

Federal Court



Cour fédérale

Date: 20140213

Docket: IMM-4720-13

Citation: 2014 FC 146

Ottawa, Ontario, February 13, 2014

PRESENT: THE CHIEF JUSTICE

BETWEEN:

S.A.

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This Application for Judicial Review is the latest in an increasingly long line of proceedings before this Court involving *sur place* claims for refugee protection made by Tamil citizens of Sri Lanka who arrived in Canada aboard the *MV Ocean Lady* or the *MV Sun Sea*.

[2] As reflected in the Court's evolving jurisprudence, judicial review applications involving decisions made by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada in respect of these types of refugee claims typically raise complex issues.

[3] This case differs in an important respect from many of the other recent decisions of this Court involving these types of claims, because it concerns a conclusion reached by the RPD with respect to the well-foundedness of S.A.'s alleged fear of persecution. The RPD did not address the applicant's nexus to one of the grounds of protection set forth in section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], other than to briefly address a case that had been referred to in the Minister's submissions. By contrast, in many of the recent cases that were cited by the Applicant in this Application, a key issue for the Court on judicial review was whether the RPD had erred in reaching its conclusion with respect to the issue of nexus.

[4] Given the adverse conclusion that the RPD reached in this case on the issue of the well-foundedness of the Applicant's fears of persecution, it was unnecessary for the RPD to address the nexus issue.

[5] It bears underscoring that, as with other applications for judicial review, these types of proceedings must be adjudicated based on the Court's application of the appropriate standard of review to the particular facts of the case, the issues raised in the application, the evidence in the certified tribunal record [CTR] and the content of the decision under review. Where the applicable standard of review is reasonableness, the fact that this Court may have reached a particular

conclusion in respect of another matter involving somewhat similar facts and issues is not a sound basis upon which to infer that the Court will reach the same conclusion again.

[6] This is in part because the reasonableness standard requires the Court to pay respectful attention to the reasons offered or which could be offered in support of the decision subject to review, having regard to the content of the CTR. If those reasons are sufficiently transparent, justified and intelligible to allow the Court to understand why the RPD made its decision and to permit the Court to determine whether the decision is within the range of acceptable outcomes in fact and in law, they will withstand review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at paras 12-16 [*Newfoundland Nurses*]). This is so even though the opposite conclusion also could reasonably have been reached by the RPD, based on the same evidentiary record (*Suppaiah v Canada (Minister of Citizenship and Immigration)*, 2013 FC 429, at para 35; *SK v Canada (Minister of Citizenship and Immigration)*, 2013 FC 78, at para 25 [*SK*]; *B198 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1106, at para 44 [*B198*]; *B231 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1218, at para 29 [*B231*]).

[7] In this case, the Applicant, S.A., alleges that the RPD erred by:

- i. Failing to consider his Tamil ethnicity and his perceived political opinion together in assessing his *sur place* claim, and by relying on unreasonable assumptions in reaching its conclusion with respect to that claim;
- ii. Fettering its discretion when it assessed his *sur place* claim; and
- iii. Unreasonably assessing the risk he faces if he is required to return to Sri Lanka.

[8] I disagree. For the reasons that follow, this Application will be dismissed.

1. Background

[9] S.A. was born and raised in Jaffna, where he worked as a labourer. He alleged in the Personal Information Form [PIF] that he filed as part of his claim for refugee protection that during the civil war in Sri Lanka, his family fled to Kilinochchi and then to Jayapura, before returning to Jaffna after failing to receive the protection that the Sri Lankan army had apparently undertaken to provide in the former cities.

[10] He also claimed that his brother was shot and killed by the Sri Lankan army in 1996, because he was suspected of having connections to the Liberation Tigers of Tamil Eelam [LTTE].

[11] In addition, he claimed that the army searched his house, ordered him not to have anything to do with the LTTE and threatened him with “consequences” if he was found to have helped the LTTE.

[12] He further asserted that, while working as a labourer at Jaffna University in May 2009, he was arrested during a student protest, taken to a camp, and severely assaulted and interrogated after being unable to identify the organizers of the protest.

[13] He apparently was released after the Dean of the University vouched for him and he agreed to become an informant for the army. He then fled to Colombo in July 2009 and to Thailand later that month, where he boarded the *MV Ocean Lady*. He claimed refugee protection soon after his arrival in Vancouver in August 2010.

[14] He fears that if he is forced to return to Sri Lanka he will be arrested, detained and tortured by the Sri Lankan police, the army or paramilitary groups, and that he may be mortally harmed by former members of the LTTE.

[15] Those fears are based in part on his belief that his identity as a passenger on the *MV Ocean Lady* has been shared with Sri Lankan authorities, who will likely perceive him to be affiliated with the LTTE and will likely impute the LTTE's political opinions to him, by virtue of his presence on that vessel and his Tamil ethnicity.

II. The Decision under Review

[16] At the outset of its analysis, the RPD identified the determinative issues in this case as being “the pursuit of the claimant by Sri Lankan army authorities due to perceived affiliation with the LTTE, whether the claimant has a well-founded fear of persecution if required to return to Sri Lanka and *Sur Place*.”

[17] The RPD proceeded to determine that S.A. had “not been a credible witness in this regard.” This general conclusion regarding S.A.’s overall credibility was repeated numerous times during the RPD’s decision, namely, at paragraphs 14, 19, 24, 34 and 36.

[18] Based on its general and specific adverse credibility findings and the related negative inferences that it made, the RPD concluded that S.A. was not suspected of being a member or otherwise affiliated with the LTTE by authorities in Sri Lanka and that they had no interest in him at the time he left Sri Lanka. In reaching this conclusion, the RPD attributed particular significance to the fact that, following his release from detention after the student protest in May 2009, S.A. was able to obtain a Sri Lankan passport without difficulty, obtain security clearance to travel to Colombo, pass through security checkpoints and leave the country.

[19] In addition, the RPD reviewed a number of sources of country documentation, including documentation published in December 2012 and February 2013 by the United Nations High Commissioner for Refugees [UNHCR] which identified seven categories of persons who are potentially at risk upon returning to Sri Lanka. After finding that S.A. did not fit within any of those categories, and that S.A. had not provided any persuasive evidence that he would be perceived to be a supporter of the LTTE, the RPD determined that “there is little risk that he would be persecuted [as a person suspected of having certain links with the LTTE] should he return to Sri Lanka.” The RPD added that this conclusion was consistent with information contained in documentation published by the United Kingdom Border Agency [UKBA] in February 2013, as well as other documentary sources that it discussed.

[20] With respect to S.A.'s *sur place* claim in particular, the RPD concluded, on a balance of probabilities, that the Sri Lankan government would not perceive S.A. to be a member or supporter of the LTTE simply on the basis of his travel to this country on the *MV Ocean Lady*, given his history in Sri Lanka before coming to Canada.

III. Standard of Review

[21] The issue that S.A. has raised regarding the RPD's alleged failure to consider his Tamil ethnicity and his perceived political opinion together in assessing his *sur place* claim, and regarding the reasonableness of certain assumptions allegedly relied upon by the RPD in the course of reaching its conclusion with respect to that claim, is focused on matters of mixed fact and law. As such, it is reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paras 51-53 [*Dunsmuir*]; *Ganeshan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 841, at para 9 [*Ganeshan*]; *B231*, above, at para 28).

[22] In determining whether a decision is reasonable, the general test is whether the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." In this regard, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process (*Dunsmuir*, above, at para 47).

[23] If there exists a reasonable basis upon which the RPD could have decided as it did, the Court must not interfere (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, at para 53 [*Alberta Teachers*]). In other words, the

RPD's decision will stand where it can be "rationally supported" (*Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 SCR 364, at para 47 [*Halifax*]).

[24] The issue as to whether the RPD erred by fettering its discretion when it assessed S.A.'s *sur place* claim is reviewable on a standard of correctness (*Dunsmuir*, above, at para 55; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 43; *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198, at para 33).

[25] The issue as to whether the RPD erred by unreasonably assessing the risk faced by S.A. if he is required to return to Sri Lanka is reviewable on a standard of reasonableness.

IV. Analysis

- A. *Did the RPD err by failing to consider S.A.'s Tamil ethnicity and his perceived political opinion together in assessing his sur place claim, and by relying upon unreasonable assumptions in the course of reaching its conclusion?*

[26] S.A. submits that the RPD failed to consider the fact that his Tamil ethnicity coupled with the fact that he travelled on the *MV Ocean Lady* played an important role in his *sur place* claim. In brief, he maintains that the RPD failed to appreciate that as a result of the combination of these two considerations, authorities in Sri Lanka may consider him to have political opinions that are similar to or sympathetic with those of the LTTE. Stated differently, he asserts that, in assessing his *sur place* claim, the RPD failed to consider the fact that his agents of persecution in Sri Lanka may have

mixed motives for harming him, should he return to Sri Lanka (*Zhu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 80, at para 2; *Canada (Minister of Citizenship and Immigration) v B344*, 2013 FC 447, at paras 37-45); *Canada (Minister of Citizenship and Immigration) v B377*, 2013 FC 320, at para 21).

[27] In a related submission, S.A. asserts that the RPD conducted a generalized assessment of the issue of failed asylum-seekers returning to Sri Lanka, without examining whether his unique profile as a passenger on a suspected LTTE ship enhanced the risk to his life and safety if he returned to Sri Lanka. On this point, he maintains that the RPD failed to come to grips with the fact that his risk profile increased after he had left the shores of Sri Lanka, because he might be perceived to either be a supporter of the LTTE or to have valuable information regarding the LTTE, by virtue of having spent so much time with fellow passengers on a suspected LTTE ship. Instead, he submits that the RPD unreasonably assumed that, since he was not perceived to be a supporter of the LTTE at the time he left Sri Lanka, he did not face a serious possibility of persecution upon his return to that country. He adds that, even if the RPD did not err in reaching its adverse conclusions regarding the credibility of his claims, it erred by failing to assess the heightened risk that formed the basis of his *sur place* claim.

[28] I disagree.

[29] It is clear from a reading of the RPD's decision as a whole that the RPD carefully considered and rejected S.A.'s claim that he has a well-founded fear of persecution based on the fact that he was a Tamil male who had travelled aboard the *MV Ocean Lady*. The RPD's assessment of

this claim included an evaluation of S.A.'s allegation that he may be perceived to have political opinions that are similar to, supportive of or sympathetic with those of the LTTE. The RPD was very much alive to the possibility that Sri Lankan authorities might have mixed motives for persecuting or harming him upon his return to Sri Lanka. However, after reviewing the evidence in the CTR on this issue, which essentially consisted of several objective sources of country documentation, the RPD reasonably rejected this aspect of S.A.'s claims.

[30] The RPD recognized S.A.'s Tamil ethnicity at the outset of its decision. Then, after explaining why it rejected important aspects of his claims and testimony on credibility grounds, it proceeded to a discussion of country conditions. Throughout that section of its decision (at paragraphs 37, 39, 45 and 47), as well as the remaining sections dealing with failed asylum-seekers (at paragraphs 51, 53 and 56) and S.A.'s *sur place* claim (at paragraphs 62 and 63), it repeatedly referred to the situation facing Tamils in Sri Lanka, including those returning from abroad.

[31] The RPD also squarely came to grips with S.A.'s claim that he would be persecuted based on the fact he had travelled aboard the *MV Ocean Lady* and may therefore be perceived to have the political opinions described above.

[32] The RPD explicitly turned to this issue at paragraph 50 of its decision. After further discussing S.A.'s prior interrogation history, the more general issue of returning Tamils, and the "Togo experience," which it observed "did not generate the kind of publicity that the arrival of the *Sun Sea* and *Ocean Lady* ships did," the RPD specifically addressed the situation faced by returnees who had been passengers on those vessels. On this issue, it concluded that "the Sri Lankan

government would not perceive the claimant to be a member or supporter of the LTTE simply on the basis of his travel on the *Ocean Lady*, given his alleged history in Sri Lanka before coming to Canada.” That history included being released after prior interrogations, being able to obtain security clearance from the army to travel to Colombo, and being able to obtain a passport, pass through security checkpoints and leave Sri Lanka without difficulty. Contrary to S.A.’s assertions, the RPD’s assessment of this point was highly personalized, and not general in nature.

[33] As further discussed in part IV.C of these reasons below, in the course of its assessment the RPD referred to several objective and credible sources of country documentation addressing persons at risk in Sri Lanka and the situation faced by Tamils returning to that country. It then concluded that S.A. does not fit within any of the categories of persons who are considered to be at risk of persecution or harm in Sri Lanka. This assessment covered persons currently within Sri Lanka as well as failed asylum-seekers. Based on its review of that country documentation, the RPD concluded that there was insufficient evidence to suggest that S.A. would be detained after initial screening, should he return to Sri Lanka. This determination was supplemented by its subsequent finding that S.A. had failed to adduce sufficient credible evidence to demonstrate that “the Government of Sri Lanka suspects individuals as having links to the LTTE by virtue of having been smuggled to Canada aboard a ship owned and operated by the LTTE.” S.A. did not identify any such evidence in either his written or his oral submissions to this Court.

[34] Having reviewed the CTR, I am satisfied that these conclusions and findings were not unreasonable, particularly given that the RPD recognized that the country documentation reflects

that Tamils in Sri Lanka continue to suffer from harassment and discrimination, and that those who are suspected of having links to the LTTE continue to face a risk of torture and even death.

[35] As in *Ganeshan*, above, at paragraph 35, the “mixed motives” aspect of S.A.’s claim was speculative and largely unsupported by the evidentiary record (see also *PM v Canada (Minister of Citizenship and Immigration)*, 2013 FC 77, at para 13 [*PM*]; and *B198*, above, at para 44).

[36] S.A. also submits that the RPD erred in its assessment of his *sur place* claim by stating that it is reasonable to expect that, if Sri Lankan officials became aware that he had been aboard the *MV Ocean Lady*, they would logically conclude that Canadian officials had investigated whether or not he had ties to the LTTE. S.A. maintains that the RPD compounded this error by stating that it would be open to him to produce the RPD’s decision to Sri Lankan authorities, and by implying that this would further reduce the possibility that he might be persecuted upon his return.

[37] I am satisfied that this consideration was not material to the RPD’s decision. The statements made by the RPD in this regard were made at the very end of its decision, after it had already rejected the key components of S.A.’s claims on credibility grounds and reasonably concluded for other reasons that he does not have a well-founded fear of persecution if required to return to Sri Lanka. Those other reasons were essentially those discussed in these Reasons for Judgment.

[38] I would simply add in passing that I share Justice Snider’s view that the RPD’s decision could be helpful to S.A. upon his return to Sri Lanka, although there is no evidence in the CTR that

this would necessarily be probative to authorities in that country (*SK*, above, at para 23; *PM*, above, at para 15).

[39] In addition to the foregoing, relying on comments made by the RPD at paragraph 63 of its decision, S.A. asserts that the RPD restricted its consideration of his *sur place* claim to his “membership in a particular social group,” and therefore failed to assess the other grounds upon which he claimed to have had a well-grounded fear of persecution, namely, his race, his religion, his nationality and his imputed political opinions.

[40] I disagree. At paragraph 63, the RPD simply observed that the Minister had referenced a recent case in which this Court overturned the RPD’s finding that the claimant was a refugee *sur place* by virtue of his being a Tamil male who had travelled to Canada aboard the *MV Sun Sea*. The RPD noted that in that case, the Court found that simply being a Tamil male who had travelled to Canada aboard the *MV Sun Sea* was not a sufficient basis upon which to find that the applicant was a member of a particular social group, as contemplated by section 96 of the IRPA. This single paragraph was situated in the middle of the RPD’s assessment of S.A.’s *sur place* claim, which was clearly focused on the well-foundedness of his fear of persecution. This is evident from the absence of any other reference in the decision to the issue of nexus, and from the content of the RPD’s analysis in the other paragraphs in its decision, under the heading *Sur Place*. For example, at paragraph 61, the RPD stated that it “has considered if, in fact, the claimant faces an increased risk of persecution by virtue of having travelled aboard the Sun Sea.” The RPD proceeded in paragraph 62 to quote from a report from the UKBA, which again focused on the risk of persecution (rather than on nexus). In paragraph 64, the RPD then corrected its inadvertent reference to the *MV Sun Sea*

by addressing Sri Lankan authorities' likely interest in the arrival of the *MV Ocean Lady* in Canada. Finally, at paragraph 66, the RPD stated its conclusion that the Sri Lankan government would not perceive S.A. to be a member or supporter of the LTTE simply on the basis of his travel to Canada on the *MV Ocean Lady*, given his alleged history in Sri Lanka before coming to Canada. Importantly, that history included being a Tamil male who was known to Sri Lankan authorities.

[41] In summary, I am satisfied that the RPD did not err by failing to consider S.A.'s Tamil ethnicity and his perceived political opinion together in assessing his *sur place* claim, or by making unreasonable assumptions that were material to its decision to reject that claim.

B. *Did the RPD err by fettering its discretion when it assessed S.A.'s sur place claim?*

[42] S.A. submits that the RPD fettered its analysis of his *sur place* claim by failing to consider the fact that his brother-in-law is the alleged owner of the *MV Sun Sea*. He asserts that the RPD was required to assess this issue even if it may be said to have reasonably rejected his narrative on credibility grounds and concluded that this aspect of his claim was fraudulent. He maintains that the fact that he is related to the alleged owner of the *MV Sun Sea* heightened his risk and increased the possibility of his persecution at the hands of Sri Lankan authorities.

[43] I am satisfied that the RPD did not err in respect of this aspect of S.A.'s claim.

[44] The RPD directly and comprehensively dealt with this issue at paragraphs 25-34 of its decision.

[45] In brief, it began by noting that S.A. raised this issue for the first time in the second amendment to his PIF, which he made on May 16, 2013. In that amendment, he alleged that both the *MV Sun Sea* and the *MV Ocean Lady* are registered in the name of his brother-in-law, and that the army and the Criminal Investigation Department [CID] have visited his home in Sri Lanka to inquire about him and his brother-in-law.

[46] The RPD provided seven separate reasons for rejecting this aspect of S.A.'s claim on credibility grounds. Based on its adverse credibility findings and negative inferences, it rejected the specific allegation that the *MV Ocean Lady* and the *MV Sun Sea* are registered in his brother-in-law's name, and that this has caused the army and the CID to have a greater interest in him. In my view, the assessment conducted and the conclusion reached by the RPD on this issue were not unreasonable. The same is true with respect to the RPD's observation that these allegations were made only for the purpose of enhancing S.A.'s fraudulent claim.

[47] Contrary to S.A.'s assertion, the RPD did not fetter its analysis of his *sur place* claim by failing to mention the allegation that his brother-in-law is the registered owner of the vessels in question when it specifically considered his *sur place* claim. By that point in its assessment, the RPD had already rejected that specific allegation on credibility grounds. It was therefore entirely appropriate for the RPD to have refrained from further discussing this allegation in its analysis.

C. *Did the RPD unreasonably assess the risk S.A. faces if he is required to return to Sri Lanka?*

[48] S.A. submits that the RPD unreasonably and incorrectly concluded that his personal profile does not fall within one of the seven categories of persons identified by the UNHCR as being at risk of persecution or harm if required to return to Sri Lanka. He adds that while the RPD made and relied upon adverse credibility findings or negative inferences in the course of reaching its decision, it ignored or failed to reasonably address aspects of his case in respect of which he was found to be credible.

[49] I disagree.

[50] The RPD observed that the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* [Guidelines], dated July 5, 2010, state that given the cessation of hostilities in Sri Lanka, persons originating from the north of the country are no longer in need of refugee protection under broad refugee criteria or complementary forms of protection, solely on the basis of risk of indiscriminate harm. The Guidelines also state that, “[i]n light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for the presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country.” Nevertheless, the Guidelines identify the following categories of persons as being at risk of persecution or harm if required to return to Sri Lanka:

1. Persons suspected of having links with the LTTE;
2. Journalists and other media professionals;
3. Civil society and human rights activists;

4. Women and children with certain profiles; and
5. Lesbian, gay, bisexual and transgender individuals.

[51] The RPD further noted that the most recent version of the Guidelines, published on December 21, 2012, adds two additional groups of concern, namely:

6. Certain opposition politicians and political activists; and
7. Certain witnesses of human rights violations and victims of human rights violations seeking justice.

[52] In addition, the RPD observed that this more recent version of the Guidelines identified the following six “Risk Profiles” within the first of the above-mentioned categories (persons suspected of having links with the LTTE):

1. Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka;
2. Former LTTE combatants or “cadres”;
3. Former LTTE combatants or “cadres” who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, “computer branch” or media (newspaper and radio);
4. Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;

5. LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE; and
6. Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.

[53] S.A. maintains that the RPD erred by finding that he does not come within the general category of persons suspected of having links with the LTTE, and in particular the “profile” of persons with family links to the LTTE. However, based on the reasonable credibility findings that it made and the evidence in the CTR, it was reasonably open to the RPD to conclude that S.A.’s personal profile did not fit within that category or within any of the other above-noted categories identified by the UNHCR. Those findings included (i) its determination that S.A. “was not suspected of being a member or otherwise affiliated with the LTTE” at the time he left Sri Lanka and that authorities in that country had “no interest in him in this regard” at that time; (ii) its determination that his claimed relationship to the registered owner of the *MV Sun Sea* and the *MV Ocean Lady* was not credible; and (iii) its determination that “no credible evidence has been adduced that the Government of Sri Lanka suspects individuals as having links to the LTTE by virtue of having been smuggled to Canada aboard a ship owned and operated by the LTTE.” As noted at paragraph 33 above, S.A. did not identify any such evidence in either his written or his oral submissions to this Court.

[54] The RPD’s conclusion that “there is little risk that [S.A.] would be persecuted [on the basis of suspected links with the LTTE] should he return to Sri Lanka” is also supported by other country documentation that was cited by the RPD. This includes information discussed in a recent report issued by the UKBA. Among other things, that report states: “The principal focus of the authorities

[in Sri Lanka] continues to be, not Tamils from the north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.” That report also notes: “The records the Sri Lankan authorities keep on persons with some history of arrest and detention have become increasingly sophisticated; their greater accuracy is likely to reduce substantially the risk that a person of no real interest to the authorities would be arrested or detained.”

[55] Having reviewed the CTR, I am satisfied that the findings made by the RPD with respect to the well-foundedness of S.A.’s fears of persecution should he return to Sri Lanka were not unreasonable. In my view, they reasonably reflected the information in the country documentation on this point.

[56] With respect to the positive credibility findings that S.A. alleged were ignored or not reasonably considered by the RPD, none were identified in his written submissions on this Application and his counsel was unable to identify any in response to my specific questioning on this point during the hearing of this Application. With that in mind, and having closely reviewed the RPD’s decision and the CTR, I am satisfied that there were no positive credibility findings that may have had a significant bearing on the conclusions reached by the RPD and that were ignored by the RPD.

[57] Finally, S.A. asserts that the RPD's decision is unreasonable because paragraphs 52 and 65 are incomplete and a reader of the decision is left wondering as to what the RPD intended.

Paragraph 52 states:

[52] Also, in January 2012, the government of Canada and the IOM signed an Assisted Voluntary Returns Agreement in which the IOM would facilitate the voluntary return of Sri Lankans from Africa to Colombo. Canadian officials reported that sixty-six returnees were interviewed at the airport and released without any difficulties. Similar results were found

[58] I am satisfied that the RPD's failure to complete the last sentence in paragraph 52 did not render its decision unreasonable. The words "[s]imilar results were found" clearly indicate that the incomplete sentence would simply have provided additional evidence for the statement made by the RPD regarding returnees being released without difficulties after being interviewed at the airport. The absence of such additional evidence did not render unreasonable any of the conclusions reached by the RPD.

[59] With respect to paragraph 65, the relevant passage of the RPD's decision is as follows:

[65] ... Furthermore, the panel notes that the issue of the claimant's alleged LTEE affiliation was vetted by Sri Lankan authorities prior to his arrival in Canada by virtue of his ability to obtain travel documents in and out of Sri Lanka without difficulty. In addition, the panel finds it is reasonable that, it would be open to the claimant produce the Immigration and Refugee Board's decision to in order to demonstrate that he was not found by Canadian authorities to be a member or associate of the LTTE.

[60] For the reasons discussed at paragraph 37 above, these statements were not material to the conclusion reached by the RPD with respect to the well-foundedness of S.A.'s stated fears.

Therefore, the fact that the second statement was incomplete, by virtue of the omission of the object of the sentence, does not render the RPD's decision unreasonable.

[61] During the oral hearing of this Application, counsel to S.A. submitted that the RPD did not reasonably assess the contents of two of the documents upon which it relied in reaching its decision. Both of those documents are *Responses to Information Requests (RIRs)* that are contained in the CTR and in the Immigration and Refugee Board of Canada's National Documentation Package for Sri Lanka.

[62] The first of those documents, dated 9 February 2011 and coded ZZZ103665.E, was accurately quoted as stating that the UNHCR assists refugees wanting to repatriate to Sri Lanka, including by financially supporting their return, after assessing the situation on the ground in that country. Having closely reviewed that document, I am satisfied that there is nothing in it which might reasonably have led the RPD to conclude that S.A. has a well-founded fear of persecution should he return to Sri Lanka.

[63] The second of those documents, dated 22 August 2011 and coded LKA103815.E, contains information from many different sources. It was cited by the RPD as authority for its statement that "... returning Tamils are subjected to the same screening process [as is applied] for all persons returning to Sri Lanka, regardless of whether they are returning on a voluntary basis or as the result of a failed refugee claim." That particular statement was attributed to an official from the Canadian

High Commission in Sri Lanka. However, other sources referred to in the document suggest that persons who are deported or who are “returned” as a result of a failed asylum process may be treated somewhat differently from others who are returning to that country. A fair reading of those other sources reflects that such persons may be detained for a period of time ranging from a few hours to “months.” A small number of those sources also suggest that such persons may be assaulted or tortured in detention. However, other sources that are cited in the document report that there is no evidence that those who have been returned to Sri Lanka have been mistreated. Particularly given that this document is significantly older than the more recent documentation upon which the RPD relied in reaching its conclusion that S.A. does not have a well-founded fear of persecution if he is returned to Sri Lanka, I am satisfied that it was not unreasonable for the RPD to have failed to explicitly address the above-mentioned information in its decision.

[64] In summary, having regard to the reasons given by the RPD and the contents of the CTR, I am satisfied that the conclusion reached by the RPD falls “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” That conclusion was appropriately transparent, justified and intelligible (*Dunsmuir*, above, at para 47; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65, [2012] 3 SCR 405, at para 3). It was also rationally supported and had a reasonable basis in the CTR (*Alberta Teachers*, above; *Halifax*, above).

[65] Having regard to all of the foregoing, this Application will be dismissed.

[66] At the end of the hearing, the parties declined to propose a question for certification. I agree that no such question arises on the particular facts of this case.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

“Paul S. Crampton”

Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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**REASONS FOR JUDGMENT
AND JUDGMENT:** CRAMPTON

C.J.

DATED: FEBRUARY 13, 2014

APPEARANCES:

Gurpreet Badh

FOR THE APPLICANT

Hill Aharon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Smeets Law Corporation

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT