Federal Court  Cour fédérale

Date: 20230505

Docket: IMM-9026-21

Citation: 2023 FC 655

Ottawa, Ontario, May 5, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SATHIYARAJAH AMARASINGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sathiyarajah Amarasingam, seeks judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision dated May 26, 2021, of a Senior Immigration Officer [the Officer] refusing the Applicant's application for permanent residence on humanitarian and compassionate [H&C] grounds. On judicial review, the Applicant argues that the decision is unreasonable.

[2] For the following reasons, the application for judicial review is allowed. The matter is remitted to a different immigration officer for reconsideration.

II. Factual background

[3] The Applicant is a 52-year-old citizen of Sri Lanka. He entered Canada on January 7, 2011, and made a refugee claim on the basis that he was being persecuted as a member of a minority community in Sri Lanka, the Tamil Hindu.

[4] As a youth and young man, during the civil war in Sri Lanka, the Applicant was allegedly detained and exposed to various persecutions. He and his family left the part of the country that was controlled by the Liberation Tigers of Tamil Eelam [LTTE], a militant secessionist organization, and began living in the government-controlled territory. There, he continued to face harassment, mob attacks, extortion, and robbery, on the suspicion that he was associated with the LTTE.

[5] On March 26, 2012, his refugee claim was refused on the basis that the motivation for the attacks and extortion were criminal in nature and that the threat of future extortion or kidnapping was a generalized risk faced by others in the country. He sought leave for judicial review of the decision, but his application was denied on August 15, 2012.

[6] On June 21, 2012, he submitted an application for permanent residence on H&C grounds, which was also refused on June 24, 2013. An order for removal was issued against him to leave

Canada on December 23, 2012. The Applicant did not appear for his removal because of his alleged continued fear to return to Sri Lanka.

[7] On December 27, 2012, a warrant was issued against him. However, he continued to remain and work in Canada without authorization for an extended period of time. The warrant against him was executed on August 20, 2020, and he was released with conditions.

[8] Upon the execution of the warrant, on August 19, 2020, the Applicant submitted a second application for permanent residence based on H&C grounds. The motives for this application were his level of establishment in Canada, the best interest of the children, and the adverse country conditions in Sri Lanka.

[9] On March 16, 2021, he submitted a Pre-Removal Risk Assessment [PRRA] application.

A. *H&C Decision*

[10] After conducting a global assessment of all the factors raised by the Applicant, the H&C application was denied on May 26, 2021. The Applicant's PRRA decision was also refused at the same time by the same Officer. The Officer was not satisfied that the humanitarian and compassionate considerations justified an exemption under subsection 25(1) of the *IRPA*.

[11] With regards to the criterion of establishment, the Officer concluded that the Applicant had a degree of establishment in Canada. Nevertheless, the Officer also noted that the Applicant continued to remain and work in Canada without authorization for a prolonged period. The

Officer also considered that the Applicant had failed to appear for removal on December 23, 2012, and had subsequently gone underground for more than eight years.

[12] Because the Applicant did not make further attempts to regularize his status in Canada during that period, until recently, the Officer found that the Applicant had shown disregard for Canadian regulations and that this failure negatively affected his application.

[13] With regards to the risks and adverse country conditions, the Officer concluded that there was insufficient evidence to demonstrate that the Applicant would, on a balance of probabilities, be discriminated against or mistreated simply as a result of his status as a Tamil returnee and also as a person who had resided in Canada for the past decade.

[14] More specifically regarding the forward-looking hardships that the Applicant would face upon his return to Sri Lanka, the Officer found that the Applicant did not provide sufficient corroborative evidence of past mistreatment or abuse at the hands of the army or People's Liberation Organisation of Tamil Eelam, a pro-government paramilitary group supporting the LTTE. The Officer further noted that the Applicant resided in Canada for over ten years and had not objectively established with sufficient evidence that anyone in Sri Lanka had an ongoing interest to locate and harm him.

[15] The Officer also relied on documentary evidence indicating that those who are likely to be detained and interrogated upon return are individuals with a history of significant political activity, which the Applicant had not established. The Officer found that the Applicant had

presented insufficient evidence to demonstrate that anyone in Sri Lanka perceives or would perceive him to be related to the LTTE supporter or sympathizers.

[16] The Officer also noted that while discrimination against Tamils is clearly present in Sri Lanka, the Applicant had not demonstrated that he would face a level of hardship that would justify an exemption from legislative requirements (H&C considerations). In fact, the Officer noted that insufficient evidence had been provided to show that the Applicant's family members who still reside in Visuvamadu in the Northern Province of Sri Lanka were denied access to education, employment, health services, or other social services.

[17] The Officer further found that the Applicant is a resilient individual who will be able to adapt upon his return to Sri Lanka as his family members will be able to support him financially. The skills he obtained as an assembler, general labourer, and maintenance worker in Canada will also be transferrable for him in Sri Lanka.

III. Issues and standard of review

[18] The determinative issue in this judicial review is whether the Officer's decision to refuse the H&C application was reasonable.

[19] The applicable standard of review is one of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. 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).

[20] For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws are "more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[21] In this particular case, the Applicant submits that because the decision ignores relevant evidence and applies illogical reasoning, it is neither justifiable nor intelligible (*Vavilov* at paras 104, 126). As explained in *Vavilov*, "the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" and "the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise" (*Vavilov* at para 104).

[22] As I explained in *Ehigiator v Canada (Citizenship and Immigration)*, 2023 FC 308 [*Ehigiator*] at paragraphs 71-73, a decision maker cannot selectively choose evidence and ignore contradicting facts. Instead, the decision maker must demonstrate that all of the evidence was considered and weighed, as well as explain why evidence that would be contrary to the result was not sufficient to justify a different conclusion (see also *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 17). As I also mentioned in *Ehigiator* at paragraph 52, intervening because the decision maker did not properly mention contradicting facts is appropriate when the Court cannot assess whether the decision maker meaningfully considered all of the key issues and evidence:

> [52] Overturning a decision because the reasons did not discuss critical contradicting evidence is not "disguised correctness" - nor the application of a court established "yardstick" to measure the decision maker's reasons (see *Hiller v Canada (Attorney General)*, 2019 FCA 44 at para 14). Rather, it is a conclusion that the decision maker may not have meaningfully grappled with key issues and evidence and may not have been alert and sensitive to the matters before it (*Vavilov* at paras 83, 125-128). The decision consequently does not bear the hallmarks of reasonableness – justification, transparency and intelligibility – because it either does not justify in a transparent and intelligible manner why an important factor was not assessed, or it demonstrates that the decision maker failed to consider relevant evidence, argument or ground.

IV. Parties' submissions

A. *Applicant*

[23] The Applicant submits that the Decision is unreasonable because the Officer turned positive H&C factors into negative ones, contrary to the rule established by jurisprudence. For instance, despite noting the discrimination the Applicant might face, the Officer points to his resilience as a way to justify his conclusion that "he will be able to adapt to the environment of his home country after an initial period of adjustment." In *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 [*Singh*] (at paras 23-24), this Court found such reasoning unreasonable.

[24] Moreover, the Officer ignored relevant evidence that contradicted their decision that the Applicant was unable to demonstrate a risk if removed, on a balance of probabilities and more than ten years after having left Sri Lanka.

[25] As an important fact, the Officer deciding the H&C application in this case was the same Officer that was also considering the PRRA application, and both decisions rested on the exact same record. However, despite copying the PRRA analysis into the H&C decision, the Officer excluded the sections of the PRRA analysis that were in fact more relevant to an H&C analysis. As an example, in the PRRA analysis (but absent from consideration in the H&C decision), the decision maker cited a source from Freedom House in 2019 indicating that military presence increased in Tamil-populated areas and that the government encouraged settlement with the aim of diluting local Tamil majorities. The decision maker also cited a US Department of State Report of 2020 in which Tamils are reporting events of harassment at the hands of security forces. The Applicant also cited a passage from the PRRA analysis where the decision maker assesses country evidence and concludes as follows:

> The documentary evidence I have consulted demonstrates that human rights abuses committed in the past in Sri Lanka may still not have been fully addressed by the government. Tamils may continue to face discrimination due to their ethnicity.

[26] Because the Officer did not include those passages from their PRRA analysis, and instead completely ignored them for the purposes of the H&C application, the Applicant submits that the Officer either did not properly appreciate the differences between the PRRA and H&C tests, or simply improperly excluded information from the H&C decision that should have been given positive weight.

[27] Finally, in ignoring some of the evidence considered in the PRRA analysis for the purposes of the H&C application, the Officer gave no weight to the available evidence of discrimination against Tamils, opting instead to repeat the risk analysis of the PRRA. In doing

so, the Officer applied the same legal requirements, despite the fact that the criteria are different for the H&C test. In other words, the Applicant submits that the Officer failed to consider relevant factors through a humanitarian and compassionate lens. Overall, by applying the more onerous PRRA standards and dismissing relevant evidence of discrimination, militarization, and adverse country conditions that will directly impact the Applicant, the Officer failed to consider relevant factors otherwise necessary under the H&C lens.

B. *Respondent's submissions*

[28] The Respondent submits that the Officer turned their mind to whether the level of discrimination faced by the Applicant amounted to a hardship that justified a positive H&C, finding that there was insufficient evidence that his family in Sri Lanka was facing difficulties and that they could help him settle upon his return.

[29] The Respondent further submits that the Officer's overall assessment was reasonable based on the evidence that was before them. The Officer considered the evidence of discrimination against similarly situated individuals, such as the Applicant's family in Sri Lanka, and found that it did not amount to hardship. In this case, it was open to the Officer to look at what the current situation for the Applicant's family was at the time of evaluation, and find that it didn't rise to the level where H&C relief was warranted.

[30] With respect to the argument on the positive factors that were used against the Applicant, the Respondent argues that the Officer reasonably considered the Applicant's establishment

factors independently from the assessment of the hardship in Sri Lanka and gave it negative weight within the context of his whole immigration history.

V. Analysis

[31] Subsection 25(1) of the *IRPA* provides the Minister with the discretionary power to exempt a foreigner from having to meet any criteria or obligation of the *IRPA* and to grant him/her permanent resident status, if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations. This provision reads:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte

it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	tenu de l'intérêt supérieur de l'enfant directement touché.

[32] It is important to note that applicants who apply for H&C considerations bear the onus of satisfying the decision maker that the granting of permanent resident status or an exemption from any applicable criteria or obligations of the *IRPA* is justified by H&C considerations (*Lee v Canada (Minister of Citizenship and Immigration*), 2005 FC 413, citing *Owusu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 94, [2003] FCJ No 139 per Gibson J., citing *Prasad v Canada (Minister of Citizenship and Immigration)* (1996), 34 Imm LR (2d) 91 (FCTD) and *Patel v Canada (Minister of Citizenship and Immigration)* (1997), 36 Imm LR (2d) 175 (FCTD).

[33] The test for H&C relief is set out in *Huang v Canada (Citizenship and Immigration*), 2019 FC 265:

> *A. The test for H&C relief*
>
> [17] Section 25 of the IRPA provides exceptional relief from what would otherwise be the ordinary operation of the IRPA. To obtain such relief, an applicant bears the onus of establishing circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another": *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, at para 21 [*Kanthasamy*], quoting from *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970) 4 IAC 338, at 350.
>
> [18] To meet this test, it is not sufficient to simply establish the existence or likely existence of misfortunes, relative to Canadian citizens and permanent residents of Canada. This is something that one would expect could be readily established by most persons

facing removal to, or currently living in, a country where living standards are significantly below those in Canada. As the Supreme Court of Canada has recognized, "[t]here will inevitably be some hardship associated with being required to leave Canada": *Kanthasamy*, above, at para 23. Similarly, there will inevitably be some hardship associated with being an unsuccessful applicant for H&C relief from outside Canada.

[19] Section 25 was enacted to address situations in which the consequences of deportation "might fall *with much more force on some persons … than on others*, because of their particular circumstances …": *Kanthasamy*, above, at para 15 (emphasis added), quoting the *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on Immigration Policy*, Issue No. 49, 1st Sess., 30th Parl., September 23, 1975, at p. 12. Accordingly, an applicant for the exceptional H&C relief provided by the IRPA must demonstrate the existence or likely existence of misfortunes or other H&C considerations *that are greater than those typically faced by others who apply for permanent residence in Canada*.

[20] Put differently, applicants for H&C relief must "establish exceptional reasons as to why they should be allowed to remain in Canada" or allowed to obtain H&C relief from abroad: *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, at para 90. This is simply another way of saying that applicants for such relief must demonstrate the existence of misfortunes or other circumstances that are exceptional, *relative to other applicants who apply for permanent residence from within Canada or abroad: Jesuthasan, v Canada (Citizenship and Immigration)*, 2018 FC 142, at paras 49 and 57; *Kanguatjivi v Canada (Citizenship and Immigration)*, 2018 FC 327, at para 67.

…

[23] In assessing whether an applicant has established sufficient H&C considerations to warrant a favourable exercise of discretion under s. 25 of the IRPA, *all* of the relevant facts and factors advanced by the applicant must be considered and weighed: *Kanthasamy*, above, at para 25. In this regard, the words "unusual and undeserved or disproportionate hardship" should be seen as instructive, but not determinative: *Kanthasamy*, above, at para 33.

[Emphasis in original.]

[34] Furthermore in *Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61 [*Kanthasamy*], the Supreme Court of Canada held that the applicant only needs to show that it is likely that discrimination will occur, and that such a conclusion may be inferred:

> [52] The Officer agreed to consider the hardship Jeyakannan Kanthasamy would likely endure as discrimination in Sri Lanka against young Tamil men. She also accepted evidence that there was discrimination against Tamils in Sri Lanka, particularly against young Tamil men from the north, who are routinely targeted by police. In her view, however, young Tamils are targeted *only where there is suspicion of ties to the* Liberation Tigers of Tamil Eelam, *and* the government had been making efforts to improve the situation for Tamils. She concluded that "the onus remains on the applicant to demonstrate that these country conditions would affect him personally."
>
> [53] This effectively resulted in the Officer concluding that, in the absence of evidence that Jeyakannan Kanthasamy would be personally targeted by discriminatory action, there was no evidence of discrimination. With respect, the Officer's approach failed to account for the fact that discrimination can be inferred where an applicant shows that he or she is a member of a group that is discriminated against. Discrimination for the purpose of humanitarian and compassionate applications "could manifest in isolated incidents or permeate systemically", and even "[a] series of discriminatory events that do not give rise to persecution must be considered cumulatively": Jamie Chai Yun Liew and Donald Galloway, *Immigration Law* (2nd ed. 2015), at p. 413, citing *Divakaran v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 633.
>
> [54] Here, however, the Officer required Jeyakannan Kanthasamy to present direct evidence that he would face such a risk of discrimination if deported. This not only undermines the humanitarian purpose of s. 25(1), it reflects an anemic view of discrimination that this Court largely eschewed decades *ago*: *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143, at pp. 173-74; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3; *Quebec (Attorney General) v. A*, 2013 SCC 5 (CanLII), [2013] 1 S.C.R. 61, at paras. 318-19 and 321-38.
>
> …

> [56] As these passages suggest, applicants need only show that they would likely be affected by adverse conditions such as discrimination. Evidence of discrimination experienced by others who share the applicant's identity is therefore clearly relevant under s. 25(1), whether or not the applicant has evidence of being personally targeted, and reasonable inferences can be drawn from those experiences. Rennie J. persuasively explained the reasons for permitting reasonable inferences in such circumstances in *Aboubacar v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 714:
>
> > While claims for humanitarian and compassionate relief under section 25 must be supported by evidence, there are circumstances where the conditions in the country of origin are such that they support a reasoned inference as to the challenges a particular applicant would face on return…. This is not speculation, rather it is a reasoned inference, of a non-speculative nature, as to the hardship an individual would face, and thus provides an evidentiary foundation for a meaningful, individualized analysis…. [para. 12 (CanLII)]
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> [Emphasis in original.]

[35] During the hearing, the Respondent cited *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 at para 16, relying on *Kanthasamy* at para 23, in which the Court opined that an H&C application should only be granted in exceptional circumstances. Otherwise, section 25 would risk becoming the alternative immigration scheme that the Supreme Court of Canada explicitly sought to avoid.

A. *The Officer's decision is unreasonable*

(1) The Officer unreasonably turned positive factors that weigh in favour of granting an exemption into a justification for denying it

[36] In my view, the Applicant's argument that the Officer turned positive H&C establishment factors into negative ones should be sustained. The Officer relied on specific factors that could demonstrate that the Applicant met the H&C factors and, instead of weighing those factors in favour of granting the application, used them against the Applicant suggesting that the same factors could demonstrate that the Applicant would not face hardship if he was removed to Sri Lanka. For example, the Officer noted that the Applicant was "resilient" and had obtained "work skills in Canada that could be transferrable in Sri Lanka". Instead of considering those factors as relevant to his H&C application, the Officer instead opined that this demonstrated that the Applicant could re-establish in Sri Lanka.

[37] The Respondent submits that the Officer reasonably considered the establishment factors independently and gave it a negative weight within the context of the Applicant's past immigration history and in the context of considering hardship in Sri Lanka. The Officer commented on some factors that were true about the Applicant based on the evidence that was before them (work history) and found that those factors did not warrant an H&C relief and that therefore these findings were reasonable. I disagree.

[38] As this Court held in *Singh* at paras 23-28, the Officer is not allowed to turn positive establishment factors into negative ones:

[23] The Officer's analysis regarding the Applicants' establishment in Canada was unreasonable because it turned positive factors that weigh in favour of granting an exemption into a justification for denying it. The Applicants highlight one portion of the establishment analysis as troubling, particularly in light of the errors made in the first H&C decision:

> While I recognize that having to return to India may cause them some disruption and anxiety, I am satisfied that they are resilient individuals who possess the ability to adapt to the environment in their home country after an initial period of adjustment. … While I have given positive consideration to their level of establishment in Canada, I find that their ability to assimilate to the environment in Canada demonstrates their ability to assimilate to the environment in their home country.
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> [Emphasis added]

To turn positive establishment factors on their head is unreasonable. The officer cannot, as s/he does here, use the Applicants' shield against them as a sword.

[24] This Court has previously criticized the use of such reasoning. In *Sosi v Canada (Citizenship and Immigration)*, 2008 FC 1300 [*Sosi*], the Court found against the officer's statement that "[t]he industriousness of this family also tends to demonstrate a high level of ability to reintegrate back into Kenyan society, especially when considering the prospect of them being reunited with their remaining children on their return" (*Sosi* at para 9). And relying on *Sosi*, Justice Rennie in *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 [*Lauture*]), wrote that "[u]nder the analysis adopted, the more successful, enterprising and civic-minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed" (at para 26).

…

[27] Including considerations of establishment in Canada when assessing an applicant's hardship upon return does not, by itself, render the Decision unreasonable (*Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163; see also *Brambilla*). Commingling becomes problematic, however, when an officer ascribes positive weight to an applicant's establishment on the one hand but, on the other, uses the positive establishment attributes (resiliency, drive and determination), to attenuate future hardship.

> [28] Here, the Officer committed this error by applauding the Applicants' successful ability to assimilate to the Canadian milieu, but then using those positive skills to their detriment, by asserting the ability to adapt and assimilate to the Indian milieu. This use of the positive establishment factor to turn the Applicants' skills against them was precisely the type of reasoning cautioned against by Justice Rennie in *Lauture* above. And the Officer committed a further unreasonable error in using similar logic in the BIOC analysis.

[39] In this case, I agree with the Applicant that the Officer unreasonably turned positive establishment factors on their head. In their reasons, the Officer accepts that the Applicant is "resilient" and has "work skills," but then states that the Applicant could use those attributes to reintegrate himself in Sri Lanka. This conclusion is unintelligible (see also *Teweldemedhn v Canada (Citizenship and Immigration)*, 2022 FC 36 at paras 21, 24; *Li v Canada (Citizenship and Immigration)*, 2020 FC 848 at para 22; *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at para 26).

(2) The Officer ignored relevant contradictory evidence

[40] The Officer decided both the Applicant's PRRA and H&C applications at the same time, and on the same record. As held by this Court in *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1404 at para 47, officers who rule on both types of applications at the same time are "at risk of confusing the two separate and distinct analyses required by these procedures… and may be drawn to the same conclusion [and therefore] extra care should be taken to ensure the two processes are kept separate."

[41] In this case, the Officer considered some evidentiary elements in making their findings on the PRRA application, but then ignored some of the same relevant evidence in the H&C decision. However, the evidence that was ignored for the purposes of the H&C decision is directly in contradiction to their finding.

[42] As stated above, the omission to consider relevant objective evidence that is contradictory to the findings is unreasonable (*Vavilov* at para 128). The decision maker is not allowed to choose the evidence that fits its rationale, but ignore existing evidence that point to a contradictory conclusion. Instead, the decision maker must explain why little or no weight had to be assigned to the contradicting evidence and why it preferred, in light of the contradicting evidence, to dismiss the application (*Ehigiator* at para 74; *Rajput v Canada (Citizenship and Immigration)*, 2022 FC 65 at para 25).

[43] In my view, the Applicant provided documentary evidence showing that Tamils were facing growing discrimination in Sri Lanka today and that he was part of this group. The Officer considered that evidence, but failed to consider it entirely for the purposes of the H&C analysis.

[44] The Officer had a complete record and did consider the evidence relating to the discrimination and harassment of Tamils as well as concerns that the government had not fully addressed the situation. While that information was considered in the PRRA analysis, it was excluded from the H&C analysis. However, that information remained relevant and ought to have been considered and analyzed in the H&C decision. The Officer failed to do so.

[45] The Officer either failed to appreciate the differences between the PRRA test and the H&C criteria, or failed to consider and weigh contradicting evidence. Either way, the reasons do not provide an explanation as to why that important evidence played no role in the Officer's decision-making process.

[46] Indeed, issues as to potential discrimination, harassment, or threats of criminal violence, even if they don't meet the PRRA test, may directly impact the Applicant if he is removed. Those are important considerations in the H&C process.

[47] As stated in *Kim v Canada (Citizenship and Immigration)*, 2020 FC 581 (see also *Yanchak v Canada (Citizenship and Immigration)*, 2019 FC 117 at paras 15-18):

> [55] The correct legal test is not a strict hardships lens, but a broader one that considers the humanitarian and compassionate factors that is responsive to the facts of the case (*Kanthasamy* at para 25). The Officer failed to do so, and thus erred by applying an incorrect legal test.

[48] I would also add that I agree with the Applicant that for the H&C application, the Officer did not appear to rely on the most up-to-date evidence that was relevant to the H&C assessment. Indeed, in the circumstances of this case where Sri Lanka is a country in which the situation is fluid, the Officer was able to and should have relied on the most recent objective evidence (more specifically the UNHCR Eligibility Guidelines). I agree with Justice Brown in *Krishnapillai v Canada (Citizenship and Immigration)*, 2022 FC 485 where he found that:

> [28] I am also concerned with the timeliness of the PRRA and its consideration of other than up-to-date country condition evidence. The Officer recognized the situation in Sri Lanka was deteriorating for Tamils from the North who are returning. While I make no determination, which is for the Officer, I may say that considerable

evidence to this effect was supplied to the Officer by the Applicant in February 2020, six months after the PRRA was submitted. The Officer dated the Decision May 27, 2020. However, the Decision was withheld for almost a year. During that time, as might be concluded from the Applicant's submissions to this Court, it appears conditions may have further deteriorated for persons in the Applicant's position. I would not normally consider new evidence on judicial review, but this was not objected to and filled in the gap left by the unexplained one-year delay in releasing the Decision. To the extent reasonably possible, a PRRA should be based on up-to-date country condition evidence.

[29] From the information filed at this hearing and before the PRRA Officer, it seems to me the situation in Sri Lanka is once again fluid, which emphasizes the need for timely and up-to-date PRRA assessment. In particular, I note there is a new Prime Minister, Mahinda Rajapaksa and a new President, the Prime Minister's brother Gotabaya Rajapaksa elected and appointed in 2019.

[30] I am not satisfied this Applicant had the benefit of a timely up-to-date PRRA assessment, as per Justice Favel in *Navaratnam v Canada (Minister of Citizenship and Immigration)*, 2018 FC 247:

> [27] The Applicant's argument that the Officer made an unreasonable conclusion regarding country conditions is persuasive. Each case needs to be decided on its own facts. This Court has held that Sri Lanka is a country where the conditions are continuously changing (*Navaratnam v Canada (Minister of Citizenship and Immigration*), 2015 FC 244 per Brown J at para 13).
>
> [28] Where a decision maker fails to consider recent country condition evidence and bases a risk conclusion on outdated country conditions, such decision is unreasonable (*Rasalingam v Canada (Minister of Citizenship and Immigration*), 2017 FC 718 per Diner J at paras 19-20). While not every aspect of the evidence of country condition evidence needs to be explained, it should be considered fully.
>
> [29] On the face of it, the Officer deferred to the RPD's conclusion that country conditions were improving instead of considering the "significant package of documentary material which consisted

> of internet and news articles as well as publications which discuss various topics such as torture, rape, disappearance, human rights abuses, impurity, detention, returnees, country condition, etc." In short, there was more recent evidence before the Officer to illustrate that conditions were not improving. In my view, this is one of the reasons the PPRA Decision is unreasonable.

[49] Accordingly, the decision lacks intelligibility and is therefore not reasonable.

JUDGMENT in IMM-9026-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. The matter is remitted for redetermination by a different officer.

3. No questions for certification were argued, and I agree none arise.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9026-21
STYLE OF CAUSE:	SATHIYARAJAH AMARASINGAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 14, 2023
JUDGMENT AND REASONS:	RÉGIMBALD J.
DATED:	MAY 5, 2023

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