

Federal Court



Cour fédérale

**Date: 20120503**

**Docket: IMM-5913-11**

**Citation: 2012 FC 519**

**Ottawa, Ontario, May 3, 2012**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**RATHIKANTHAN PATHMANATHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 26 July 2011 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

## BACKGROUND

[2] The Applicant is a 37-year-old Tamil citizen of Sri Lanka. He seeks Canada's protection from the Sri Lankan police and army who believe he is a member of the Liberation Tigers of the Tamil Eelam (LTTE). The Applicant's mother and two of his brothers live in Canada as citizens. He also has a sister and two brothers living in Sri Lanka.

[3] In August 1987, the Applicant and his family were displaced by the LTTE from their home in Jaffna, Sri Lanka, to Sangaranthai, Sri Lanka – a small town Northwest of Jaffna. At one point, the family thought it was safe, so they set out to return home. As they were returning home, a soldier shot at them, wounding the Applicant, his mother, and his brother (1987 Attack). The Applicant's father was killed in this attack. The Applicant recovered from his injuries, but bears the scars. He says his scars lead Sri Lankan authorities to believe he is a former LTTE Member. At the port of entry into Canada, the Applicant completed form IMM 5611 – Claim for Refugee Protection in Canada (IMM 5611). In this form he said his scars resulted from the explosion of a bomb.

[4] After the Sri Lankan government and the LTTE negotiated a cease fire, the Applicant says he and his family returned to Jaffna in June 2004. Two weeks after they moved there, he says the Sri Lankan Army came to his home, arrested him, and took him to their camp. After questioning him, they released him. The army again detained the Applicant in September 2004; they questioned him about his scars and released him.

[5] In his Personal Information Form (PIF) narrative, filed on 9 June 2009, the Applicant said the army detained him and twenty other people in February and March 2006. The army was suspicious because he had lived in Vanni, Sri Lanka and had scars on his body. He also said in his

PIF he was near the Murugamoorthy Temple – a Hindu temple near Jaffna – in November 2006 when a claymore mine exploded near by. He said the army rounded up everyone in the area, took him to an army camp, questioned, beat and kicked him (2006 Detention). They released him, but took down his personal information and told him the next time he was detained, he would not be released.

[6] The Applicant was afraid to continue living in Jaffna, so he says he moved to Negambo, Sri Lanka – a suburb of Colombo – to live with his sister. Shortly after he arrived there, Sri Lankan police arrested him and took him to a police station. They questioned him about his scars and accused him of being an LTTE member. The police released him on condition he leave Colombo immediately, so he returned to Jaffna.

[7] After returning to Jaffna, the Applicant went into hiding there. His mother and brothers arranged for an agent to help him leave Sri Lanka, which he did on 7 February 2007, accompanied by the agent. The Applicant's travel and location from the time when he left Sri Lanka in 2007 and arrived in Canada in 2010 are unclear on the record. Apparently, in Peru the first agent demanded more money and abandoned the Applicant in Lima. His family engaged a second agent to take the Applicant to Canada through the United States of America (USA). In Texas, American authorities caught and detained the Applicant. When he told the American authorities he was coming to Canada where his family lived he was released on bond.

[8] The Applicant also testified at the hearing before the RPD that three agents had assisted him. One helped him travel from Sri Lanka to Peru, another helped him travel through Ecuador, Colombia, and back to Peru, and the third helped him travel from Peru to Canada.

[9] The Applicant first wrote in his PIF that, on his way to Canada, he first travelled to Singapore, then to Johannesburg, South Africa. From Johannesburg, he said he travelled to Sao Paulo, Brazil, and then to Santiago, Chile. From Santiago, he went to Lima, Peru. After leaving Lima, he travelled to Santa Cruz, Bolivia, and then returned to Lima. He then travelled to San Jose, Costa Rica, and from San Jose to Guatemala City, Guatemala. From Guatemala City, he went to Mexico, from where he walked into Texas, USA. From Texas, the Applicant said he travelled to Buffalo, New York, and then came to Canada by taxi.

[10] In IMM 5611, the Applicant indicated his agent took his Sri Lankan passport and gave him a Canadian passport bearing his name and photograph. When his passport was checked at the Lima airport, when he was on his way to Buenos Aires, Argentina, a different name appeared. Peruvian police arrested the Applicant, though they released him after three days' detention and the payment of a \$1000 US bribe. The Applicant also said in IMM 5611 that, from Lima, he travelled to Santa Cruz, Bolivia, returned to Lima, then travelled to San Jose and Guatemala City on a false Indian passport.

[11] In an amendment to his PIF narrative which he submitted at the RPD hearing, the Applicant says his travel route to Canada was through Colombo, Singapore, Johannesburg, Sao Paulo, Brazil, Santiago, Lima, Quito, Ecuador, Colombia, Peru, Bolivia, Peru, Costa Rica, Guatemala, Mexico, USA.

[12] The Applicant entered Canada on 17 June 2010 and claimed refugee protection that day. When he entered Canada, an officer from the Canada Border Services Agency (CBSA) interviewed him. The CBSA officer noted that, while he told Peruvian authorities who arrested him that he had received his falsified passport in Quito, Ecuador, he had not mentioned Quito in his travel history.

The CBSA officer also noted the Applicant had spent a significant amount of time in Peru, where the Shining Path guerrillas are known to have provided support to the LTTE in fundraising through illegal drug sales.

[13] The RPD invited the Respondent to participate in the hearing to address the Applicants' possible exclusion from refugee status under Articles 1E and 1F of the *1951 Convention Relating to the Status of Refugees* but the Respondent declined.

[14] The RPD heard the Applicant's claim for protection on 14 December 2010. At the hearing, the Applicant, his counsel – a lawyer, and a Refugee Protection Officer (Officer) were present. The Applicant and his brother (Pathamanthan) testified.

[15] After the hearing, the Applicant made additional submissions to the RPD. He submitted a letter from Dr. Les Richmond – a physician practicing in Toronto – which confirmed the scars on the Applicant's body are consistent with bullet wounds and surgery to correct damage from bullet wounds (Richmond Report). The Applicant also submitted further argument in which he reviewed the history of his travel to Canada and experiences in Sri Lanka.

[16] The RPD considered the Applicant's claim and refused it on 26 July 2011. The RPD notified the Applicant of its Decision on 2 August 2011.

## **DECISION UNDER REVIEW**

[17] The RPD found that the Applicant is neither a Convention refugee under section 96 nor a person in need of protection under section 97 of the Act because he was not a credible witness and had not established a serious possibility of persecution or other harm if he returned to Sri Lanka.

[18] The RPD began its analysis with a review of the Applicant's narrative. It noted that he claimed his scars from the 1987 Attack had raised suspicions he was a member of the LTTE. The Applicant said in November 2006 he was taken to an army camp where soldiers beat him and told him he would not be released if he were detained again.

### **2006 Detention**

[19] Based upon a number of inconsistencies between his oral testimony and his PIF, the RPD found that the Applicant was not detained or beaten in 2007.

[20] The RPD found the Applicant was not taken from a bus with nineteen other people in 2006. In his oral testimony, the Applicant said that, when he was taken from the bus during the 2006 Detention, he was detained along with 19 other people. He also said he was the only one the army detained during this event. In his PIF narrative, the Applicant said the army rounded up the area, but he also said twenty people were arrested at this time. When the RPD asked him why he said the area was rounded up when he had said he was taken from a bus, the Applicant repeated his statement from the PIF narrative and said he did not know if anyone else was arrested.

[21] Based upon the statement in his PIF that he worked until he left Sri Lanka, the RPD also found the Applicant was not in hiding before he left Sri Lanka. The Applicant testified he worked in Jaffna as a driver's helper until he quit in the fall of 2006, before the 2006 Detention. He said he quit his job because he was stopped and questioned by the authorities too frequently. The RPD noted that, in his PIF, the Applicant said he worked for the same employer from June 2004 to February 2007 and found that this was inconsistent with his testimony that he quit his job in November 2006.

[22] The RPD further found that the 2006 Detention was the most serious event which happened to the Applicant because this was the only time an ongoing death threat was made against him. Further, the RPD noted that he said in his PIF that his sister lived in Jaffna, but later amended his PIF at the hearing to show that she actually lived Negambo. The Applicant did not explain the discrepancy when asked; rather, he told the RPD when his sister moved to Negambo. On this basis, the RPD found that he had not gone to Negambo to hide with his sister, because he said she lived in Jaffna in his original PIF.

[23] The RPD concluded that the Applicant made up the 2006 Detention because there was no independent evidence to show that it had actually occurred. It noted that he had not submitted any documents from his employer, a driver's licence, or any other documents to show he was in Jaffna at any time between 2004 and 2007.

[24] The RPD also examined the Applicant's travel history. He testified at the hearing that he gave his passport to his agent in Lima, but the RPD found this did not make sense. A report from INTERPOL showed he still had his passport in Ecuador when he tried to board a plane there. The Applicant testified that he gave his agent his passport in Lima when he returned there from Ecuador, but the RPD said this would mean the agent would have waited in Lima against the chance the Applicant might not be allowed to board the plane to Canada. The agent would have no way of knowing whether the Applicant got on the plane to Canada. The RPD concluded that if the agent wanted the Sri Lankan passport he would have taken it before letting the Applicant leave Lima.

[25] The RPD found the Applicant was not a credible witness. It also found there was no independent evidence to support his claim and that he had not established a serious possibility of

persecution or harm in Sri Lanka. Accordingly, the RPD refused the Applicant's claim for protection.

## ISSUES

[26] The Applicant raises the following issues in this case:

- a. Whether the RPD erred by not considering his claim on the basis of evidence it found credible and trustworthy;
- b. Whether the RPD's credibility determination was reasonable.

## STANDARD OF REVIEW

[27] The Supreme Court of Canada in *Dunsmuir v New Brunswick* 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[28] In *Dunsmuir*, above, at paragraph 51 the Supreme Court of Canada held that findings of fact are generally subject to review on the reasonableness standard. Further, *Hussaini v Canada (Minister of Citizenship and Immigration)* 2012 FC 239, Justice Leonard Mandamin held that the standard of review on whether a claimant is a Convention refugee is reasonableness (see paragraph 14). The standard of review on the first issue is reasonableness.



[29] The standard of review applicable to the RPD's credibility finding is reasonableness. In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. Further, in *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Finally, in *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, Justice Michael Kelen held at paragraph 17 that the standard of review on a credibility determination is reasonableness.

[30] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

## STATUTORY PROVISIONS

[31] The following provisions of the Act are applicable in this proceeding:

### Convention refugee

**96.** A Convention refugee is a person who, by reason of a well-founded fear of

### Définition de « réfugié »

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui,

<p>persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p>	<p>craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:</p>
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<p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;</p>	<p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p>
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[...]

[...]

**Person in Need of Protection****Personne à protéger**

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by

(ii) elle y est exposée en tout

the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care

[...]

lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[...]

## ARGUMENTS

### The Applicant

#### No Finding on Credible Evidence

[32] The Applicant says the RPD erred when it did not consider whether he was a Convention refugee on the basis of evidence it found credible and trustworthy. He notes that a refugee claim is always forward looking and a negative credibility finding is not dispositive of a refugee claim. A claimant can satisfy the RPD that he meets the definition of Convention refugee with evidence other than his testimony.

[33] In this case, the RPD rejected the Applicant's claim for protection because he was not a credible witness. However, the RPD was obligated to evaluate his claim on the basis of the evidence it found was credible and trustworthy: the documentary evidence and the Applicant's scars. The

RPD should have evaluated whether this evidence established the Applicant was a Convention refugee, even though he was not a credible witness.

[34] The Applicant says the documentary evidence before the RPD showed that young and middle aged Tamil men are often harassed by the Sri Lankan security forces and paramilitary groups. Tamils who return from failed asylum claims in other countries, particularly those who have scars on their bodies, also face an increased risk of harassment from the authorities. Although the evidence the RPD accepted showed the Applicant met this profile, it did not consider whether this put him at risk in Sri Lanka. He points to *Manickan v Canada (Minister of Citizenship and Immigration)* 2006 FC 1525 where Justice Eleanor Dawson had this to say at paragraph 2:

While Mr. Manickan raises a number of issues with respect to the Board's decision, in my view only one issue has merit and it is determinative of this application. The application is allowed because, notwithstanding that the Board did not believe Mr. Manickan's testimony, the evidence of his age, nationality, ethnicity and place of usual residence linked Mr. Manickan to the documentary evidence before the Board. The documentary evidence included country condition reports to the effect, for example, that Tamil males who, like Mr. Manickan, bear scars are more prone to adverse identification by the security forces and to be taken for rigorous questioning and potential ill-treatment.

[35] The Applicant also points to *Mylvaganam v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1195, at paragraph 10, where Justice Frank Gibson held as follows:

The CRDD had before it substantial documentary evidence attesting to the difficulties that all young Tamil males, particularly those from the north, face in Sri Lanka. Even if it rejected outright, as it did, the applicant's own alleged experience of persecution, in its analysis in support of its decision in this matter, it does not appear to have rejected the applicant's identity as a young Tamil male from the north of Sri Lanka. Having accepted this identity, the CRDD then ignored the substantial evidence before it that a person such as this applicant might well be subjected to persecution if he were required to return to Sri Lanka and that

therefore he might very well have had not only a subjective fear of persecution but also potentially a well-founded objective basis to that fear. In failing to so much as even consider this possibility, I am satisfied that the CRDD reached its decision in this matter without taking into account all of the evidence that was before it. In essence, it was so centered on its concern regarding the credibility of the applicant himself and the interrelationship of that concern with the psychiatric report that it had before it, that it would appear to have ignored all other evidence that was before it that could reasonably have been considered to be relevant to the applicant's claim. In the result, on this ground, I am satisfied that the CRDD erred in a reviewable manner. On this ground alone, I conclude that this application for judicial review must be allowed and the decision of the CRDD set aside and the matter referred back for rehearing and redetermination.

[36] The Applicant says his case is analagous to *Mylvaganam* and *Manickan* and should be resolved in a similar way.

### **Credibility Finding**

[37] The Applicant also says the RPD's credibility finding was unreasonable because it was based on an improperly microscopic reading of his PIF. At question 4 on his PIF, the Applicant initially wrote that his sister lived in Jaffna; however, he later amended his PIF to say she lived in Negambo. He now says that, in his oral testimony and PIF narrative, he said his sister lived in Negambo. The RPD found the Applicant was not credible because the unamended answer to question 4 was inconsistent with his testimony. This reliance on an obvious error was unreasonable and overly microscopic. The RPD also ignored Pathamanthan's testimony, in which he said the Applicant had gone to Negambo to hide with their sister.

[38] In a similar way, the RPD found the Applicant was not credible because the work history he disclosed in his PIF showed he worked for one employer until he left Sri Lanka in February 2007,

though he said in oral testimony that he quit his job in November 2006. It was unreasonable for the RPD to rely on information in the PIF, which the Applicant corrected in his oral testimony, to reject both the oral testimony and PIF narrative.

[39] Finally, when the RPD found there was no evidence he lived in Jaffna when he said he did, it ignored the photographs he submitted after the hearing and Pathmanathan's testimony, both of which confirmed his story. The Decision is unreasonable on this basis and must be returned for reconsideration.

### **The Respondent**

[40] The Respondent says the RPD did not ignore any relevant evidence or unreasonably assess the Applicant's credibility. There was no independent evidence to support the Applicant's allegations.

[41] *Sellan v Canada (Minister of Citizenship and Immigration)* 2008 FCA 381 teaches that a general negative credibility finding is sufficient to dispose of a claim. There was no corroborating evidence to support the Applicant's story, so his claim stood or fell with his credibility. Based on inconsistencies in his testimony, the RPD reasonably found the Applicant was not credible.

### **Risk Assessment Reasonable**

[42] The Respondent also says the RPD's assessment of documentary evidence depends on its nature and relationship to the claim. In *Manickan*, above, at paragraph 6, Justice Dawson said that

Documentary evidence need not be consulted where the only evidence that links an applicant to the documents is the applicant's discredited testimony. For example, there will be instances where

country condition reports may shed no light on a particular applicant's claim. In other cases, the country condition reports may potentially establish a well-founded objective basis for a fear of persecution. In the latter case the Board must have regard to that evidence.

[43] Further, *Sellan*, above, at paragraph 3 shows that credibility is not determinative only where there is independent and credible documentary evidence in the record capable of supporting a positive outcome. In the instant case, the country condition documents could not support the Applicant's claim. The evidence the Applicant has cited to show the risk he alleged pre-dates the end of the Sri Lankan civil war. The RPD rejected the entire essence of the Applicant's claim and was not obligated to speculate about his circumstances.

#### **Reasonable Credibility Finding**

[44] The Respondent also says the RPD's finding that the Applicant was not credible was reasonable. The Applicant does not dispute the existence of the discrepancies the RPD relied on to impeach his credibility. It was open to the RPD to conclude from the error in the sister's location and the Applicant's lack of explanation for this discrepancy that he was not credible. Further, the RPD relied upon a number of discrepancies when it found the Applicant was not in hiding before leaving Sri Lanka and did not hide with his sister in Negambo.

[45] Although the Applicant has said Pathamanthan's evidence corroborated his story, this is not the case. Pathamanthan did not testify he was actually in Sri Lanka during the relevant period, so he could not personally know where their sister lived.

[46] The RPD also reasonably assessed the Applicant's evidence about his arrest and beating in November 2006. The RPD looked at discrepancies in the number of people detained and the circumstances of their detention, and put its concerns to the Applicant.

[47] The RPD also notified the Applicant of its concerns about whether he actually was in Jaffna between 2004 and 2007. Although the RPD put this concern to him, he provided no evidence he was actually living there and only gave the RPD undated photographs. Pathamanathan's testimony does not corroborate the Applicant's story.

[48] In sum, the Applicant has not shown the Decision was unreasonable.

### **The Applicant's Reply**

[49] The Applicant says the risk associated with his scarring was a central aspect of his claim. There was independent, credible evidence showing how it put him at risk, including the Richmond Report. The Applicant also testified that the Sri Lankan authorities would not believe him if he said he was not an LTTE member and that his scars set him apart from other returning Tamils. The RPD clearly acknowledged this aspect of his claim but did not make any finding on it. The Respondent has not shown how country condition evidence would not have provided a basis for the Applicant's claim, and the cases he relies on for this proposition are distinguishable on their facts.

[50] Although the Court should not re-weigh evidence the RPD considered, this does not insulate credibility findings from judicial review. The RPD's unreasonable credibility finding must be overturned and the Decision returned for reconsideration.



## ANALYSIS

[51] The Applicant has raised a number of concerns regarding the RPD's credibility findings. I have reviewed each point in turn but can find no reviewable error on this ground. The discrepancies and gaps in the Applicant's evidence gave rise to obvious problems and none of the individual findings on credibility, even if they can be disputed, fall outside of the *Dunsmuir* range. In any event, there is no point in my going into these credibility matters because I find that, as alleged by the Applicant, the Decision is flawed because the RPD erred by considering the Applicant's testimony on prior instances of persecution as determinative. The RPD failed to consider whether evidence of the Applicant's profile that was accepted by the RPD could have grounded his claim, which means the Decision is unreasonable. See *Manickan*, above, at paragraph 2 and *Mylvaganam*, above, at paragraph 10.

[52] There is no conflict in this case with *Sellan*, above, because the Federal Court of Appeal held in that case that a general finding that a claimant lacks credibility may be sufficient to dispose of a claim "unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim." See paragraph 3. The issue for me is whether such independent and credible documentary evidence exists in this case.

[53] The Respondent seeks to overcome the flaw in the Decision by arguing that "the Applicant was not a credible witness" and "there was no independent evidence to support his claim for refugee protection." However, independent documentary evidence that was not addressed by the RPD related to the risks the Applicant's faced because of his status as a visibly scarred, 37-year-old Tamil male who would be returning to Sri Lanka as an asylum seeker.

[54] The Applicant repeatedly referred to his scarring as a significant part of his profile that placed him at risk. He provided evidence from a medical specialist on point but the RPD does not address future-looking risk based upon the Applicant's profile and the role his scarring could play. There is no doubt that the Applicant wanted this risk assessed because his counsel, in submissions, makes specific reference to his evidence that "scars stand out to the Sri Lankan Security Forces and have been interpreted as combat injuries." The RPD is told that the "claimant fears return to Sri Lanka today. He is an unmarried Tamil man who has significant scarring. He has a very different profile from remaining family members, all of whom are married and established, none of whom have significant scarring."

[55] When the RPD says there is "no independent evidence to support his claim for protection," it leaves entirely out of account the future-looking profile evidence and the documentary evidence related to that profile. Documents before the RPD specifically mentioned scarring as a risk factor for "ill-treatment" as well as evidence of arrests for Tamils with particular profiles, "real or perceived." Even if the RPD does not believe the Applicant's narrative about past detentions, his profile as a 38-year-old, unmarried Tamil male with significant scarring was not in dispute.

[56] I am not saying that the RPD had to accept that the Applicant had a profile that places him at risk if returned today but, based upon counsel's submissions to the RPD, the undisputed aspects of the Applicant's profile (and his extensive scarring in particular), and the objective documentary evidence before the RPD, there was an obligation, in my view, for the RPD to address this forward-looking risk and the independent evidence to support a claim for protection on this basis. See *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425.

[57] On this basis alone, the Decision is unreasonable and must be returned for reconsideration.

[58] Counsel agree there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that**

1. The application is allowed. The decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.
2. There is no question for certification.

“James Russell”  
\_\_\_\_\_  
Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-5913-11

**STYLE OF CAUSE:** RATHIKANTHAN PATHMANATHAN

- and -

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 28, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

**DATED:** May 3, 2012

**APPEARANCES:**

Clarisa Waldman **APPLICANT**

A. Leena Jaakkimainen **RESPONDENT**

**SOLICITORS OF RECORD:**

Waldman & Associates **APPLICANT**  
Barrister & Solicitor  
Toronto, Ontario

Myles J. Kirvan, Q.C. **RESPONDENT**  
Deputy Attorney General of Canada