

Federal Court



Cour fédérale

Date: 20240117

Docket: IMM-1296-23

Citation: 2024 FC 67

Toronto, Ontario, January 17, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JAMES WATSON MOSES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Overview

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision, dated February 15, 2022 [the Decision]. In the Decision, a Senior Immigration Officer [Officer] determined that the Applicant would not be subject to a risk of torture or a risk

of persecution, or face a risk to life or risk of cruel and unusual treatment or punishment if returned to Sri Lanka.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

Background

[3] The Applicant is a Tamil male citizen of Sri Lanka. His mother, father, brother, wife and children still live in Colombo, Sri Lanka. The Applicant's father is Tamil, while his mother and wife are Sinhalese.

[4] The Applicant claims a fear of Sri Lankan police and military and believes he would be arrested on Prevention of Terrorism Act [PTA] charges if he returns to Sri Lanka. He alleges that he was detained and experienced several incidents of persecution while in Sri Lanka and that his wife continues to be subject to persecution in Sri Lanka.

[5] The Applicant claims that, as Tamils, his family experienced threats and intimidation from Sinhalese thugs, and that he also personally faced several incidents of persecution, summarized as follows.

[6] The Applicant alleges that, in November 1994, he was arrested without charge, detained three days, and tortured. In 2006, a motorcycle gang set his family's factory on fire. In February

2008, the Applicant was arrested on an accusation that he had provided material assistance to the Liberation Tigers of Tamil Eelam [LTTE] and detained two days without charge. After the first arrest in 2008, the Applicant was repeatedly taken to the police station when LTTE terrorist activities took place, where he was questioned and beaten. The Applicant went to Dubai in 2008, for work and to flee this alleged persecution in Sri Lanka. He returned to Sri Lanka in 2010.

[7] The next allegation is that in August 2014, armed members of a special intelligence unit took the Applicant from his office by van to an unidentified place of detention, where he was tortured and accused of past and present connections to LTTE terrorists. He was eventually released through bribery.

[8] The Applicant then left Sri Lanka, as explained below, but alleges that authorities continued to search for him in 2014 and 2015. He alleges that, in the course of these searches, his wife was assaulted and his parents were questioned and told he would be killed if the authorities found him. He further alleges incidents between the police and his wife occurring in 2019 and 2021.

[9] In September 2014, the Applicant left Sri Lanka and entered the United States [US], where he eventually made a refugee claim in 2015. However, the Applicant withdrew his US claim in order to come to Canada and pursue refugee protection here. He entered Canada in February 2020 and subsequently made a claim, which was deemed ineligible to be referred to the Refugee Protection Division pursuant to 101(1) (c.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because of the claim he had made in the US.

[10] In March 2020, the Applicant submitted an application for a PRRA, the February 15, 2022 Decision in which is the subject of this application for judicial review. Before making the Decision, the Officer held a PRRA hearing in July 2021.

Decision under Review

[11] This summary of the Decision is organized under headings identifying the various incidents and categories of persecution alleged by the Applicant and considered by the Officer.

Persecution Based on Tamil Ethnicity

[12] The Officer first considered the Applicant's testimony that he and his family endured problems from Sinhalese thugs as a result of being Tamil. The Applicant reported that in 2006, his family's business was the target of a motorcycle gang who set the factory's roof on fire. He believed his family was targeted because they are Tamil. The Officer acknowledged that the Applicant's family experienced threats and intimidations from these thugs.

[13] The Officer considered an affidavit sworn by one of the workers who witnessed the fire at the Applicant's family's factory but found that the affidavit was insufficient to establish that the factory was targeted because the Applicant's family are Tamils. The Officer concluded the Applicant had introduced insufficient objective evidence to support his belief that the fire was set because of the family's Tamil ethnicity. Noting that the police responded to the call promptly, the Officer also concluded that the evidence did not suggest the family was given substandard

police services because they are Tamils. The Officer ultimately found that the 2006 fire demonstrated a risk from criminal gangs that is faced generally by the population of Sri Lanka, rather than an attack on the Applicant personally.

[14] Similarly, the Officer considered the harassment the Applicant's wife experienced in 2015, when a group of men inquired about her husband's whereabouts, but found there was insufficient evidence that the harassment was related to the Applicant's Tamil ethnicity.

[15] More broadly, the Officer gave some weight to the fact that there is discrimination directed towards Tamils from the Sinhalese community but found that the events experienced by the Applicant's family did not cumulatively amount to persecution. The Officer concluded, on a balance of probabilities, the Applicant would not be at serious risk of persecution from the Sinhalese community because he is Tamil.

1994 Arrest

[16] Turning to the events related to the Applicant personally, the Officer considered each of the alleged incidents of persecution, from 1994, 2008, and 2014. In relation to the 1994 events, comparing the Applicant's testimony and his supporting evidence, the Officer identified several inconsistencies and omissions. Most significantly, in the Applicant's written evidence, he stated that he was beaten with a telephone book by the police. In his testimony, he said he was hit in a face with a baton such that his front teeth were broken, evidence of which he says is still visible today.

[17] The Officer did not find the Applicant's explanations for the inconsistencies to be reasonable. The Officer noted that the Applicant had the assistance of a competent legal representative from the outset of his PRRA application and that the absence of dental evidence to corroborate that his teeth were broken, if true, was a major omission of evidence that would potentially provide proof of a longstanding injury. The Officer found the inconsistencies and omissions surrounding his alleged mistreatment by the police in 1994 led to a negative inference with respect to the credibility of his allegations and ultimately found that, on a balance of probabilities, the 1994 events did not occur as alleged.

2008 Questioning

[18] The Officer next considered the 2008 events. The Applicant's alleged that on February 1, 2008, two police came to his family's home and took him to the station for questioning, where it was alleged that his family business had been involved in making jackets with special pockets for suicide bombers and was told that the police wanted to question his workers. The Officer considered that the Applicant had not provided any documentation to corroborate his arrest, nor any corroboration in the documentary evidence from his father or wife, both of whom were involved in the family business. The Officer accepted that the Applicant was arrested on suspicion that he had provided material assistance to the LLTE, but concluded that the police were just doing their job by following up on a serious allegation.

[19] The Officer also drew a negative inference as to the credibility of the Applicant's allegations surrounding the 2008 events, because he did not testify as to subsequent questioning

and mistreatment by the police in Sri Lanka that his written submissions alleged to have occurred until he left to work in Dubai. The Officer acknowledged that the Applicant's wife's letter states briefly that the police continued to harass and beat him, but the Officer gave it little weight, as it was not written by an objective third party disinterested in the outcome of the PRRA application and because it lacked details sufficient to remedy her husband's testimonial omissions.

[20] The Officer also found that, if Sri Lankan authorities believed that the Applicant was associated in any way with the LTTE, he would not have been released in February 2008 after a very brief detention and he would not have been able to leave the country subsequently for Dubai using his own passport.

August 2014 Mistreatment

[21] In considering the August 2014 events, the Officer accepted that the Applicant was taken from his office by some unidentified armed men to an unknown place of detention where he was severely mistreated. The Officer noted the Applicant's statement that these men accused him of being associated with the LTTE, but also that they were interested in the Applicant's work in Dubai and ultimately released him as a result of bribery. The Officer concluded that these men were more interested in finding a victim of perceived wealth and obtaining a bribe than in pursuing alleged connections with the LTTE.

[22] The Officer found there was insufficient evidence to link the armed men with official Sri Lankan authorities and, noting that seven years had passed since this event, the Officer did not

find, on a balance of probabilities, that there was a serious possibility of persecution or that the Applicant would more likely than not face risks to his life from these unidentified armed men in the future. Based on the lack of credible information to establish the police's presence or involvement in the 2014 events, the Officer concluded the Applicant's last contact with the police was in 2008.

2015 Assault of Applicant's Wife

[23] The Officer then considered the Applicant's testimony that authorities continued to intimidate his family in Sri Lanka in 2014 and 2015 after his departure. While the Applicant testified that police came to his family home looking for him and slapped his wife, the letter of support from his wife indicated it was neighbors who hit her. Moreover, the documentary evidence did not identify the men who came to his home in 2015 as the police. The Officer found the Applicant's testimony to be evolving and inconsistent with his own sworn affidavit and his written supporting materials. The Officer drew a negative inference with respect to credibility of the Applicant's allegations that the police were the agents of persecution in 2015.

[24] The Applicant's post-hearing submissions included a medical note dated June 2015, which stated that the Applicant's wife was treated by a physician for injuries from March 2015 to June 2015. However, the Officer noted that the Applicant's wife's letter of support did not mention that she sought medical assistance as a result of the 2015 events. The Officer gave the note very little weight, observing in particular that it did not confirm that the police were looking for the Applicant.

[25] As a cumulative assessment, the Officer found that the Applicant had provided insufficient credible and objective evidence that any Sri Lankan authorities continued to search for him in 2015, as alleged, and found on a balance of probabilities that he did not reasonably establish these events as facts.

2019 Questioning of Applicant's Wife

[26] The next time the Sri Lankan authorities allegedly showed interest in the Applicant was in May 2019, following what is described as the Easter bombing events in April 2019. The Applicant's wife was questioned about the Applicant, and she revealed that he was not in Sri Lanka. However, the Officer found this encounter was a generalized event that indiscriminately affected citizens in the entire neighborhood.

[27] The Applicant's wife stated that, as a result of the police's questioning and physical mistreatment, she sought medical treatment. During the hearing, the Officer questioned the Applicant why he had not provided any medical evidence, to which he replied he did have documentation but was having problems with his emails. He subsequently provided a medical note, dated May 20, 2019, in post-hearing submissions. In describing the Applicant's wife's treatment, the physician's note states, "I took couple of X-Ray's on the head, and chest before treatment for the period from 20th May to 30th May 2019".

[28] The Officer took issue with the fact that the note dated May 20 appeared to refer to treatments that would occur in the future on May 30 and observed that the signature from the

2019 and 2015 doctor's notes seemed identical. The Officer found these factors detracted weight from the quality and authenticity of the evidence. The Officer also took issue with the Applicant's suggestion that he had been having issues with his emails for nearly a year and a half and that his counsel did not know about the existence of the 2019 medical note. The Officer ultimately afforded the medical note minimal weight in establishing the Applicant's wife's allegations of mistreatment from the police and found that it cast a negative inference on the trustworthiness of her mistreatment allegations.

[29] Based on a review of all material submitted in support of the May 2019 incident, the Officer was persuaded only that the Applicant's wife was invited for an interview with the Criminal Investigation Department [CID], that she was not suspected of any adverse findings, and that she was released by the CID without charges. As the CID did not follow up on the Applicant, the Officer was not persuaded that the CID viewed the Applicant's profile as one perceived to discredit Sri Lankan government. The Officer did not find, on a balance of probabilities, that the Applicant would face harm from the CID upon his return to Sri Lanka or that there is a forward-looking risk and serious possibility of persecution from them.

2021 Questioning of Applicant's Wife

[30] The Officer next considered the Applicant's wife's reporting of an incident in March 2021, where two police officers came to her home in a private vehicle and asked if the Applicant was still in America. The Applicant's wife was asked to bring 500,000 rupees to the police station that day to stay out of trouble, although she was only able to secure 100,000 rupees. She

reported that the police threatened that not all her problems would be solved based on that payment and that they would still arrest the Applicant as soon as he arrives in Sri Lanka.

[31] The Officer acknowledged that corruption is a problem in Sri Lanka. However, the Officer concluded that the police were solely interested in bribe money and not actually in reopening the Applicant's case. The Officer found, on a balance of probabilities, that bribery alone did not rise to the level of persecution.

Applicant's Risk Profile

[32] In assessing the Applicant's risk profile, the Officer considered the Applicant's 2008 arrest on suspicion of a connection with the LTTE, that he was taken by unidentified armed men in 2014 and questioned about connections to the LTTE, and the 2019 accusations made by CID linking him to the LTTE. The Officer reviewed some of the above findings related to these events and concluded that the Applicant had provided insufficient objective evidence to establish that the Sri Lankan authorities would be interested in him as a result of perceived links to the LTTE. As such, the Officer gave little weight to the Applicant's belief that the Sri Lankan authorities would arrest him on PTA charges if he returned to Sri Lanka.

[33] The Officer found the Applicant had not demonstrated that he would face more than a mere possibility of serious risk of persecution as defined in section 96 of IRPA or that it was more likely than not that he faced a risk to life, of torture or of cruel and unusual treatment or punishment as defined in section 97 of IRPA.

Issues and Standard of Review

[34] The sole issue for the Court's determination in this judicial review is whether the Decision was reasonable. The parties agree, and I concur, that reasonableness is the standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

Analysis

[35] The Applicant's arguments challenging the reasonableness of the Decision are principally organized around the various incidents comprising the Applicant's allegations. I will organize my analysis in the same manner.

2008 Questioning

[36] As previously explained, the Officer accepted that the Applicant was arrested in 2008 on suspicion that he had provided material assistance to the LLTE, but the Officer concluded that the police were just doing their job by following up on a serious allegation. The Officer then drew a negative inference as to the credibility of the Applicant's allegations surrounding the 2008 events, because he did not testify as to subsequent questioning and mistreatment by the police in Sri Lanka that his written submissions alleged to have occurred until he left to work in Dubai. The Applicant argues that this analysis was unreasonable, because it was based on the Officer's incomplete notes or recollection of his testimony at the PRRA hearing.

[37] This portion of the Decision states that the Officer asked the Applicant at the hearing if the police continued to investigate him and pursue him even after his release in February 2008, and the Applicant responded that he did not know. The Decision notes that the Officer then prompted the Applicant by reading aloud his counsel's written submissions that, subsequent to February 2008, the Applicant was repeatedly taken to the police station, questioned and beaten. The Applicant replied simply that the police called him for questioning but never arrested him. The Officer drew a negative inference as to the Applicant's credibility, as the Applicant failed to volunteer details and events representing key elements of his claim without being prompted.

[38] In his affidavit filed in support of this application for judicial review, the Applicant deposes that the Officer's questioning was complicated and that the Officer did not record the Applicant's complete answer, which was that he did not know if he was being investigated. However, the Officer's notes reflect an exchange that is materially identical to the description in the Applicant's affidavit. I find no merit to this argument.

[39] The Applicant's affidavit also states that the Officer misstated the question to which he replied that he was called for questioning but never arrested. The Applicant states that this answer was in reply to a question about whether he was arrested and why he was not brought to court. However, even if I were to accept the Applicant's recollection of the questioning, this does not undermine the reasonableness of the Officer's analysis, which turned on the fact that the Applicant's oral testimony omitted significant events from his written evidence and referenced those events only after he had been prompted by the Officer.

[40] The Applicant also challenges the Officer's reasoning that, if there was an open case file associated with the Applicant's name following his 2008 detention, he would have been put on a watch list and would not have been able to leave the country for Dubai using his own passport. The Applicant argues that this analysis is unreasonable and speculative, because the Officer does not explain what an "open case file" means and that the country condition evidence [CCE] does not support the Officer's conclusion. The Applicant refers to the CCE discussing only human rights defenders and former LTTE cadres being on a watch list or stop list.

[41] On this point, I agree with the Respondent's submission that the CCE supports the reasonableness of the Officer's analysis, as it references watch lists as including names of individuals that the Sri Lankan security services considered to be of interest.

August 2014 Mistreatment

[42] In relation to the August 2014 events, the Applicant challenges the Officer's conclusions that the armed men who abducted him were not associated with the police or security services and were more interested in obtaining bribery money. He submits that these conclusions are unreasonable, because the abductors asked questions about the LTTE and tortured him. In my view, these submissions ask the Court to re-weigh the evidence and arrive at different conclusions, which is not the Court's role on judicial review.

[43] The Applicant also argues that the Officer overlooked evidence in his father's affidavit that he was told by a police officer, who was a friend of the father, that the police officer had

identified that the Applicant was in the custody of an intelligence unit. The Applicant is correct that the Officer's analysis of the evidence surrounding the 2014 incident does not reference that particular statement in the father's affidavit.

[44] In considering this argument, I am conscious of the principles explained in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 [*Cepeda-Gutierrez*] at paragraph 16 to 17. An administrative decision-maker is not required to refer to every piece of evidence that is contrary to its finding and explain how it addresses that evidence. However, the more important the evidence that is not specifically mentioned and analysed in the decision-maker's reasons, the more willing a court may be to infer from the silence that the decision-maker made an erroneous finding of fact without regard to the evidence.

[45] As the Respondent submits, it is clear that the Officer did not overlook the father's affidavit. Rather, the Officer analysed the circumstances under which the affidavit was generated, following the Applicant's PRRA hearing, finding it self-serving and giving it only limited weight. Moreover, the Decision demonstrates analysis of evidence (related to the nature of the vehicle in which the Applicant was abducted) that is contained in the same paragraph of the affidavit as the evidence of the father's conversation with his police officer friend. Again, the Officer assigned only nominal weight to the father's evidence.

[46] Parenthetically, I also note that the Applicant argues that the Officer erred in the weight afforded to the father's evidence, based on his self-interest or based on a focus on what his

affidavit did not say. I find no reviewable error in the Officer considering the father's self-interest, given that this was not the sole reason for affording his evidence little weight (*Rahman v. Canada (Citizenship and Immigration)*, 2019 FC 941 at para 27). Nor do I read the Officer's reasoning as impugning the father's evidence for what it did not say.

[47] Against the background of the Officer's overall analysis of the evidence surrounding the 2014 event, including analysis of the father's affidavit and the little weight assigned thereto, the principles explained in *Cepeda-Gutierrez* do not support a conclusion that the Officer overlooked the father's evidence in finding that there was insufficient evidence to link the criminals who abducted the Applicant to official Sri Lankan authorities.

2015 Assault of Applicant's Wife

[48] In connection with the March 2015 assault of the Applicant's wife at her home, he testified that the assault had been committed by the police. However, neither his wife's evidence nor the supporting documentary evidence identified the men, who came to his home in 2015 and slapped his wife, as the police. The Officer found the Applicant's testimony to be evolving and inconsistent with his own sworn affidavit and his written supporting materials. The Officer drew a negative inference with respect to credibility of the Applicant's allegations that the police were the agents of persecution in 2015.

[49] The Applicant is not challenging the finding that it was that not the police who slapped his wife. However, he submits that the Officer was unreasonable in making a negative finding

with respect to his credibility. He argues that, while the Officer was entitled to reject the Applicant's inference that the agents of persecution were the police, there was no basis to impugn his credibility.

[50] I find no error in this portion of the Officer's analysis, which was based on the Applicant providing oral testimony that contradicted not only his wife's evidence and documentary evidence but also his own affidavit. Moreover, the significance of this portion of the Decision is the Officer's rejection of the allegation that the police were the agents of persecution in the March 2015 incident. While the Officer also made the impugned adverse credibility finding, this is only one of several such findings against the Applicant in the Decision and therefore does not materially affect the outcome of the Decision.

2019 Questioning of Applicant's Wife

[51] The Officer accepted that the Sri Lankan authorities questioned the Applicant's wife in May 2019, but not that she was injured by police during that questioning, and ultimately found this encounter was a generalized event that indiscriminately affected citizens in the entire neighborhood.

[52] As explained earlier in these Reasons, the Officer took issue with both the authenticity and probative value of the physician's note tendered by the Applicant as post-hearing evidence, based on concerns about the dates referenced in the note and its signature matching that of an earlier medical note. The Applicant challenges both aspects of this analysis.

[53] With respect to the dates, I find that the Applicant is asking the Court to re-weigh the evidence. With respect to the signatures, the Applicant relies heavily on *Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 [*Paxi*] at paragraph 52, and related jurisprudence, arguing that the Officer should have taken advantage of the contact information provided in the medical note, to verify its authenticity with the physician, before rejecting it. The Applicant refers the Court in particular to the comments on *Paxi* in the relatively recent decision in *Jankovic v Canada (Citizenship and Immigration)*, 2022 FC 857 [*Jankovic*].

[54] In *Jankovic* at paragraph 32, the Court considered a Refugee Protection Division [RPD] decision that described *Paxi* as having been the subject of criticism and recently not generally followed. Noting both decisions that had followed *Paxi* and those that had not, the Court in *Jankovic* concluded that, at the very least, the RPD's description did not reflect the totality of the case law (at paras 32-35).

[55] To the extent that, as suggested in *Jankovic*, there is a divergence in the jurisprudence on this subject, in my view it is unnecessary to resolve that divergence in the case at hand. As the Respondent submits, the Officer was not only concerned about the authenticity of the medical note as a result of the similar signatures, but also found the note to be vague, as well as inconsistent with its own contents, casting doubt on the accuracy of the physician's reporting. As I read the Officer's reasoning, independent of the authenticity concerns, the medical note was of little probative value in establishing the allegations of mistreatment by police, and I find no reviewable error in that conclusion.

[56] At the conclusion of the analysis of the 2019 incident, the Decision states that the Officer did not find, on a balance of probabilities, that the Applicant would face harm from the CID upon his return to Sri Lanka or that there is a forward-looking risk and serious possibility of persecution from them. The Applicant argues that the Officer thereby erred in misstating the tests or burden of proof applicable to claims under sections 96 and 97 of IRPA.

[57] While it is arguable that the Officer could have used more precise language, I agree with the Respondent that that the Officer's statement does not suggest a misunderstanding or confusion of the applicable tests or burden of proof. Rather, the reference to establishing on a balance of probabilities that the Applicant would face harm relates to section 97, and the reference to establishing persecution as a forward-looking risk relates to section 96.

[58] To the extent the Applicant is arguing that the Officer's language demonstrates a misunderstanding of the law applicable to section 97 claims, I find that language consistent with the principle that the standard of proof to be applied in assessing the danger or risk described in paragraphs 97(1)(a) and (b) of IRPA is the usual balance of probabilities standard (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 para 14). Moreover, as the Respondent emphasizes, the Decision concludes with a more precise expression of the burden of proof and tests applicable to section 96 and 97 claims.

2021 Questioning of Applicant's Wife

[59] In relation to the 2021 incident, in which police officers came to the Applicant's wife's home and demanded a bribe, the Officer again accepted that the incident occurred but concluded that the police were solely interested in bribe money and were not actually interested in reopening the Applicant's case. The Officer found, on a balance of probabilities, that bribery alone did not rise to the level of persecution, a finding which the Applicant challenges as unsupported by any reasoning.

[60] The Applicant submits that extortion can represent persecution if there is at least in part a nexus to a Convention ground. As a legal principle, I accept this submission. However, the Officer's reasoning is apparent from reviewing the Decision as a whole and, in particular, its concluding paragraphs in which the Officer assesses the Applicant's risk profile based on the various events canvassed in the Decision. The Officer assessed the Applicant's forward-looking risk and concluded that he had provided insufficient objective evidence to establish that the Sri Lankan authorities would be interested in him as a result of perceived links to the LTTE.

Cumulative Persecution

[61] The Applicant argues that the Officer failed to discharge the duty to consider cumulative persecution (*Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 at para 42). I find little merit to this submission. In assessing whether the discrimination experienced by the Applicant's family amounted to persecution, the Officer expressly found that, in the Applicant's personal circumstances, the events did not cumulatively amount to persecution. Also, as noted above, the concluding portion of the Decision, where the Officer considered the Applicant's risk

profile, reviewed the events canvassed in the Decision and certain findings related thereto. The Officer expressed the finding, that the Applicant had not demonstrated a section 96 or 97 risk, as based on the preceding analysis of the events and allegations tendered in support of a forward-looking risk assessment.

Conclusion

[62] I have considered the arguments set out in the Applicant's written materials and oral submissions and find that the Decision is reasonable. As such, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-1296-23

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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