

Federal Court



Cour fédérale

**Date: 20230721**

**Docket: IMM-5529-20**

**Citation: 2023 FC 1003**

**Ottawa, Ontario, July 21, 2023**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**KANESHANANTH MAHESWARAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Kaneshananth Maheswaran, is a Tamil from northern Sri Lanka, who came to Canada in 2010 and claimed refugee status. His refugee claim was denied in 2011, and since that time he has lived and worked in Canada under various work permits. He says that he has developed a strong establishment here, including a strong work history, engagement with his community, as well as a close and meaningful relationship with his sister, brother-in-law, and

nephew. The Applicant's application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds was refused.

[2] The Applicant seeks judicial review of the Officer's decision denying his H&C claim. He argues that the decision is unreasonable because the Officer applied the wrong test, erred in assessing the hardships he would face on a return to Sri Lanka, and wrongly discounted his strong establishment in Canada. Finally, the Applicant submits that the Officer conducted an inadequate analysis of the best interests of the child, in light of the evidence of the close relationship between him and his nephew.

[3] For the reasons that follow, I find that the determinative issue in this case is the Officer's failure to explain why a relatively short gap in the Applicant's employment history outweighed all of the other positive establishment factors. The decision is marred by an unexplained leap of logic on a crucial point, and this is a sufficiently serious flaw to warrant quashing the decision and sending the matter back for reconsideration. The application for judicial review will therefore be granted.

#### I. Background

[4] The Applicant is a Tamil from northern Sri Lanka. He says that he fled the country after he and his family were caught up in the conflict between government forces and the Liberation Tigers of Tamil Elam (LTTE), and he was arrested, interrogated, and beaten by security forces who believed he had ties to the LTTE. The Applicant initially went to the United Kingdom on a student visa, and then made his way to Canada in 2010.

[5] Upon his arrival in Canada, the Applicant claimed refugee status based on the risk that he and his family faced in Sri Lanka due to his Tamil identity, and the mistreatment he experienced because of his perceived ties to the LTTE. The Applicant's parents reside in France as refugees, and he has one sister in Canada and another who lives in Switzerland.

[6] The Applicant's refugee claim was dismissed by the Refugee Protection Division in 2011, because he was found to lack credibility and to have lied under oath to Canadian authorities in regard to key aspects of his claim. This Court dismissed the Applicant's application for leave and judicial review of that decision. Following this, the Applicant submitted several applications for H&C relief under section 25 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*, which were refused in May 2013, March 2015, and September 2017.

[7] The Applicant filed a fourth claim for H&C relief in September 2019, based on his establishment in Canada, the risk and hardship he would face because of Sri Lanka's treatment of the Tamil community, and his fear of the police who suspect that he is a member or supporter of the LTTE. He also cited his lack of family or other ties to Sri Lanka, as well as the best interests of his nephew in Canada, with whom he had developed an extremely close relationship.

[8] On the establishment issue, the Officer gave strong positive weight to the Applicant's length of time in Canada, his clean civil record and compliance with immigration law. The Officer noted the Applicant's employment history of both full-time and seasonal work, reflected in the income tax documents he filed for tax years 2011 to 2018, as well as his commitment to personal development through job-related training. However, the Officer also noted that the

Applicant had not demonstrated that he would be unable to find work if he returned to Sri Lanka, and that there was an unexplained gap in his employment history from November 2013 to August 2014. Based on this, the Officer attributed low weight to the Applicant's employment history.

[9] Noting the evidence of the Applicant's close ties to friends in Canada, his support of the friends' elderly parents, and his community activities, the Officer gave some positive weight to the Applicant's engagement with the community. Despite this, the Officer attributed low weight to the Applicant's overall establishment, stating: "However, I also observe that the lack of evidence and what has been noted above cannot be understated."

[10] In regard to hardship and ties to Sri Lanka, the Officer acknowledged that moving back to that country would constitute some form of upheaval for the Applicant, but found that he would be returning to a country where he had spent the majority of his life, having been raised and educated there. The Officer found that the Applicant could resettle and re-establish himself in Sri Lanka because he was familiar with the language and culture. Based on this and the limited evidence presented by the Applicant, the Officer gave low weight to the hardship factor.

[11] The Officer attributed low weight to the best interests of the child element, because while the Applicant had shown that he had developed a strong relationship with his nephew (e.g. by visiting him every weekend), the evidence did not demonstrate a strong level of dependency. The Officer observed that if the Applicant left for Sri Lanka, the child would remain in Canada with his parents and could maintain contact with his uncle through other means of communication.

[12] As for the Applicant's claim of risk, the Officer noted that the country condition evidence showed that some Tamils face persecution in Sri Lanka because of their ethnicity and also their perceived support for the LTTE. However, the Officer found that the Applicant had not demonstrated that he would be at risk as a Tamil male from northern Sri Lanka, because he failed to show how the general country conditions would apply to his personal situation.

[13] The Officer concluded that the positive elements in the Applicant's case were not sufficient to grant him an exemption to the usual rule of applying for permanent residence from overseas, and thus refused the Applicant's request for H&C relief.

[14] The Applicant seeks judicial review of the decision.

## II. Issues and Standard of Review

[15] The overarching issue in this case is whether the Officer's decision is reasonable. Within that, the Applicant raises four sub-issues, arguing that the Officer: (i) applied the wrong legal framework to the section 25 analysis (as reflected by a failure to grapple with the Applicant's personal circumstances, and giving undue weight to a minor gap in his employment history in assessing his establishment in Canada); (ii) erred by relying on the RPD's negative credibility finding; (iii) ignored relevant and recent country condition evidence that the Applicant provided, and applied the wrong test to assessing the hardship associated with a return to Sri Lanka; and (iv) failed to conduct a proper assessment of the best interests of the child regarding the Applicant's nephew.

[16] The standard of review that applies to all of these questions is reasonableness, in accordance with the framework set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[17] In summary, under the *Vavilov* framework, a reasonable decision is “one that is 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 para 85). An administrative decision-maker’s exercise of public power must be “justified, intelligible and transparent” (*Vavilov* at para 95). The onus is on the Applicant to demonstrate flaws in the decision that are “sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). The decision must be assessed in light of the history and context of the proceedings, including the evidence and submissions made to the decision-maker (*Vavilov* at para 94). Finally, “absent exceptional circumstances, a reviewing court will not interfere with [the decision maker’s] factual findings” (*Vavilov* at para 125).

### III. Analysis

[18] The determinative issue in this case is the Officer’s failure to explain why a relatively short gap in the Applicant’s employment history was sufficient to outweigh all of the other positive establishment factors.

[19] The analysis of the establishment factors included the following elements. On the length of time in Canada, the Officer attributed “strong positive weight” to this element, in light of the

Applicant's history of employment, his good civil record, and the fact that he had been in Canada since August 2010.

[20] Turning to employment history, the decision notes the Applicant's history of full-time, part-time, and seasonal employment from 2011 to 2018, as demonstrated by his income tax information showing employment income during this period. However, the Officer also notes that there is a gap in the Applicant's employment from November 2013 until August 2014: "the [A]pplicant has provided no evidence to show how he was able to support himself during [this] period..." Based on this, the Officer concludes: "Therefore, based on the evidence presented to me and what has been noted above, I have attributed low weight to the [A]pplicant's employment history as a positive component of this application."

[21] On ties to the community, the Officer attributed positive weight to this factor, based on the letters of support from friends, his engagement with the community – including caring for the elderly parents of friends, his history of making blood donations to the Canadian Red Cross, and his positive contribution to his workplace.

[22] However, the Officer then goes on to sum up the analysis, in the following key passage:

Overall, based on the totality of the evidence presented to me, I find that the applicant's willingness to be self-sufficient, acquire new skills as well as get involved in his community is commendable. However, I also observe that the lack of evidence and what has been noted above cannot be understated. As such, I have attributed low weight to the establishment component of this application.

[23] There are two main problems with this conclusion: first, the Officer's reference to "the lack of evidence and what has been noted above..." is unclear. The only evidentiary deficiency mentioned in this part of the decision relates to the nine-month gap in the Applicant's otherwise unbroken history of employment. The second problem arises from the first: having given strong positive weight to the Applicant's time in Canada, and having accorded positive weight to the ties to the community, and also having found that he had shown an almost continuous pattern of employment over nine years, the Officer needed to explain why the failure to provide details about a nine-month period of unemployment was sufficiently serious to lead to an overall assessment that the Applicant's establishment in Canada should be accorded low weight.

[24] In making this finding, it is important to underline that I am not re-weighting the evidence, but rather pointing to an unexplained leap of logic at the heart of the Officer's analysis on a key element of the overall H&C claim. There may be good reasons for the Officer to find that a lack of evidence on some points combined with the Applicant's failure to explain his entire employment record are sufficiently serious to overcome the other positive elements and thus justify a low rating for the establishment factor. However, this conclusion needed to be explained. That is what responsive justification under the *Vavilov* framework for analysis calls for, and its absence here is a sufficiently serious flaw to warrant quashing the decision and sending the matter back for reconsideration.

[25] This is sufficient to deal with this application. The parties submitted detailed arguments on the other points raised, but because this case will be sent back for reconsideration it is not appropriate to discuss these submissions in any detail. I will simply note that I was not persuaded



by the Applicant's other arguments, and in particular I reject the argument that the Officer failed to give effect to the equitable purpose that section 25 is meant to serve. In most other respects, I find the Officer's decision to be careful, compassionate and thorough.

#### IV. Conclusion

[26] For the reasons set out above, I find that the Officer's decision is unreasonable, when assessed against the framework set out in *Vavilov*. The gap in the reasoning regarding the Applicant's period of unemployment, and why it outweighed the other positive elements of his establishment in Canada, is exactly the type of leap of logic that *Vavilov* signalled could lead to a finding of unreasonableness. That is the case here, and given the importance of the establishment factor in the overall H&C analysis, I am persuaded that this is sufficiently serious to warrant overturning the decision (*Vavilov* at para 100).

[27] As discussed above, I am not persuaded by the Applicant's other arguments. While the Applicant may disagree with the Officer's findings on each of the points discussed above, this does not make the decision unreasonable.

[28] For the reasons set out above, this application for judicial review is granted. The matter is remitted back to a different decision-maker for reconsideration.

[29] There is no question of general importance for certification.

**JUDGMENT in IMM-5529-20**

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

1. The application for judicial review is granted.
2. The Applicant's request for permanent residence from within Canada based on humanitarian and compassionate grounds is sent back for reconsideration by a different Officer, in accordance with these reasons.
3. There is no question of general importance for certification.

"William F. Pentney"

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Judge

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

**DOCKET:** IMM-5529-20

**STYLE OF CAUSE:** KANESHANANTH MAHESWARAN v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 16, 2022

**REASONS FOR JUDGMENT  
AND JUDGMENT:** PENTNEY J.

**DATED:** JULY 21, 2023

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