

Federal Court



Cour fédérale

**Date: 20230111**

**Docket: IMM-5671-21**

**Citation: 2023 FC 44**

**Ottawa, Ontario, January 11, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**YASHODHA KAMALANATHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Yashodha Kamalanathan (“Ms. Kamalanathan”) is challenging the decision of the Refugee Protection Division [RPD] to reject her refugee claim and find that it had “no credible basis.” Ms. Kamalanathan principally argues that the RPD made unreasonable credibility findings. I agree with Ms. Kamalanathan. The RPD misapprehends significant facts and makes assertions without explanation or reference to the evidence.

[2] On the whole, the RPD's reasons do not exhibit the care and attention required in making credibility findings about a refugee claimant. This Court and the Federal Court of Appeal have consistently held over the last three decades that credibility findings in refugee matters must be made in clear and unmistakable terms (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (FCA) at para 6 [*Hilo*]). This was not done. The RPD's reasons also run afoul the requirements set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] that a decision be transparent, intelligible, and justified. Therefore, as I explain in my reasons below, the decision is unreasonable, must be set aside, and be redetermined by a different decision-maker.

## II. Background

[3] Ms. Kamalanathan is a Tamil citizen of Sri Lanka. When she filed her refugee claim in November 2017, she presented a narrative stating she had just arrived from Sri Lanka, where she had faced years of persecution and abuse. Her description of the events leading her to flee was false. In fact, she had lived in India in the state of Tamil Nadu, without valid status, since she was six years old.

[4] Approximately five months prior to her hearing before the RPD, Ms. Kamalanathan filed an amended refugee narrative ("Amended Narrative"), with the assistance of her new counsel. In this narrative, Ms. Kamalanathan admitted the aspects of the first narrative that were false, provided an explanation for making the false statements, and set out a detailed chronology explaining the basis of her fear of persecution in Sri Lanka. She also explained her lack of status in India.

[5] The RPD held a hearing over two days on February 23, 2021 and May 5, 2021. Ms. Kamalanathan's counsel provided written submissions on May 18, 2021. On July 27, 2021, the RPD rejected the claim and found it had "no credible basis" as defined under subsection 107(2) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. This finding of "no credible basis" has significant consequences for Ms. Kamalanathan. Most critically, it precludes her from appealing the RPD's decision to the Refugee Appeal Division (*IRPA*, s 110(2)(c)).

### III. Issue and Standard of Review

[6] The sole issue on judicial review is whether the RPD's credibility determinations are reasonable. The Supreme Court of Canada in *Vavilov* confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

### IV. Analysis

[7] The RPD's credibility analysis is unreasonable in two principal ways: i) it is based on an inaccurate account of the evidence on a key issue; and ii) negative inferences are made in a general way without reference to the evidence.

#### A. *Misapprehension of Evidence*

[8] There is no dispute that Ms. Kamalanathan filed the Amended Narrative approximately five months prior to her RPD hearing. In this Amended Narrative, Ms. Kamalanathan crosses out the aspects of her first narrative that are not true, as is required by Rule 9 of the *Refugee*

*Protection Division Rules*, SOR/2012-256, and provides a further detailed chronological statement setting out the basis for her allegations.

[9] At the outset of the RPD hearing, as is the standard practice, the RPD Member asked Ms. Kamalanathan if the Amended Narrative, which included the crossing out of numerous statements made in the original narrative, was “complete, true and accurate.” Ms. Kamalanathan affirmed under oath that this was the case.

[10] There was no action on the part of the RPD or the Minister that precipitated Ms. Kamalanathan’s admission. In other words, Ms. Kamalanathan did not file the amendments after an allegation was made that she had made false statements. Despite the evidence on the record clearly showing that Ms. Kamalanathan came forward on her own with her admissions with respect to the false statements in her first narrative, the RPD Member insists at two points in their decision that Ms. Kamalanathan only admitted that she had provided false statements when she was confronted with the contradictions after two full days of hearings. The RPD Member writes: “The panel submits that the claimant was not spontaneous, nor did she voluntarily admit to erroneous statements in her [original narrative] until she was confronted with the glaring contradictions and inaccuracies by the panel during two full day of hearings.”

[11] This statement is not accurate and contradicts the evidence in the record (*Vavilov* at para 126). It also unintelligible given that the RPD Member acknowledges that Ms. Kamalanathan amended her narrative prior to the hearing. The amendments included the identification of the false statements in the original narrative. As Ms. Kamalanathan’s counsel notes in their written

submissions following the RPD hearing, the voluntariness and spontaneity of her admissions are key elements in evaluating the credibility of her allegations. With no explanation, the RPD refutes that Ms. Kamalanathan's admissions were spontaneous or voluntary.

[12] This is unreasonable. It is not a minor misstep. Rather it demonstrates a refusal to acknowledge critical facts in the evaluation of Ms. Kamalanathan's credibility and ultimately results in an analysis that does not "add up" (*Vavilov* at para 104).

B. *Negative Credibility Inferences Without Reference to the Evidence*

[13] The RPD Member makes a number of negative credibility findings with respect to Ms. Kamalanathan's testimony. The RPD Member states: "the panel found the testimony of the claimant to be vague, contradictory, and evolving and was used to embellish her claim." And also: "I found the claimant's testimony to be untrustworthy in that she could not keep her story straight, and on numerous occasions her responses were reactive and manufactured." The RPD Member makes no reference to any examples from Ms. Kamalanathan's testimony to support these general assertions. Inferences about a claimant's credibility must be explained in "clear and unmistakable terms" (*Hilo* at para 6; *Lawani v Canada (Minister of Citizenship and Immigration)*, 2018 FC 924 at para 26).

[14] The RPD Member's approach puts the Applicant in a position where she is left wondering on what basis the RPD Member made these credibility findings. For example, what was it about her testimony that the RPD Member found vague or contradictory? In this circumstance, the Applicant cannot challenge the substance of the RPD's credibility findings

because there is no justification provided for the RPD's assertions; the assertions are simply declarations without justification. This reasoning is not transparent or justified as is required and therefore the RPD's decision is unreasonable (*Vavilov* at para 95).

V. Disposition

[15] I acknowledge that the RPD also relied on other grounds, such as reavilment, to make negative credibility findings. I am satisfied, however, that the flaws I have identified in the credibility assessment are “sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). I allow the application for judicial review and remit the matter for redetermination.

[16] The parties proposed no question for certification and I agree that none arises.

**JUDGMENT IN IMM-5671-21**

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

1. The application for judicial review is allowed;
2. The decision of the RPD dated July 27, 2021 is set aside;
3. The matter is sent back to be redetermined by a different member of the RPD;
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-5671-21

**STYLE OF CAUSE:** YASHODHA KAMALANATHAN v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 18, 2022

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** JANUARY 11, 2023

**APPEARANCES:**

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