Federal Court  Cour fédérale

Date: 20111019

Docket: IMM-6902-10

Citation: 2011 FC 1172

Ottawa, Ontario, October 19, 2011

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

PONNAMPALAM KATHIRIPILLAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Ponnampalam Kathiripillai, is a citizen of Sri Lanka. He applied for a permanent resident visa in Canada after serving approximately 26 years as a member of the Sri Lankan police force. His application was rejected after a visa officer ("Visa Officer") determined that there are reasonable grounds to believe that he was complicit in crimes against humanity.

[2] Mr. Kathiripillai submits that the Visa Officer erred by:

i. failing to explain how he was complicit in crimes against humanity; and

ii. failing to identify the crimes in respect of which he was complicit and to address whether they were systematic and widespread.

[3] For the reasons that follow, this application will be dismissed.

I. Background

[4] Mr. Kathiripillai is of Tamil ethnicity. He joined the Sri Lankan police force in 1964 as a constable. After serving approximately 20 years in the police force, he was promoted to the rank of senior constable. In that capacity, he had a number of supervisory responsibilities, particularly during mobile patrol. Approximately six years later, he applied for a pension and retired after the police station where he worked in Jaffna was closed, following attacks by the Liberation Tigers of Tamil Eelam ("LTTE"). During his retirement, Mr. Kathiripillai had no further involvement with the police.

[5] In 2002, after being retired for approximately 11 years, Mr. Kathiripillai applied to become a permanent resident of Canada. During an initial interview in early 2007, he was asked "standard questions" about his numerous postings over the course of his police career, the various difficulties that he encountered with the LTTE during this period, his experience as a member of the Tamil minority while working with the police, and whether he had ever tortured anyone. He denied having ever tortured anyone and added that he had never been "part of or near such events." At the end of this interview, the notes that were entered into Immigration Canada's Computer-Assisted Immigration Processing System ("CAIPS") state that his "recounting of events appears genuine, natural and is consistent with [his] son's PIF."

[6] Following initial background checks and a "war crimes review," Mr. Kathiripillai was requested to attend a second interview in January 2009. During that interview, he was once again questioned regarding his length of service, his dates of service at various police stations, his responsibilities and ranks with the police force, the nature of his work, and whether he or other members of the police had used torture while he was a member of the force.

[7] In the course of that second interview, Mr. Kathiripillai once again denied ever having personally witnessed torture or beatings of individuals by the Sri Lankan police. However he acknowledged that he was aware that torture was routinely used by the Sri Lankan police. When asked how he knew that people had been tortured by the police, he replied: "Well, since I'm at the station during my duty hours, I will know if torture is carried out." When subsequently asked whether torture was common during his career, he replied: "No. In the places that I worked there was no torture for the most part. I would say that 70% were not tortured."

[8] Later in that interview, Mr. Kathiripillai denied that torture had taken place at the stations where he had been posted. However, he acknowledged that he had arrested and detained people on a regular basis and had been involved in interrogations. He also acknowledged that he was permitted to use force during interrogations, although he stated that he had never personally used any force during an interrogation, and that he had never arrested members of the LTTE or anyone supporting the LTTE.

[9] As a result of concerns that arose during his second interview, Mr. Kathiripillai was requested to attend a third interview in July 2009, to provide him with an opportunity to address those concerns. During that third interview, he was once again asked if he had ever arrested or attempted to arrest the LTTE members who had attacked the police station in Jaffna where he

worked between 1985 and 1988. He was found to have been "most evasive in his replies." He also denied having been authorized to use force during his interrogations. When the Visa Officer stated that he had heard many stories that prisoners were tortured, Mr. Kathiripillai replied that those "stories were not true," at least not during the time that he worked with the police. When it was pointed out that he had contradicted statements made during his second interview, he insisted that he had not done so. When asked if he was aware of others having used excessive force without authority, he replied that he had "read about it in the newspapers."

[10] The Visa Officer found that Mr. Kathiripillai had done "poorly at the [third] interview." Among other things, he observed:

> Each question had to be asked 2 or 3 times and he was evasive in his replies to many of my questions. It was difficult to determine if the applicant's evasiveness was due to the fact that he knew that an admission of the use of violence could lead to refusal or if he was in fact hiding something. In any event he has not been able to pass background.

II. The Decision under Review

[11] On October 20, 2010, the Visa Officer wrote to Mr. Kathiripillai to inform him that his application had been rejected. In his short letter, the Visa Officer stated that there were reasonable grounds to believe that Mr. Kathiripillai is a member of the inadmissible class of persons described in paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). Based on this finding, the Visa Officer stated that he had concluded that Mr. Kathiripillai had not satisfied his statutory burden of establishing that he is not inadmissible to Canada.

III. Relevant Legislation

[12] Paragraph 35(1)(a) is found in Division 4 of the IRPA, which deals with inadmissibility.

That provision states:

Human or international rights violations	Atteinte aux droits humains ou internationaux
35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for	35. (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :
(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;	a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

[13] The applicable standard of proof in respect of decisions made under Division 4 of the IRPA is proscribed by section 33, which states:

Rules of interpretation	Interprétation
33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	33. Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

[14] Subsection 4(3) of the *Crimes against Humanity and War Crimes Act*, SC 2000, c 24 defines a "crime against humanity" as follows:

OFFENCES WITHIN CANADA	INFRACTIONS COMMISES AU CANADA
Definitions	Définitions
4. (3) The definitions in this subsection apply in this section.	4. (3) Les définitions qui suivent s'appliquent au présent article.
"crime against humanity"	« crime contre l'humanité »
"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.	« crime contre l'humanité » Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

IV. Issues

[15] Mr. Kathiripillai has raised the following two issues in this application:

i. Did the Visa Officer err by failing to explain how Mr. Kathiripillai was complicit in crimes against humanity?

ii. Did the Visa Officer err by failing to identify the crimes in respect of which Mr. Kathiripillai was complicit and by failing to address whether those crimes were systematic and widespread?

V. The Standard of Review

[16] When applying the "reasonable grounds to believe" standard of proof, findings of fact and findings of mixed fact and law are subject to review on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paras 55, 62). That is to say, a visa officer's decision will stand unless it does not fall "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" and is not sufficiently justified, transparent and intelligible (*Dunsmuir*, above, at para 47).

[17] However, whether those findings meet the requirements of a crime against humanity is a question of law that is subject to review on a standard of correctness (*Dunsmuir*, above, at paras 55, 79; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 44; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, at para 24; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100, at para 116; *Thomas v Canada (Minister of Citizenship and Immigration)*, 2007 FC 838, at para 15).

VI. Analysis

A. *Did the Visa Officer err by failing to explain how Mr. Kathiripillai was complicit in Crimes against Humanity?*

[18] In determining whether a visa applicant has committed crimes against humanity, as contemplated by paragraph 35(1)(a) of the IRPA, regard must be had to the following principles:

i. It is possible to "commit" a crime against humanity as an "accomplice," or through complicity, even though one has not personally engaged in the acts amounting to the crime (*Ramirez v Canada (Minister of Employment and Immigration)*, [1992] 2 FC 306, at 314-317 (CA); *Sivakumar v Canada (Minister of Employment and*

Immigration), [1994] 1 FC 433, at 438 (CA); *Canada (Minister of Citizenship and Immigration) v Ezokola*, 2011 FCA 224, at para 50).

ii. Mere membership in an organization which is not directed to a limited and brutal purpose, but which from time to time commits international offences, is not normally a sufficient basis upon which to find that a person was complicit in such crimes (*Ramirez*, above, at 317; *Sivakumar*, above, at 440; *Ezokola*, above, at para 52).

iii. Similarly, mere presence at the scene of a crime, and acts or omissions amounting to passive acquiescence, are not a sufficient basis upon which to find that someone has been complicit in the commission of a crime against humanity. A person is not required to incur a risk of similar treatment by intervening to stop such a crime (*Ramirez*, above, at 317; *Sivakumar*, above, at 441; *Ezokola*, above, at para 53; *Moreno v Canada (Minister of Employment and Immigration*), [1994] 1 FC 298, at 322 (CA)).

iv. To be complicit in a crime against humanity committed by others, a person must be shown to have either had "personal and knowing participation" in the crime or to have tolerated the crimes (*Ramirez*, above, at 316-317; *Sivakumar*, above, at 438, 442; *Ezokola*, above, at paras 52-58).

v. Personal participation in a crime does not require physical participation or presence at the scene of the crime, and may be established by demonstrating the

existence of a shared common purpose (*Ezokola*, above, at para 53; *Moreno*, above, at 323; *Sivakumar*, above, at 438-439).

vi. A shared common purpose can be established in various ways, including by demonstrating that a person (i) is a member of an organization that committed the crime, (ii) had knowledge of the commission of the crime, (iii) provided active support to the organization, and (iv) neither took steps to prevent the crime from occurring (if that was within the person's power) nor left the group at the earliest opportunity, having regard to that person's own safety (*Penate v Canada (Minister of Employment and Immigration)*, [1994] 2 FC 79, at para 6).

vii. Presence coupled with being an associate of the primary offenders may be sufficient to constitute complicity, depending upon the particular facts in question (*Ramirez*, above, at 317).

viii. It is not the fact of working for an organization that makes an individual an accomplice to the acts committed by that organization, but rather the fact of encouraging or knowingly contributing to its illegal activities in any manner whatsoever, whether from within the organization or from the outside (*Ezokola*, above, at para 55; *Bazargan v Canada (Minister of Citizenship and Immigration)* (1996), 67 ACWS (3d) 132, at para 11 (CA); *Sivakumar*, above, at 438).

ix. A person who aids in or encourages the commission of a crime, or a person who willingly stands guard while it is being committed, will usually be found to have been complicit in the crime (*Sivakumar*, above, at 438).

x. The closer one is to being a leader, as opposed to being an ordinary member, of an organization that has committed a crime against humanity, the more likely it is that an inference will be drawn that one knew of the crime and shared the organization's purpose in committing that crime (*Sivakumar*, above, at 440).

xi. Likewise, the closer a person is to being involved in the decision-making process and the less he or she does to prevent the commission of a crime against humanity, the more likely criminal responsibility will attach (*Moreno*, above, at 324; *Ezokola*, above, at para 53).

[19] In addition to the foregoing, the jurisprudence has identified the following other factors to be considered in assessing whether a person was complicit in the commission of a crime against humanity:

i. The nature of the organization.

ii. The method of recruitment.

iii. The length of time in the organization.

iv. Opportunity to leave the organization.

v. Knowledge of the organization's atrocities.

(See *Ardila v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1518, at para 11; *Blanco v Canada (Minister of Citizenship and Immigration)*, 2006 FC 623, at paras 16-21; *Ali v Canada (Solicitor General)*, 2005 FC 1306, at para 10; *Rutayisire v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1168.)

[20] Within the context of the foregoing legal framework, each case will turn on its own particular facts. The Minister does not have to prove the person's guilt. The Minister merely has to show that there are reasonable grounds to believe that the person is guilty through complicity. In this regard, the standard of proof to be met by the Minister lies somewhere between mere suspicion and the balance of probabilities standard applicable in civil matters (*Mugesera*, above, at para 114).

i. The Nature of the Organization

[21] The Sri Lankan police force has a legitimate primary function, namely, to enforce the validly enacted laws of Sri Lanka. However, according to CAIPS notes that further explain the basis for the Visa Officer's decision, Mr. Kathiripillai acknowledged that he was aware that torture was routinely used by the Sri Lankan police. He also stated that he was permitted to use force when interrogating people. The Visa Officer further noted that "the brutality of the SL police force in the time period of employment of [Mr. Kathiripillai] has been well documented."

[22] Given Mr. Kathiripillai's statements and the other information that was available to the Visa Officer regarding the use of torture, it was not unreasonable for the Visa Officer to conclude that there are reasonable grounds to believe that the Sri Lankan police force routinely engaged in torture during the period that Mr. Kathiripillai was a member of the force. Although Mr. Kathiripillai later stated that "there was not torture" and that he was not permitted to use force, it was reasonably open to the Visa Officer to prefer to believe Mr. Kathiripillai's initial statements, particularly given that Mr. Kathiripillai was found to have been "both evasive and contradictory" in subsequent interviews.

ii. Method of Recruitment

[23] In his initial interview in early 2007, Mr. Kathiripillai stated that he joined the Sri Lankan police force in 1964, after participating in a competition. It was therefore not unreasonable for the

Visa Officer to state in his CAIPS notes that Mr. Kathiripillai had voluntarily joined the police force.

iii. Length of Time in the Organization

[24] According to the materials submitted by Mr. Kathiripillai in support of his application for a visa, he joined the Sri Lankan police force in November 1964 and retired at the end of 1990. This evidence demonstrated that Mr. Kathiripillai was employed by the Sri Lankan police for slightly more than 26 years. Therefore, the statement in the Visa Officer's CAIPS notes that Mr. Kathiripillai served with the Sri Lankan police force for 27 years was approximately correct. I am satisfied that the slight inaccuracy in this finding did not have any material impact on the Visa Officer's decision.

iv. Opportunity to Leave the Organization

[25] In his initial interview in early 2007, Mr. Kathiripillai stated that he retired after the police station where he worked in Jaffna was closed, following attacks by the LTTE. Later in that interview, he identified the fact that he is a Tamil and may have been perceived to be a government sympathizer, as being another reason why he retired from the police force.

[26] When asked, during his second interview in January 2009, whether he was forced to remain with the police, Mr. Kathiripillai replied "no."

[27] Based on the foregoing, I am satisfied that it was not unreasonable for the Visa Officer to find that Mr. Kathiripillai did not "take any steps to remove himself from employment, but rather stayed until retirement."

v. Knowledge of the Organization's Atrocities

[28] For the reasons explained at paragraph 22 above, I am satisfied that it was reasonably open to the Visa Officer to conclude that Mr. Kathiripillai was aware that the Sri Lankan police force engaged in torture during the time of his employment with the police force.

vi. Shared Common Purpose

[29] As discussed above, Mr. Kathiripillai was a member of the Sri Lankan police force for slightly longer than 26 years, was aware that torture was routinely used by the police force, and failed to leave the police force when he became aware that such torture was being practiced. There is no evidence that he took any steps to prevent any torture from occurring. However, he did state that he had arrested and detained people on a regular basis and had been involved in interrogations. In short, he provided active support to the Sri Lankan police while he was employed by them. He also acknowledged that he was permitted to use force during interrogations, although he stated that he had never personally used any force. In addition, when asked how he knew torture was being carried out, he replied: "Well since I am at the station during my duty hours, I will know if torture is carried out."

[30] The persons who were tortured were individuals who had been brought to the station for inquiry and subjected to initial questioning. Mr. Kathiripillai stated that 70% of the persons who were brought in for inquiry were not tortured. The logical inference to be made is that the remaining 30% were tortured. Although Mr. Kathiripillai later stated that no torture occurred at any of the stations where he worked, for the reasons discussed at paragraph 22 above, I am satisfied that it was not unreasonable for the Visa Officer to conclude that Mr. Kathiripillai's initial statements "carry more credibility in that he was aware that torture was taking place, he was responsible for

interviewing (maybe ont [sic] all cases, but certainly some), [and] that he had permission to use force when interviewing."

[31] Based on the foregoing, I am satisfied that Mr. Kathiripillai shared a common purpose with the Sri Lankan police force in respect of the torture that it committed while he was employed with the force. In my view, he was an associate of the persons who engaged in torture and contributed to the activities of those persons in at least some manner.

vii. Conclusion

[32] Given my findings above, I am satisfied that the Visa Officer did not err by failing to explain how Mr. Kathiripillai was complicit in crimes against humanity.

[33] Even though Mr. Kathiripillai did not hold a senior rank within the Sri Lankan police force, it was reasonably open to the Visa Officer to conclude that there exist reasonable grounds to believe that Mr. Kathiripillai was complicit in crimes against humanity committed by that organization. That conclusion was based on the Visa Officer's reasonable findings that (i) the Sri Lankan police force had routinely engaged in torture while Mr. Kathiripillai was employed by the force, (ii) he voluntarily joined the force and served for approximately 27 years, (iii) he was aware that torture was routinely used by the force, (iv) approximately 30% of the detainees at one or more of the locations where he worked were tortured, (v) he arrested and detained people on a regular basis, and (vi) there was no evidence that he opposed the use of torture or that he took any steps to remove himself from the Sri Lankan police force during the period that it engaged in torture on a routine basis. There was also no evidence that Mr. Kathiripillai would have faced a risk of being a victim of torture or similar violence, had he intervened to oppose the use of torture at the stations where he worked, or elsewhere.

[34] The Visa Officer's conclusion was reinforced by his finding that (i) Mr. Kathiripillai likely was responsible for interviewing at least some of the people who wound up being tortured by his colleagues, and (ii) he was "both evasive and contradictory" over the course of his follow-up interviews. As in *Penate*, above, at para 11, the Visa Officer clearly believed that Mr. Kathiripillai knew much more about the torture that was committed by the Sri Lankan police force than he admitted.

[35] By making the various findings mentioned above, the Visa Officer's conclusion regarding Mr. Kathiripillai's complicity in crimes against humanity committed by the Sri Lankan police force were appropriately justified, transparent and intelligible. The Visa Officer was not obliged to state the legal test against which he had reached that conclusion, so long as his factual findings reasonably supported the conclusion that Mr. Kathiripillai was complicit in crimes against humanity, as defined in the jurisprudence (*Thomas*, above at para 30; *Ponce Vivar v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 286, at para 30).

[36] For the reasons discussed at paras 29-31 above, the Visa Officer's findings establish that Mr. Kathiripillai shared a common purpose with the Sri Lankan police force. The Visa Officer's findings also provide a reasonable and sufficient basis for concluding that Mr. Kathiripillai was not an innocent bystander in respect of the routine use of torture by the Sri Lankan police at the places where he worked, but rather knowingly contributed in at least some way to its illegal activities (*Bazargan*, above, at para 11; *Sivakumar*, above, at 438). This is sufficient to meet the test of "personal and knowing participation" in the widespread use of torture by the Sri Lankan police (*Sivakumar*, above, at 438-439; *Ezokola*, above, at para 53; *Moreno*, above, at 323; *Penate*, above, at para 6; *Bazargan*, above, at para 11). In turn, personal and knowing participation in a crime

against humanity is sufficient to constitute the commission of that crime (*Ramirez*, above, at 316-317; *Sivakumar*, above, at 438, 442; *Ezokola*, above, at paras 52-58).

[37] Considering the foregoing, I am satisfied that the Visa Officer's conclusion that there exist reasonable grounds to believe that Mr. Kathiripillai was complicit in crimes against humanity fell well "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47). The Visa Officer did not err by failing to further explain the basis for reaching that conclusion.

[38] In my view, Mr. Kathiripillai's position throughout the relevant period was much closer to that of a person who acted as a guard during the torturing of prisoners (*Sivakumar*, above, at 438-439; *Moreno*, above, at para 47) than to that of a person who (i) was forcibly recruited into the army at the age of 16, (ii) believed he would be killed if he intervened during the interrogations, (iii) did not share the military's purpose in perpetrating the torture, and (iv) deserted from the army after 33 months of service (*Moreno*, above, at paras 4-6, 55-56).

[39] Mr. Kathiripillai's position was also closer to that of the applicants in *Penate*, above, *Ponce Vivar*, above, *Ali v Canada (Solicitor General*), 2005 FC 1306, and *Rutayisire v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1168, than to that of the applicant in *Rueda v Canada (Minister of Citizenship and Immigration)*, 2006 FC 754.

[40] In *Penate*, above, at paras 11-13, the applicant was a "middle ranking" career soldier in the Salvadoran army who (i) knew that atrocities were being committed by the army in which he served, (ii) heard at least some of the gun shots that killed the victims of the army's crimes, (iii) accepted positions of higher responsibility within the army, (iv) appeared to accept the counter-

insurgency approach taken by the army, and (v) failed to disassociate himself from the army at any time. In *Ponce Vivar*, above, at paras 9 and 19, the applicant was a lieutenant in Peru's Republican Guard who personally arrested and delivered individuals to other members of the Republican Guard, who then tortured them (see also *Rueda*, above, at paras 32-33). In *Ali*, above, at para 48, the applicant was an activist in Pakistan's Muttahida Quami Movement ("MQM"), who was found to have embraced the MQM's goals and to have been aware of the atrocities committed by the MQM. In *Rutayisire*, above, at para 48, the applicant, who was a sub-prefect, was found to have facilitated genocide through both his specific administrative duties and delegations as well as more generally by ensuring the continuing functioning of the prefecture, the apparatus of which was used to perpetuate genocide in Rwanda. I embrace Justice Pinard's observation in the latter case that "those who, with knowledge of the crimes being perpetrated, acted or acquiesced in administrative positions that facilitated violence and normalized brutality are complicit in that violence and brutality" (*Rutayisire*, above, at para 50).

[41] In contrast to the foregoing cases, and the case at bar, the applicant in *Rueda*, above, at paras 33-36, who was a member of the Peruvian Navy, expressed disapproval of the atrocities perpetrated by the Navy and then attempted to disassociate himself from the actions of his colleagues by transferring to a different unit within the Navy.

[42] This case is also very different from the cases cited by Mr. Kathiripillai in which (i) there was no evidence that would support a finding that the applicant shared a common purpose with the perpetrators of the crimes against humanity in question (see, for example, *Merceron v Canada (Minister of Citizenship and Immigration)*, 2007 FC 265, at para 30), (ii) the applicant made it clear to his superiors that he wanted no part of any human rights violations and never did anything to

assist others in the commission of such violations (see, for example, *Valère v Canada (Minister of Citizenship and Immigration)*, 2005 FC 524, at paras 32-35; *Baqri v Canada (Minister of Citizenship and Immigration)*, [2002] 2 FC 85, at paras 32-34), (iii) the factual findings required to support a finding of complicity in crimes against humanity were never made (see for example, *Thomas*, above, at para 31), or (iv) there was insufficient evidence to establish that the organization in which the applicant was a member had committed crimes against humanity (*Blanco v Canada (Minister of Citizenship and Immigration)*, 2006 FC 623, at para 32).

B. *Did the Visa Officer err by failing to identify the crimes in respect of which Mr. Kathiripillai was complicit and by failing to address whether those crimes were systematic and widespread?*

[43] Mr. Kathiripillai submitted that the Visa Officer erred by failing to explicitly state the specific crimes in respect of which he was allegedly complicit. In this regard, Mr. Kathiripillai observed that, aside from general references not supported by any documentary evidence, the Visa Officer failed to identify the specific documents upon which he relied in reaching his conclusions, and failed to identify specific incidents.

[44] On the particular facts of this case, it was not necessary for the Visa Officer to refer to specific documents to support either (i) his observation that "the brutality of the SL police force in the time period of employment of [Mr. Kathiripillai] and in the locations where [he] was employed has been well documented", or (ii) his conclusion that there exist reasonable grounds to believe that Mr. Kathiripillai was complicit in crimes against humanity.

[45] The Visa Officer reasonably found that Mr. Kathiripillai's acknowledgment that he was aware that torture was routinely used by the Sri Lankan police force was more credible than his subsequent denials of this fact. The Visa Officer reached a similar reasonable finding with respect to

Mr. Kathiripillai's statement that "70% [of the detainees where he worked] were not tortured," which implied that approximately 30% of such individuals were in fact tortured. In addition, the Visa Officer reasonably found that Mr. Kathiripillai was responsible for interviewing at least some of the persons who were subsequently tortured by other members of the Sri Lankan police force.

[46] Upon making those findings, and having regard to the fact that torture is defined as a crime against humanity in subsection 4(3) of the *Crimes against Humanity and War Crimes Act*, above, it was open to the Visa Officer to conclude that there were reasonable grounds to believe that the Sri Lankan police force had committed the crimes against humanity in respect of which it found Mr. Kathiripillai to have been complicit. In my view, this conclusion fell well "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47). It was also appropriately justified, transparent and intelligible.

VII. Conclusion

[47] The application for judicial review is dismissed. No question was proposed for certification and none arises.

JUDGMENT

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

"Paul S. Crampton"

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Judge

FEDERAL COURT

SOLICITORS OF RECORD

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