

Federal Court



Cour fédérale

**Date: 20230503**

**Docket: IMM-1371-22**

**Citation: 2023 FC 638**

**Toronto, Ontario, May 3, 2023**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**PRABAKARAN SATHASIVAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant asks the Court to set aside a decision of the Refugee Protection Division (“RPD”) dated January 20, 2022.

[2] The applicant claimed protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the “IRPA”). The RPD denied his claims. The determinative issue was credibility.

[3] The applicant argued that the RAD's decision was unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[4] For the reasons below, I have concluded that this application must be dismissed. The applicant has not shown that the RPD made a reviewable error in its decision.

**I. Events Leading to this Application**

[5] The applicant is a citizen of Sri Lanka and is a native of the northern province of Valvetty.

[6] The applicant arrived in Canada in September 2020 from the United States. He claimed protection under the *IRPA* based on his fear of the Sri Lankan authorities (including the army and paramilitary groups) due to his Tamil ethnicity.

[7] The applicant based his claim for protection on the following factual allegations, which included allegations concerning two incidents that became important to the RPD's analysis – one in 2012 and another in 2019.

[8] While in Sri Lanka, the applicant worked as a self-employed bus operator. He described that when the Liberation Tigers of Tamil (LTTE) were in power, the LTTE recruited many young people like him using force, and the Sri Lankan army was going after Tamil youths like him. There were many arbitrary arrests, detentions and disappearances of Tamil youths. On

several occasions, he was stopped and questioned by the army, the police and pro-government Tamil militants on mere suspicion. He was sometimes detained for a few hours and ill-treated.

[9] In April 2012, the applicant was arrested, hung upside down, beaten and burnt by a metal rod by security forces and was accused of being a supporter of the LTTE. He was detained overnight.

[10] After that 2012 incident, the applicant “continued [his] routine life” and experienced no issues until 2019.

[11] In February 2019, he bought a mini bus. The narrative in his Basis of Claim (“BOC”) form advised that his neighbours wanted his bus. He refused their request so the neighbours had a grudge against him. To take revenge, his neighbours falsely told the army that he was an LTTE member.

[12] In May 2019, that false information fuelled the army’s suspicions of him as a Tamil youth. As a result, the applicant claimed that the army took his bus on May 14, 2019. That same night, the army came to his home and arrested him. He was severely beaten, mistreated and two of his teeth were broken. They released him the next day with a warning that they would watch him closely. The army also damaged his bus, which he had to repair at significant expense.

[13] The applicant left Sri Lanka on July 24, 2019. He fears he may be re-arrested, detained, tortured and even killed if he were to return to Sri Lanka.

## **II. The RPD's Decision**

[14] By decision dated January 20, 2022, the RPD dismissed the applicant's claims for protection.

[15] The RPD convened two separate hearings to hear the applicant's claims. Its decision disclosed that, at the first hearing during the applicant's testimony, he was "very vague" in his answers and "frequently greeted questions with absolute silence". The RPD and the applicant's counsel agreed that a psychologist should evaluate the applicant.

[16] Following the psychological evaluation, the RPD convoked a second hearing, at which the applicant testified. In its reasons, the RPD considered the psychologist's report, finding that the psychologist did not diagnose the applicant with any major issues and that the report indicated that there were no mental health issues for the applicant's delayed responses to questions. The RPD noted that the report suggested that the applicant experienced a medium to high level of anxiety that may have contributed to unclear answers. The RPD therefore decided to accommodate applicant by repeating questions when he was absolutely silent, as requested by his counsel and in deference to the report's statement that he may have had an anxiety issue at the first hearing. The RPD also did not consider any contradictions between his testimony at the first and second hearings.

[17] The RPD found that at the second hearing, the applicant answered questions "more clearly and did not seem to be anxious, but still had moments of silence."

[18] In its decision, the RPD found that the determinative issue was credibility. The RPD also considered the risk to the applicant as a returning refugee claimant.

A. *The RPD's Credibility Findings*

[19] The RPD's credibility analysis included several elements. The principal concern was that in the applicant's Basis of Claim narrative, he indicated that "neighbours" wanted his minibus who then told the army he was a LTTE member. However, the RPD found that the applicant testified at the hearing that a paramilitary group called the Eelam People's Democratic Party ("EPDP") demanded to use his bus for their political activities and he refused. He testified that this caused the army to seize his bus and the resulting incidents that occurred on May 14, 2019.

[20] The RPD noted that the applicant did not mention the EPDP in his BOC form and was slow to provide a clear answer to explain the discrepancy. Eventually he stated that the person was a member of the EPDP and a neighbour. He could not explain why a letter from his brother in Sri Lanka also advised that "neighbours" asked for the use of the bus.

[21] The RPD found that the applicant did not provide a clear explanation why he used a vague terms such as "neighbours" to indicate that a paramilitary group such as the EPDP wanted to use his bus for their political activities. The applicant could also not clarify what the EPDP's "political activities" were that required the use of the bus.

[22] The RPD found other concerns relating to the applicant's credibility, including:

- The applicant testified that he went to see a village elder after the May 2019 incident, which was not in his BOC narrative;

- The applicant could not remember the name of the repair shop that fixed his bus, which the RPD found unlikely because he submitted the invoice as a document and paid a large sum of money (C \$70,000) for the repairs.

[23] The RPD also concluded that letters from the applicant's brother and neighbour in Sri Lanka restated, in simpler terms, statements that he made in his BOC form, which the applicant had contradicted during his testimony. The letters therefore did not address the RPD's credibility concerns arising from the testimony, nor did they provide clear information to substantiate his narrative. Additional information in the letters was too vague to establish events after he left Sri Lanka.

[24] For these reasons, the RPD had "direct credibility issues with regard to who asked for the bus, the applicant's actions after the bus was taken and how the bus was repaired". The RPD noted that the applicant had provided very little in the way of explaining his interactions with police and army officials despite repeated questions from the panel. There were no details about the army's visits and threats to the applicant after the May 14, 2019 incident.

[25] The RPD concluded that the events on May 14, 2019, did not occur. The RPD stated:

Given the issues regarding the [applicant's] omissions and contradictions with his BOC regarding the causative issue of that day's events, the issues with one of the documents he provided, as well as the [applicant's] lack of knowledge and lack of description of his experiences, the panel finds that the claimant has not credibly established, on a balance of probabilities, that the events of May 2019 occurred.

[26] The RPD found that this conclusion “goes to the heart of the claim, as the [applicant’s] troubles in Sri Lanka that prompted him to leave, aside from one incident in 2012, occurred on that day.”

[27] The RPD therefore concluded that applicant had not established he faced a serious possibility of persecution on a Convention ground, or that he faced, on a balance of probabilities, a risk to his life or of cruel and unusual treatment or punishment, or a danger of torture, if he were to return to Sri Lanka from the events he described.

B. *The RPD’s Risk Assessment*

[28] As the applicant is a single Hindu Tamil from the North, the RPD found that the applicant met some elements of a typical profile of those at risk of extended interrogation on return to Sri Lanka.

[29] The RPD found that the applicant “testified to not having any issues in Sri Lanka since his 2012 arrest to until 2019”, and was not found to have credibly testified to any issues in that year. The applicant testified that he was not accused of anything directly in 2019 by authorities when being harassed by them and testified to leaving the airport without incident.

[30] The RPD considered objective country evidence indicating who received the most attention on arrival in Sri Lanka. The RPD noted that the applicant “left Sri Lanka legally without issue, with legal documents, and has not credibly established that his 2019 detention occurred or that, other than his 2012 arrest, there would be any reason that he would be imputed

as a political opponent of the Rajapaksas or an LTTE member”. Therefore, the RPD concluded that there was “no more than a mere possibility” that applicant, who had “peacefully re-entered and left the country at various points in Sri Lanka without incident, would be subject to screening, arrest or possible harm when returning to Sri Lanka” [endnote excluded].

[31] The RPD therefore rejected the applicant’s claim for *IRPA* protection.

### **III. Analysis**

[32] The standard of review for the RPD’s decision is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision has the attributes of transparency, intelligibility and justification: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[33] The applicant’s position was that the RPD’s decision was based on unreasonable credibility findings and that the RPD should have conducted a separate analysis of the 2012 incident as possible torture under paragraph 97(1)(a) of the *IRPA*. I will address these arguments in turn.



A. *Did the RPD make a reviewable error in its credibility analysis?*

[34] The applicant submitted that the RPD erred in its credibility analysis, challenging each of the RPD's negative credibility findings. He submitted that the applicant's testimony that the neighbour was a member of the EPDP was an elaboration rather than an inconsistency between the BOC and his testimony. The applicant argued that the RPD should have recognized from the psychological report that the applicant was extremely anxious because of the gravity of the hearing. He contended that it was unreasonable for the RPD to draw a negative inference from the fact that he "eventually" provided an explanation and could not provide clear answers to questions. The applicant further argued that the RPD's credibility analysis was over-zealous and microscopic.

[35] These submissions are not persuasive. First, the RPD was clearly aware of the contents of the psychiatric report. The applicant's submissions in substance requested that the Court reweigh that evidence by emphasizing the applicant's anxiety and the consequences of it. However, the Court is not permitted to reweigh the evidence and, in this case in particular, the RPD was in a much better position to understand how the applicant testified and how the contents of the psychological evidence should affect the process at the hearing and the assessment of his testimony.

[36] Second, I do not agree that the applicant's testimony that the neighbour was a member of the EPDP was merely an elaboration. The applicant's BOC indicated that neighbours wanted to use the minibus and reported him due to a grudge, whereas he testified at the RPD hearing that

the EPDP – a paramilitary group – wanted the minibus for its political activities, which led to the overnight incident with the army and the alleged risks on which the applicant based his claim for protection. It was open to the RPD to conclude that the omission of any reference to the EPDP in the BOC went to the heart of the applicant’s claim.

[37] Third, the applicant has not demonstrated that any of the other adverse credibility concerns, individually or together, give rise to a reviewable error. In addition, the reasons of an administrative tribunal must be considered as a whole. A reviewing court’s analysis does not involve determining whether each point in the decision maker’s reasoning meets the reasonableness test, including each of the contradictions and implausibilities used to conclude that an applicant was not credible: *Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, at para 22; *Shatirishvili v Canada (Citizenship and Immigration)*, 2014 FC 407, at para 35; *Su v Canada (Citizenship and Immigration)*, 2019 FC 1052, at para 38; *Zomachi v Canada (Citizenship and Immigration)*, 2021 FC 1286, at paras 13-14; *Vavilov*, at para 102, citing *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 SCR 458, at para 54..

[38] I agree with the respondent that the RPD reasonably assessed the contents of the applicant’s BOC, his testimony and explanations for discrepancies with his BOC, and the documents he filed to support the alleged events on May 14, 2019. The applicant’s submissions have not persuaded me that it was not open to the RPD to conclude that the alleged events on May 14, 2019, did not occur. See also *Gulal v Canada (Citizenship and Immigration)*, 2014 FC 1151, at paras 16-17.

B. *Did the RPD make a reviewable error in its analysis of forward-looking risk?*

[39] The applicant submitted that RPD failed to properly assess the incident experienced by the applicant in April 2012. The applicant's position was that the events in 2012 could be considered torture and the RPD diluted the incident by failing to mention that in his BOC, he stated that he was hung upside down and burnt with a metal rod. The applicant argued that the RPD should have conducted a separate analysis of this incident under *IRPA* paragraph 97(1)(a) as the basis for a forward-looking risk of harm on the applicant's return to Sri Lanka. The applicant referred to *Kanagarasa v Canada (Minister of Citizenship and Immigration)*, 2015 FC 145. He argued that RPD's risk analysis effectively carved out the 2012 incident (when it used the phrases "aside from" or "other than" his 2012 arrest) but did not assess the forward-looking risks arising from that 2012 incident.

[40] By contrast, the respondent submitted that the applicant had the onus of establishing that he is at future risk of persecution and did not meet that onus (citing *Cessa Mancillas v Canada (Citizenship and Immigration)*, 2014 FC 114). The respondent maintained that the RPD reasonably considered the applicant's allegations of his 2012 arrest and the 2019 incident. The RPD found that the 2019 incident did not occur and that in 2019, the applicant was not accused of anything directly, contrary to his claim that he was at risk because he was perceived to be associated with the LTTE. The respondent observed that the RPD determined that the applicant had not established having any recent issues leaving or entering Sri Lanka since 2019. The RPD reasonably concluded that the applicant did not face a forward-looking risk on return to Sri Lanka.

[41] For the following reasons, I agree substantially with the respondent's position.

[42] The basis of the 2012 incident was that the applicant was arrested and physically harmed as a suspected LTTE member. The applicant testified that he did not have any issues after that incident in 2012, until 2019. The RPD noted that when harassed by authorities in 2019, the applicant did not claim that he was accused of anything directly – which, in context, must include that the authorities in 2019 did not link him to the LTTE. In addition, the RPD reasonably found that the May 14, 2019 incident, did not occur. It assessed the applicant's risk of returning to Sri Lanka based on whether he would suffer harm on his return, noting that he had left and returned to Sri Lanka on a valid passport without incident. The RPD recognized that the only basis that he might be associated as an LTTE member was his 2012 arrest. In those circumstances, the RPD concluded that there was no more than a mere possibility that he would be subject to "screening, arrest or possible harm" when returning to Sri Lanka.

[43] In my view, the RPD's analysis was intelligible and transparent and it provided a reasoned justification for its conclusion on forward-looking risk. The applicant did not challenge the factual findings or inferences in its risk analysis. As the respondent noted, the purpose of the analysis was to assess the forward-looking risks to the applicant. One basis for such a risk analysis is events in the past, from which a future risk could be inferred. As the Federal Court of Appeal stated in *Mileva v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 398 (CA): "The question raised by a claim to refugee status is not whether the claimant had reason to fear persecution in the past, but rather whether he now, at the time his claim is being decided, has good grounds to fear persecution in the future."

[44] Although the RPD's 2022 decision did not separately analyze the additional facts about the 2012 incident in the BOC as possible torture, it did reach an express conclusion on possible harm to the applicant on his return to Sri Lanka and explicitly concluded that he did not face a danger of torture. In the specific circumstances of this case – in which the applicant testified that he lived in Sri Lanka for seven years after the 2012 events without issues, and that he was not accused of anything in 2019 (including that he was an LTTE supporter), and was able to leave and return to Sri Lanka without incident before he came to Canada – I do not believe that the law required a separate analysis of the additional underlying facts of the 2012 incident to assess the forward-looking risk to the applicant. The RPD's analysis of the forward-looking risk of harm was legally adequate.

[45] In the course of argument, the applicant also argued that the RPD should have conducted a cumulative assessment of whether the events constituted persecution (citing *Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84). The applicant noted that in addition to the 2012 incident, his BOC referred to “several occasions” when he was detained by authorities and questioned on mere suspicion (presumably because he was a young Tamil man). These incidents were not mentioned by the RPD.

[46] From the BOC, it appears that these incidents occurred before 2012. As noted, the applicant's BOC also advised that after 2012, he continued his “routine life” and he testified that he experienced no issues for seven years until 2019. The RPD found that the May 2019 events did not occur. It reasonably assessed the risks of harm on his future return to Sri Lanka based on his profile and circumstances, as already discussed. In these circumstances, the RPD made no

reviewable error by failing to conduct a cumulative assessment that included the additional incidents mentioned in the applicant's BOC: *Vavilov*, at para 100; *Sellathambi v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1227 at paras 29-35.

#### **IV. Conclusion**

[47] For these reasons, I conclude that the application must be dismissed.

[48] Neither party proposed a question to certify for appeal and none will be stated.

**JUDGMENT in IMM-1371-22**

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

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

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Judge

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

**DOCKET:** IMM-1371-22

**STYLE OF CAUSE:** PRABAKARAN SATHASIVAM v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 17, 2023

**REASONS FOR JUDGMENT  
AND JUDGMENT:** A.D. LITTLE J.

**DATED:** MAY 3, 2023

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