

Federal Court



Cour fédérale

**Date: 20200220**

**Docket: IMM-2151-19**

**Citation: 2020 FC 274**

**Ottawa, Ontario, February 20, 2020**

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

**BETWEEN:**

**SIVAKUMARAN RATNASINGAM  
THEVARANJINI THEVARASA  
AHTHISHAN SIVAKUMARAN (MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] The Applicants seek leave for judicial review of a decision of the Refugee Protection Division [RPD], dated March 14, 2019, wherein the RPD found that the Applicants were not Convention refugees nor persons in need of protection based primarily on an adverse credibility finding. The fundamental issue in this case is whether the Applicants provided sufficient

evidence of their fear of persecution based on a series of run-ins with the Eelam People's Democratic Party [EPDP], a minority political party and a paramilitary organization in Sri Lanka.

[2] The Applicants were ineligible to file an appeal with the Refugee Appeal Division because their claim was referred to the Immigration and Refugee Board before December 2012 and was thus designated as a legacy claim.

[3] For the reasons set out below, I grant the present application.

## II. Facts

[4] The Applicants are citizens of Sri Lanka and of Tamil ethnicity. In Sri Lanka, Tamils are often victims of ethnic profiling, surveillance and harassment by state actors and certain pro-government political actors.

[5] The Principal Applicant, Sivakumaran Ratnasingam, fled Jaffna for Vanni with his family in 1989 when the Indian Peace Keeping Forces took control of Jaffna. During this period, Vanni was controlled by the Liberation Tigers of Tamil Eelam [LTTE], a Tamil nationalist militant organization. The Principal Applicant was forced to work for the LTTE and his family was required to contribute 25% of their farm yield to the LTTE. In 1995, the Co-Applicant, Thevaranjini Thevarasa, and her family fled to Vanni, where she too was forced to work for the LTTE.

[6] The Principal Applicant and the Co-Applicant married in 2004. In 2007, while pregnant, the Co-Applicant moved with her parents to Trincomalee, Sri Lanka, where it was safer. While in Trincomalee, the Co-Applicant gave birth to the Minor Applicant.

[7] In March 2009, the Principal Applicant surrendered to the army and was taken to the Arunachalam refugee camp. He was questioned and beaten because the abductors suspected he was an LTTE fighter. Individuals associated with the LTTE are frequently subject to attacks, questionable detentions and harassment by government and pro-government actors. In June 2009, the Co-Applicant visited the refugee camp, where members of the army tried to rape her. With the assistance of a local priest, she was able to get the Principal Applicant released from the camp. The family then moved back to Jaffna.

[8] While in Jaffna, the Principal Applicant was approached by members of the EPDP, who urged him to vote for the party in the municipal election or face serious consequences. The EPDP is a paramilitary group in Sri Lanka that maintains close associations with the Sri Lankan military and police force. When the EPDP members realized that the Principal Applicant was related to one of the opposing candidates, he was abducted in a white van. The Principal Applicant was questioned and told not to vote for his relative. The Principal Applicant was released that evening and was warned that he would be abducted again if he did not support the EPDP. The incident took place in August 2009.

[9] In August 2010, a majority of Sri Lankan voters voted for the Tamil National Alliance during the parliamentary elections, angering the EPDP.

[10] In December 2010, the Principal Applicant was abducted again by the EPDP, threatened, beaten, and held for ransom. The kidnappers demanded 15 lakh rupees (roughly \$11,000) in ransom. Initially five lakh rupees were paid. The Principal Applicant was released and the Co-Applicant was provided additional time to pay the amount on pain of death.

[11] Rather than pay the balance, the Applicants fled the country on December 25, 2010. They arrived in Canada on May 10, 2011. The Applicants then filed claims for refugee protection. After nearly eight years, the Applicants were called to a hearing before the RPD in January 2019.

[12] The Applicants claim that they cannot return to Sri Lanka because they continue to fear the Sri Lankan army, the police, and the EPDP. The Applicants claim that the army and the police continue to ask questions about them on the suspicion that they may have been members of the LTTE and because they failed to pay the outstanding ransom sum. The Applicants fear that they will be detained and questioned upon return to Sri Lanka and it will be revealed that they failed to pay the full ransom amount to the EPDP.

[13] As a consequence, the Applicants believe they are at a risk of mistreatment by the EPDP. The Applicants also fear that they will be perceived as having been involved in LTTE activities abroad.

### III. Decision Under Review

[14] The RPD rejected their claim for refugee protection and concluded that the Applicants are not Convention refugees nor persons in need of protection. The RPD first found that there

were important credibility concerns relating to the Applicants' claims due to several inconsistencies in the Principal Applicant's testimony. Also, the RPD found that the threat posed by the army and the EPDP subsided because of insufficient evidence to indicate that these actors pose a continued risk to the Applicants. As an alternative conclusion, the RPD found that the Applicants have access to a viable internal flight alternative [IFA] in Colombo. Regarding the IFA, the RPD determined that the Applicants failed to provide sufficient evidence to support their fear of the Sri Lankan army, the police, and the EPDP.

IV. Procedural Issue

[15] The Respondent asks that this Court not consider the affidavit of the Co-Applicant because it contains new information that was not before the decision-maker. The Applicants did not vigorously argue the admissibility of the affidavit before me.

[16] This affidavit is inadmissible because it seeks to introduce facts that were not before the RPD (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19). There are some exceptions to this rule, but I do not see how they could apply in this case. Accordingly, the affidavit will not be considered.

V. Issues

[17] The sole issue in the case at bar is whether the RPD decision was reasonable.

VI. Standard of Review

[18] It is well established that this Court reviews the RPD's assessment of the evidence and the RPD's credibility findings on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]). Under the reasonableness standard of review, "the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable" (*Vavilov* at para 83).

VII. Analysis

[19] The Applicants challenge the RPD's decision on two grounds. First, the Applicants submit that the RPD drew an erroneous negative credibility finding that resulted from a misunderstanding of the Principal Applicant's testimony. Second, the Applicants submit that the RPD erred in finding that the risk from the EPDP was general and criminal in nature. The Applicants also submit that the RPD engaged in an unreasonable and selective review of the country condition evidence.

[20] I should first say that this is not a case where there was a problem understanding an interpreter. Consequently, interpretation is not being considered as a factor in my decision. Rather, this is a case where inconsistencies in testimony that led to a negative credibility finding are attributable to a lack of clarity in the manner in which the Applicants were asked questions.

A. *The Principal Applicant's testimony*

[21] In its decision, the RPD placed considerable weight on an apparent inconsistency in the Principal Applicant's testimony. According to the RPD's account, the Principal Applicant testified that he was beaten, threatened and held for ransom during the 2009 abduction incident. The RPD member noted that this testimony was inconsistent with the Principal Applicant's narrative, wherein he made no mention of a beating or a ransom demand and stated that the ransom demand of 15 lakh rupees was only made within the context of the 2010 abduction incident. On the basis of this and a few other inconsistencies, the RPD drew a "negative inference with respect to the [Principal Applicant's] credibility."

[22] The Applicants submit that this apparent inconsistency is attributable to a misinterpretation of the Principal Applicant's testimony due to the RPD's imprecise and confusing questions. The Applicants argue that it is clear from the transcript that the Principal Applicant was referring to the December 2010 abduction, not the August 2009 abduction, when he described being beaten and a ransom being paid.

[23] In the Principal Applicant's original claim for refugee protection, he states that he "was abducted by white van 2 times." In the Co-Applicant's claim for refugee protection, she states that her "[h]usband was abducted twice." In the Principal Applicant's Personal Information Form [PIF], the Principal Applicant described two incidents of abduction, one in August 2009 (to which I will refer as the 2009 Incident) and the other in December 2010 (to which I will refer as the 2010 Incident):

In August 2009 some people came in a van and introduced themselves as EPDP and told us we should vote for their party in the Municipal election and if not we would face serious consequences. When they realized I was related to one of the opposing candidates they abducted me in a white van. They took me to a house and questioned and threatened me not to support him. They left me late in the night and said that if I ignored their warning I would be abducted again and not be released. We lived in fear.

In August 2010 during Parliamentary elections people voted for the Tamil National Party, EPDP was very angry. During the first week of December 2010 I was abducted in a white van. My wife was in the kitchen. After 3 days they gave me a phone and instructed me to tell my wife to come with 15 Lakhs rupees. She first asked about my health. One man snatched my phone and warned my wife that I would be killed if the money was not paid. She asked for at least a day to borrow some money. Next day one of them went to my house and got 5 Lakhs rupees. They wanted my wife to take responsibility for paying the 10 Lakh rupee balance. My wife was told that she would be killed if she did not pay. She asked for one month's time.

[24] On the basis of these claims, the following can be said. During the 2009 Incident, after the abductors realized that the Principal Applicant was a relative of a member of a rival political party, the Principal Applicant was abducted in a white van by members of the EPDP, questioned, threatened and released without ransom. During the 2010 Incident, the Principal Applicant was abducted in a white van for three days. The abductors instructed the Principal Applicant to call his wife and demand a ransom payment of 15 lakh rupees.

[25] At the RPD hearing in 2019, the panel member questioned the Principal Applicant about these abduction incidents. During his testimony, the Principal Applicant claimed to be the victim of two abductions, one of which occurred in 2010:

MEMBER: Okay, and you made a claim for refugee protection in Canada in 2011.



PRINCIPAL CLAIMANT: Yes

MEMBER: Okay, and in, what, what and who did you fear?

PRINCIPAL CLAIMANT: White van abduction.

MEMBER: From whom?

PRINCIPAL CLAIMANT: A combination of army and EPDP.

MEMBER: And, and why did you fear that would happen to you when you made that claim back in 2011?

PRINCIPAL CLAIMANT: Sir, would you be able to re-phrase that question?

MEMBER: Sure, you said that you were afraid of being abducted in white van by combination of the army and the EPDP, why were you afraid of that?

PRINCIPAL CLAIMANT: In fact, I was a victim of that while I resided in Vanni and when I relocated to Jaffna that happened to me.

MEMBER: So, it happened to you twice, is that correct?

PRINCIPAL CLAIMANT: Yes, 2010 as well.

[26] The panel member then questioned the Principal Applicant about events that occurred from 1989 to June 2009. At the end of this line of questioning, the Principal Applicant reiterated his claim that he was questioned and warned not to support the LTTE. At this point, the Principal Applicant was asked if he “helped” the EPDP with their 2010 parliamentary election campaign:

MEMBER: Okay, did you help them?

PRINCIPAL CLAIMANT: In the year 2010 when they lost the Parliamentary elections, one day they appeared to my place and my wife was with the, wife and the baby was there, at that time she was in the kitchen and they entered the house and ordered me to come out with them for some questioning.

MEMBER: Okay, now before, just before you go, I asked you before, they asked you to help them get elected, did you do anything to help them?

PRINCIPAL CLAIMANT: I did not participate in any positive way.

MEMBER: Okay, now when you're talking about getting them elected, let's be clear, who, who is it you're talking about?

PRINCIPAL CLAIMANT: EPDP.

MEMBER: Okay, now you say they, they came into the house and, and asked you to go outside for questioning, is that right?

PRINCIPAL CLAIMANT: Yes, and they took me along with them, they took me to a place half an hour from, away from my home and they took me to a house and they keep on threatening me and questioning me what my motives are, what I am, what am I doing in the town and swearing at me, they kicked me, kicked with their shoes on, on the third day of custody they put forward a request to bring 15 Lakhs rupees [...]

MEMBER: Okay [...]

PRINCIPAL CLAIMANT [...] that way [...]

MEMBER: [...] just go on.

PRINCIPAL CLAIMANT: [...] you will be able to save your life.

MEMBER: All right, now, you said they came to your, what, the, why were they upset about you? They, they came and they asked you to work with them, did you do anything to upset them or?

PRINCIPAL CLAIMANT: I don't know the real reason why, but I was working in the market at that time, that's where I was working, in the market. They put forward a request for ransom and we, I did not have the financial means to pay, I, with 1 or 2 Lakhs, you won't be able to leave alive [...]

[27] Clearly, the Principal Applicant is speaking of the 2010 Incident and his testimony is consistent with his narrative regarding that incident. The Principal Applicant was abducted following the EPDP's loss in the August 2010 parliamentary elections. The Principal Applicant

was threatened and questioned. On the third day of the abduction, the abductors demanded a ransom payment of 15 lakh rupees.

[28] Immediately after this testimony, the panel member asked the Principal Applicant about a detail relating to the 2009 Incident:

MEMBER: Okay, let's just wait, wait there. You've written here that they, they were upset with you cause they, they realized that you were related to one of the opposing candidates.

PRINCIPAL CLAIMANT: That's the reason I was questioned intensively.

MEMBER: Yeah, but I asked you that before, you know, is there a reason they're upset with you, did you do anything? You said no, there was no real reason. You didn't mention this before until I brought it up now, what, I mean, that's why they got upset, came and saw you the first time when they, they said, when they realised I was related to one of the opposing candidates, they abducted me in a white van. They said they took, they took you to a house, questioned and threatened you not to support this person. Okay, why, why didn't you mention this?

PRINCIPAL CLAIMANT: I didn't understand that.

MEMBER: Why, why did you not mention this when I asked you why they were upset with you or why did they come and, you know, talk to you and question you, you made no mention of this. Why is that?

PRINCIPAL CLAIMANT: I did not understand sir.

MEMBER: You don't understand my question why you didn't mention that according to your story, one of the opposing candidates was a relative of yours?

PRINCIPAL CLAIMANT: The story is correct, like, the opposing candidate was a relative of mine and I did not, and that's the reason they were so angry but I, on the whole, I was trying to tell my whole story to make more meaning to the story.

[29] It seems to me that the Principal Applicant and the RPD member were speaking at cross-purposes. At this point, it is clear that the panel member was referring to the 2009 Incident but the Principal Applicant had not yet made the segue from the 2010 Incident, hence his comments about not understanding the question.

[30] According to the Principal Applicant's narrative, the abductors realized that he was a relative of an opposing candidate during the 2009 Incident. The Principal Applicant was understandably confused by the panel member's questioning because he was being accused of omitting a detail that was related to the earlier abduction incident.

[31] The panel member then asked more questions about the abduction incident:

MEMBER: Okay, so let's clarify, so, they found out you were related to one of the opposing or opposition candidates from the Tamil National Alliance, is that correct?

PRINCIPAL CLAIMANT: Yes sir.

MEMBER: And, and so, when they found out, what happened?

PRINCIPAL CLAIMANT: I was threatened that I did not cooperate with them getting elected.

MEMBER: And, and what did they do?

PRINCIPAL CLAIMANT: I was abducted, I was hit, kicked in the face with the shoe on, I was hit in the leg so badly I wasn't able to walk for some time, beaten with batons and weapons, they were asking for ransom [...]

MEMBER: Okay, hold, hold, let's hold it please, I asked you what, what happened when they found out that he was, you were related to a member of the opposition and you said that they, they took you, you were, they abducted you, then they took you and hit you and beat you and, and now you're saying that they, then they asked for ransom.

PRINCIPAL CLAIMANT: Yes.

[32] Yet again, the questioner and the answerer do not appear to be on the same page. The Principal Applicant testified about the 2010 Incident that involved a ransom demand, while the panel member appears to be questioning the Principal Applicant about the 2009 Incident, which did not involve a ransom demand.

[33] After this questioning, the panel member asked for clarification, and then continued to ask imprecise questions that failed to distinguish between the 2009 Incident and the 2010 Incident:

MEMBER: Okay, when did this all happen?

PRINCIPAL CLAIMANT: 2010.

MEMBER: When did they find out that you were related to one of the opposition parties?

PRINCIPAL CLAIMANT: I, I returned to my native town in 2009, in August they did bring this issue.

MEMBER: So, in, in August 2009 they, that's when they found out that you were related to a member of the opposition party, is that right?

PRINCIPAL CLAIMANT: Yes.

MEMBER: And, and that's when they abducted you?

PRINCIPAL CLAIMANT: At that time, I was, hold on (interpreter says to claimant), at that time, they did come and threaten me, at that time they took me into custody for a period of two-days and then released me. I was told that I should be loyal and help them get elected in the Parliamentary elections.

MEMBER: Did anything else happen during those two-days?

PRINCIPAL CLAIMANT: It's a number of threats happened. I was told not to help anyone, including the Tamil National Alliance. Then, eventually I was released.

MEMBER: Were you beaten or hit?

PRINCIPAL CLAIMANT: Yes, threatened and beaten.

MEMBER: Anything else happen to you?

PRINCIPAL CLAIMANT: They beat me with the batons in my legs.

MEMBER: Okay, you, you made no mention of being beaten, you just said they threatened you.

PRINCIPAL CLAIMANT: It included both threats and beats.

COUNSEL: Okay, so just to be clear if you don't mind, this is August 2009 only that you're being asked about.

PRINCIPAL CLAIMANT: I was held captive for two-days and they interrogated me.

MEMBER: And beat you.

PRINCIPAL CLAIMANT: At that time, no beating, just threatens.

MEMBER: Okay, so now, so you're saying now they're not, you were not beaten, is that right?

PRINCIPAL CLAIMANT: No.

MEMBER: Okay, and when, when was the next time that you had any interaction with the EPDP?

PRINCIPAL CLAIMANT: They appear in person in 2010 and took me into custody in their white van.

MEMBER: And, and do you remember when in 2010?

PRINCIPAL CLAIMANT: First week of December.

MEMBER: Okay, so you were abducted and, and I'm sorry, and what happened during that time when you were abducted?

PRINCIPAL CLAIMANT: While we are, while we are at home and wife was in the kitchen, they entered the house and suggested that I come with them for questioning, that's where I got

threatened and beaten and they were asking about what I am doing, what my involvement is, they used their shoes to hit on my face, they tie me up and then beat me with batons. Even though I told them I have no involvement whatsoever with anything, I am a family man but that did not get into their heads.

MEMBER: And why, why were they so upset?

PRINCIPAL CLAIMANT: Because the Tamil National Alliance came to power and they were asking for ransom and they made threats to harming my life. Two-days later, I was given access to talk to my wife over the phone indicating to bring money. Initially, my wife spoke to me and then because my wife didn't have the capacity to obtain the money they were demanding so they asked, she asked for more time [...]

MEMBER: How much money did they want?

PRINCIPAL CLAIMANT: 15 Lakhs rupees. Three-days later, my wife provided them with 5 Lakhs rupees.

MEMBER: Okay, so you were in custody for how long being beaten and threatened before you called your wife?

PRINCIPAL CLAIMANT: In total, I stayed in custody for one-week. On, on the third day, the money request came up.

MEMBER: Okay, but, hold on (Panel says to claimant), my, answer the question, how long were you in custody before you called your wife?

PRINCIPAL CLAIMANT: Six-days.

MEMBER: And then after six-days of questioning, you called your wife, is that right?

PRINCIPAL CLAIMANT: On the third day I was given the opportunity to talk to my wife.

MEMBER: So, you were six days in total in, you know, detained by them, is that right?

PRINCIPAL CLAIMANT: Yes, my wife went and borrowed money from people whom she knew and once she was able to get some money, that's when she turned to the camp.

[34] On the basis of this exchange, the RPD member made an adverse credibility finding, at paragraph 11 of the RPD decision:

The PC has stated in his Personal Information Form (PIF) narrative that after moving to Jaffna with his family, he was abducted on two occasions by the EPDP: in August 2009 and in August (should be December) 2010. His testimony in regard to these two alleged incidents was confusing and inconsistent. Initially, when testifying about the 2009 incident, he indicated that he had been abducted, that he had [*sic*] beaten and threatened, and that a ransom had been demanded. It was pointed out to the PC that his PIF narrative regarding the 2009 abduction made no mention of being beaten or of a ransom being demanded. In fact, according to his PIF narrative, the ransom demand of 15 lakh rupees was not made until the second abduction in December 2010. The PC was also informed that his PIF narrative stated that during the 2009 abduction he was warned not to vote for a relative who was an opposing candidate. He was asked why he had made no mention, in his testimony, of the 2009 abduction and of having a relative who was an opposing candidate. After being made aware of his omissions and inconsistencies, the PC changed his testimony to reflect what had been written in his PIF narrative. The PC, however, provided no explanation as to the inconsistencies and omissions in his initial testimony. The panel draws a negative inference with respect to the PC's credibility.

[Emphasis added.]

[35] The Applicants concede that the Principal Applicant's testimony was initially inconsistent as regards the manner in which the Co-Applicant paid the ransom money (whether she went to the abductors, or whether the abductors went to her home), however, this was corrected later in the testimony. According to the Respondent, this inconsistency alone is so crucial that it warrants dismissal of the present application for judicial review.



[36] I disagree. It seems to me that the inconsistency regarding the manner of payment of the ransom did not seem to have been of concern to the RPD, as it was not mentioned in its decision. In any event, that single inconsistency is not determinative as far as I am concerned.

[37] The Respondent acknowledges that there was confusion during the testimony of the Principal Applicant but takes the position that such confusion, and the determination on credibility that followed, was not determinative of the final decision of the RPD. The Respondent argues that independently of the misunderstandings identified by the Applicants, there were other inconsistencies in the Principal Applicant's testimony that on their own would justify a negative credibility finding by the RPD.

[38] For example, the Respondent raises the inconsistency in the testimony relating to the number of days that the Principal Applicant was held hostage during the 2010 Incident. I am not certain I read the testimony as being inconsistent on this issue, however, whether there were other inconsistencies does not seem to have been determinative in the RPD's findings on credibility.

[39] Another example raised by the Respondent relates to the Principal Applicant's response to the question as to why the EPDP was angry with the Principal Applicant; the Principal Applicant answered as follows: "I don't know". The Respondent suggests that the answer is inconsistent with the Principal Applicant's previous evidence that the EPDP was angry with him on account of his uncle being an opposition candidate. The Respondent argues that the answer is wrong regardless of which incident was being spoken about.

[40] I disagree. When the RPD asked the question, it followed a line of questioning in relation to the 2010 Incident. It made sense that the Principal Applicant would answer, “I don’t know” to the question as to why the EPDP was angry with him in the context of what he thought was the 2010 Incident.

[41] Overall, it seems to me that the panel member was not clear on what the Principal Applicant was asked, and that the member conflated details relating to both the 2009 and 2010 Incidents. The Principal Applicant testified about the December 2010 Incident when he described a ransom payment and a beating. The panel member asked the Principal Applicant about visits by the army and the EPDP, but did not clarify that the panel was referring to the 2009 Incident. This confusion led the panel member to ask questions about details relating to the 2009 Incident.

[42] This does not seem to me to be a case where the Principal Applicant changed his testimony to be consistent with his PIF. Each of the elements of the Principal Applicant’s testimony was consistent with his PIF. The inconsistency emerged when the RPD member tried to ascribe each of those elements to either the 2009 Incident or the 2010 Incident.

[43] It is on account of what can best be described as a misunderstanding between the Principal Applicant and the member that the RPD made a negative credibility finding. That credibility finding permeated the entire decision and thus was clearly determinative of the RPD’s decision.

[44] It is a reviewable error for the RPD to base a negative credibility finding on an inconsistency that did not in fact exist (*Adomah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 328 at para 8; *Abed v Canada (Citizenship and Immigration)*, 2010 FC 1160 at paras 11-12). The RPD's misunderstanding of the evidence undermines the reasonableness of the RPD decision. The RPD's confusion on this point also raises issues of procedural fairness (e.g., *Yahaya v Canada (Citizenship and Immigration)*, 2019 FC 1570).

B. *The risk from the EPDP*

[45] The RPD found that the risk posed by the EPDP was criminal and general in nature. The RPD panel wrote the following at paragraph 29:

The panel finds that his interactions with individuals whom the claimant believes were members of the EPDP were of a criminal nature. Given the huge number of Tamils who have worked abroad or have a member of their family currently living in the Tamil diaspora, the panel finds that the risk faced by the claimant is one generally faced by most Tamils, especially in the north of Sri Lanka, where the Tamil population is most concentrated.

[46] There is no question that the RPD's credibility findings permeated its decision. In fact, before me, the Respondent conceded that the crux of this case rests on the credibility findings and that the RPD did combine credibility within its other findings.

[47] In any event, I need not make a finding on the issue of whether the risk posed by the EPDP was criminal and general in nature because it seems to me that the RPD's determination on this point is tainted by the aforementioned erroneous credibility finding. At the start of the RPD's analysis of the EPDP risk, the RPD stated incorrectly that the Principal Applicant's

purported omissions and inconsistencies are “indicative of a lack of credibility”. In the absence of evidence of targeting, the RPD found that the “EPDP’s interaction with the claimant has essentially been one of a criminal nature”.

[48] I think that this issue is an appropriate issue for reconsideration. On reconsideration, the RPD can determine whether the Principal Applicant was the target of the EPDP for political or other reasons, and whether such a risk faced disproportionately by a particular ethnic group (i.e., the Tamils) amounts to targeting, and re-evaluate the country condition documents and the viability of Colombo as an IFA in light of whether there exists any association between the EPDP and state actors in Sri Lanka.

#### VIII. Conclusion

[49] Accordingly, I grant the application for judicial review.

**JUDGMENT in IMM-2151-19**

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

1. The application for judicial review is granted.
2. The matter is referred back for redetermination by a differently constituted panel.
3. No question of general importance is certified.

**"Peter G. Pamel"**

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Judge

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

**DOCKET:** IMM-2151-19

**STYLE OF CAUSE:** SIVAKUMARAN RATNASINGAM, THEVARANJINI  
THEVARASA, AHTHISHAN SIVAKUMARAN  
(MINOR) v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 12, 2019

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** FEBRUARY 20, 2020

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