

Federal Court



Cour fédérale

**Date: 20220825**

**Docket: IMM-4434-20**

**Citation: 2022 FC 1227**

**Ottawa, Ontario, August 25, 2022**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**PARAMESWARAN SELLATHAMBI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Parameswaran Sellathambi sought refugee protection based on his fear of persecution and mistreatment by Sri Lankan authorities, including the Sri Lankan army. The Refugee Protection Division (RPD) and Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB) found that Mr. Sellathambi was not a Convention Refugee or a person in need of protection as he lacked credibility and had not established central elements of his refugee claim.

On this application for judicial review, Mr. Sellathambi argues the RAD's decision is unreasonable. In particular, he challenges the RAD's treatment of letters he filed as corroborative evidence and the RAD's failure to address his argument about cumulative persecution.

[2] For the reasons set out below, I conclude the RAD's decision is reasonable. The RAD gave cogent and justified reasons for giving no weight to one of the letters, and reasonably noted that the others did not corroborate allegations central to his claim. Nor did the lack of analysis of Mr. Sellathambi's arguments regarding cumulative persecution render the RAD's decision unreasonable, given the brevity and nature of those arguments in the context of his overall submissions to the RAD.

[3] The application for judicial review is therefore dismissed.

## II. Issues and Standard of Review

[4] Mr. Sellathambi raises the following issues on this application:

- A. Did the RAD err in its treatment of corroborating evidence in the form of a letter from a Justice of the Peace and two letters from his mother?
- B. Did the RAD fail to consider the cumulative effects of the risks of persecution?

[5] These issues go to the merits of the decision and are to be reviewed on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23–25; *Jayasinghe Arachchige v Canada (Citizenship and Immigration)*, 2020 FC 509 at

para 28. A reasonable decision is one that is justified, transparent, and intelligible to the person affected by the decision in light of the factual and legal constraints on the decision maker:

*Vavilov* at paras 99–101, 105–107, 125–128.

[6] In his written submissions, Mr. Sellathambi also argued the RAD applied too high a threshold in its examination of the risk Mr. Sellathambi faced in Sri Lanka as a failed refugee claimant. This argument was withdrawn at the hearing of the application.

### III. Analysis

#### A. *The RAD's analysis of the evidence was reasonable*

##### (1) Mr. Sellathambi's refugee claim

[7] Mr. Sellathambi states that he grew up in the town of Sampur, in the Trincomalee district of Sri Lanka. His family, which is of Tamil ethnicity, moved to Vanni in 1990 amid fighting between the Liberation Tigers of Tamil Eelam (LTTE) and the national army in their area. In Vanni, he was forced to work for the LTTE, doing tasks such as digging bunkers and felling trees. The family was able to return to Sampur after peace talks began in early 2002, after which Mr. Sellathambi claims he bought a truck and started a transport business in Trincomalee. At some point, Mr. Sellathambi needed a cleaner for his truck, and he says the LTTE forced him to hire a man he later learned was the brother of an LTTE militant.

[8] In mid-2005, when returning late from a transport run, Mr. Sellathambi states that he was stopped by the Sri Lankan army, who accused him of transporting goods for the LTTE. The army

detained, tortured and severely beat him. He was released when a former LTTE member stated that he was not in the LTTE.

[9] In January 2006, Mr. Sellathambi says he successfully bid on a supply contract for the Trincomalee University canteen. Meanwhile, however, hostilities between the army and the LTTE had intensified, and the army recaptured Sampur from the LTTE in 2006. After this, the man who had cleaned his truck left without notice. For the following nine years or so, Mr. Sellathambi lived in Sampur and continued to service the University contract.

[10] However, in 2015, he claims the army diverted the contract to a Sinhalese supplier. When he refused to sell his truck to the new supplier, it was stolen, and the police refused to take his complaint. On June 30, 2016, Mr. Sellathambi says army officers came to his house to ask about the cleaner he had employed in the mid 2000's, as well as a court case against the government regarding land ownership claims he says he was involved in. The following week, he received a death threat from an anonymous caller speaking Tamil with a Sinhalese accent. He went into hiding and left Sri Lanka at the end of July. He travelled to Malaysia on his own passport, then to Canada on a fake Canadian passport.

[11] In support of his refugee claim, Mr. Sellathambi filed identity documents, a "Certificate on residence and character" issued by a village headman, extensive country condition evidence for Sri Lanka, a letter from a physician confirming that he has scarring consistent with his narrative about detention and beating in 2005, and two letters from his mother.

[12] After the hearing, Mr. Sellathambi submitted a letter from a Justice of the Peace in Trincomalee, as well as copies of his parents' National Identity Cards. The letter from the Justice of the Peace, written in English and reproduced here as the text appears, stated as follows:

I do hereby certify that Mr. Sellathambi Parameswaran who had been residing at No. 65, Orr's Hill Road, Trincomalee from year 2006 to middle part of the 2016 July .when he was in Srilanka such period ,was a driver by profession , and at that period frequently he was searched by the Army personal and armed civil group . He got fear due to anything will be happened to his life. Some time he was threatened over the telephone calls .If he will be here certainly his life will be danger.

On that reason in such period he was living hiding.

This is the incidents being mentioned above are true and correct on my knowledge.

[13] The RPD rejected Mr. Sellathambi's claim, finding him not to be credible for a number of reasons. Having reviewed Mr. Sellathambi's testimony and the limited supporting documents, the RPD did not believe that Mr. Sellathambi (i) had a contract with the Trincomalee University, (ii) was involved in a court case, (iii) was visited by the Sri Lankan army in 2016 who questioned him about the employee, or (iv) subsequently received threatening phone calls. In reaching this conclusion, the RPD gave no weight to the letter from the Justice of the Peace since it was poorly written and did not indicate how the author knew the claimant or how they confirmed the information in the letter.

[14] Mr. Sellathambi appealed the RPD's decision to the RAD pursuant to section 110 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. Mr. Sellathambi raised a number of issues and alleged errors on the part of the RPD, challenging its treatment of the evidence, its conclusions regarding his credibility, and its determination on the merits of the

claim. Mr. Sellathambi filed a number of new country condition documents in support of his appeal, which the RAD accepted but are not relevant to this application.

(2) The RAD's findings regarding the corroborative evidence

[15] The RAD dismissed Mr. Sellathambi's appeal. It confirmed the RPD's negative credibility findings, and found Mr. Sellathambi had not established that he was a Convention refugee or a person in need of protection.

[16] In reviewing Mr. Sellathambi's arguments about the corroborative evidence, or lack thereof, the RAD noted that subsection 100(4) of the *IRPA* requires a claimant to produce the documents and information required by the IRB's rules. It further noted that Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 requires a claimant to provide acceptable documents establishing the elements of their claim, or to explain why they did not provide them and what steps they took to obtain them. It found that a lack of acceptable documents without a reasonable explanation for their absence is a significant factor in assessing a claimant's credibility.

[17] Turning to the corroborative documents themselves, the RAD agreed with RPD that the letter from the Justice of the Peace should be given no weight. The RAD did not adopt the RPD's comments about the letter being poorly written. However, the RAD agreed that the letter did not say the writer had any personal knowledge of Mr. Sellathambi, and did not say how they otherwise confirmed the information in the letter. The RAD concluded on a balance of

probabilities that the Justice of the Peace did not have any personal knowledge of Mr. Sellathambi and that the letter “represents at best hearsay evidence.”

[18] The RAD also noted that where a claimant does submit documentary evidence, it is reasonable to expect it to corroborate key elements of their narrative. However, the RAD concluded that none of the documents provided real corroboration of the allegations central to Mr. Sellathambi’s claim that he was a truck driver who was harassed for having suspected links to the LTTE due to his former employee. The RAD noted that the Certificate from the village headman indicated that he had known Mr. Sellathambi for about three months prior to the date of the document, and that it gave his occupation as “Farmer.” As for the two letters from Mr. Sellathambi’s mother, the RAD noted that the first only states that the army is still looking for him, without providing any reasons, and that the truck matter was unresolved but that she was unable to get copies of contracts from the University. The second states that there were “many reasons for [Mr. Sellathambi’s] departure from Sri Lanka” and that army officers were still looking for him, again without providing details.

[19] Based on its review of the evidence, the RAD agreed with the RPD’s findings that Mr. Sellathambi did not have a contract with Trincomalee University, was not visited by the Sri Lankan army to question him about his former employee, and did not receive a threatening phone call in 2016. The RAD also found that the court case regarding land ownership claims was irrelevant to his allegation that he was suspected of being linked to the LTTE in 2016 due to his former employee.

(3) The RAD's treatment of the corroborative evidence was reasonable

(a) *The letter from the Justice of the Peace*

[20] Mr. Sellathambi argues it was unreasonable for the RAD to give the Justice of the Peace's letter no weight. He cites this Court's decision in *Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313. In that case, the applicant similarly filed corroborative evidence, including a letter from a Sri Lankan Justice of the Peace, as well as a letter from a Sri Lankan Member of Parliament and one from the applicant's mother. Justice Ahmed found that the letters were all consistent with the applicant's narrative, and that in light of this evidence, the unexplained statement by the officer in that case that the evidence was "insufficient" was unreasonable: *Nagarasa* at para 23. Justice Ahmed noted that it was incumbent on the officer to explain why they were unconvinced by the evidence, and criticized in particular the officer's "overzealous approach to scrutinizing the letters for hearsay, dates, and other allegedly missing details": *Nagarasa* at para 23.

[21] In my view, despite the fact that both cases involve letters from a Sri Lankan Justice of the Peace, *Nagarasa* is of little assistance to Mr. Sellathambi. There is no doubt, as Justice Ahmed concluded, that decision makers must reasonably assess the evidence before them and explain the basis for their assessments, principles the Supreme Court has subsequently confirmed: *Vavilov* at paras 96, 99, 125–126. Similarly, decision makers must avoid an overzealous or overly vigilant approach to finding fault with evidence: *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (CA) at para 9; *Shi v Canada (Citizenship and Immigration)*, 2022 FC 196 at para 53.



[22] However, this does not mean that a letter signed by a Justice of the Peace must necessarily have probative value in every case. Mr. Sellathambi is correct that the RAD did not question the authenticity of the letter he presented. However, the RAD clearly explained why it did not accept that the Justice of the Peace's letter had any value, namely that there was no indication that the author had any personal knowledge of the information. As Mr. Sellathambi conceded during argument, the Justice of the Peace's statement that Mr. Sellathambi had received threatening telephone calls can only have come from Mr. Sellathambi himself, despite the Justice of the Peace's statement that the incidents are "true and correct on my knowledge." There is similarly no basis given for the Justice of the Peace's ability to certify Mr. Sellathambi's residence, profession, or the fact that he was frequently searched by the army and others.

[23] In my view, the RAD's analysis is not assessing the letter for what it does not say, in the sense described in *Nagarasa*, but rather for it being found to be a mere repetition of Mr. Sellathambi's statements by someone with no apparent basis to corroborate those statements. It may well be, as Mr. Sellathambi argued, that the Justice of the Peace genuinely believed the truth of Mr. Sellathambi's statements and was prepared to certify them on that basis. However, the fact that they believe them does not provide any corroboration in the absence of any indication as to why they were known or believed, or why the Justice of the Peace was able to confirm them as facts.

[24] I therefore conclude the RAD reasonably justified its decision to give no weight to the Justice of the Peace's letter in the circumstances.

(b) *The mother's letters*

[25] Mr. Sellathambi argues the RAD unreasonably discounted the letters sent by his mother for not corroborating all aspects of his narrative, and in particular the motivation of the Sri Lankan army. He cites *Kalonda*, in which the Court found it unreasonable to find an applicant not credible because they did not know why authorities acted as they did: *Kalonda v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 396 at paras 3–6.

[26] On my read of the RAD's decision, however, its concern was the lack of corroborative evidence of material aspects of Mr. Sellathambi's claim given its concerns about his credibility. This Court has criticized discounting evidence that corroborates part of a narrative on the basis that it does not corroborate other parts, without explaining why the inference is made: *Belek v Canada (Citizenship and Immigration)*, 2016 FC 205 at para 21. However, the RAD did not assign little weight to what the mother's letters did say based on what they did not say. Rather, the RAD observed that neither the mother's letters nor the other evidence corroborated the central allegations that Mr. Sellathambi was a truck driver and had suspected links to the LTTE. The RAD noted that where a claimant submitted personal documentary evidence, it would be expected to address the key elements of his story. This Court has accepted that there may be elements of a narrative sufficiently central that it is reasonable to question why they are not referred to in corroborative evidence: *St-Sulne v Canada (Citizenship and Immigration)*, 2020 FC 619 at para 15; *Belek v Canada (Citizenship and Immigration)*, 2017 FC 196 at para 16; *Tahzibi v Canada (Citizenship and Immigration)*, 2022 FC 42 at paras 14–15.

[27] Mr. Sellathambi correctly points out that the mother's first letter speaks to some involvement in trucking, albeit indirectly, referring twice to the "lorry matter," as well as her efforts to get documents from Trincomalee University. Both of her letters refer to the army visiting and coming in search of Mr. Sellathambi. The RAD noted these aspects of the letters. However, as the RAD observed, the mother provides no details regarding the army visits, and does not speak to Mr. Sellathambi's central allegations that the army visited him in June 2016 after he lost the University contract, asked about the cleaner he had employed and suspected him of LTTE links, and that he subsequently received anonymous threatening telephone calls. Rather, the mother vaguely states that there were "many reasons for his departure from Sri Lanka."

[28] Keeping in mind that it is not this Court's role to undertake its own assessment of the evidence, but simply to review the reasonableness of the RAD's assessment of the evidence, I conclude that Mr. Sellathambi has not met his onus to demonstrate that the RAD's decision was unreasonable: *Vavilov* at paras 100, 125–126.

B. *It was not unreasonable for the RAD not to address cumulative persecution*

[29] In his appeal to the RAD, Mr. Sellathambi identified one of the issues on appeal as being whether the RPD erred in "failing to consider cumulative persecution and compelling reasons and residual profile." He made submissions on each of these three notions, among others, in the body of his submissions. The RAD addressed the question of "compelling reasons" and "residual profile," treating them as Mr. Sellathambi's second and third grounds of appeal, respectively. However, the RAD did not address Mr. Sellathambi's submission on cumulative persecution. Mr. Sellathambi argues this was unreasonable.

[30] As the Supreme Court noted in *Vavilov*, the principles of justification and transparency require a decision maker's reasons to "meaningfully account for the central issues and concerns raised by the parties": *Vavilov* at para 127. A failure to "meaningfully grapple" with a key issue or central argument may render the decision unreasonable: *Vavilov* at para 128.

[31] At the same time, the Supreme Court underscored that reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis": *Vavilov* at para 128, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 25. Having reviewed Mr. Sellathambi's submissions to the RAD, I conclude the RAD was not required to specifically address his arguments on cumulative persecution to render a reasonable decision.

[32] Mr. Sellathambi's submissions to the RAD on cumulative persecution, in their entirety, were the following:

*Cumulative*

83. Location not in reasons

84. The RPD moreover erred in that it failed to consider whether on cumulative grounds the Appellant merited being protected, in large because of the previous torture in 2005.

85. Relevant factors not included what was rejected by the [RPD] are:

- The Appellant has scarring
- He resided in the Vanni for many years during the time of the LTTE and in [Sampur] which was taken by the army from the LTTE  
he will be deported, from Canada and is a failed refugee claimant  
he was forced to do work for the LTTE 2002-2005 (see para 26)

he was detained and tortured in 2005 (see para 26)  
The Applicant fears to return to Sri Lanka and fears the  
governmental authorities

[33] These brief paragraphs represent one of 17 separate arguments presented by Mr. Sellathambi over the course of 71 paragraphs in his submissions to the RAD. It is difficult in these circumstances to describe this argument as one of the “central issues and concerns” raised by Mr. Sellathambi: *Vavilov* at para 127. I therefore cannot accept that it was unreasonable for the RAD not to address the cumulative persecution argument as a separate matter.

[34] It is also worth noting that given the brevity of Mr. Sellathambi’s submissions, the nature of his arguments about “cumulative persecution” and the alleged failure on the part of the RPD are somewhat unclear. Some of the “factors” raised by Mr. Sellathambi, such as his concerns about being a failed refugee claimant and his asserted fear of return, are not asserted incidents of persecution or discrimination that would typically be considered in the context of a concern about cumulative persecution (or cumulative discrimination amounting to persecution). The RAD addressed these factors in addressing Mr. Sellathambi’s other arguments, including those on the “compelling reasons” exception under subsection 108(4) of the *IRPA*, and his residual profile as a failed asylum seeker. Mr. Sellathambi does not now challenge these aspects of the decision.

[35] Leaving these factors aside, the “cumulative persecution” argument appears to be that consideration should be given to the cumulative effect of the 2005 incidents and the more recent events of 2016. However, this is, in essence, the nature of Mr. Sellathambi’s primary refugee claim, namely that the Sri Lankan army was interested in him in 2016 as a result of alleged

LTTE connections dating back to 2005. The RAD simply did not believe this narrative and rejected the claim on this basis.

IV. Conclusion

[36] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

**JUDGMENT IN IMM-4434-20**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

---

Judge

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

**DOCKET:** IMM-4434-20

**STYLE OF CAUSE:** PARAMESWARAN SELLATHAMBI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 11, 2022

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** AUGUST 25, 2022

**APPEARANCES:**

Micheal Crane FOR THE APPLICANT

Alex Kam FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Micheal Crane FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario