

Federal Court



Cour fédérale

**Date: 20180427**

**Docket: IMM-4324-17**

**Citation: 2018 FC 458**

**Toronto, Ontario, April 27, 2018**

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

**BETWEEN:**

**PRABAKARAN THEVARAJAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] Prabakaran Thevarajah challenges the August 9, 2017 refusal [Decision] of the Refugee Protection Division [RPD] of his claim under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. At the conclusion of the hearing of Mr. Thevarajah's application for judicial review, I advised the parties that I was inclined to grant his application, based on their written and oral submissions. However, I undertook to re-review the materials

before finally deciding the matter, given the Respondent's counsel's very able submissions, and the fact that the RPD's credibility findings — one of the bases for Mr. Thevarajah's challenge — attract great deference.

[2] Having now had that opportunity to further consider the matter, I confirm that the Decision must be set aside and returned to the RPD for redetermination by another panel. My reasons for this conclusion will be confined to a brief review of the significant deficiencies which render the Decision unreasonable, as this application raises no issues of complexity or general importance.

## II. Analysis

[3] In this case, the RPD drew a negative credibility finding against Mr. Thevarajah as a result of perceived inconsistencies between his oral testimony, Basis of Claim [BOC] form, and an earlier asylum claim he made in the United States [US]. In short, Mr. Thevarajah's evidence was that he helped one of his relatives, a man named Krishna, who wished to move from Jaffna to Colombo, by finding him a house in Kotahena, a suburb of Colombo.

[4] At the hearing, the RPD asked Mr. Thevarajah the following question: "Okay. Okay, I am just trying to understand why you said in paragraph 7 of your basis of claim that you helped Krishna move from Jaffna to Colombo?" Mr. Thevarajah replied, "No, no, I did not help him to come from Jaffna to Colombo, but within Colombo to move from Wellawatta to Kotahena." The RPD found answer this to be inconsistent with the information in Mr. Thevarajah's BOC and

drew a negative credibility finding against him. It also determined that Mr. Thevarajah's US asylum claim portrayed a "third version of these events".

[5] I reproduce here the relevant extract of Mr. Thevarajah's BOC:

Most of my father's relatives have been living in the northern part of Sri Lanka. One of them is named Krishna. After I was married, we became friends. He asked me to help him find accommodation for him and some of his family since living in Jaffna was dangerous. I found a house for them in Kotahena. I also helped them move in.

[6] In the Decision, the RPD provided the following excerpt from Mr. Thevarajah's US asylum claim:

Most of my father's relatives have been [sic] living in the northern part of Sri Lanka. One of them is named Krishna. After I was married, we became friends. One day he asked me to give accommodations for one of his relatives to stay in Colombo, since living in Jaffna was dangerous.

I found a house for them in Kotahena, Colombo. I also helped them move in.

[Spelling as in the RPD's Decision]

[7] The RPD's negative credibility findings are reviewable on a reasonableness standard (*Selvarasu v Canada (Citizenship and Immigration)*, 2015 FC 849 at para 29). Here, I find that the RPD's analysis was not reasonable: the above excerpts are in fact consistent with one another, and nowhere in them does it state that Mr. Thevarajah helped Krishna or his family move from Jaffna to Colombo. Rather, Mr. Thevarajah was consistent in his account that he helped these family members find a house in Colombo.

[8] Further, the notes taken by a Canada Border Services Agency officer in Fort Erie upon Mr. Thevarajah's entry into Canada, which are included in the Certified Tribunal Record (but not cited by the RPD) are also consistent with Mr. Thevarajah's account in this regard. These notes reflect that, in response to a question about why Mr. Thevarajah feared returning to Sri Lanka, he replied, "The police and the army had arrested me three times. A man named Krishnan [sic] who attended my wedding is a distant relative and a friend of mine. Because he and his family had problems and they lived in Jaffna, they moved to Kotehana. Because he is Tamil, he had difficulty finding a house and I helped him find a house."

[9] The RPD's unreasonable findings on this point, which reflect a misapprehension of the evidence before it, taint the entire Decision. This is because Krishna was central to Mr. Thevarajah's claim (he alleged that Krishna was perceived to be connected to the Liberation Tigers of Tamil Eelam [LTTE], which led the police to arrest and question Mr. Thevarajah).

[10] The RPD also found that Mr. Thevarajah's credibility was undermined as a result of his return to Sri Lanka in 2015 after six months of working on a ship. It concluded that, had Mr. Thevarajah genuinely feared persecution, he would not have "reavailed" himself to Sri Lanka. This finding too is unreasonable in light of Mr. Thevarajah's evidence that the captain had taken his passport (which contained a valid US visa). Mr. Thevarajah was therefore not at liberty to simply "jump ship". The RPD also incorrectly stated that Mr. Thevarajah went to live illegally in the US in 2015 where he was at risk of being deported, when in fact Mr. Thevarajah had a valid US visa.

[11] Finally, the RPD did not meaningfully address the risk Mr. Thevarajah would face in Sri Lanka as a failed refugee claimant, which was a key aspect of his profile that did not depend on his credibility (*Shanmugarajah v Canada (Minister of Citizenship and Immigration)*, 2014 FC 987 at para 49 [*Shanmugarajah*]). Rather, the RPD focused on a 2012 United Nations High Commissioner for Refugees document, which suggested that a serious possibility of persecution for young Tamil males only arose if they or a close relation had been actively and formally involved in the LTTE. As Justice Brown found in *Shanmugarajah*, the RPD has a duty to consider whether there is a serious possibility of persecution of the applicant specifically as a failed refugee returnee (see also, by analogy, *Vilvarajah v Canada (Citizenship and Immigration)*, 2018 FC 349). The RPD failed to do so in this case.

### III. Conclusion

[12] For the reasons set out above, the Decision will be set aside and returned to a different panel of the RPD for redetermination. No questions for certification were argued and none arise.

**JUDGMENT in IMM-4324-17**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is granted.
2. The Decision is set aside, and the matter is returned for redetermination by a different panel of the RPD.
3. No questions are certified.

"Alan S. Diner"

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Judge

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

**DOCKET:** IMM-4324-17

**STYLE OF CAUSE:** PRABAKARAN THEVARAJAH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 23, 2018

**JUDGMENT AND REASONS:** DINER J.

**DATED:** APRIL 27, 2018

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