

Federal Court



Cour fédérale

**Date: 20140409**

**Docket: IMM-8452-12**

**Citation: 2014 FC 344**

**Ottawa, Ontario, April 9, 2014**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**A049**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application by the Minister of Citizenship and Immigration [Applicant] for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD or Board] dated August 3, 2012 [Decision]. The Board accepted the Respondent's claim for refugee protection, having found that he is a Convention refugee *sur place* under section 96 of the Act.

[2] The Respondent arrived in Canada on October 17, 2009 aboard the *MV Ocean Lady*. He made a claim for refugee protection at the port of entry. On March 2, 2010, the Minister of Public Safety and Emergency Preparedness [Minister] filed a *Notice of Intention to Intervene* in the Respondent's refugee protection claim, and the Minister's counsel appeared before the Board to examine the Respondent and make submissions.

[3] The Board found that the Respondent has a well-founded fear of persecution if returned to Sri Lanka by reason of his nationality and his membership in a particular social group comprised of young Tamil males who would be suspected of links to the Liberation Tigers of Tamil Eelam [LTTE] because of their travel to Canada on the *MV Ocean Lady*.

[4] The Applicant requests that the Decision be set aside and the matter be remitted back to another member of the Board for re-determination.

## **BACKGROUND**

[5] The Respondent is a 31-year-old male from the Jaffna region in Sri Lanka. In 1998, he moved to Colombo, allegedly due to problems he faced from the LTTE in the Jaffna region. He has a wife and daughter who remain in Sri Lanka.

[6] In Colombo, the Respondent was self-employed as a van driver. He owned one van, which he purchased in 2004 with funds provided by his father, and sometimes employed other drivers on a temporary, casual basis. In his Personal Information Form [PIF], the Respondent indicated he generated income by driving passengers around Colombo and its suburbs. In his

port of entry interview and in his testimony before the Board, the Respondent stated that he also drove passengers to Jaffna and other areas.

[7] The Respondent alleges that he had problems in Colombo with local police and with the Criminal Investigations Department [CID]. He says the police often stopped him, interrogated him and accused him of being a Tamil Tiger. These events occurred both within Colombo and at army checkpoints on the highway to Jaffna. The Respondent says the LTTE also stopped him at checkpoints along the highway. The LTTE would require a “tax” of 12,000 rupees for the driver and 4,000 rupees from each passenger before they would let him pass.

[8] Before the RPD, the Respondent claimed that in addition to the road stops he was detained by the police overnight in 2002 and for seven days in 2003, and questioned about his connections to the LTTE. There is inconsistent evidence regarding whether he was ever assaulted during these detentions; the Applicant’s PIF states that he was, but he stated in his point of entry interview and his hearing testimony that he had never been assaulted by the police.

[9] The Respondent said in his PIF that in mid-2007, the intelligence authorities started arresting many young Tamil men, accusing them of being LTTE supporters, and that “white vans” were abducting many young Tamil males in Colombo at that time. At his hearing, he said that two of his friends were abducted and murdered in separate incidents in October 2007. He says the abductions were committed by people driving white vans, but he could not identify them. After this, the police visited the house where he lived and questioned him. The owner of the house was arrested.

[10] The Respondent says he feared the police and government troops in Sri Lanka and made a decision to leave. He fled from Colombo to Thailand on November 26, 2007, and remained there until July 17, 2009, when he traveled to Indonesia. He departed Indonesia on the *MV Ocean Lady* and arrived in Canada on October 17, 2009. He made all of these arrangements with the assistance of an agent.

### **DECISION UNDER REVIEW**

[11] The RPD allowed the Respondent's claim for protection under section 96 of the Act, finding that he is a *sur place* Convention refugee. The Board found that the Respondent "has a well-founded fear of persecution for a Convention refugee ground in Sri Lanka by reason of his nationality and membership in a particular social group of young Tamil males who would be suspected of links to the LTTE because of their travel to Canada on the *Ocean Lady*" (Decision at para 6).

[12] The Board raised concerns about the Respondent's credibility with respect to his allegations of past persecution. In particular, the Respondent stated in his PIF that he was assaulted and interrogated by the intelligence officials about the various drivers driving his van, and that the police would take him to a police station and assault and interrogate him about Tamils living in Colombo. However, before the Tribunal he testified that he was never beaten by the police. The Respondent testified that the original PIF had not been properly translated to him. Once it was translated, an amended PIF was submitted to the Board. However, the references to the assaults remained the same.

[13] The Respondent also testified at the hearing that the CID visited his home in Colombo one month before he departed from Sri Lanka, and that this visit was a significant reason why he departed. The RPD questioned him on why he had not included this incident in his PIF, especially since it was a major impetus for him leaving the country. The Respondent replied that he stated in his PIF that he left the country because of problems with the police. The RPD noted PIF amendments that referred to problems with the police and the CID, and accepted the Applicant's explanation as reasonable.

[14] The Respondent also indicated in his PIF that his business involved driving a van in Colombo and its suburbs, but he testified that he also drove to Jaffna and other areas. The Board held that this was a material omission that impacted his credibility. The Board found the Respondent's explanations with respect to this inconsistency to be "inadequate." Nonetheless, the Board concluded that these inconsistencies were "not sufficient to totally impugn his credibility." Further, the Minister's counsel intervening in the proceedings did not raise any issues with respect to the Respondent's credibility.

[15] The RPD found the Applicant's evidence regarding his journey on the *MV Ocean Lady* and his allegations regarding what could happen to him on his return to Sri Lanka to be credible, and since the refugee definition is forward-looking, placed greater weight on these findings than on the negative inferences drawn from the inconsistencies in his evidence regarding his past experiences. The RPD found the Respondent to be "generally a credible and trustworthy witness."

[16] The RPD found that there was no evidence to suggest that, prior to his departure from Sri Lanka, the Respondent was a member of, or would have been considered to have connections with, the LTTE. However, the Respondent's profile changed when he boarded the *MV Ocean Lady*, with the result that the Respondent was deemed to be a Convention refugee *sur place*.

[17] The ship's arrival in Canada, as well as its LTTE connections, was widely publicized internationally. The Board cited expert evidence and an internal Canadian government report stating that a number of individuals on the *MV Ocean Lady* were suspected LTTE members. It also noted media coverage indicating that the RCMP communicated with the Sri Lankan government regarding criminal background checks for passengers.

[18] Although there was some evidence regarding improvements in country conditions for Tamils since the end of the war in May 2009, the RPD noted that the *2010 UNHCR Guidelines* recommended ongoing protection for persons suspected of having links with the LTTE. The Board highlighted evidence of the ongoing prevalence of detention, torture and disappearances in Sri Lanka for those suspected of connections with the LTTE, and of the impunity of state officials. In particular, failed refugee claimants returning to the country are identified at the border by their temporary travel documents, and are subject to prolonged detention and special questioning. The Board noted that contrary evidence, suggesting that failed asylum claimants of Tamil ethnicity returning to Sri Lanka are not singled out for greater questioning or detention, was based upon potentially biased sources such as Sri Lankan government officials. As such, the RPD assigned greater weight to information coming from the U.S. Department of State, Amnesty

International and Human Rights Watch, among others, whom the RPD considered to be internationally recognized as definitive authorities.

[19] The Board held that the Respondent would easily be identified by Sri Lankan authorities as an *MV Ocean Lady* passenger with potential LTTE connections should he be returned to Sri Lanka, and found that the Sri Lankan government has a “clear interest in tracking down and often persecuting persons with LTTE links.” The Board concluded that there was more than a mere possibility that the Respondent would, upon return to Sri Lanka, be subject to detention, interrogation and potential beatings and torture that rise to the level of persecution as a result of his nationality and inclusion in a particular social group.

[20] The Board also held that state protection would not be forthcoming since the state is the agent of persecution in this case. The RPD found that despite well documented abuses such as torture, disappearances and killings, there are no civilian or military courts which have convicted any soldier or police officer involved. It found that there is impunity for those involved in these abuses, and that returning males suspected of links to the Tamil Tigers will therefore be subject to the kinds of atrocities the Respondent fears at the hands of the police and the military.

[21] The Board considered whether an Internal Flight Alternative [IFA] was available and concluded that none existed. The Respondent was at risk of persecution throughout Sri Lanka and could not avail himself of state protection in any area of the country.

[22] Based on this analysis, the RPD found that the Respondent is a Convention refugee under section 96 of the Act. The Board did not consider the Respondent's claim under section 97 of the Act.

## **ISSUES**

[23] The issue in this application is whether the Board committed a reviewable error in finding that the claimant is a Convention refugee *sur place* on the basis of nationality and being a member of a particular social group.

## **STANDARD OF REVIEW**

[24] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[25] In the present application, the parties are in agreement that the issues should be decided on the reasonableness standard. I would note that there is disagreement in the jurisprudence regarding the standard of review that applies regarding the legal meaning of the term "particular

social group” in section 96 of the Act. The contending positions are set out by Justice Gleason in *Canada (Minister of Citizenship and Immigration) v A068*, 2013 FC 1119 at paras 12-17 [A068]. However, given my findings below, it is not necessary to go into this issue. The issues that arise here are mixed questions of fact and law that are reviewable on a standard of reasonableness. (*Dunsmuir*, above, at para 47)

[26] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## STATUTORY PROVISIONS

[27] The following provisions of the Act are applicable in these proceedings:

### **Convention refugee**

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

### **Définition de « réfugié »**

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

## **ARGUMENT**

### **Applicant**

[28] The Applicant argues that the RPD's Decision is neither correct nor reasonable, and should be quashed regardless of the applicable standard of review. The RPD's finding that the Respondent's fear of persecution has a nexus to a Convention ground of refugee protection based on membership in a particular social group or nationality is in error, the Applicant says, and the Court should not read other potential grounds into the RPD's reasons. In particular, an analysis based on "mixed motives" or imputed political opinion is inappropriate because the RPD made no such findings.

[29] Furthermore, the Applicant argues, the Respondent's claim lacks an objective basis. The evidence that was before the RPD did not support the claim that merely being in the proximity of alleged LTTE members would cause the Respondent to be perceived as an LTTE member.

[30] The RPD also failed to reconcile the Respondent's personal circumstances with its finding that he is a refugee, the Applicant argues. For example, he lived in Colombo for 9 years and travelled regularly to Jaffna without any problems.

[31] Finally, the Applicant argues that the RPD's reasons are inadequate.

### ***No Nexus to a Convention Ground***

[32] For a refugee claim to be accepted, a claimant's fear of persecution must have a nexus to one of the five grounds listed in the Convention refugee definition: race, religion, nationality, membership in a particular social group or political opinion: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 53 *et seq.* [*Ward*]. The Applicant argues that no nexus to any of these grounds is established in this case.

#### ***i. MV Ocean Lady Passengers are not a Particular Social Group***

[33] The Applicant says that an association formed by voluntarily choosing to set sail for Canada on an illegal human smuggling ship does not meet the test for a particular social group. Choosing to travel on a particular ship does not engage the defence of human rights or anti-discrimination, and is not an immutable characteristic or one that is fundamental to human dignity, and therefore does not make one a member of a particular social group within the meaning of section 96 of the Act: *Canada (Minister of Citizenship and Immigration) v B380*, 2012 FC 1334 at paras 16-27 [*B380*]; *Canada (Minister of Citizenship and Immigration) v B472*, 2013 FC 151 at paras 26-28 [*B472*]; *Canada (Minister of Citizenship and Immigration) v B451*,

2013 FC 441 at paras 27-37; *Canada (Minister of Citizenship and Immigration) v A011*, 2013 FC 580 at para 40 [A011]; *Canada (Minister of Citizenship and Immigration) v B171, B169, B170*, 2013 FC 741 at paras 10-13 [B171]; see also *B027 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 485 at paras 2, 12.

[34] According to *Ward*, above, at para 70, a particular social group within the meaning of section 96 of the Act is either: (i) a group defined by an innate and unchangeable characteristic; (ii) a group whose members voluntarily associate for reasons fundamental to their human dignity; or (iii) a group defined by a former voluntary association that is now unalterable due to its historical permanence. The Applicant says that none of these categories fit the current circumstance. Travel onboard the *MV Ocean Lady* is not an immutable characteristic such as gender, linguistic background or sexual orientation, it was not fundamental to the Respondent's human dignity, and it has nothing to do with the defence of human rights or anti-discrimination, which is a requirement for the application of the third category.

[35] The Supreme Court in *Ward*, above, expressly rejected the expansive understanding of a particular social group employed by the RPD in this case and found that a paramount consideration for determining whether a person is a member of a particular social group is whether a case raises "the underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative": *Ward*, above, at para 70; *Zefi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 636 at paras 31-41 (FCTD) [*Zefi*]. Voluntarily choosing to set sail for Canada on an illegal human smuggling ship does not engage the defence of human rights or anti-discrimination, the

Applicant argues. This is particularly so where, as here, there is no evidence of a risk of persecution prior to departure. The RPD found that during the time the Respondent lived in Sri Lanka, and when he left in November 2007, there was no evidence to “even suggest” that he would have been considered to have connections with the LTTE. Nor is such a voluntary association fundamental to human dignity. The choice of method of transportation is simply what someone does rather than what someone is: *Zefi*, above, at para 41.

[36] In the Applicant’s view, a finding that those who travel aboard an illegal human smuggling operation constitute a particular social group trivializes the concept. The circumstances of this case are analogous to *Chekhoskiy v Canada (Minister of Citizenship and Immigration)*, 2009 FC 970, where Justice de Montigny held (at para 23) that a building contractors’ group was not a particular social group, and that to find otherwise would be incompatible with the anti-discrimination purpose of the Convention.

[37] The Applicant argues that, contrary to the Applicant’s assertions, the Canadian government did not label the *MV Ocean Lady* an “LTTE ship,” and did not treat its passengers as a particular social group by detaining them or otherwise. The mere fact that an undocumented arrival of many passengers had to be investigated to establish identity, admissibility, and potential public health risks does not provide indicia of a particular social group; similar investigations would be required on any undocumented mass arrival.

[38] In addition, a claimant who fears persecution merely because he or she is believed to have information about a criminal organization does not have a nexus to a Convention ground,

and the RPD's finding of a nexus based on the Applicant "having information about LTTE members on board the Ocean Lady" was unreasonable: *Levano v Canada (Minister of Citizenship and Immigration)*, 2000, 182 FTR 153 at para 8 (FCTD); *Ivakhnenko v Canada (Solicitor General)*, 2004 FC 1249 at paras 65-67 [*Ivakhnenko*]; *Yoli v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1329 at para 27 (FCTD).

ii. No Nexus Based on Nationality

[39] The Applicant argues that the finding of a nexus based on nationality is unfounded, because the documentary evidence does not establish an individualized risk. Simply identifying the Respondent as a Tamil and disjointedly referring to country condition evidence showing that the human rights situation in a country could be problematic does not establish a risk to a given individual: *Canada (Minister of Public Safety and Emergency Preparedness) v Baraniroobasingam*, 2010 FC 92 at para 6; *Canada (Minister of Citizenship and Immigration) v Fouodji*, 2005 FC 1327 at para 20.

iii. The Court Should Not Read In Grounds Not Considered by the RPD

[40] The Applicant notes that this Court has grappled with the issue of whether or not to "read in" a "mixed motives" analysis in other cases involving passengers on the *MV Sun Sea* and *MV Ocean Lady*. The Applicant argues that the Court should not read in a Convention ground that has not been analyzed by the decision-maker.

[41] The Applicant notes several cases in which the Minister's applications for judicial review of successful refugee claims by *MV Sun Sea* or *MV Ocean Lady* passengers have been dismissed,

but argues that each case is either distinguishable or has been superseded by other cases. In *Canada (Minister of Citizenship and Immigration) v A032*, 2013 FC 322 at para 21 [A032], Justice Blanchard found that there was sufficient discussion by the RPD to find a nexus based on political opinion, and a nexus to race could be inferred from the reasons. The Applicant says this case is distinguishable on the facts, because A032 had been arrested and questioned multiple times in Sri Lanka, and charged in court on suspicion of LTTE involvement. There was also an explicit finding that he spent part or all of the voyage in the company of an individual for whom there was an INTERPOL Red Notice. There are no similar findings in this case. In *Canada (Minister of Citizenship and Immigration) v B420*, 2013 FC 321 [B420], Justice Blanchard found that a nexus with ethnicity and political opinion was implicit in the RPD's decision. The Applicant says *B420* is distinguishable because the RPD in that case made a cumulative ethnicity and imputed political opinion nexus finding, whereas no such finding was made in the present case. In *Canada (Minister of Citizenship and Immigration) v B377*, 2013 FC 320 [B377], Justice Blanchard again applied the doctrine of mixed motives, finding that the respondent's fear of persecution was partially based on his Tamil ethnicity. He found that a mixed motives analysis hinging on race and ethnicity was clear and explicit in the RPD's reasons. In *Canada (Minister of Citizenship and Immigration) v B399*, 2013 FC 260 [B399], Justice O'Reilly found that there was a basis in the RPD's decision to suggest that political opinion was an alternative nexus ground. The Applicant says this was based on B399's credible evidence about his experiences in Sri Lanka before he left and the evidence about the treatment of Tamil returnees.

[42] The Applicant says that the hearing dates in the above-noted matters suggest that they were argued and taken under reserve before Justice Harrington's decisions in *B472*, above, and

*Canada (Minister of Citizenship and Immigration) v B323*, 2013 FC 190 [B323] were issued, and before Justice Mosley's decision in *B171*, above. In *B472* and *B323*, Justice Harrington found that those who travelled to Canada on the *MV Sun Sea* did not form a particular social group, following Chief Justice Crampton's analysis in *B380*, above, and refused to "rewrite the reasons" to support a finding based on a combination of section 96 risks. Similarly, in *B171*, Justice Mosley refused to read a mixed motives finding into the RPD's decision. He reviewed only the express finding of a nexus based on membership in a particular social group, and found it to be unreasonable.

[43] The Applicant argues that the Court should follow the latter cases here. Upholding the Decision based on a nexus of imputed political opinion or mixed motives would not be appropriate, because the RPD made no such finding and only the explicit findings of the RPD can be reviewed: *B171*, above, at para 10; *Canada (Minister of Citizenship and Immigration) v B459*, 2013 FC 740 at para 7 (per Mosley J) [B459]; *A011*, above, at para 27. While courts may elaborate upon the reasons, they should not fashion reasons that provide a different basis for the decision than the one given by the Board: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54.

[44] Furthermore, the Applicant says, the RPD's reasons in this case do not support a mixed motives analysis. The only reference by the RPD that could be related to the Respondent's perceived political opinion is the finding that he could face persecution for potentially having information about the LTTE, and "having information is not political opinion": *A011*, above, at para 42; *Ivakhnenko*, above, at paras 65-67; *Yoli*, above, at para 27. Any mixed motives analysis

related to ethnicity or race must also fail, the Applicant argues, because there is no support for a finding that the Respondent is at risk of persecution due to his Tamil background. In fact, the RPD expressly found that but for his voyage on the *MV Ocean Lady*, there was no evidence to suggest that the Applicant's profile as a young Tamil male from Sri Lanka created any risk of persecution: *Ganeshan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 841 at para 35; *B198 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1106 at para 57.

[45] The Applicant also notes that in *PM v Canada (Minister of Citizenship and Immigration)*, 2013 FC 77 [PM] and *SK v Canada (Minister of Citizenship and Immigration)*, 2013 FC 78 [SK], Justice Snider upheld the RPD's conclusion that the country condition evidence of human rights violations in Sri Lanka and the possible questioning and detention of the claimants upon return was insufficient to establish that the authorities would target these particular claimants for persecution.

#### ***Failure to Properly Consider Personal Circumstances***

[46] The Applicant also argues that the RPD failed to consider the Respondent's personal circumstances before finding him to be a refugee, and therefore the Decision is unreasonable because it was not made in accordance with the facts.

[47] Finding that the Respondent was "from Jaffna" was unreasonable given that he moved to Colombo in 1998, and had not lived in Jaffna for over 14 years by the time of departure. The RPD also failed to reconcile its findings with objective evidence that the Respondent has no ties to the LTTE, and with the Respondent's own evidence in interviews with the Canada Border

Services Agency. In these interviews, the Respondent said he does not know or believe that any of the other passengers on the *MV Ocean Lady* were members of the LTTE, and never discussed the LTTE while on board.

[48] The Respondent's own experiences do not support a finding that he would be at risk of serious abuse if the Sri Lankan authorities wanted to question him, the Applicant argues. The RPD did not accept his account of past persecution when he lived in Sri Lanka, even while the civil war was ongoing, and failed to explain how he would now be at risk of serious abuse after the situation in Sri Lanka has improved.

### ***Inadequate Reasons***

[49] The Applicant says that the RPD's reasons in this case were inadequate because: the Board made no reference to the test for finding a particular social group; it relied on articles discussing the *MV Sun Sea* ship even though the Respondent travelled aboard the *MV Ocean Lady*; and the one newspaper article in evidence suggesting that 26 of the *MV Ocean Lady* passengers were LTTE members does not support a sweeping generalization that all passengers would be perceived to be LTTE members. The only relevant similarly-situated evidence would have been evidence pertaining to how a mass marine arrival was treated after returning to Sri Lanka, and no such evidence was before the RPD. The Board discounted the only evidence available regarding the treatment of failed Tamil asylum seekers returning from Canada, the Applicant says, and ignored evidence on the treatment of failed Tamil asylum seekers from the United Kingdom. While the standard is not perfection, in the Applicant's view, the RPD's reasons are unintelligible.

***Lack of an Objective Basis***

[50] The Applicant argues that the evidence before the RPD did not show, on a balance of probabilities, that the Respondent's claim had an objective basis: *Ward*, above, at para 47; *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at paras 119-120, 137 [Chan]. The evidence before the RPD simply does not support a finding that merely being on the same ship as LTTE members means that the Respondent would be perceived as being an LTTE member. Recent country reports on Sri Lanka have rejected this type of sweeping generalization. For example, UNHCR's revised Eligibility Guidelines, which reflect the improved human rights and security situation following the end of the civil war, removed the previous broad group-based recommendation of protection for all Tamils from the North. Merely being a Tamil associated with a particular region is not sufficient to ground a refugee claim: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers, July 5, 2010.

[51] While the documentary evidence does discuss problems for perceived LTTE members, this evidence refers to persons who have closer ties than merely being in the general vicinity of alleged LTTE members, the Applicant says. The various reports before the RPD make no mention that Sri Lankan authorities would perceive an individual to be connected to the LTTE simply because they travelled overseas on the same ship as an alleged LTTE member. Rather, the documentary evidence shows that a claimant may be perceived to be associated with the LTTE if they were: 1) a former LTTE child soldier recruit; or 2) an actual former member of the LTTE. The RPD made an unjustified logical leap from its finding that the Sri Lankan

government believed the *MV Ocean Lady* to be owned by the LTTE to its finding that “the claimant would be stopped, detained, interrogated, tortured and possibly disappeared or even killed since he was on a ship suspected of being owned by and having LTTE members on it” (Decision at paras 20, 36). In fact, the evidence before the RPD was that the Sri Lankan government believed there were two kinds of refugees fleeing: those who are fighters or who had collaborated with the LTTE, and those fleeing for economic reasons.

[52] The RPD is forbidden from giving the benefit of the doubt to a claimant regarding the objective basis for their claim where: 1) the claimant lacks credibility; and 2) it runs against generally known facts: *Chan*, above, at para 142. Here, the Respondent’s claim of past persecution was found to be severely lacking in credibility.

### **Respondent**

[53] The Respondent argues that his claim was properly granted by the RPD after a careful and thorough analysis of the evidence, and the Decision should not be disturbed by the Court. He says the RPD was careful to focus on the Respondent’s *sur place* claim, and, based on the totality of the evidence, determined that his voyage aboard the *MV Ocean Lady*, as a young ethnic Tamil male from Jaffna, would invariably lead to suspicions that he is an LTTE member or supporter: see *Gonsalves v Canada (Attorney General)*, 2011 FC 648 at para 29. Numerous credible and objective sources confirm ongoing acts of persecution against persons fitting that profile. The objective documentary evidence consulted and quoted by the RPD does not merely show a problematic human rights situation; it points to specific targeting and grave human rights abuses directed at Tamils suspected of LTTE affiliation.

[54] In the Respondent's view, the Applicant simply disagrees with the RPD's determination and is asking this Court to reassess and reweigh the evidence without pointing to any unreasonable findings, which is not the role or function of the Court. The Board is a specialized tribunal and both its overall determination and each of its critical findings were well supported by a clear evidentiary basis: *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (FCA) [*Adjei*]; *Salibian v Canada (Minister of Employment and Immigration)* (1990), 11 Imm LR (2d) 165 (FCA); *Rajudeen v Canada (Minister of Employment and Immigration)* (1984), 5 NR 129 (FCA); *Ward*, above.

[55] The Respondent argues that the RPD's reasons must be read as a whole, and that a microscopic analysis is unwarranted. Read as a whole, the reasons reflect justification, transparency and intelligibility, and the outcome is defensible on the facts and the law: *Khosa*, above, at paras 45-46, 59; *Dunsmuir*, above. The RPD was careful to consult a variety of objective evidence, and carefully applied it to the Respondent's claim and particular circumstances: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425.

[56] The Respondent says the RPD was alert and aware of the basis of his refugee claim; namely, his race, imputed political opinion, and membership in a particular social group. The Respondent based his claim on his ethnicity or race, as a Tamil, as well as his gender, age and residence as a younger male from Jaffna. These same characteristics form the basis of his membership in a particular social group.

[57] The Respondent argues that the RPD reasonably found that this profile, combined with his travel to Canada aboard the *MV Ocean Lady* – a ship labelled as LTTE owned and operated and as carrying LTTE members, cadres and sympathizers – makes him a refugee *sur place*. There was a plethora of credible, reliable and objective evidence before the RPD that the *MV Ocean Lady* will go down in history as an LTTE-owned and operated ship, insidiously carrying LTTE cadres to Canada: see *Canada (Minister of Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94.

[58] The RPD's *sur place* analysis was not disconnected from the Respondent's ethnicity and imputed political opinion as the Applicant suggests. Rather, the Board included his ethnicity and perceived political opinion within its *sur place* analysis and overall determination. The RPD's reasons refer repeatedly to the issue of Tamil ethnicity and imputed or perceived political opinion. The Board referred to the UNHCR Eligibility Guidelines to assess whether the Respondent fit within one of the five enumerated high-risk groups, and found that he fit the profile of "Tamils suspected of LTTE affiliation." The Applicant is simply off-base in asking the Court to accept that the RPD *declined* to conduct an analysis of the Respondent's ethnicity or perceived political opinion, the Respondent argues. The RPD was careful to focus on the mixed motives of the agents of persecution: based on his Tamil ethnicity plus his presence aboard an LTTE-owned and operated ship, the Sri Lankan authorities would surely suspect him of LTTE affiliation: *B377*, above; *Canada (Minister of Citizenship and Immigration) v B344*, 2013 FC 447 [B344]; *B420*, above; *A032*, above; *B399*, above. The Respondent quotes in particular Justice Blanchard's analysis in *B377*, above, at paras 21-23:

[21] It is clear that the RPD turned its mind to the Respondent's ethnicity in concluding as it did. It is also clear that the RPD was satisfied that the Respondent's alleged fear of persecution was based at least in part on his Tamil ethnicity or race. The jurisprudence of this Court has accepted the proposition that where a fear of persecution is based on more than one motive, and where there is evidence to support a motive based on a Convention ground, nexus might be established. See: *Gonsalves v. Canada (A.G.)*, 2011 FC 648 at paragraph 29.

[22] The circumstances here fall squarely within the circumstances underlying the decision in *Veeravagu v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 468 (C.A.) (QL) in which Justice Hugessen implicitly dealt with the Convention nexus when he wrote:

In our view, it is obvious beyond any need of demonstration that if a person faces "real and oppressive" risks, including a risk of "substantial violence", from state sponsored sources (the IPKF) because he or she belongs to a group one of whose defining characteristics is race, (young Tamil males), it is simply impossible to say that such person does not have an objective fear of persecution for reasons of race.

See also *Nara v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 364 at paragraph 38

[23] In its comprehensive reasons, the RPD dealt with the issue of race and found that the evidence established a "pattern of discrimination by government authorities against Tamils". It also found that Tamil ethnicity is an "aggravating factor" in addressing the treatment the Respondent may receive upon his return. The RPD concluded that a nexus to a Convention ground was established, "in which the claimant's Tamil race" along with other factors are combined elements of the grounds on which the Respondent may face persecution in Sri Lanka. In my view, this finding, reasonably open to the RPD on the record before it, satisfies the required nexus to a Convention ground, namely race.

[59] The Respondent argues that the facts in *B377* are very similar to the present case, and the same reasoning applies. Travel aboard the *MV Ocean Lady*, on its own, is insufficient to support

a finding of particular social group, and the RPD was quite conscious of this. However, the Board was also alert to the issues of the Respondent's Tamil ethnicity and how he would be perceived by the Sri Lankan authorities in terms of his political opinion, and the danger to his life by virtue of these factors *plus* his voyage aboard the *MV Ocean Lady*.

[60] The Respondent argues that it is a critical premise in refugee determination law in Canada that a decision-maker can look to the circumstances of those *similarly-situated* to the claimant. He says that in assessing his claim, the RPD analyzed the evidence in a manner commensurate with the direction of this Court and the Federal Court of Appeal that:

In the context of claims derived from situations of generalized oppression, the issue is not whether the claimant is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status...

*Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at para 14 [*Fi*], citing *Salibian*, above.

Unlike under section 97 of the Act:

[T]here is no requirement under section 96 of IRPA that the applicant show that his fear of persecution is 'personalized' if he can otherwise demonstrate that it is 'felt by a group within which he is associated, or even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention Refugee]

*Fi*, above, at para 16, citing *Salibian*, above, at 258.

[61] The RPD's finding that there would be more than a mere possibility, or a serious risk that the Respondent would be subjected to persecution if he returned to Sri Lanka was well supported by reliable objective evidence. The RPD carefully drew a distinction between the evidence

related to the Respondent's past experiences in Sri Lanka and his *sur place* claim as an *MV Ocean Lady* migrant. The Respondent concedes that had his claim been based only on his past experiences in Sri Lanka, it would have been rejected by the RPD, since it found that his claims of past persecution lacked credibility. However, his travel to Canada aboard the *MV Ocean Lady* changes the assessment. The Respondent's ethnicity combined with the perception or suspicion of his political views or affiliation based on his travel aboard the *MV Ocean Lady* makes him a refugee *sur place*. The refugee determination is forward-looking: what matters is not whether the Respondent has been suspected of LTTE affiliation in the past, but whether he will be suspected of such affiliation or having information about LTTE members on board the *MV Ocean Lady* in the future if returned to Sri Lanka: *Adjei*, above.

[62] The Respondent argues that the RPD paid close attention to a critical distinction: it was not the fact of his "voluntary" boarding of the *MV Ocean Lady* that raised the *sur place* claim. Rather, it was the subsequent identification or labelling of this ship as being LTTE-owned and operated, with LTTE cadres and supporters on board. There was nothing about the Respondent's "voluntary" actions that created this image and definition of the ship. It was applied by both domestic and international governments (including the government of Sri Lanka), media and purported experts. While the Respondent voluntarily walked onto the *MV Ocean Lady*, he played no role in labelling it an LTTE ship, or in labelling himself an LTTE member or supporter travelling on board. On the other hand, the Applicant played a prominent role in this labelling.

[63] The Respondent argues that the historical permanence of the *MV Ocean Lady*'s definition as an LTTE ship is unalterable, as is the Respondent's presence aboard it. As such, the

Respondent was properly found to be included in the third category of “particular social group” as enunciated in *Ward*, above. As a result of the now unalterable perception of what the *MV Ocean Lady* represents, the Respondent’s arrival on that ship amounts to much more than being “in the general vicinity of an alleged LTTE member,” he argues. A wealth of recent, credible and reliable objective evidence shows that the mere suspicion of involvement with the LTTE, or even having a family member suspected of affiliation, can lead to arbitrary arrest, detention and interrogation. The evidence therefore supports the RPD’s findings.

## **ANALYSIS**

[64] This is yet another judicial review application in the long series of cases involving refugee claims made by passengers who arrived in Canada on one of two ships bearing Tamil asylum-seekers in late 2009 and mid-2010. The Respondent in this case was a passenger on the *MV Ocean Lady*.

[65] In the recent case of *A068*, above, Justice Gleason set out a summary of the jurisprudence that has accumulated around the many cases that have come before the Court involving passengers on the *MV Ocean Lady* and the *MV Sun Sea*. The results have not been the same for all such passengers, and this is because the Court has had to deal with different fact situations as well as different legal bases used by the RPD in reaching its conclusions on each claimant. It is important to examine the facts and the reasons in the RPD’s decision in each case.

[66] In the present case, the essential basis for the Decision is set out by the RPD in paragraphs 6 and 38 of its reasons:

[6] The claimant is a Convention refugee, in that he has a well-founded fear of persecution for a Convention refugee ground in Sri Lanka by reason of his nationality and membership in a particular social group of young Tamil males who would be suspected of links to the LTTE because of their travel to Canada on the *Ocean Lady*.

[...]

[38] The claimant's nexus to a Convention ground changed from the particular social group of "young Tamil males from Sri Lanka *not* suspected of being a LTTE member or supporter" to "a young Tamil male from Jaffna suspected of being a LTTE member or having information about LTTE members on board the *Ocean Lady*." Based on the forgoing analysis, I thus find he would face more than a mere possibility of persecution in Sri Lanka.

[67] Taken together, it seems clear that the Respondent was granted refugee status because he was:

- a. A young Tamil male who, if returned to Sri Lanka, would be suspected of being an LTTE member or having links to the LTTE; or
- b. A young Tamil male having information about LTTE members on board the *MV Ocean Lady*.

[68] The Applicant has based much of its argument on the proposition that "An association formed by voluntarily choosing to set sail for Canada on an illegal human smuggling ship does not meet the test for a particular social group set out in *Ward*." The Respondent has countered with the argument that *MV Ocean Lady* passengers do form a social group within the reasoning

of *Ward*, above, because “The historical permanence of the *Ocean Lady*’s definition as an LTTE ship is unalterable . . . .” In other words, as a result of the actions of various parties, including the government of Canada, the *MV Ocean Lady* was labelled an LTTE owned and operated ship with LTTE cadres on board, so that the Respondent “may very well be suspected and/or perceived to be an actual LTTE member.”

[69] In my own view, on the facts of the present case, there is no need to debate and decide the fraught issue of whether the Respondent’s presence on the *MV Ocean Lady* places him in a “social group” for purposes of section 96 of the Act. My reading of the Decision as a whole is that the Respondent was granted *sur place* refugee protection because, in the opinion of the RPD, if he is returned to Sri Lanka, he will be perceived as a young Tamil male suspected of being an LTTE member and, as such, he will face detention and persecutory treatment at the hands of the authorities. As the RPD makes clear in its reasons, the fact of the Respondent’s arriving in Canada on the *MV Ocean Lady* was the catalyst that changed his profile from being a “young Tamil male” to “a young Tamil male from Jaffna suspected of being a LTTE member or having information about LTTE members on board the *Ocean Lady*.” The qualities that put the Respondent at risk are that he is a young Tamil male from Jaffna and his perceived connection to the LTTE. In terms of section 96 of the Act, this could mean that his fear is based upon membership in a particular social group (young Tamil male from Jaffna with connections to the LTTE) or an amalgam of race, nationality and political opinion. However we legally characterize the basis for the Respondent’s fear, we know that the basis for the RPD’s positive *sur place* finding was that the Respondent will face persecution because he will be perceived as a young Tamil male from Jaffna with connections to the LTTE.

[70] As the Applicant points out, Chief Justice Crampton in *B380*, above, made it clear that simply coming together to seek refugee protection does not constitute a social group for the purposes of section 96 of the Act:

[24] To come within the scope of a particular social group contemplated by section 96, there must be something about a group which is related to discrimination or human rights. That something can include associating for reasons so fundamental to their dignity that they should not be required to forsake or alter that association. However, that something must be more than simply coming together to seek refugee protection. In addition, that something should relate to what the members are, in an immutable or fundamental way, as opposed to what they do (*Ward*, above, at paras 65, 66 and 69-70; *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, at paras 83-86 [*Chan*] (per LaForest dissenting on an issue not considered by the majority)).

[71] In the present case, however, the claim was not based upon a group coming together and seeking refugee protection in Canada aboard the *MV Ocean Lady*.

[72] It is important to identify what the RPD meant by the “particular social group” in this case. A reading of the Decision as a whole makes it clear that by “social group” the RPD meant:

- a. Young Tamil males from Jaffna who are:
- b. Suspected of being a LTTE member or having links to the LTTE; or
- c. Suspected of having information about LTTE members on board the *MV Ocean Lady*.

[73] The significant point about this social group is that it is made up of people who share race (or ethnicity) and who are suspected of having a political opinion by reason of membership in or affiliation with the LTTE. So this “social group” is not something separate from other section 96 grounds; it is composed of people with an ethnic and a political reason to fear persecution. A reading of the Decision as a whole shows that the RPD is concerned about the fact that the “government of Sri Lanka has shown itself to have a clear interest in tracking down and persecuting persons with LTTE links.” Para 25 of the Decision of the Board says:

[25] Under these circumstances, I find that if the claimant were to return to Sri Lanka, he would be immediately detained for some amount of time so that the Sri Lankan government can ascertain whether he is a LTTE member, whether he has organized for the Tamil Tigers abroad, whether he possesses LTTE intelligence since he apparently travelled with LTTE members on the ship, whether he participated in the trafficking of weapons and ammunition, and so forth.

[74] The RPD follows the *UNHCR Guidelines* as regards persons suspected of having links with the LTTE:

[27] The UNHCR advises that all asylum claims should be considered on their individual merits and further, that some individuals with certain profiles require a particularly careful examination of the possible risks they may face. The UNHCR Guidelines, unchanged since their issuance two years ago in 2010, specifically recommend ongoing protection for those persons with the following profiles: **persons suspected of having links with the LTTE** (emphasis added), journalists and other media professionals, civil society and human rights activists, women and children with certain profiles, and lesbian, gay, bisexual and transgender individuals. As I have found that this claimant would be suspected of having links with the LTTE on return to Sri Lanka, I have paid particular attention to the risks he might face.

[Emphasis added by the RPD]

[75] The Board's conclusions on nexus are found at paras 37 and 38:

[37] Minister's counsel's reading of the documents in fact concurs with my own in one key area. He stated in his submissions that if someone is suspected of LTTE membership or connections, such a person would be at risk of harm in Sri Lanka. In addressing the issue of whether this is a sur place claim, Minister's counsel emphasized that there is no evidence that the claimant's name was released in the media in Sri Lanka. That information alone is insufficient to establish that this claim is not a sur place claim. This argument fails to recognize the basis of the claimant's sur place claim, that is, that his profile changed after boarding the *Ocean Lady*. In face of the body of evidence that I had before me, the evidence put forth by the Minister does not impact my finding that this claimant will be perceived as having LTTE links on return to Sri Lanka.

[38] The claimant's nexus to a Convention ground changed from the particular social group of "young Tamil males from Sri Lanka *not* suspected of being a LTTE member or supporter" to "a young Tamil male from Jaffna suspected of being a LTTE member or having information about LTTE members on board the *Ocean Lady*." Based on the forgoing analysis, I thus find he would face more than a mere possibility of persecution in Sri Lanka.

[76] The jurisprudence of the Court has warned against the dangers of "reading in" alternate racial and political opinion grounds for a decision. See, for example, *B472*, above and *B323*, above. However, there have also been situations where the Court has been able to find, on the facts and based on the RPD's analysis, a nexus with ethnicity and political opinion. See, for example, *A032*, *B420*, and *B377*, all above.

[77] In the present case, I find that no reading-in is required. I also find that ethnicity and political opinion are not an alternative "mixed-motive" basis for the Decision. As the Decision makes clear, ethnicity and political opinion are *the* ground for the Decision. The RPD uses the term "particular social group," but the only group it is referring to is made up of ethnic Tamils

with perceived connections to the LTTE. This is not a group that is defined by its presence on the *MV Ocean Lady*. Presence on the *MV Ocean Lady* is, in this case, what creates the perception of an LTTE connection in the same way that, for example, engaging in a particular activity or being present in a particular location in Sri Lanka might give rise to a perceived LTTE connection, and lead the authorities to track someone down and persecute them.

[78] The case law on these issues was set out by Justice Gleason in A068, above.

[79] On facts very similar to those before me in the present case, Justice Gleason found as follows in A068, above:

[27] I do not find it necessary to address the “particular social group” issue (or the standard of review that applies to the Board’s determination regarding the applicant’s belonging to a “particular social group”) because I have determined that the Board’s decision should be maintained on the basis of an analysis similar to that applied by my colleagues Justices O’Reilly, Blanchard, Noël and de Montigny in *B399*, *B420*, *A032*, *B377*, *B344* and *B272*.

[28] In focusing on whether the Board erred in premising its decision on the risk the claimant would face due to his background and the belief of the Sri Lankan authorities that he might be an LTTE supporter (as opposed to consideration of what the “particular social group” ground encompasses as a matter of law), the standard of review to be applied is reasonableness as the issue is one of mixed fact and law as opposed to a pure legal issue (see e.g. *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190, *B420* at para 13; *A032* at para 14; *B377* at para 8). In other words, what is at issue is not what the grounds of “nationality”, “race” or “political opinion” may mean under the *Refugee Convention*, but, rather, whether the Board’s explicit or implicit finding of a nexus to these grounds on the facts of this case should be disturbed. This question requires application of the deferential reasonableness standard of review.

[29] In the decision in this case, as in *B399*, *B420*, *A032*, *B377*, and *B344*, there are several places in the RPD’s decision where the

Board comments on the risk that the claimant would face by reason of being a young Tamil male from the north of Sri Lanka who would be perceived by the Sri Lankan authorities as being an LTTE member or sympathizer (and as having information about the LTTE) due to his background and presence on the *M/V Ocean Lady*.

[30] For example, in the determination section of the reasons, the RPD wrote as follows:

The claimant is a Convention refugee, in that he has a well-founded fear of persecution for a Convention refugee ground in Sri Lanka by reason of his nationality and membership in a particular social group of young Tamil males who would be suspected of links to the LTTE because of their travel to Canada on the *Ocean Lady*.

[31] At several other points in the decision, the RPD commented on the risk of torture the claimant might well face upon his return to Sri Lanka by reason of the fact that the authorities would perceive him as having links to the LTTE.

...

[32] Although the Board does not use the words “political opinion” or “perceived political opinion” in the foregoing passages, it clearly delineates that the risk the claimant would face is tied in part to the fact that the Sri Lankan authorities would perceive he had links to the LTTE.

[33] In *B420*, *A032*, and *B377*, Justice Blanchard held that such reasoning is sufficient to establish a nexus to the protected ground of political opinion; he noted as follows at para 21 of *B420*:

The RPD’s findings are not as clear as they could have been and in some cases arguably deficient. For instance, the RPD could not rely upon imputed knowledge of LTTE activities to support its finding of imputed political opinion. I am nevertheless satisfied that the evidence referred to by the Tribunal in its reasons supports a finding that the Respondent, as a young, Tamil male from northern Sri Lanka, has a well-founded fear of persecution by reasons of his race and his imputed political opinion by reason of his perceived association with the LTTE. I am satisfied that the RPD’s conclusion is reasonable.

[34] Justices de Montigny and O'Reilly reached a similar conclusion in *B272* and *B399*.

[35] Although the Board in the decisions reviewed by Justices Blanchard, de Montigny and O'Reilly explicitly used the words "perceived political opinion" as part of the basis for the finding that there was a nexus to a ground in the *Refugee Convention*, this express enunciation of perceived political opinion appears to have been absent from the Board decision in *B344*, where Justice Noël upheld the decision based on a so-called "mixed motives" analysis. He focused in particular on the connection to the claimant's Tamil ethnicity, which when coupled with the other factors, he found led to a nexus to the protected ground of "race". He concluded that the claimant's ethnicity was a key factor, along with others, which led to his being at risk of persecution and, therefore, that there was a sufficient nexus to a ground in the *Refugee Convention* to warrant protection under section 96 of the IRPA. He held in this regard that a narrow interpretation of "mixed motive" contravenes the spirit of the *Refugee Convention*, stating as follows at paras 37 and 45:

... Section 96 of the IRPA has one objective which is to prevent people from being subjected to persecution as long as it is linked to a Convention ground. If one of the motivations of the agent of persecution is race but only in combination with another factor, how could that not be sufficient to meet the requirements of section 96 of the IRPA? After all, section 96 of the IRPA as written, is not to be interpreted in a narrow restrictive fashion: its purpose, as outlined, is to address fear of persecution and to protect any person who suffers from persecution based on race, religion, nationality, membership in a particular social group or political opinion. Moreover, section 3(2)(d) of the IRPA clearly states that one of the main purposes of Canada's refugee system is to "offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment." Section 96 of the IRPA needs to be interpreted in light of this objective.

...

...the Respondent's Tamil ethnicity was a prime contributing factor to the possibility of risk of persecution upon arrival in Sri Lanka. When considered individually, the motivations, which are based on the Respondent's Tamil ethnicity as well as his status as a former passenger on the *MV Sun Sea*, which is perceived by the government as a LTTE-driven operation, were not sufficient to establish a nexus to the Convention ground of race on their own, however, when taken together they cumulatively established a serious possibility of risk of persecution upon return. Without one of the contributing factors, the Convention ground would not be satisfactorily established but taken together, these motivations form the basis of the ground of race. Therefore, the nexus to race was essential to the RPD's conclusion that the risk of persecution upon return was a serious scenario to be envisaged.

[36] I find the reasoning of Justices de Montigny, O'Reilly, Blanchard and Noël to be persuasive and believe that the Board in this case should be viewed as having tied its nexus finding to race or nationality and perceived political opinion. In this regard, it must be recalled that under the reasonableness standard of review, reasons need not be perfect or follow any particular form as long as they allow the parties and the reviewing court to understand why a decision was made (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708). Here, as the above quotations demonstrate, it is clear that it was the combination of the claimant's race or nationality and perceived political opinion, acquired as a result of his background and presence on the *M/V Ocean Lady*, that led the Board to find him to be a Convention refugee.

[80] In the present case before me, I do not see any indication in the reasons to support the Applicant's contention that the RPD found that "the Respondent's travel to Canada on a particular ship forms a social group that gives rise to a nexus to a Convention ground for refugee protection." I certainly agree with Justice Harrington in *A011*, above, that having information does not constitute a political opinion, so that the RPD's alternative finding that the Respondent's "having information about LTTE members on board the *Ocean Lady*" does not

suffice for section 96 protection even in conjunction with Tamil ethnicity. However, I see no reason to exclude “young Tamil males from Jaffna suspected of being a LTTE member . . . .” As Justice Blanchard concluded in *B377*, above, at para 22, I find that the current case falls squarely within the circumstances contemplated by the Court of Appeal in *Veeravagu v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 468 (CA) (QL), where Justice Hugessen wrote for the unanimous Court:

In our view, it is obvious beyond any need of demonstration that if a person faces “real and oppressive” risks, including a risk of “substantial violence”, from state sponsored sources (the IPKF) because he or she belongs to a group one of whose defining characteristics is race, (young Tamil males), it is simply impossible to say that such person does not have an objective fear of persecution for reasons of race.

In addition, a finding of a nexus based on perceived political opinion seems fully justified and is apparent in the RPD’s reasons.

[81] Whether this issue is assessed on the basis of correctness or reasonableness, I can find no reviewable error by the RPD.

[82] In my view, the real issue in the present application is whether there was sufficient objective evidence to support the Board’s factual findings of risk to the Respondent. In this regard, I find that the Decision is intelligible, justifiable and transparent and falls within the range posited in para 47 of *Dunsmuir*, above.

[83] Counsel agree that there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"James Russell"

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Judge

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

**DOCKET:** IMM-8452-12

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
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**APPEARANCES:**

Ada Mok and Nimanthika Kaneira FOR THE APPLICANT

Robert Israel Blanshay FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE APPLICANT  
Deputy Attorney General of  
Canada  
Toronto, Ontario

Blanshay & Lewis FOR THE RESPONDENT  
Barristers and Solicitors  
Toronto, Ontario