

Federal Court



Cour fédérale

**Date: 20220906**

**Docket: IMM-4409-21**

**Citation: 2022 FC 1258**

**Ottawa, Ontario, September 6, 2022**

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

**BETWEEN:**

**THAVARAJAH THAVASI KANCHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] Thavarajah Thavasi Kanchi [Applicant] seeks judicial review of a Senior Immigration Officer's [Officer] March 29, 2021 decision [Decision] refusing his Pre-Removal Risk Assessment [PRRA]. The Officer concluded that, if returned to Sri Lanka, the Applicant would not face more than a mere possibility of persecution, or a personalized danger of torture, risk to

life, or cruel and unusual treatment or punishment pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[2] For the reasons that follow, the application for judicial review is allowed.

## II. Background

[3] The Applicant is a male Tamil from northern Sri Lanka. He claims that, while in Sri Lanka, he was detained, abused, and tortured by members of the Sri Lankan military and paramilitary groups for having suspected links to the Liberation Tigers of Tamil Eelam [LTTE]. He was released only on the condition he pay a bribe. Having disregarded this condition, the authorities threatened him and are trying to locate him. The Applicant also alleges that his brothers were detained for the same reason, and that one of his brothers has since disappeared.

[4] In September 2010, the Applicant left Sri Lanka and travelled to the United States, where he claimed refugee protection. In March 2011, before a decision surrounding his refugee status was rendered, the Applicant travelled to Canada where he similarly made a refugee claim. In March 2013, after failing to appear for his hearing, the Applicant's refugee claim was declared abandoned by the Refugee Protection Division [RPD]. His leave to appeal the RPD decision was subsequently denied in May 2013. In July 2013, the Applicant's request to the RPD to have his application reopened was rejected.

[5] In February 2016, the Applicant submitted his PRRA application.

III. The Decision

[6] The Officer found insufficient evidence that the Applicant was at risk as defined in sections 96 or 97 of *IRPA*.

[7] The Officer concluded that by failing to remain in the United States to address his refugee claim, the Applicant showed a lack of subjective fear.

[8] The Officer classified both the Applicant's detentions and subsequent conditional releases as extortion or criminal activity. Accordingly, the Officer concluded that there was no nexus to a Convention ground.

[9] The Officer found that the Applicant provided insufficient evidence that he fit the profile of an at-risk individual in Sri Lanka. The Officer noted, for instance, that the Applicant was not "a former high or low members of the LTTE, a human rights defender or a journalist, profiles that are often targeted as indicated in the objective evidence noted below." Similarly, the Officer noted that the Applicant "does not identify himself as a member or supporter of the LTTE, nor is he of a profile that would bring unwanted attention by authorities, over ten years after he was released."

[10] Regarding the mistreatment from Sri Lankan authorities, the Officer concluded that the Applicant's allegation was vague and lacked details of where he was detained, the length of time he was detained, and how he was detained.

[11] The Officer reviewed two objective country condition documents published in 2019 and 2020. The Officer noted the following:

- Tamils faced less harassment during the 2015 elections than the 2010 elections;
- Tamils do not receive unwarranted attention from the authorities because of their political involvement;
- Sri Lankan authorities collect and maintain sophisticated intelligence on former LTTE members and supporters;
- Surveillance of Tamils in northern and eastern Sri Lanka continues, although violence against those being monitored is uncommon;
- All returnees are subject to standard procedures at the airport, regardless of ethnicity and religion, and are not subject to mistreatment during processing;
- There is long-standing discrimination against the Tamil population;
- Former high and low members of the LTTE, as well as their family members, face harassment and monitoring;
- Tamils, especially former or suspected LTTE members, are regularly monitored and harassed, particularly in northern and eastern Sri Lanka; and
- Following the election of Gotabaya Rajapaksa in November 2019, human rights conditions have significantly deteriorated, particularly in Tamil areas. An increase in repression of Tamil communities in northern and eastern Sri Lanka, as well as incidents of police brutality within those communities, have been reported.

[12] The Officer found that the objective evidence did not indicate that all Tamils in northern Sri Lanka are subject to treatment as defined in sections 96 and 97 of *IRPA*, and that the Applicant presented insufficient objective evidence that he is at risk in Sri Lanka.

[13] The Applicant explained that, while the Officer's decision is dated March 29, 2021, he was only made aware of it on June 15, 2021 during a scheduled meeting with Canada Border Services Agency [CBSA] officials. The Applicant sent new submissions to the Officer on June 14, 2021. Accordingly, the Applicant requested the reconsideration of his application to account for these submissions. The Applicant's request for reconsideration was left unanswered.

IV. Issues and Standard of Review

[14] The Applicant frames the issues as:

1. Was the Officer's decision unreasonable?
2. Did the Officer err in law because they failed to consider the Applicant's submissions sent prior to the Applicant being notified that a decision was rendered?
3. Did the Officer err in law because they failed to consider the Applicant's request to reopen the decision due to changes in country conditions?
4. Did the Officer breach the principles of natural justice because they failed to provide the Applicant with notice of the country documentation which indicated a substantial and significant change as required by the decision of the Federal Court of Appeal in *Mancia v Canada (Citizenship and Immigration)*, [1998] 3 FC 461, 161 DLR (4th) 488 (FCA)?

5. Did the Officer err in law because they made veiled credibility findings without an oral hearing?
6. Did the Officer err in law in finding no nexus to the Convention?
7. Did the Officer err in law because they failed to consider whether the exceptional circumstances to a change in circumstances applied to the Applicant?

[15] The determinative issue in this case is whether the Decision is reasonable. I agree with the Respondent that the appropriate standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]).

[16] In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87). A reasonable decision must be “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 85, 99). However, a reviewing court must refrain from conducting a line-by-line search for error (*Vavilov* at para 102). To set aside a decision, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision, such that it lacks the “requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). Superficial or peripheral flaws will not suffice to overturn the decision.

[17] Having established the determinative issue, I do not consider it necessary to address the Applicant’s remaining issues.

V. Analysis

A. *Was the Officer's decision unreasonable?*

(1) Applicant's Position

[18] The Decision was unreasonable in light of the objective evidence. The Officer accepted that the Applicant was a suspected LTTE member in Sri Lanka, but failed to explain why he would not be at risk if returned. Moreover, the Officer selectively relied on documentary evidence, the summary of which indicated that both the human rights conditions and the treatment of suspected LTTE members have deteriorated since the election of the new president.

[19] The Officer further erred in finding that there was no nexus to a Convention ground. The evidence before the Officer illustrated that the Applicant was mistreated due to suspicions that he was a member of, or connected to, the LTTE. However, even if the authorities had mixed motivations, this partial connection to a Convention ground is sufficient to establish a nexus (*Shahiraj v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 453).

(2) Respondent's Position

[20] The Decision was reasonable, in that it was justified, transparent, and intelligible in light of the evidence.

(3) Conclusion

[21] The Officer's decision is neither transparent nor justified (*Vavilov* at para 100).

[22] The Officer concluded that the Applicant provided insufficient evidence that he has the profile of an at-risk individual in Sri Lanka. Without questioning the Applicant's credibility, the Officer took issue with the insufficient evidence establishing that the Applicant was a former high or low member or supporter of the LTTE. However, the Applicant never alleged that he was mistreated because of his actual membership. Rather, he alleged that he was detained and tortured for his suspected membership. In this context, it was unreasonable for the Officer to require proof of actual membership to the LTTE.

[23] Furthermore, by requiring the Applicant to establish proof of actual membership, the Officer overlooked the objective evidence indicating that suspected LTTE members are equally at risk as actual members or former members. The Officer also provided little insight as to why the Applicant, who has encountered problems with the authorities in the past because of his perceived association with the LTTE, does not fit the profile of an at-risk individual. Indeed, to the contrary, the objective evidence expressly indicates that Tamils in northern Sri Lanka who are suspected LTTE members have faced increased harassment, abuse, and repression following the 2019 election. If the Officer did not accept the Applicant was mistreated for his suspected affiliation with the LTTE, it was necessary that they clearly said so (*Isakova v Canada (Citizenship and Immigration)*, 2008 FC 149 at para 10).

[24] Lastly, the Officer erred in finding that the Applicant had not established a nexus to a Convention ground. The Applicant clearly stated that he was detained and mistreated because of



his perceived association with the LTTE. There is no indication that the Officer did not accept this statement. Even if part of the motivation to detain the Applicant was extortion, this does not preclude a nexus to a Convention ground. Mixed motivation is sufficient to establish a nexus to a Convention ground (*Gunaratnam v Canada (Citizenship and Immigration)*, 2015 FC 358 at para 55).

[25] To summarize: the Officer unreasonably required the Applicant to demonstrate that he was an actual member of the LTTE; the Officer was not alert to the objective evidence indicating that suspected members of the LTTE are equally at risk as actual members; the Officer failed to articulate a proper justification as to why the Applicant did not fit the profile of an at-risk individual in Sri Lanka in light of the evidence; and the Officer erred in finding that the Applicant had not established a nexus to a Convention ground.

## VI. Conclusion

[26] For all of these reasons, the application for judicial review is allowed. The parties have not proposed a question for certification and I agree that none arises.

**JUDGMENT in IMM-4409-21**

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

1. The application for judicial review is allowed and the matter is remitted to a different decision officer for redetermination.
2. There is no question of general importance for certification.

"Paul Favel"

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Judge

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

**DOCKET:** IMM-4409-21

**STYLE OF CAUSE:** THAVARAJAH THAVASI KANCHI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 21, 2022

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** SEPTEMBER 6, 2022

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