

Federal Court



Cour fédérale

Date: 20220208

Docket: IMM-5536-20

Citation: 2022 FC 158

Ottawa, Ontario, February 8, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

CHANDRASEGARAN KALIRASAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background and PRRA officer's decision

[1] The Applicant, Chandrasegaran Kalirasah, is a 56-year-old citizen of Sri Lanka of Tamil ethnicity. He is married with three sons; his wife and youngest son remain in Sri Lanka, his eldest son applied for refugee protection in France and his middle son has been in Malaysia since 2019. Mr. Kalirasah seeks judicial review of a decision rendered by a senior immigration officer [PRRA officer] on April 23, 2020, refusing his pre-removal risk assessment [PRRA] application

on the grounds that Mr. Kalirasah failed to discharge the burden upon him of demonstrating a prospective risk as set out in section 96 or paragraphs 97(1)(a) and (b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] In 1983, ethnic armed conflict opposing the government and the Liberation Tigers of Tamil Eelam [LTTE] erupted in northeast Sri Lanka. Mr. Kalirasah's father-in-law was rounded up by the Sri Lankan army and killed in 1985, and unknown assailants killed his brother in October 1988. In June 1990, during a resurgence of violence, Mr. Kalirasah and his family fled Sri Lanka for the State of Tamil Nadu in India, where they lived in a refugee camp until they were forced back to Sri Lanka by the Government of India in 1997. In the meantime, his father, who had returned to Sri Lanka from India, was struck by a Sri Lankan army vehicle and died in November 1996.

[3] In 1998, Mr. Kalirasah worked in Saudi Arabia on a two-year contract, returning to Sri Lanka in 2000 on account of his eldest son being ill. In early 2002, Mr. Kalirasah became an independent candidate in local council elections and was affiliated to a party led by Mr. Periyapody Sooriyamoorthy, who ran on the platform of representing and advocating for the interests of the Tamil people. Mr. Kalirasah asserts that he continued to face threats from the Sri Lankan army, however, he kept organizing meetings, distributing pamphlets and putting up posters around the community. Because of his involvement in Mr. Sooriyamoorthy's campaign, Sri Lankan armed forces threatened Mr. Kalirasah so that he would stop holding meetings and put an end to the campaign. Independent candidates with similar platforms in neighbouring villages were also targeted with similar threats, some of whom went missing or were killed.

Fearing the situation, Mr. Kalirasah decided to put an end to his campaign and the elections set for March 2002 were cancelled; his independent party was disbanded shortly thereafter.

[4] In August 2002, Mr. Kalirasah left Sri Lanka for Greece on a temporary work permit, leaving his wife and three children behind. He remained in Greece for two years, returning in December 2004 to assist family members affected by the tsunami. While back home, Mr. Kalirasah began receiving suspicious telephone calls; one night, unidentified armed individuals knocked on his door, but Mr. Kalirasah was able to escape with his family through the back door. He says that he feared for his life, so in March 2005, Mr. Kalirasah returned to Greece, leaving his wife and children behind. Mr. Kalirasah remained in Greece for about 10 years on a temporary work permit, during which time he claims that the leader of the political party for which he was a candidate in 2002 was killed in May 2005 and, in 2009, he lost another relative to the war in Sri Lanka. In addition, Mr. Kalirasah's younger brother was accepted as a refugee in Canada in 2006.

[5] Mr. Kalirasah returned to Sri Lanka in December 2015 to receive medical treatment for a heart issue, however, two months after his return, the threats against him resumed; four individuals came to his home looking for him while he was at the market. They found him at the market but Mr. Kalirasah again managed to escape. He hid at his daughter-in-law's house in a village while making plans with a smuggler to flee Sri Lanka for Canada, where his younger brother is presently living.

[6] He returned for the third time to Greece in May 2016 on the strength of his Greek work permit and, with the assistance of the smuggler, Mr. Kalirasah travelled to France, then on to Panama, Costa Rica, Nicaragua, Honduras, Guatemala, and Mexico before arriving in the United States [U.S.] in December 2016. He remained in a U.S. immigration detention centre until July 2017, when he set off for Canada, arriving here in August 2017; he immediately claimed refugee protection. While in the U.S. detention centre, Mr. Kalirasah was informed by his brother that his eldest son had been attacked and tortured by the Sri Lankan army and later admitted to the hospital on account of his injuries – he fled to France in 2016, where he sought refugee protection. His second son was also tortured in 2019 and later suffered from depression leading him to attempt suicide; he is now living in Malaysia.

[7] The Refugee Protection Division [RPD] rejected Mr. Kalirasah's claim on November 17, 2017, on the basis that Mr. Kalirasah failed to establish his identity, but the RPD failed to assess Mr. Kalirasah's forward-facing risk; leave for judicial review was denied, however, in what was described as a remarkable display of cultural insensitivity, the RPD member microscopically dissected all of the pieces of Mr. Kalirasah's evidence going to establish his identity, the principal reason for the concern being minor inconsistencies in how his name was spelled in the English translation of his passport, the birth certificates, the letters from his wife and other supporters of his claim, and in the letter from Mr. Kalirasah's U.S. lawyer and the U.S. biometrics report. There were clearly differences in how the English version of Mr. Kalirasah's name appeared on the documents, but it would not be the first time that names of individuals in languages which do not use the Latin alphabet are strained and often written differently from one document to the next when translated into English. I appreciate that Mr. Kalirasah did not help

himself in trying to explain the differences— which admittedly went some way in the RPD’s determination at the end of the day – however, the fact that the RPD did not recognize this cultural reality and was not more accommodating in getting to the bottom of the anomalies in the English spelling of Mr. Kalirasah’s name is somewhat disappointing. In any event, the RPD decision is not the issue before me.

[8] Following the RPD decision, a removal order was initiated, and Mr. Kalirasah was given the opportunity to submit a PRRA application. Although it was certainly open to the PRRA officer to accept the new evidence that Mr. Kalirasah tried to submit in accordance with paragraph 113(a) of the Act to establish that he was the person who he claimed to be, the PRRA officer refused to do so on the basis that Mr. Kalirasah did not provide an explanation as to why the new documents – which predated the decision of the RPD – were not reasonably available at the time or why he could not reasonably have been expected in the circumstances to have presented them to the RPD. Mr. Kalirasah tried to introduce a translation of his National Identity Card from Sri Lanka – the RPD had not considered the document because no translation was attached – however, the PRRA officer determined that the translation itself was not a new document as it could have been provided to the RPD. Mr. Kalirasah tried to introduce a copy of his Sri Lanka Refugee Identity Card, however, that document was refused because it was not translated into either English or French but also because it predated the RPD hearing and was thus not a new document. As regards the letters from Mr. Kalirasah’s wife, the Justice of the Peace and Mr. Kalirasah’s neighbour, all attesting to the fact that Mr. Kalirasah is who he claims to be, the PRRA officer also refused to accept them because the letters were reformulations (with a fresh date) of the letters which had already been rejected by the RPD on the ground that they

were not official government identification or because the information could reasonably have been put before the RPD at the time.

II. Analysis

[9] Had the assessment by the PRRA officer of Mr. Kalirasah's identity been the determinative issue in the matter before me, I would have been inclined to grant the present application for judicial review; but it is not. After determining that Mr. Kalirasah had not discharged his burden to establish his identity, and given that his prospective risk had not been assessed by the RPD, the PRRA officer proceeded to assess Mr. Kalirasah's risk of returning to Sri Lanka.

[10] Before me, Mr. Kalirasah raises three arguments; the issue regarding the new documents sought to be introduced to establish his identity need not be addressed as I do not consider identity as being the determinative issue with respect to the PRRA decision. The same applies to the issue regarding whether the PRRA officer breached procedural fairness by not holding an oral hearing to allow Mr. Kalirasah to address the PRRA officer's credibility concerns relating to his identity documents. Consequently, the only remaining issue is the reasonableness of the PRRA decision – whether the PRRA officer erred in his/her assessment of the evidence and in not assessing Mr. Kalirasah's risk as a Tamil man. In addition, there is consensus that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). Thus, this Court should intervene only if the decision under review does not bear “the hallmarks of reasonableness –

justification, transparency and intelligibility” and if the decision is not justified “in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

[11] Mr. Kalirasah begins by citing the Federal Court of Appeal decision in *Salibian v Canada (Minister of Employment and Immigration)*, 1990 CanLII 7978 (FCA), [1990] 3 FC 250 [*Salibian*], for the proposition that the apprehension of risk to an individual should not be disengaged from the suffering of those around him and with whom he is closely connected, and that the fate of other members of his family, racial and social groups are the best indicator of possible harm to him. Mr. Kalirasah asks that I look to the destructive effects that the war in Sri Lanka has had on his family and points to the death of his father, his father-in-law, his brother and his uncle, and the targeting of his two sons as being the prism through which the PRRA officer should have considered his risk of persecution.

[12] There is no doubt that Mr. Kalirasah and his family have suffered greatly on account of the war in Sri Lanka that ended in 2009, and I agree with the proposition set forth in *Salibian*, however, this is not a case of the PRRA officer not appreciating the context surrounding Mr. Kalirasah’s claim. Rather, this is ultimately a case of insufficiency of evidence to establish prospective risk; the PRRA officer was simply not convinced that Mr. Kalirasah had met his burden of establishing a forward-facing risk of persecution in the event that he was to return to Sri Lanka.

[13] The PRRA officer reviewed the evidence, in particular the new documents submitted by Mr. Kalirasah on the issue of prospective risk, and determined that although the documents were

accepted for establishing the facts to which they relate, they are insufficient to establish that Mr. Kalirasah continues to be at risk in Sri Lanka.

[14] As regards the registers of death for his father, father-in-law and uncle, the PRRA officer determined that although the registers were evidence of the death of Mr. Kalirasah's family members, Mr. Kalirasah did not indicate that he is personally at risk because of his relationship to these family members or that they were targeted because of their relationship to him. As regards the evidence of his political involvement in 2002, the PRRA officer pointed to the fact that Mr. Kalirasah's party was no longer active and that the election was cancelled over 18 years before and accordingly found that Mr. Kalirasah has not provided sufficient information or evidence regarding his past political activities to demonstrate how such would cause him to be at risk in Sri Lanka today. As regards the incidents which occurred in 2004 and 2016 while Mr. Kalirasah was back in his village in Sri Lanka, the PRRA officer found that there was insufficient evidence to tie those events to Mr. Kalirasah's previous political activities. Having reviewed the material, I am not persuaded that there is anything unreasonable in the PRRA officer's findings on these issues.

[15] As regards the events in 2016 involving Mr. Kalirasah's eldest son leading to him being hospitalized and eventually departing for France, the PRRA officer did not find sufficient evidence that the attack on his eldest son was attributable to or in any way connected to Mr. Kalirasah, nor did the PRRA officer find sufficient evidence to support any claim of a forward-facing risk for Mr. Kalirasah. Before me, Mr. Kalirasah points to a line in his Basis of Claim [BOC] narrative where he describes being in the U.S. detention centre and learning that

his son had been beaten by the Sri Lankan army; Mr. Kalirasah states, in reference to his son: “He was asked about me.” Mr. Kalirasah claims that this single line in his BOC narrative ties the fate of his son to him and his past political activities. I am not convinced. The PRRA officer made a point of underscoring that although the son’s *Attestation de demande d’asile* from France was submitted, it did not contain the details of the son’s basis of claim upon which his claim for refugee protection was based or evidence that such a claim was in fact accepted. There is no explanation as to why the son’s basis of claim was not included as part of Mr. Kalirasah’s PRRA application.

[16] Putting aside for the moment whether the words “He was asked about me” is in relation to Mr. Kalirasah’s past political activities or his profile as a Tamil, it seems to me that to highlight five words tucked away in Mr. Kalirasah’s lengthy BOC narrative in support of his refugee claim as evidence of a connection between the fate of the son and the political activities of the father seems somewhat of a stretch on judicial review, especially when it is not clear that such reference was brought to the attention of the PRRA officer at the time. In his signed statement attached to his PRRA application, Mr. Kalirasah does not repeat the statement but simply professes a connection between the situations faced by his family, in particular his sons, and his past political activity. It is unfortunate that his son’s basis of claim in France was not included as part of Mr. Kalirasah’s PRRA application, however, other than the assertion of Mr. Kalirasah that the calamities that befell his family are connected to his past political affiliations, there is no evidence in support. Under the circumstances, I cannot fault the PRRA officer for finding that Mr. Kalirasah failed to demonstrate that his past political activities would continue to pose a threat to him if he were to return to Sri Lanka.

[17] As for the letter from Mr. Kalirasah's wife attesting to the attack on their second son, the PRRA officer again accepts that the attack took place, as did the son's hospitalization, however, as was the case with his older brother, the PRRA officer gave the letter little probative value as regards the issue of forward-facing risk to Mr. Kalirasah. I must agree that we do not know why the son was targeted and there is nothing in the recounting of events or in the hospital records linking the attack back to Mr. Kalirasah's past political activities many years earlier. Again, I see nothing unreasonable with the findings of the PRRA officer.

[18] At a higher level, the PRRA officer found that even if he/she accepted that Mr. Kalirasah ran in the elections in 2002, Mr. Kalirasah provided few details regarding what this independent party stood for other than saying that it represented the Tamil people; there was no evidence as to the reach and influence of this party in Sri Lanka, nor was there evidence that the party was supportive of Tamil separatism – in fact, counsel for Mr. Kalirasah conceded that she did not find any evidence to that effect in the National Documentation Package [NDP] for Sri Lanka – that it was connected to the LTTE separatist party in Sri Lanka, or that the party leader was in fact killed – no news reports or other objective evidence was brought forward to support such claims. It is certainly not for the PRRA officer to go digging around, as suggested by Mr. Kalirasah, the hundreds of pages of the NDP to find support for his claim regarding what would seem to be a fringe, very local rural political party that saw life for only a few months over 20 years ago.

[19] Mr. Kalirasah cites *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 [*Maldonado*], for the presumption of truthfulness and the proposition that a

board acts arbitrarily when it chooses, without valid reasons, to doubt a claimant's credibility, and argues that the PRRA officer erred by drawing adverse credibility findings from the absence of corroborating evidence (*Bagri v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8138 (FC) at para 11; *Maldonado* at 305; *Chen v Canada (Citizenship and Immigration)*, 2019 FC 162 at para 28; *Ortega Ayala v Canada (Citizenship and Immigration)*, 2011 FC 611 at paras 19-21). I accept the proposition as regards the events experienced by Mr. Kalirasah and his family but not Mr. Kalirasah's hypothesis as regards his forward-facing risk in the event that he returns to Sri Lanka. Nowhere in the PRRA decision did the PRRA officer question the credibility of Mr. Kalirasah's assertions in respect of what he and his family have lived through or in respect of Mr. Kalirasah's past political activity. Rather, the PRRA officer simply saw little support for where Mr. Kalirasah wanted to extrapolate from the evidence to suggest that what his sons had experienced more recently was somehow connected to his political activity. Unlike the situation in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968, corroborating evidence was not being required to avoid an adverse credibility finding.

[20] I also do not agree with Mr. Kalirasah that the PRRA officer rejected evidence "for what it does not say" and completely ignored "what it does say" (*Njeru v Canada (Citizenship and Immigration)*, 2009 FC 1281 at para 73). The PRRA officer accepted the evidence for what it did say, but did not accept that the evidence was sufficient support for what Mr. Kalirasah wanted the evidence to say, i.e., to support his claim that the attacks on his sons were connected to him. There is a difference between a PRRA officer wholly discounting the value of a document because it only contains some details but not others, and what happened in this case, which is that the PRRA officer found that the documents only proved some facts which are not in and of

themselves sufficient to establish that Mr. Kalirasah continues to be at risk if he were to return to Sri Lanka. The evidence simply did not make the connection between what was asserted therein and the forward-facing risk to Mr. Kalirasah, and I see nothing unreasonable with the PRRA officer's decision to give the evidence little probative value as regards the existence of such risk.

[21] According to Mr. Kalirasah, the PRRA officer failed to consider the evidence as a whole by not assessing the cumulative effect of the documents and only doing a "selective reading of the evidence" (*Alvarado v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 255 at para 2). However, I agree with the Minister that Mr. Kalirasah simply provided insufficient evidence to support his forward-looking risk if he returns to Sri Lanka, and he is asking this Court to reweigh the evidence on judicial review (*Ogbonna v Canada (Citizenship and Immigration)*, 2017 FC 93 at para 16). The onus to establish the sufficiency of his claim lies on the applicant. Mr. Kalirasah was expected to provide to the PRRA officer "all the evidence necessary for the officer to make a decision" (*Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913 at para 6, citing *Lupsa v Canada (Citizenship and Immigration)*, 2007 FC 311 at para 12).

[22] Mr. Kalirasah further argues that the officer failed to assess his risk based on his profile as a Tamil man (*Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 244 at para 12) and ignored objective country evidence relating to this issue as it is the officer's duty to consider current conditions in Sri Lanka (*Ampong v Canada (Citizenship and Immigration)*, 2010 FC 35 at paras 39-40). The PRRA officer relied on the NDP and reviewed the country conditions and found that Mr. Kalirasah did not adduce sufficient objective evidence to demonstrate that his

profile would make him of particular interest to the authorities in Sri Lanka. In his written submissions, Mr. Kalirasah relies on certain documents from the NDP that postdate the PRRA decision; I do not see how the PRRA officer could reasonably have relied on those documents. The PRRA officer did not ignore country condition evidence; the PRRA officer reasonably found that the country condition evidence did not support Mr. Kalirasah's claim that his profile would place him at risk in Sri Lanka.

[23] Finally, Mr. Kalirasah claims that the PRRA officer unreasonably limited the assessment of Mr. Kalirasah's personalized risk by focusing on his political activities and therefore failed to consider his risk as a returning failed asylum seeker (*Gunaratnam v Canada (Citizenship and Immigration)*, 2015 FC 358 at paras 53-54). However, Mr. Kalirasah did not raise this element of risk in his PRRA application, so I can hardly fault the PRRA officer for not addressing it.

[24] All in all, I do not find the PRRA decision to be unreasonable as to its findings and conclusions on the determinative issue of Mr. Kalirasah's forward-facing risk.

[25] On a final note, I do not see where the PRRA officer may have breached procedural fairness in not allowing an oral hearing to deal with any credibility concerns regarding Mr. Kalirasah's risk in returning to Sri Lanka. As mentioned, there were no credibility concerns expressed by the PRRA officer, who simply gave little or no probative value to the evidence in relation to Mr. Kalirasah's forward-looking risk under section 96 and subsection 97(1). Therefore, the PRRA officer was not required to hold an oral hearing.

III. Conclusion

[26] I would dismiss the application for judicial review.

JUDGMENT in IMM-5536-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5536-20

STYLE OF CAUSE: CHANDRASEGARAN KALIRASAH v THE
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