

Federal Court



Cour fédérale

**Date: 20190408**

**Docket: IMM-3275-18**

**Citation: 2019 FC 430**

**Ottawa, Ontario, April 8, 2019**

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

**BETWEEN:**

**GAMINI KEERTHIRATNE  
KULASURIYA ARACHEHIG  
(a.k.a. GAMINI KEERTHIRATNE  
KULARIYA ARACHCHIGE)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Gamini Keerthiratne Kulasuriya Arachehig, is a 58-year-old citizen of Sri Lanka who arrived in Canada in November 2012. Four days after his arrival, he claimed refugee protection. In a decision dated June 15, 2018, the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] determined that he was neither a Convention refugee

under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], nor a person in need of protection under subsection 97(1) of the *IRPA*.

[2] Because the Applicant made his claim for protection in Canada before December 15, 2012, when the Refugee Appeal Division [RAD] of the IRB became operational, he is a “legacy” claimant and does not have access to the RAD. Consequently, he has applied under subsection 72(1) of the *IRPA* for judicial review of the RPD’s decision. He asks the Court to set aside the RPD’s decision and return the matter for redetermination by another member of the RPD.

I. Background

[3] The Applicant fears for his life and safety in Sri Lanka. He fears that violence will be inflicted on him at the hands of a powerful politician named Mervyn Silva and his thugs including Mervyn Silva’s son, Malaka Silva. He also fears the Sri Lankan police who have been influenced by Mervyn Silva to come after him.

[4] The Applicant alleges that his wife was abducted and murdered by Mervyn and Duminda Silva in August of 2003. Before her death, the Applicant’s wife was active in politics and supported the United National Party [UNP]. The Applicant claims he has been a supporter and member of the UNP since 1999.

[5] The Applicant says he and his brother were taken into custody by the Sri Lankan army in February 2003 and detained for a week as they were accused of supporting the Liberation Tigers

of Tamil Eelam. The Applicant remained in Sri Lanka until August 2004 when an agent arranged for him to go to the United States to apply for asylum. His asylum claim was rejected in October 2010 and he returned to Sri Lanka.

[6] From March 2011 to early August 2012, the Applicant worked as a manager of a fish store. Mervyn Silva's thugs were collecting money by force from all the stores at the fish market, but the Applicant refused to pay them. On August 8, 2012, the Applicant was arrested for slandering the name of Mervyn Silva, held for five days, beaten, and told if he continued to go against Mervyn Silva his life would be in danger. The Applicant's mother paid a bribe to get him out of jail, though the police alleged that he had escaped from custody.

[7] After he was released from jail, the Applicant went into hiding. He was advised by a lawyer that his best option would be to leave the country. An agent arranged safe passage for the Applicant out of Sri Lanka and he departed on November 23, 2012. The Applicant claims the police and Malaka Silva and thugs continued to search for him after he left Sri Lanka.

[8] The Applicant says the police went to his home in Sri Lanka in mid-2013 looking for him. They spoke with his mother and said they wanted to arrest the Applicant. In December 2013, thugs associated with Mervyn and Malaka Silva went to the Applicant's home looking for him. There were no further incidents until September 2017 when the police went to the Applicant's house twice because they had information he had returned to Sri Lanka.

[9] The Applicant testified at his RPD hearing that he continued to fear Duminda and Mervyn Silva because they have the power to influence the police, even after the 2015 election in which the UNP came to power and even though Mervyn Silva was no longer in Parliament.

## II. The RPD's Decision

[10] After summarizing the Applicant's allegations, the RPD noted that the basis of his claim when he arrived in 2012 was that he had been persecuted by an infamous Minister of the Sri Lankan Freedom Party due to his wife's political activities as well as his own in the opposition party, the UNP.

[11] The RPD found the Applicant was not credible. The heart of the RPD's reasons are as follows:

[10] The hearing was rescheduled and took place on June 1, 2018. At that time, the claimant's allegations shifted into a somewhat different direction. The alleged persecutor was not so much Mervyn Silva, but the police. The last threats from Minister Silva took place in 2013, and of a lesser importance, but now it was the police who was looking for the claimant because he had escaped custody. In an amended PIF, adduced in between the initial hearing and the present one, the claimant added: "After this, things were quiet until September of 2017 when he (sic) police went back to my home on two occasions. The first time, they spoke with my mother and told her that they had information that I was back in the country. They proceeded to search the house for me and found nothing, Officers returned after several days again looking for me but my mother told them on both occasions that I was not there and that she did not know where I am."

[11] The claimant acknowledged that he had been an active member of the UNP and had been involved in political activities for the said party. He was then confronted with the change of circumstances which had taken place in Sri Lanka in 2015 and told that his friends were now in power and that he had nothing to fear anymore from the SFLP. He engaged in vague explanations

pretending that he knew nobody in the party except a Mr. Joseph Perera. He was reminded that as [a] former active member of the UNP, it was surprising that he knew only one member since a political party is formed by a group of militants. He alleged that he could still be a target of Mervyn Silva. He was reminded that Mervyn Silva had lost his power. The claimant alleged then that Silva was a friend of the President of the UNP. This allegation is not supported by any evidence. Counsel, in his questions and submissions, acknowledged that the last threats by Silva were many years ago, but insisted that the police had been looking for the claimant recently. To support this allegation, we only have the claimant's word, but we do not find him credible.

[12] The claimant's story, which may have had some logic in 2012, could not resist the test of time. The claimant's fear of persecution is not credible and he did not succeed in discharging his burden of proof.

### III. Analysis

[12] This application for judicial review raises one primary issue: was the RPD's decision reasonable?

#### A. *Standard of Review*

[13] The standard of review for credibility findings by the RPD is that of reasonableness with considerable deference owed to the advantageous position of the trier of fact (*Cambara v Canada (Citizenship and Immigration)*, 2017 FC 1019 at para 13; *Aguebor v (Canada) Minister of Employment and Immigration*, [1993] FCJ No 732 at para 4, 160 NR 315).

[14] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable

outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

B. *The Applicant’s Submissions*

[15] The Applicant contends that the RPD did not conduct an appropriate forward-looking assessment of the risk to him. He points to documentary evidence that Mervyn Silva was a vicious individual and it was inappropriate, the Applicant says, for the RPD to assume that because Mervyn Silva was no longer a Member of Parliament, he had no power and could no longer be an agent of persecution.

[16] The Applicant further contends that the RPD’s credibility concerns were problematic because they were based on the fact that he shifted his allegations in an addendum to his Personal Information Form [PIF] narrative. The Applicant notes that the RPD found he was not credible because he had “shifted into a somewhat different direction” when faced with the fact that Mervyn Silva had left office. In the Applicant’s view, there was no shift in evidence. According to the Applicant, his original PIF stated that he also feared the Sri Lankan police, that he was falsely arrested in 2012, and that the police were still looking for him.

C. *The Respondent's Submissions*

[17] In the Respondent's view, the RPD's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. Although there are other possible outcomes, the Respondent says the Court should not substitute its view.

[18] According to the Respondent, the Applicant failed to provide any information to show Mervyn Silva was still in a position of power or was able to exercise power through his connections, such as his alleged friendship with the President of the UNP. The Respondent says it was open for the RPD to find that the agent of persecution was no longer in the ruling party, and if there was any harm from Mervyn Silva, it was as a private citizen and not as a state actor. In the Respondent's view, the Applicant's testimony was vague and unresponsive.

[19] The Respondent notes that the RPD is entitled to reject uncontradicted evidence if that evidence is not consistent with the whole case. According to the Respondent, the RPD is also entitled, as it did in this case, to make adverse findings of credibility based on the implausibility of an applicant's story and can make reasonable findings based on common sense and rationality. Even if the Applicant did not completely shift his testimony that the police were always mentioned as a source of fear, it was, the Respondent says, the totality of the evidence that led the RPD to reject the claim.

D. *Was the RPD's Decision Reasonable?*

[20] In the Applicant's original PIF narrative (which he signed on December 21, 2012) the Applicant alleged that since leaving Sri Lanka threats have continued:

Since coming to Canada I have learned from my mother that the police and Mervyn Silva's son and thugs continue to come in search of me. I have also learned that while I was still in hiding in Sri Lanka the police and Malaka Silva and his thugs went looking for me at the home of my uncle in Padukka, my aunt in Hatton, to the Fish Market, and to my hometown in Colombo. It is for these reasons that I am seeking refugee protection in Canada.

[21] However, in the Applicant's amended PIF and during his testimony before the RPD, there was no mention of the police or other individuals looking for him after he left Sri Lanka until 2013. In this context, it was reasonable for the RPD to find that the Applicant's testimony shifted towards the police searching for him.

[22] It also was reasonable for the RPD to find that on a forward-looking basis no grounds existed to find the Applicant to need protection. No documentary evidence supported the Applicant's claim that Malaka Silva still controlled the police and the RPD found his testimony to be not credible. The Applicant bore the burden of showing how Malaka Silva still exercised control over the police and he failed to do so.

IV. Conclusion

[23] In conclusion, the RPD's decision is intelligible and transparent, and the outcome is defensible in respect of the facts and the law.



[24] Neither party proposed a question of general importance for certification; so, no such question is certified.

**JUDGMENT in IMM-3275-18**

**THIS COURT'S JUDGMENT is that:** the application for judicial review is dismissed;  
and no question of general importance is certified.

"Keith M. Boswell"

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Judge

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

**DOCKET:** IMM-3275-18

**STYLE OF CAUSE:** GAMINI KEERTHIRATNE KULASURIYA  
ARACHEHIG (a.k.a. GAMINI KEERTHIRATNE  
KULARIYA ARCHCHIGE) v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 20, 2018

**JUDGMENT AND REASONS:** BOSWELL J.

**DATED:** APRIL 8, 2019

**APPEARANCES:**

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