

Federal Court



Cour fédérale

Date: 20231127

Docket: IMM-6931-22

Citation: 2023 FC 1578

Ottawa, Ontario, November 27, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

THILAKARANI KARUPPANNAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Thilakarani Karuppanan, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated June 28, 2022, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need protection under sections 96 and 97(1) of the *Immigration and Refugee Protection*

Act, SC 2001, c 27 (“*IRPA*”). The RAD found the determinative issue to be the Applicant’s credibility.

[2] The Applicant submits that the RAD’s decision is unreasonable for denying the admission of new evidence before the RAD and making negative credibility findings.

[3] For the reasons that follow, I find that the RAD’s decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 51-year-old citizen of Sri Lanka.

[5] From December 2012 to April 2019, the Applicant worked as a confidential secretary for Zainulabdeen Naseer Ahamad (Mr. “Ahamad”), the Chief Minister of the Eastern Province (“Chief Minister”).

[6] After the April 21, 2019, bomb attacks by Islamic extremists in Sri Lanka (“2019 Easter Sunday bombings”), many people in the Applicant’s office suspected that the Chief Minister was implicated, due to his involvement with the Muslim community in the area.

[7] On April 27, 2019, officials from the Criminal Investigation Department and Financial Crimes Investigation Division (“CID”) came to the Chief Minister’s office to question the Applicant as they suspected the Chief Minister had a terrorist connection. The Chief Minister warned her not to give information to the CID.

[8] During the interrogation, the Applicant was beaten with a leather belt multiple times. She was questioned about Islamic terrorists and radicals in the Eastern Province who may have met the Chief Minister.

[9] On April 29, 2019, she was released after two days of questioning but the CID told her she may be needed for further investigation. The Chief Minister was also detained and released on the same day as the Applicant. On the night of the Applicant’s release, a CID officer visited the Applicant’s home to ask her further questions.

[10] On April 30, 2019, the Applicant received medical attention for the injuries she suffered during the detention. The Applicant was told by a colleague that the Chief Minister came into the office with associates to remove and destroy documents regarding Muslim organizations and schools in the Eastern Province.

[11] On May 1, 2019, the Applicant received a threatening phone call from an unknown person who warned her not to talk about the Chief Minister to the authorities. The Applicant thought that she recognized the anonymous caller’s Muslim Tamil accent and thought it might be an Islamic terrorist.

[12] That evening, the Chief Minister called the Applicant. When she told him about the threatening call, he refused to help her and told her to come into the office to sort his documents. She met with the Chief Minister at the office and they sorted documents until 1:30 am.

[13] The Applicant began to fear that Islamic terrorists might harm or even kill her because she was an informant to the authorities, so she left the area to go live with her brother. She decided to flee to Canada, since she already had a visitor visa for Canada and her sister resided there. She resigned from her job with the Chief Minister, telling him that she was leaving for Canada because there was no safeguard or security from the threats.

[14] On May 10, 2019, the Applicant left Sri Lanka. She sought asylum in Canada, alleging a fear of persecution at the hands of Islamic terrorists because they may perceive her as an informant to the authorities.

[15] In October 2021, the Applicant amended her Basis of Claim (“BOC”) narrative to indicate that a few days after the 2019 Easter Sunday bombings, it was reported in the media that the person responsible was a leader of an extremist group linked to ISIS. When the Applicant saw the photograph of this person in the media, she stated that she recognized him, because he had visited the Chief Minister for meetings on a dozen occasions over the previous two years.

[16] The Applicant claimed that during her interrogation, she was asked by the CID whether she had ever seen this person meet with the Chief Minister, and she told them that she had. The

amended BOC narrative also added that the CID continued to look for her in Sri Lanka following her departure to Canada, questioning her brother, her former landlord, and her work colleagues.

B. *RPD Decision*

[17] In a decision dated December 2, 2021, the RPD rejected the Applicant's refugee claim. The RPD identified the determinative issue as credibility and made a number of negative credibility findings: the Applicant was untruthful regarding her marital status in her temporary visa application and provided a fraudulent marriage certificate; there were material omissions in her original BOC narrative about the Chief Minister's contact with a terrorist responsible for the 2019 Easter Sunday bombings; the evidence about her injuries was inconsistent and not reasonably explained; and she failed to adduce sufficient credible and trustworthy evidence that she worked for the Chief Minister in April 2019.

C. *Decision under Review*

[18] In a decision dated June 28, 2022, the RAD dismissed the Applicant's appeal.

[19] The RAD rejected the three new affidavits submitted by the Applicant, finding them not to be new or relevant. The RAD found first that the Applicant's affidavit merely introduced, and provided evidence regarding, the two other affidavits, and thus considered it as supplementing her memorandum of argument. Second, the RAD concluded the doctor's affidavit was not relevant, because it did not address the basis for the RPD's credibility finding. Third, the RAD

concluded that the brother's affidavit was not relevant or new since it merely confirmed the Applicant's explanation that her brother did not remember her injuries accurately.

[20] The determinative issue for the RAD was credibility. The RAD found that the Applicant was unable to produce evidence showing she worked for the Chief Minister in April 2019, when the objective evidence from government sources and media articles indicated that the position of Chief Minister became vacant in September 2017.

[21] The RAD also made other negative credibility findings. The RAD impugned the Applicant's credibility based on her omission of the fact that she witnessed multiple meetings between the Chief Minister and a terrorist responsible for the 2019 Easter Sunday bombings. The RAD further found that the significant inconsistencies about the Applicant's alleged injuries in her evidence undermined her credibility. The Applicant's medical note did not mention any injuries to her leg or her face, which were outlined in her testimony and her brother's affidavit to the RPD.

[22] Lastly, the RAD noted the Applicant was untruthful about her marital status and presented a fraudulent document with her past visa application, but did not make an adverse credibility finding on this basis.

III. **Issue and Standard of Review**

[23] The sole issue is whether the RAD's decision is reasonable.

[24] Reasonableness is the applicable standard of review for both issues, including the RAD's admission of evidence under subsection 110(4) of the *IRPA* and the decision to hold an oral hearing under subsection 110(6), as both issues involve the RAD's interpretation and application of its home statute (*Faysal v Canada (Citizenship and Immigration)*, 2021 FC 324 at para 13; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 ("Vavilov"). I am therefore not persuaded by the Applicant's argument that the RAD's decision not to hold an oral hearing constitutes an issue of procedural fairness. I find that the reasonableness standard is also consistent with this Court's review of RAD decisions (*Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 24-25).

[25] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[26] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100). The emphasis on reasonableness review is the reasons of the decision-maker, read “in light of the record and with due sensitivity to the administrative regime in which they were given” but not “assessed against a standard of perfection” (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61, citing *Vavilov* at paras 91, 103).

IV. Analysis

[27] The Applicant submits that the RAD’s decision is unreasonable in light of the evidence establishing that she worked for the Chief Minister. I disagree. In my view, the RAD’s reasonable conclusion on the Applicant’s employment represents the “central or significant” supposed shortcomings or flaws in the RAD’s decision (*Vavilov* at para 100).

[28] The Applicant submits that the RAD’s conclusion that she had not established that she worked for the Chief Minister in April 2019 is unjustified in light of the abundant evidence she provided to show that, although the position of Chief Minister ended in September 2017, he remained the *de facto* Chief Minister and continued to use the title well after that.

[29] The Respondent submits that the RAD decision is reasonable, as the Applicant’s evidence that she worked for Mr. Ahamad from December 2012 to April 2019 was inconsistent with the objective evidence indicating that he was Chief Minister from February 2015 to September 2017. The Respondent argues that the Applicant was given an opportunity to provide objective evidence that Mr. Ahamad was *de facto* Chief Minister from 2017 onwards and that

she failed to do so, providing one video from Facebook in which he is introduced as “Honourable Chief Minister” and one email in which he uses the “Chief Minister” title in his signature. The Respondent contends that the RAD reasonably concluded this was not objective evidence.

[30] I agree with the Respondent. The RAD acknowledged a number of objective sources that indicated that Mr. Ahamad was Chief Minister from February 2015 to September 2017. This is not only inconsistent with the Applicant’s account that she had worked for Mr. Ahamad in his capacity as Chief Minister since 2012, but more importantly, it confirms that Mr. Ahamad was not Chief Minister in April 2019, when the Applicant alleges she worked for him. This is a central fact to her claim. The RAD found that none of the newspapers and other objective documents referenced by the RPD referred to Mr. Ahamad as acting or *de facto* Chief Minister after September 30, 2017. The RAD pointed out that these sources referred to him as having had the position in the past and that he took an entirely new position in government in February 2019. It was open to the RAD to prefer this documentary evidence from various reliable objective sources over the testimony of the Applicant, a Facebook video, and an email signature, and I am precluded from reweighing and reassessing these evidentiary findings (*Vavilov* at para 125). It was therefore reasonable for the RAD to conclude that the Applicant lacked credibility with respect to her employment and the RAD’s overall decision is justified, transparent, and intelligible (*Vavilov* at para 15).

[31] Counsel for the Applicant raised a question for certification shortly before the oral hearing commenced. This is contrary to the requirement that certified questions should be raised

at least five days before the hearing (*Federal Court Practice Guidelines for Citizenship, Immigration and Refugee Law Proceedings* (November 5, 2018); *Bonilla v Canada (Citizenship and Immigration)*, 2022 FC 493 at para 52; *Ait Elhocine v Canada (Citizenship and Immigration)*, 2020 FC 1068 at para 38). The question proposed is:

When a refugee claimant's sworn testimony and documentary evidence are not supported by objective documentary evidence or objective documentary evidence is silent on the matter in question, is it open to decision-makers to prefer objective documentary evidence over the refugee claimant's and impugn their credibility? It is acknowledged that there should some objective basis supporting a refugee claimant's evidence. However, how specific should the supporting objective evidence be and where should the line be drawn when seeking objective basis that supports a refugee claimant's evidence?

[32] I provided counsel for the Respondent with the opportunity to give written submissions on this question, and I agree with their submissions that the Federal Court of Appeal could rule only on whether the RAD reasonably preferred the objective evidence in this particular case, rather than how the RAD ought to prefer objective evidence in every case. I will not certify this question as it is not a serious question of general importance.

V. **Conclusion**

[33] This application for judicial review is dismissed. The RAD's decision is justified in light of the evidentiary record (*Vavilov* at paras 99-101). No question is certified.

JUDGMENT in IMM-6931-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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