that the standard of review for this issue is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[23] Proposed new evidence before the RAD must meet both the express statutory requirements in subsection 110(4) of the *IRPA* and the factors set out in *Raza* (credibility, relevance, newness and materiality) as approved in *Singh*: see *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, [2016] 4 FCR 230, at paras 38–49, 64; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, at paras 13-15.

[24] Subsection 110(4) provides:

<p>Immigration and Refugee Protection Act</p> <p>Appeal to Refugee Appeal Division</p> <p>Appeal</p> <p>(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.</p>	<p>Loi sur l'immigration et la protection des réfugiés</p> <p>Appel devant la Section d'appel des réfugiés</p> <p>Appel</p> <p>(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.</p>
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[25] The RAD set out the requirements for new evidence in subsection 110(4), citing *Singh* and *Raza*. The RAD then stated:

[9] The new evidence of the passport pages and the NIC are not accepted. The evidence arose before the RPD decision. I find that the Appellant [i.e., applicant] did not make best efforts to obtain his passport pages before the RPD decision. There is no reason given why he could not have had his mom obtain the passport pages prior to the RPD decision. There is also no explanation why the NIC photograph could not have been provided before the RPD decision.

[10] The Appellant states in his memorandum that he felt that he had provided enough documentation to establish his identity and that he submits the documents to help establish his identity. I find the Appellant is trying to cure the deficiencies in his claim by providing new photographs of the passport pages and the NIC. The Appellant is expected to put their best foot forward when making their claim at the RPD and the purpose of allowing new evidence is not to cure deficiencies in the claim.

[11] I find the evidence existed before the RPD decision, there is no reasonable explanation why it was not provided to the RPD, and

that it has been provided to cure deficiencies in the Appellant's claim. As such, the new evidence does not meet the requirements for submitting new evidence and is not accepted.

[26] The applicant did not challenge the RAD's statement of the law. His argument was that he was not alerted by the RPD that he had to provide a copy of his passport. He contended that he made reasonable efforts at the RPD to obtain proof of identity including his passport and believed that the evidence he filed would be enough to show his identity. Because the RPD did not alert him to the need to file a copy of his passport, he did not make the extra efforts that he made on appeal to obtain the two copied pages of the passport. The applicant recognized that the copy of the biographical page of his passport was poor and that identity was an important issue at the RPD owing to section 106 of the *IRPA* and section 11 of the RPD's Rules. Nonetheless, because of the consequences of the RAD's findings on his failure to prove his identity, the applicant submitted that the RAD erred by not admitting the copy of the first two pages of his passport.

[27] I do not agree. The onus was on the applicant to show why the new evidence should be admitted on appeal. His evidence was in two affidavits. The first, dated April 17, 2024, dealt with how he obtained a better copy of his passport. He asked his mother to get a better copy, and she found someone who could help and had to go to the passport office to show she was his mother. The second affidavit, dated April 26, 2024, concerned how he obtained a better copy of the NIC. He asked his father, mother and sister if they had a better copy. His father had a better copy on his cell phone.

[28] The applicant has not shown how the RAD unreasonably analyzed this evidence. It is not disputed that the passport existed before the RPD hearing, although the applicant advised that the original was taken by smugglers. The applicant's affidavits were silent on any efforts to obtain copies of the passport pages before the RPD decision – the applicant did not think he needed them. As the RAD found, his affidavits gave no reason why his mother could not obtain copies of the pages before the RPD hearing. Considering the evidence filed by the applicant with the RAD, it was open to the RAD to conclude that the applicant was trying to cure deficiencies in his refugee claim through new evidence on appeal.

[29] The applicant cannot fault the RPD for an alleged failure to ask him for copies of the passport. Proof of identity is a fundamental component of every refugee protection claim: see *Yusuf Adan v Canada (Citizenship and Immigration)*, 2022 FC 1383, at para 51. This is reflected in section 106 of the *IRPA*:

**Immigration and Refugee
Protection Act**

**Claimant without
identification**

Credibility

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

**Loi sur l'immigration et la
protection des réfugiés**

Étrangers sans papier

Crédibilité

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[30] Section 11 of the RPD Rules provides:

<p>Refugee Protection Division Rules</p> <p>Documents Establishing Identity and Other Elements of the Claim</p> <p>Documents</p> <p>11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.</p>	<p>Règles de la section de la protection des réfugiés</p> <p>Document établissant l'identité et autres éléments de la demande</p> <p>Documents</p> <p>11 Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.</p>
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[31] These provisions place the onus on a claimant to provide acceptable documentation to establish identity. If the claimant does not have acceptable documentation, the claimant must provide a reasonable explanation why or explain how reasonable steps were taken to obtain it: *Yusuf Adan*, at para 55. See also *Suresh v Canada (Citizenship and Immigration)*, 2025 FC 302, at para 16; *Sellan v Canada (Citizenship and Immigration)*, 2024 FC 883, at paras 8-9.

[32] The transcripts of the RPD hearing, which included three appearances several months apart, demonstrate that identity was an issue raised from the outset. The deficiencies in the quality of the applicant's evidence were noted immediately and his then-legal counsel advised that the deficiencies would be remedied. They apparently were not, until the applicant requested better copies for the appeal by asking his mother, who obtained copies of two different pages of

the passport from sources in Sri Lanka. The applicant, who was represented by legal counsel throughout, did not explain to either the RAD or the RPD why he did not seek better copies of the passport (or pages of it) during the RPD proceedings. He had time before and between the RPD hearing dates to do so.

[33] Indeed, the applicant's filed evidence at the RPD included one page of his alleged passport. He now argues that the RPD should have advised him to obtain copies of two other pages. It was the applicant's responsibility to adduce sufficient evidence to show his identity. I am unable to see how the RPD had an obligation to advise the applicant that, to meet his onus, he should provide two other pages of the same passport.

[34] For these reasons, I am unable to conclude that the RAD made a reviewable error in its decision not to admit the new evidence.

B. *Did the RAD decide a new issue on appeal without notice to the applicant?*

[35] The applicant's second position was that the RAD raised a new issue on appeal by deciding that the NIC was fraudulent, without providing him with notice so he could make submissions on the issue.

[36] The applicant presented this issue as a matter of procedural fairness, which attracts a standard of review akin to correctness. The respondent acknowledged this standard of review. The question is whether the applicant knew the case to meet and had a meaningful opportunity to be heard – a “full and fair” chance to respond: see e.g. *Canadian Pacific Railway Company v*

Canada (Attorney General), 2018 FCA 69, [2019] 1 FCR 121, at paras 41, 56; *Air Canada v Robinson*, 2021 FCA 204, at paras 54, 66.

[37] This Court has held that procedural fairness may require notice and an opportunity to be heard if the RAD's decision raises an issue that is new in the sense that it is a new ground or reasons that are legally and factually distinct from the grounds of appeal advanced and cannot reasonably be said to stem from the issues raised on the appeal: see *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725, at paras 65-76; *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600, at para 25.

[38] This test for a new issue originated in the Supreme Court's decision in *R v Mian*, 2014 SCC 54, [2014] 2 SCR 689, which stated that "new issues are legally and factually distinct from the grounds of appeal raised by the parties" that "cannot reasonably be said to stem from the issues as framed by the parties": *Mian*, at para 30. The Court in *Mian* also stated that "issues that are rooted in or are components of an existing issue" are also not "new issues": *Mian*, at para 33. See recently: *Gupta v Canada (Citizenship and Immigration)*, 2025 FC 1960, at paras 28-29, 44; *Rahman v Canada (Citizenship and Immigration)*, 2025 FC 22, at paras 41-43; *Warsame v Canada (Citizenship and Immigration)*, 2024 FC 630, at paras 11-15; *Kibiku v Canada (Citizenship and Immigration)*, 2023 FC 1310, at paras 11-12; *Alvi v Canada (Citizenship and Immigration)*, 2023 FC 1031, at para 22; *Savit v Canada (Citizenship and Immigration)*, 2023 FC 194, at paras 11-13; *Lopez Santos v Canada (Citizenship and Immigration)*, 2021 FC 1281, at para 45.

[39] The applicant's contention was that the RAD erred in finding the NIC was fraudulent and that this was a new issue on appeal. I do not agree.

[40] The RPD expressly found that it could not verify the authenticity of the NIC (the original was not in evidence, as required by the RPD Rules) and found it could not be used to show the applicant's identity. The RPD also could not confirm that the card contained the expected security features related to the applicant's identity.

[41] The applicant's position on appeal, based on his written submissions dated April 24, 2024, was that the copy of the NIC was sufficient to prove his identity. In his submissions, the applicant claimed that the RPD did not say that the NIC was not genuine, just that it was not sufficient. He argued to the RAD that if the NIC was genuine, even if a copy, it had to be given full weight by the RPD. He argued that "documents are either genuine or are not. If genuine, then the [applicant's] identity is established".

[42] In its decision, the RAD adopted the RPD's reasoning, finding that the NIC should be given no weight because it was not authentic. The RAD relied on the RPD's inability to find that the applicant was the person depicted in the NIC and found there was no way to determine if the copy was a reproduction of an original NIC because the original with its security features was not in evidence. The RAD concluded that the NIC was fraudulent and held that the RPD correctly gave it no weight.

[43] In these circumstances, the applicant had ample notice that the authenticity of the NIC was an issue on appeal – indeed, he argued it was genuine in order to prove his identity. The RAD found the NIC was not authentic and fraudulent. The issue was not one that was legally and factually distinct from the issues raised on the appeal; it stemmed from the issue as framed by the applicant. The RAD’s decision was also consistent with its role in the statutory context. Accordingly, the RAD did not need to give him any additional notice or opportunity to make submissions to ensure procedural fairness.

[44] This case is different from *Warsame*, relied upon by the applicant. In that case, the RPD identified a number of concerns about an affidavit, which raised doubt about its veracity. The RPD found that it did not prove the applicant’s identity but did not find it was fraudulent. The Court found that the RAD’s finding that an affidavit was fraudulent was a “broad extension of its negative credibility finding”, raising new credibility issues that were not addressed on the appeal. The Court found that the status of the affidavit as fraudulent represented a new and distinct finding. See *Warsame*, at paras 2, 5-8, 14-16. In contrast, in this case, identity has been a central concern from the outset and the RPD made negative findings about the authenticity of the NIC. The RPD could not verify its authenticity and gave it no weight. On appeal to the RAD, the applicant supported the authenticity of the NIC to prove his identity, arguing that documents are “either genuine or not”. In my view, the applicant cannot cry foul now that the RAD has found that the NIC was not genuine. Its decision on whether the NIC was genuine, authentic or fraudulent was not legally or factually distinct from the issues raised on appeal, or the issue decided by the RPD. Although the RAD’s reasons made an express finding that the NIC was fraudulent, doing so did not raise a new credibility issue as occurred in *Warsame*.

C. *Did the RAD make a reviewable error that the passport was fraudulent?*

[45] The applicant acknowledged that there was a discrepancy in his evidence concerning how he obtained the passport – through a village official rather than in person at a government office. However, he argued that the RAD made a reviewable error by concluding that that it was fraudulent. He argued that the NDP only indicated that fraudulent documents were easily obtained in Sri Lanka, but it did not refer expressly to passports.

[46] The RAD made no reviewable error on this basis. The source, as mentioned in oral argument and quoted in the applicant’s further memorandum on this application, referred to “fake or falsified travel documents to facilitate travel of Sri Lankans abroad”. It was open to the RAD to find that this description included passports.

III. Conclusion

[47] For these reasons, the application for judicial review must be dismissed.

[48] Neither party proposed a question to certify for appeal and none arises.

JUDGMENT IN IMM-15178-24

1. The application for judicial review is dismissed.
2. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-15178-24

STYLE OF CAUSE: MATHUSANSAKKARAVARTHI RATHNALINGAM
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 17, 2025

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: JANUARY 7, 2026

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