Federal Court  Cour fédérale

Date: 20201209

Docket: IMM-6344-19

Citation: 2020 FC 1132

Toronto, Ontario, December 9, 2020

PRESENT: Mr. Justice A.D. Little

BETWEEN:

DHUSHANDI GANDHI
(aka GHANDI, DHUSHANDH)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Gandhi, is a citizen of Sri Lanka who arrived in Canada on the MV (Merchant Vessel) *Sun Sea*. He claimed refugee status in Canada, seeking protection from Sri Lankan authorities and from the Liberation Tigers of Tamil Eelam ("LTTE").

[2] The Refugee Protection Division ("RPD") denied Mr. Gandhi protection under ss. 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"). He then applied for

a pre-removal risk assessment ("PRRA") under s. 112 of the IRPA. A senior immigration officer dismissed that application in a decision dated September 3, 2019.

[3] Mr. Gandhi now seeks judicial review of that PRRA decision, asking the Court to set aside the decision and remit his application back for redetermination by a different officer.

[4] For the reasons that follow, I conclude that the officer's decision was reasonable. Accordingly, the application is dismissed.

I. Facts and Events Leading to this Application

A. Background

[5] Mr. Gandhi is a Hindu, Tamil man from Kandy, Sri Lanka. He claims that he fled Sri Lanka for fear his life was in danger from Sri Lankan security personnel and paramilitary groups.

[6] Together with hundreds of other individuals from Sri Lanka, Mr. Gandhi arrived in Canada in August 2010 aboard the MV *Sun Sea.* Mr. Gandhi claimed refugee protection on the grounds of "race, religion, perceived political opinion and membership in a particular social group that is being currently persecuted in Sri Lanka without any state protection".

[7] In addition to claiming refugee status, Mr. Gandhi assisted the Canada Border Services Agency ("CBSA") and the Royal Canadian Mounted Police ("RCMP") as an interpreter. Mr. Gandhi speaks English well.

[8] The RPD heard his refugee claim on August 30, 2012. By decision dated January 7, 2013, the RPD concluded that he was not a Convention refugee and was not a person in need of protection under s. 96 or subs. 97(1) of the IRPA. The applicant requested judicial review from this Court, which the Court dismissed.

[9] Mr. Gandhi then filed a PRRA application dated June 27, 2016.

B. **PRRA Application**

[10] As Justice Diner has explained in *Valencia Martinez v. Canada (Citizenship and Immigration)*, 2019 FC 1, a pre-removal risk assessment, commonly called a PRRA, is the last formal risk assessment given to qualifying individuals before they are removed from Canada. The PRRA process seeks to ensure that those individuals are not sent to a country where their lives would be in danger or where they would be at risk of persecution, torture, or other cruel and unusual treatment or punishment, consistent with Canada's obligations under international law: see *Valencia Martinez*, at para 1; *Revell v. Canada (Citizenship and Immigration)*, 2019 FCA 262 (de Montigny JA), at para 11.

[11] A PRRA determines whether, based on a change in country conditions or new evidence that has emerged since the RPD decision, there has been a change in the nature or degree of risk faced by the applicant if he or she is returned to his/her home country. The PRRA recognizes that the international law principle of non-*refoulement* (which prohibits the removal of refugees to a territory where they are at risk of human rights violations) is prospective, and that, in some cases given the delay between adjudication and removal, a second look at country conditions may be

required to determine whether the circumstances have changed or new risks have arisen: *Kreishan v. Canada (Citizenship and Immigration)*, 2019 FCA 223 (Rennie JA), at paras 4, 116.

[12] A PRRA application by a failed refugee claimant is not an appeal or a reconsideration of the decision of the RPD to reject a claim for refugee protection. It may, however, require consideration of some or all of the same factual and legal issues as a claim for refugee protection: *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385 (Sharlow JA), at para 12. Owing to possible overlap in the evidence and submissions made by an applicant for a claim under ss. 96 and 97 of the IRPA and an application for a PRRA under s. 112, there are limits on the new evidence that may be introduced for the PRRA: IRPA, paragraph 113(*a*). Such additional evidence must be credible, relevant, new and material to the PRRA application: *Raza*, at paras 12-15. With respect to the materiality, new evidence must be of such significance that it would have allowed the RPD to reach a different conclusion. The PRRA officer must show deference to a negative decision by the RPD and may only depart from that principle on the basis of different circumstances or a new risk: *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96, 2016 4 FCR 230 (de Montigny JA), at para 47.

C. New Risks and Evidence in the Applicant's PRRA Application

[13] By letter dated July 20, 2016, the applicant's legal counsel identified three new risks that arose after the denial of the applicant's refugee claim in January 2013: (i) Mr. Gandhi feared being attacked and killed by families and associates of the other passengers on the MV *Sun Sea* who accused him of informing to the RCMP and the CBSA on passengers who were members of the LTTE; (ii) Mr. Gandhi feared being attacked and killed by families and associates of four persons charged in British Columbia with human trafficking aboard the MV *Sun Sea*. He had been subpoenaed to testify as a Crown witness in their trial in BC; and (iii) if he returned to Sri Lanka, Mr. Gandhi feared detention and torture at the hands of the Sri Lankan government because he was a passenger on the *Sun Sea* and would be accused of being a member or supporter of the LTTE himself.

[14] Counsel's letter dated July 20, 2016 referred to documentary evidence that Tamils face credible risks upon returning to Sri Lanka, including reports of *Sun Sea* passengers having been detained and tortured, reports of minority Tamils in Sri Lanka being tortured by police and the military, and reports of detention and torture of persons accused of having links to the LTTE. Counsel asserted that Mr. Gandhi would not receive any Sri Lankan state protection from these risks.

[15] The record also includes Mr. Gandhi's affidavit sworn on July 18, 2016 to support his PRRA application. The affidavit contained 8 paragraphs. In it, Mr. Gandhi testified that he was scheduled to be a Crown witness in a criminal prosecution in Vancouver concerning human

smuggling charges brought against other Tamil passengers on the *Sun Sea*. He had been served with a summons requiring him to appear at the trial scheduled for September 2016. However, the evidence did not disclose whether he actually testified for the Crown.

[16] Mr. Gandhi also testified in his affidavit that after the RPD's decision:

- He had received "specific threats and warnings from other passengers" accusing him of informing the CBSA and RCMP about which passengers on the MV *Sun Sea* were members of the LTTE. His affidavit did not provide any additional details about these "specific" threats and warnings;

- In 2012, "after my refugee decision was given", some people in Sri Lanka spoke to his mother twice on the telephone. They told her that if he kept speaking to the RCMP and CBSA about the other passengers on the ship and identifying LTTE members, then he would be killed. About a week later, he personally received a telephone call from a person who made the same threat to him; and

- On three occasions in 2012, a car followed him home from his workplace. He informed the RCMP. It did not occur again after 2012.

[17] Mr. Gandhi testified that he believed that he would be in great danger if he returned to Sri Lanka, from the people who are accused of people-smuggling on the MV *Sun Sea* against whom he would be testifying, and from other Tamils on the *Sun Sea* who believe he identified them to the Canadian authorities as LTTE members. He testified that in Canada, he has protection from the RCMP but in Sri Lanka, he would have none.

D. **The Officer's PRRA Decision**

[18] The officer began the PRRA decision dated September 3, 2019 by reviewing the decision of the RPD at some length. The officer first noted that the issues in the RPD's decision were Mr. Gandhi's credibility, due to the serious contradictions in his oral and written testimony; lack of an objective basis for his claim; and the applicant's *sur place* claim. The officer then reviewed the RPD's findings on each issue in turn.

[19] Following that review, the officer stated that he had read the applicant's submissions. The officer found that Mr. Gandhi had repeated the same claim that the RPD considered and had not identified a new risk that had arisen since the RPD refused his application for protection. The officer also found that Mr. Gandhi had not provided objective evidence to rebut the findings of the RPD.

[20] The officer found:

- *Threats from Other Passengers*: Mr. Gandhi had not provided a reasonable explanation as to why he had not told the RPD that he had received specific threats and warnings from other passengers about informing the CBSA and RCMP about who were members of the LTTE.

- *Threats to His Mother and Being Followed by a Car in 2012*: The officer noted that Mr. Gandhi stated that threats were made to his mother in Sri Lanka and he was followed by a car in Vancouver in 2012, and believed that his life was in grave danger from the persons accused of people-smuggling. The officer

concluded that Mr. Gandhi's statements were "very general, vague and lacked detail with respect to when the events occurred". The officer found that Mr. Gandhi provided no explanation as to why he did not present his fears to the RPD for their consideration. The officer further concluded that there was "insufficient evidence with respect to how these incidents [i.e., the threats made to his mother and being following by a car] were related to his testifying on behalf of the Crown". The officer concluded that these events were not new evidence as defined in paragraph 113(*a*) of the IRPA.

- *Subpoena to Testify*: The officer accepted the subpoena requiring Mr. Gandhi to testify in the British Columbia proceeding as new evidence, as it post-dated the RPD decision. However, he gave it minimal weight because there was insufficient objective evidence that Mr. Gandhi actually testified at the hearing, or that he was threatened in Canada or in Sri Lanka after he was called to testify. The officer concluded that there was insufficient objective evidence that his fear would rise to a level of risk as required by s. 96 or subs. 97(1) of the IRPA.

- *Perceived Membership in the LTTE*: The officer noted that the RPD determined on a balance of probabilities that Mr. Gandhi was not in danger of being viewed as a member of the LTTE because he was a passenger on the MV *Sun Sea*. Public officials in Sri Lanka acknowledged that only some *Sun Sea* passengers are perceived to have links to the LTTE, not all passengers.

- *Country Condition Articles*: The officer also noted articles provided by Mr. Gandhi related to the treatment of Tamils in Sri Lanka. While the articles were

> new evidence that post-dated the RPD hearing, the officer gave them minimal weight as they contained "general information on country conditions and there [was] insufficient objective evidence as to how it relate[ed] to the applicant's personal circumstances. Finally, the articles [did] not rebut the many findings made by the RPD as noted in detail above."

[21] The officer's PRRA decision concluded that the applicant faced no more than a mere possibility of persecution as described in s. 96 of the IRPA. The officer also concluded that Mr. Gandhi would not likely be at risk of torture, or likely to face a risk to life, or a risk of cruel and unusual treatment or punishment as described in s. 97 of the IRPA, if returned to Sri Lanka. The PRRA application therefore failed.

II. Issues Raised by the Applicant

[22] The applicant raised two issues on this application. The first was whether the officer erred by failing to convoke a hearing and provide Mr. Gandhi with an opportunity to address credibility issues. The second was whether the officer's decision was unreasonable. The applicant's principal submission was that the officer's PRRA analysis applied the wrong legal test under s. 96 of the IRPA, or failed to conduct an analysis at all under s. 96.

III. Standard of Review

[23] The parties disagreed on the standard of review on the first issue. The applicant submitted that the standard of review is correctness, as the decision to hold a hearing concerned procedural fairness. The respondent, on the other hand, submitted at the hearing of this application that the decision is to be reviewed on a standard of reasonableness, because it was a determination of mixed law and fact to which the Court should defer.

[24] For questions of procedural fairness, whether described as a correctness standard of review or as this Court's obligation to ensure that the process was procedurally fair, judicial review involves no margin of appreciation or deference by a reviewing court: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121 [CPR], esp. at paras 49 and 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. In *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196, de Montigny JA reaffirmed that the standard of review is correctness, citing numerous appellate cases: at para 35. As he said, "[w]hat matters, at the end of the day, is whether or not procedural fairness has been met."

[25] However, this Court has held that an officer's decision as to whether to hold an oral hearing attracts a reasonableness standard of review, due to the issues involved (including the application of legislative provisions, as set out below): see *Hare v. Canada (Citizenship and Immigration)*, 2020 FC 763, at paras 11-12 and the cases cited by Justice Strickland there.

[26] I do not need to decide whether any deference applies because, as I will explain, I see no error in the officer's decision not to convoke a hearing in this case.

[27] On the second issue in this application, the parties both submit that the standard of review is reasonableness. I agree. The Supreme Court of Canada affirmed and explained the reasonableness standard in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness is the presumed standard applicable to judicial review of administrative decisions. This presumption of reasonableness review applies to all aspects of the decision: *Vavilov*, at paras 16, 23 and 25. The presumption may be rebutted by legislative intent, or if the rule of law requires a different standard: *Vavilov*, at paras 17, 23 and 69. The presumption is not rebutted on the second issue in this case.

[28] The onus to demonstrate that the decision is unreasonable is on the applicant: *Vavilov*, at paras 75 and 100.

[29] In conducting a reasonableness review, a court considers the outcome of the administrative decision in light of its underlying rationale, in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15. The focus of reasonableness review is on the decision made by the decision maker, including both the reasoning process (i.e. the rationale) that led to the decision and the outcome: *Vavilov*, at paras 83, 86; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 SCR 6, at para 12.

[30] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision-maker: *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, at para 31; *Vavilov*, at paras 91-96, 97, 103.

[31] When reviewing for reasonableness, the court asks whether the decision bears the hallmarks of reasonableness (i.e., justification, transparency and intelligibility) and whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov*, at para 99. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[32] The reviewing court does not determine how it would have resolved an issue on the evidence, nor does it reassess or reweigh the evidence on the merits: *Vavilov*, at paras 75, 83 and 125-126; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at paras 59, 61 and 64.

[33] With these principles in mind, I turn to the issues raised by Mr. Gandhi on this application.

IV. Analysis

A. Did the Officer's Findings Require a Hearing?

[34] In the context of a PRRA, paragraph 113(*b*) of the IRPA provides that "a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required". The prescribed factors are in s. 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "IRPR"), which provides:

> **167** For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:
>
> (a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;
>
> (b) whether the evidence is central to the decision with respect to the application for protection; and
>
> (c) whether the evidence, if accepted, would justify allowing the application for protection.

[35] These provisions contemplate that an immigration officer may hold a hearing if the officer believes one is required and the evidence raises a serious issue of the applicant's credibility: *Jystina v. Canada (Citizenship and Immigration)*, 2020 FC 912 (Diner J), at para 28.

[36] The applicant made two arguments to support his position that a hearing was required. First, he submitted that in the PRRA decision, the officer made a "veiled credibility finding". The applicant contended that the officer disbelieved his evidence that he testified on behalf of the Crown against individuals accused of human smuggling on the MV *Sun Sea* and that his life was in great danger as a consequence of that testimony. Second, the applicant submitted that the

officer implicitly disbelieved his evidence about the threats made to his mother and that a week after his mother was called, he received a phone call from a person who said that if he kept talking to the RCMP and CBSA, the caller would kill him.

[37] The respondent disagreed. The respondent submitted that the issue was not the applicant's credibility but the sufficiency of his evidence. The officer concluded that there was insufficient evidence that the applicant actually testified in court, as being subpoenaed to testify does not equate to actually testifying. The respondent characterized the applicant's argument as a microscopic attempt to find errors in the officer's decision, something impermissible on judicial review: *Vavilov*, at para 102; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd.*, 2013 SCC 34, [2013] 2 SCR 458, at para 54. The respondent also submitted that the officer in fact held that the applicant had not adduced sufficient evidence that the subpoena put the applicant's life at risk.

[38] I agree substantially with the respondent. In my view, the officer's several conclusions did not turn on an assessment of Mr. Gandhi's credibility arising from the evidence of the new risks he alleged. Rather, the officer was principally concerned with two other issues: whether the evidence was admissible new evidence under IRPA paragraph 113(*a*) (a conclusion the applicant did not challenge on this application); and whether the evidence was sufficient to prove what the applicant claimed.

[39] On sufficiency, the officer did not have to disbelieve the incidents to reach her/his conclusions. The only evidence was Mr. Gandhi's belief, stated without elaboration in his

affidavit dated July 18, 2016, that he would be in great danger from the persons accused of human smuggling if he returned to Sri Lanka. The officer found the evidence insufficient because it did not provide at least some minimal explanation from Mr. Gandhi, or some other evidence, connecting the events and explaining why they gave rise to new risk(s) to the applicant when he was called to testify in 2016. The record supports the officer's conclusions.

[40] I recognize that on this issue, Mr. Gandhi provided an affidavit in which he stated his belief that that he was in great danger. To that extent, one cannot exclude the possibility that the officer considered the applicant's credibility in reaching a conclusion on this issue. As the officer was aware, the RPD had already identified significant credibility concerns with the applicant's evidence. The RPD found the applicant to be an "untrustworthy witness" and made a series of adverse credibility findings: see its decision dated January 22, 2013, at paras 20, 24, 29, 32, 33, 34, 35, 36-37, 38 and 40.

[41] However, a mere possibility that the officer considered credibility does not trigger a right to a hearing. The first factor in IRPR s. 167 is whether the evidence that raises a "serious issue" of the applicant's credibility that is related to the factors set out in sections 96 and 97 of the IRPA: IRPR, paragraph 167(*a*). An applicant's stated belief in a great danger to his life or safety must be supported with factual evidence; a finding of insufficient evidence contrary to a stated belief does not, on its own, trigger a right to a hearing: *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 (Gascon J), esp. at paras 40 and 45; *Monsavat v Canada (Citizenship and Immigration)*, 2011 FC 647 (Snider J), at para 18; *Herman v Canada (Citizenship and Immigration)*, 2010 FC 629 (Crampton J), at para 17. Put another way, a mere possibility that the

officer considered Mr. Gandhi's credibility does not convert credibility into a serious issue, or constitute a veiled credibility finding as understood in the Court's case law. The question is whether the officer's decision on the evidence of the new risks involved in substance a credibility finding and if so, whether it was of sufficient importance as to require the officer to convene a hearing. In this case, the officer's decision in substance concerned the insufficiency of the evidence and the record supports the conclusion reached. Any suggestion of a credibility issue is theoretical and not a serious issue.

[42] The officer also concluded that there was no evidence that Mr. Gandhi in fact testified in 2016. That finding was accurate on the record. I observe that on this application, Mr. Gandhi submitted an affidavit in which he confirmed that he testified. However, even on this application he did not elaborate about what he said during his testimony. Nor did he connect it to the fear he asserted in his PRRA application, or elaborate on why the content of his testimony could induce the accused persons to harm him if he returned in Sri Lanka.

[43] Overall, I find that the officer did not have to hold a hearing in these circumstances in order to provide the applicant with procedural fairness. The process was procedurally fair to Mr. Gandhi.

B. **Was the Officer's Decision Unreasonable?**

(1) *Country Condition Articles and Section 96 of the IRPA*

[44] The applicant's written submissions focused on the following paragraph in the officer's decision, with specific emphasis on the underlined part:

> Counsel also provides articles related to the treatment of Tamils in Sri Lanka and how it continues to be a problem even though the civil war ended six years ago. While the articles are new evidence in that they postdate the RPD hearing, I give them minimal weight as it is general information on country condition and there is insufficient objective evidence as to how it relates to the applicant's personal circumstances. Finally, the articles do not rebut many findings made by the RPD as noted in detail above.
>
> [Underlining added.]

[45] This passage in the officer's reasons was the second last of 31 paragraphs in the officer's PRRA decision. The final paragraph of the decision reads as follows:

> In light of the foregoing, I find the applicant faces no more than a mere possibility of persecution as described in section 96 of the [IRPA]. Similarly, I find the applicant would not likely be at risk of torture, or likely to face a risk to life, or a risk of cruel and unusual treatment or punishment as described in section 97 of IRPA if returned to Sri Lanka.

[46] The applicant submitted that the officer applied the wrong test in assessing the applicant's PRRA application. By requiring evidence of the applicant's "personal circumstances", the officer must have restricted the analysis to s. 97. The applicant notes several differences between the legal analysis under IRPA s. 96 compared with the analysis under s. 97, focusing on the protection against generalized risks under s. 96 versus the requirement under s.

97 for a personalized risk: see *Alcantara Moradel v. Canada (Immigration, Refugees and Citizenship)*, 2019 FC 404 (LeBlanc, J) at paras 22-24.

[47] The applicant also referred to the four articles or reports submitted with his PRRA application. He submitted that as a Tamil man returning to Sri Lanka from abroad, his risk profile would match those who, according to the articles, are similarly situated. He submitted that the officer failed to properly analyse that country condition evidence and conclude that his personal circumstances would expose him to risks of persecution. According to the applicant, either the officer did not conduct a s. 96 assessment or the officer erred in law by unreasonably applying a standard that is far higher than what is specified under s. 96 of the IRPA, by requiring evidence of a personalized risk.

[48] The applicant criticized the officer's use of the phrase "insufficient objective evidence" in the underlined passage above, arguing that it is boilerplate, fails to describe what was missing, and leaves the applicant guessing how the officer reached his/her conclusions, citing *Velazquez Sanchez v. Canada (Citizenship and Immigration)*, 2012 FC 1009, at paras 18-19. The applicant extended this argument by submitting that the officer's reasons are insufficient to understand the rationale for the decision – in the applicant's submission, one cannot connect the dots within the decision because there are no dots to connect.

[49] The respondent contended that the Court must read the officer's reasons as a whole and that the insufficiency of the evidence – the absence of any new risk to the applicant since the RPD's decision – was the real issue on the PRRA application.

[50] For the reasons that follow, I agree with the respondent's characterization of the PRRA decision and the evidence in this case. In the result, I find the officer's decision to be reasonable. In my view, the officer's reasons as a whole exhibit the hallmarks of justification, transparency and intelligibility that are required for an administrative decision, as set out in *Vavilov*.

[51] First, the Court must read the officer's reasons for the PRRA decision not only holistically and contextually, but also in light of the record: *Vavilov*, at paras 91-96. The record here included not only the four country condition articles provided by the applicant's counsel, but also counsel's covering letter dated July 20, 2016 that attached those articles (along with other supporting materials). In the July 20, 2016 letter, counsel advocated the applicant's position on the three new risks to support his PRRA application. The record included the very short affidavit by the applicant and the RPD's lengthy decision dated August 30, 2012, to which the officer made extensive reference.

[52] Second, the officer's decision was framed by and relies on the extensive findings of the RPD in relation to the risks under IRPA ss. 96 and 97 that would faced by the applicant on return to Sri Lanka. As noted above, the purpose of the PRRA is to identify and assess the nature and degree of <u>new</u> risks arising since the RPD's decision or changes in country conditions since that decision: *Kreishan*, at paras 19 and 116; IRPA subs. 113(a).

[53] Third, the letter from the applicant's then-counsel dated July 20, 2016 stated that the applicant feared "detention and torture at the hands of the Sri Lankan government because he was a passenger on the MV Sun Sea and therefore will be accused of being a member or

supporter of the LTTE". The letter identified evidence in the four attached articles that Tamils faced credible risk upon being returned to Sri Lanka. The letter then specifically referred to:

- reports of *Sun Sea* passengers who were removed to Sri Lanka being detained and tortured;
- a report describing torture of minority Tamils by the police and military, with more than one third of the torture cases involving people who had returned from Britain after the Sri Lankan civil war; and
- a report quoting sources that the detention and torture of Tamils returned to Sri Lanka remains a "serious concern". The letter submitted that the report demonstrated that if Mr. Gandhi returned to Sri Lanka,

> he would face a strong likelihood of detention and torture by the police and army because he was a passenger on the Sun Sea and will be accused of links to the LTTE. He will not receive any state protection from the serious and credible risks he faces from family and associates of other Sun Sea passengers as a result of acting as a translator following the arrival of the ship in Vancouver, and for appearing as a Crown witness in the trial of four members of the Sun Sea charged with people smuggling offences.

[54] As may be apparent, the articles submitted with counsel's letter were aimed at supporting the three specific, new risks alleged in the letter: that the applicant would be attacked and killed by families and associates of the other passengers on the MV *Sun Sea*; that he would be attacked and killed by people associated with the alleged people-smugglers; and that he would be detained and tortured by the Sri Lankan government because he was a passenger on the *Sun Sea* and would be perceived as member or supporter of the LTTE.

[55] The applicant's central position on the PRRA application was therefore particularized. That position was not that Mr Gandhi would experience generalized risks due to his status a Tamil man returning to Sri Lanka from abroad. It was, as the July 20, 2016 letter itself concludes, that he would face "serious risks if he returns to Sri Lanka for the reasons set out above".

[56] Fourth, before the officer's PRRA reasons considered the four articles containing country condition evidence, the officer had already referred at length to the RPD's conclusions and had made numerous findings about the applicant's arguments and short affidavit on the PRRA application.

[57] The officer's findings concerned both generalized and specific risks to the applicant. The officer had already concluded generally that Mr. Gandhi had repeated the same claim that the RPD considered, had not identified a new risk that had arisen since the RPD refused his application for protection, and had not provided objective evidence to rebut the findings of the RPD. The officer had already noted the following RPD conclusions:

- the RPD determined on a balance of probabilities that the applicant was not and would not be identified as an LTTE sympathizer or member;

- the RPD determined that the applicant did not fit the profile of a person suspected of having links to the LTTE;

- the RPD noted that the applicant is a Tamil originally from Kandy, located in central Sri Lanka. He was educated in Kandy and employed in Colombo. The RPD inferred he would not be identified with Tamils from the north or east, who are often perceived as having ties to the LTTE and are reported to have difficulties with Sri Lankan authorities;

- the RPD concluded that while Sri Lanka was experiencing some post-war challenges, it remained relatively safe for persons who, like the applicant, do not have connections to the LTTE;

- the RPD concluded that the applicant would not be perceived as having ties to the LTTE and would not be pursued by authorities or any others for any reason;

- the RPD determined that the personal identity of the applicant and his travel aboard the MV *Sun Sea* had not come to the attention of the Sri Lankan authorities through disclosure by Canadian authorities or media; and

- the RPD found that there was insufficient credible and trustworthy evidence that there is more than a mere possibility of persecution due to the applicant's travel to Canada on board the MV *Sun Sea* and that he was not in danger of being viewed as a member of the LTTE as a result of being a passenger.

[58] Before turning to the four articles, the officer also rejected more specific arguments about possible risks arising in relation to threats from other passengers; threats made to Mr. Gandhi's mother that the applicant connected to the alleged people-smugglers; his participation as a Crown witness against those accused; and risks associated with being a passenger on the *Sun Sea* and therefore being viewed by Sri Lankan government officials as a member of the LTTE.

[59] It is in the context of all these points that this Court must assess the applicant's arguments about the reasonableness of the officer's assessment of the four articles.

[60] The officer's reasoning on the articles was short and to the point. However, in the broader context of the officer's task in rendering a PRRA decision, the officer's conclusions on the arguments made by the applicant, and the RPD's findings, I cannot agree with the applicant that officer failed to consider s. 96 of the IRPA or put an improper legal burden on the applicant.

[61] The officer accepted that the articles were new evidence but found they contained general information on country conditions. The officer found there was insufficient objective evidence about how that evidence related to the applicant's "personal circumstances". This Court has held that the applicant bears the onus to establish a link between the general documentary evidence and the applicant's specific circumstances: see, e.g., *Shina v. Canada (Citizenship and Immigration)*, 2020 FC 940, at para 18; *Sharawi v. Canada (Citizenship and Immigration)*, 2019 FC 74, at para 29; *Balogh v. Canada (Citizenship and Immigration)*, 2016 FC 426, at para 19.

[62] The officer's reference to the applicant's "personal circumstances" does not lead to the conclusion that the officer overlooked the generalized risks raised by the applicant. The officer concluded that the four articles did not rebut the findings of the RPD that had been noted in detail earlier in the officer's reasons (set out in the bullet points above). In those findings, the RPD addressed both generalized and specific risks that the applicant could face on return to Sri Lanka. The officer made also express conclusions about both s. 96 and subs. 97(1) in the next paragraph.

[63] Accordingly, I cannot conclude, having regard to the record and the standard of review in *Vavilov*, that the officer's chain of reasoning or the outcome of the PRRA application were unreasonable on the basis that the officer failed to conduct a proper analysis under s. 96 of the IRPA.

(2) *Use of Repetitive Language about the Insufficiency of the Evidence*

[64] As the applicant submitted, the officer's reasons do repeat the same or similar phrases in several places – such as "vague, general, and … lack any detail", "very general, vague and lack detail", "insufficient objective evidence", "insufficient evidence". This Court has recognized that repeated use of "boilerplate" phrases may not accurately capture the substance of a decision-maker's reasoning or may obscure the true reasoning, which may affect the applicant's ability to understand why a decision was made: see *Velazquez Sanchez*, at para 19.

[65] In my view, on the record in this case, the descriptions of the evidence were warranted. Notably, the applicant's own affidavit was thin. Although an officer's reasons should explain

why the evidence is insufficient or missing on an issue and not rely on stock phrases and conclusory statements, the use of these phrases to describe the insufficiency of the evidence on several issues in this case did not amount to a reviewable error.

(3) *Additional Arguments made at the Hearing*

[66] At the oral hearing of this application, the applicant made some additional arguments related to the specific grounds set out in his PRRA application. If I understood them well, the applicant submitted that the applicant is known to the individuals aboard the MV *Sun Ship* who were accused of human smuggling as a result of his participation in the prosecution of those persons. This created a personal risk to him as was described in counsel's letter dated July 20, 2016. In that context, the applicant submitted it does not matter that there was no evidence that the applicant actually testified against the accused individuals. In addition, the applicant submitted that the officer failed to explain why the applicant's failure to provide evidence of his trial testimony was important, as the existence of the subpoena is enough to create risks to the applicant.

[67] In my view, these submissions in substance requested that the Court reweigh the evidence and the arguments and make a determination of its own on the issues. However, it is not this Court's role on an application for judicial review to do so: *Vavilov*, at para 125; *Khosa*, at paras 59, 61 and 64.

V. Conclusion

[68] For these reasons, the application for judicial review is dismissed. Neither party proposed a question for certification and I agree there is none. This is not a case for costs.

JUDGMENT in IMM-6344-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.
3. There is no order as to costs.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6344-19
STYLE OF CAUSE:	DHUSHANDI GANDHI (aka GHANDI, DHUSHANDH) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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