

CANADA / JUDGMENT

TB9-02098

COURT

Refugee Appeal Division

DECIDED

26 August 2020

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RAD File / Dossier de la SAR : TB9-02098

TB9-02099

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Person|s who is|are the subject of the appeal

XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX

Personne|s en cause

Appeal considered / heard at

Vancouver, BC

Appel instruit / entendu à

Date of decision

August 26, 2020

Date de la décision

Panel

Kim Polowek

Tribunal

Counsel for the person|s who is|are the subject of the appeal

Elyse Korman

Barrister and Solicitor

Conseil de la|des personne|s en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] I dismiss this appeal. XXXX XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX (Associate Appellant) are citizens of Sri Lanka who are appealing a decision of the Refugee Protection Division (RPD) dated December 14, 2018 rejecting their claims for refugee protection on the basis of well-founded fear, credibility and Internal Flight Alternative (IFA). The Minister intervened on the basis of credibility by making observations and submitting evidence.
- [2] This is the second time the Appellants have submitted an appeal to the Refugee Appeal Division (RAD). Their first claims for asylum were rejected by the RPD in a decision dated June 11, 2015. On September 23, 2015, pursuant to section 111(1)(c) of the Immigration and Refugee Protection Act (IRPA)¹ the appeal was allowed and RAD referred the matter back to the RPD for re-determination with directions. The RAD determined that the RPD in its 2015 reasons did not provide clear and transparent reasons for arriving at its finding that there was not a serious chance of persecution due to the Appellants' conversion to Christianity. The RPD was directed to pay attention to both Convention² grounds. For the second time, the Appellants' asylum claims were rejected by the RPD and they have appealed again to the RAD.
- [3] The Appellants' allege persecution in their country based on perceived political opinion and their conversion to Christianity from Buddhism. They allege that their problems began in Sri Lanka in 2008 when the Principal Appellant led a protest over XXXX XXXX XXXX XXXX in his home village. The Principal Appellant claims that, as a result of his opposition, he was arrested by the police, detained on false charges, beaten and pursued. The Associate Appellant claims that she was also assaulted by the police (including being sexually assaulted). The Appellants left Sri Lanka for Israel in XXXX 2012. They came to Canada in XXXX 2013 on valid work permits and claimed refugee protection in February 2015.
- [4] I have found that the determinative issues in this case are credibility and the lack of well-founded objective and subjective fear.

DECISION

- [5] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection.

ANALYSIS

- [6] My role is to look at all the evidence and decide if the RPD made the correct decision.³
- [7] The RPD, in denying the Appellants' claims found that the determinative issues, were credibility, the subjective and objective components of the well-founded fear of persecution, delay in claiming, and the availability of an IFA in Colombo.

Well-Founded Serious Risk of Persecution Due to Christianity Not Established

- [8] The Appellants fear persecution in Sri Lanka on account of their religious conversion to the Christian faith. Their evidence was that they would not be able to freely practice their Christian faith in Sri Lanka and that they would be harmed if their conversion was discovered by people in their home village of XXXX.
- [9] The RPD found that the Appellants' lacked a well-founded fear of religious persecution. The RPD noted that neither Appellant had experienced any incidents of religious persecution or harm in Sri Lanka and that, despite fearing radical Buddhists in their home area, they had been able to successfully conceal their religious conversation from the radical Buddhists in their home area by attending a church 40 kilometres away. As a result, the RPD found that the Appellants had a viable IFA in Columbo because they would be able to attend a church in that city without being discovered by radical Buddhists in XXXX.
- [10] On appeal, it is submitted that the RPD erred because it failed to assess whether Christian converts have religious freedom in the IFA of Colombo or in Sri Lanka. It is argued that the documentary evidence supports the conclusion that Christians suffer persecution throughout all of Sri Lanka and that the Appellants are Convention refugees based on their fear of religious persecution in Sri Lanka as Christians.
- [11] After a thorough review of all the available evidence, I find that the Appellants have failed to establish that they would be at risk of a serious possibility of persecution due to their Christianity in Sri Lanka for the following reasons.
- [12] First, I considered that the Appellants in their Basis of Claim (BOC) form primarily focus on risk related to political persecution and there is limited information outlined in their BOC form narrative regarding the basis for their fear of religious persecution in Sri Lanka. The only information related to fear of religious persecution appears in their BOC form paragraph 2 which is as follows: "Buddhists who convert to Christianity are targeted by Buddhist nationalist groups in Sri Lanka. Many churches have been destroyed or damaged in Sri Lanka in the past few years. There is even a movement that is trying to make conversion illegal. We hid our religion from our parents."⁴ The remainder of the Appellants' BOC form

narrative, including amendments, makes no further mention of fear or risk arising out of religious persecution.

- [13] In their first asylum claim before the RPD, the RPD noted that the Appellants mentioned in their narrative that they converted to Christianity and they feared persecution, but found the following in regards to this fear:

At no point when the claimants were asked about their fear did they spontaneously mention their fear of religious persecution. It was only after their counsel mentioned at the end of the hearing that they talked about religion in their narratives, the claimants testified that they hid the fact that they changed their religion, and that they are afraid that someone would bum their house, and that going to church will be a problem. Country evidence indeed reveals that all minorities in Sri Lanka are discriminated against including Christians; however, there is not enough evidence that the claimant will be persecuted in Sri Lanka because of their religion, and at this point the claimant's fear is speculative.⁵

- [14] In their second asylum claim, the Appellants' fear and risk arising from religious persecution was explored in more depth. When asked by his Counsel, "Is there any other reason why you fear going back besides what you just said?" the Appellant stated, "There is a problem about the village that we have become Catholics."⁶ The Principal Appellant was asked by Minister's Counsel what stopped him from going to the church in his home village in Sri Lanka, and he testified that if he did that he would have to face a lot of problems.⁷ When asked from who he would face such problems the Appellant testified as follows:

There are the Buddhist organizations, and in the village there are young people's organizations of Buddhists. [inaudible] called the Buddhist [inaudible] -- the [inaudible] Buddhist power. Another thing called [inaudible]. When -- if you are catholic by birth, you won't have a problem, but if you are a convert, you will have problems. They will put -- give trouble for changing your religion and trying to influence others.⁸

- [15] The Principal Appellant was asked what he meant by "give trouble" and he responded that "their teams will come and burn your house down. They'll do that kind of thing."⁹ The Associate Appellant later testified that that the radical Buddhist organizations and the people from the village were organized all over the country and if they know that you are a new Christian, then they will attack you or your house.¹⁰

- [16] When asked if he ever had any problems because of his conversion to Christianity while living in Sri Lanka, the Principal Appellant explained that because there were too many problems he went to a church far away and nobody knew about his conversion. When asked if he or his wife were confronted with any problems he stated, "No."¹¹

- [17] The evidence before me is that the Associate Appellant converted to Christianity in 2003 followed by the Principal Appellant in 2005. Their evidence is that they were able to practice their religion without any incidents of concern up until their departure in 2012. The Principal Appellant testified that the church they attended 40 kilometres away from their

home was not targeted for damage by any radical groups nor was there any evidence adduced that anyone at his church was targeted by radical groups for persecution or harm. In the record are baptismal certificates for both Appellants from Sri Lanka. There is a letter from the XXXX XXXX XXXX XXXX Church in Sri Lanka, dated XXXX XXXX, 2016 which states that the Principal Appellant converted to the Christian faith in Sri Lanka and describes him as an active member of the church who participated in various religious programs and activities. The letter, however, makes no specific mention of the Principal Appellant being concerned about religious persecution or harm and describes the Principal Appellant as standing up against unfairness and injustices, and because of this nature he and his family has been a victim of social injustices and life threats.¹²

- [18] I find that this letter from the church does not assist the Appellants in corroborating their concerns that they faced or would face forward-looking risk arising from their religion in Sri Lanka. I also have some credibility concerns with this church letter which diminish its weight. The first arises on its face as the church describes itself as a "Pentha Costal Church" which is an obvious spelling mistake as it is a Pentecostal Church.¹³ I also observe that it was the Appellant's evidence that he did not have the ability to go to church every Sunday, but went about once every two or three months¹⁴ and the letter describes the Principal Appellant as an "active member who participated in various religious programs and activities."¹⁵ I could find no evidence in the record that would corroborate the Principal Appellant's active participation in the church as depicted in this letter.
- [19] While I have no good reason to doubt that the Appellants are committed to their religion, I find that their fears that they will face a serious possibility of persecution or a probability of harm arising from their conversion to be Christianity to be speculative concerns not supported by the objective documentary evidence. First, I note that the Appellants have not experienced any religious persecution during the time they were in Sri Lanka and reportedly actively involved in practicing their religion. Second, while the Appellants feared persecution and harm in their home village due to their religious conversion, this did not occur. Third, the Appellants' evidence from their church in Sri Lanka does not describe the Appellants' facing risk arising from their religion. Fourth, I find that the Appellants' profile and the objective National Documentation Package (NDP) documentation does not support the Appellants' assertion that they will be persecuted or harmed throughout Sri Lanka due to the fact that they are Christian converts (outlined below).
- [20] I have considered the profile of the Appellants and find that their profile is not one which might elevate their risk. There is no evidence before me that either Appellant is a member of the clergy, which, according to NDP documentation, might elevate their risk,¹⁶ or that either Appellant was actively involved in conversion of non-Christian persons in Sri Lanka, another factor which might elevate their risk, or that the Appellants were involved in religious practices in Sri Lanka which would be considered evangelical.¹⁷ The NDP documentation indicates that while the state and police sometimes fail to act in relation to attacks on religious minorities, there are arrests.¹⁸

- [21] The country documentation in relation to Christians in Sri Lanka indicates that Christians make up just over seven per cent¹⁹ of the population in Sri Lanka and 82% of Christians are Roman Catholic. They reside throughout the country, but with a larger presence in the Eastern, Northern, Northwestern and West provinces.²⁰ In accordance with the constitution in Sri Lanka, citizens can freely choose their religion and "have the right to manifest their religion or belief in worship, observance, practice, or teaching, both in public and in private."²¹ Buddhism is given the "foremost place" in the constitution and other laws²² and the government is committed to its protection while respecting the rights of religious minorities.²³
- [22] Further, the NDP indicates that incidents of intimidation and violence against religious minorities by state officials do occur but they are rare and, in general, a person will not face a real risk of serious harm or persecution from state actors because of their religion.²⁴ The NDP documentation also describes a general trend in the manifestations of hostilities against Christian groups which has evolved from frequent incidents of physical violence to threats and intimidation. For example, for the period from November 2015 to September 2016, physical violence accounted for only 8% of total incidents against Christians, and destruction of property 3%.²⁵ Thus, the risk feared by the Appellants, namely that their house would be burned down or they would be physically harmed by radical groups, I find to be speculative and not supported by the objective evidence in the NDP.
- [23] Given the objective documentation and considering that the Appellants have not experienced any religious persecution or harm in Sri Lanka, I find that the Appellants have failed to discharge their burden that they would face a serious possibility of forward-facing risk of persecution on religious grounds or a probability of harm due to their Christian religious identity in Sri Lanka. Accordingly, the RPD's internal flight determination was not required in the circumstances of the Appellants.

Delay in Claiming Asylum in Canada Undermines Subjective Fear

- [24] The Appellants left Sri Lanka for Tel Aviv on XXXX XXXX XXXX 2012 where they both obtained Canadian temporary work visas XXXX XXXX, 2013 to expire XXXX XXXX, 2014. The Appellants entered Canada on XXXX XXXX, 2013 to work in a XXXX XXXX. The Principal Appellant's work permit was successfully extended to XXXX XXXX, 2015. The Associate Appellant's work permit was extended to XXXX XXXX, 2014 and then she received visitor status until XXXX XXXX, 2014. Her request for a work permit extension was refused on XXXX XXXX, 2015. The Appellants both initiated their claims for refugee protection on February 25, 2015.
- [25] The RPD found that the Appellants' delay in claiming asylum in Canada, first in Israel and then in Canada, was inconsistent with their alleged fear of persecution in Sri Lanka. Regarding Canada, the RPD noted that there was nothing in evidence that either Appellant in their pursuit of work and visitor visa extensions in New Brunswick ever enquired about permanent status in Canada. It was only after the Principal Appellant's last work permit

expired that the Appellants initiated a claim for asylum. The RPD found that if the Appellants' fear was well-founded that they would have made every effort to secure their position in Canada while living legally on a valid visa. As the Appellants did not do this, the RPD found that this behaviour went directly to the Appellants' lack of subjective fear.

- [26] On appeal, it is submitted that the Appellants' actions in Canada were entirely consistent with a subjective fear of returning to Sri Lanka. They point to the unchallenged evidence that they believed that they were on track to obtain permanent residency as legal workers in Canada. Further, the notion that every person who fears returning to his country of origin will seek to regularize their status by means of a refugee claim is untenable, particularly in the Appellants' case as they entered Canada legally and were not at imminent risk of removal. It is also submitted that when the Appellants arrived in Canada, they still had hope that they would eventually be able to return to Sri Lanka. When it was clear that the government continued to be corrupt, that the situation escalated with a warrant issued for the male Appellant's arrest, and their realization that they would not succeed in obtaining permanent residency were factors that led them to seek refugee in Canada. It is submitted that all of these circumstances are consistent with a subjective fear of returning to Sri Lanka.
- [27] I am not persuaded by the Appellants' arguments regarding the delay in claiming asylum in Canada. Contrary to the argument on Appeal that the Appellants' were hoping to return to Sri Lanka when they came to Canada, it was the Principal Appellant's testimony that when they left Sri Lanka in XXXX 2012 that it was permanent and that both he and the Associate Appellant had no intention to return as he had "death threats" on him in Sri Lanka.²⁶ While in Israel, the Appellants made efforts to explore opportunities to claim asylum there by speaking with many different parties. When the Principal Appellant was asked why he did not claim asylum in Israel he explained that his pastor, a lawyer and friends told him that there was no chance of being granted refugee status in Israel.²⁷ The Principal Appellant was asked by Minister's Counsel, "What made you decide to move onto Canada?" to which the Principal Appellant testified, "I can't go back to Sri Lanka. I knew that Canada is a place that you could live without fear and any trouble. From the time I'm in school, I heard that Canada is a free place."²⁸ The Principal Appellant was then asked, "So why didn't you make a claim when you got here?" to which he testified, "I came here on work permit. When we came to New Brunswick on a work permit, we were told that if you work under the same place for two years, you can apply for permanent residence. And we also attended the English classes. IELTS (phonetic)."²⁹ The Principal Appellant then added another reason for not seeking asylum earlier and that being that he had a fractured leg at the time. The Principal Appellant testified that an agent in Israel told him that both he and the Associate Appellant would be able to able for permanent residency in Canada after a two-year period.
- [28] I find that the Appellants' XXXX-month delay in seeking asylum in Canada undermines their subjective fear and is not adequately explained. The Principal Appellant testified that he researched the asylum system in Israel and consulted a lawyer, his friends and a priest and

thereafter believed that his claim would be unsuccessful in Israel. Given that the Principal Appellant had taken such steps to explore asylum in Israel, that there seems to be no good reason why they would not have taken similar steps to explore the asylum system in Canada if it were the case that they believed they were at risk in Sri Lanka. I do not find it credible that the Appellant chose to believe an agent in Israel who advised that permanent residency was possible in Canada after two years of work and that the Appellant would not make further efforts in Canada to explore the pathways to more permanent status in Canada, much like they had done so in Israel. If anything, the Appellants' urgency to find a safe refuge would be more enhanced given that they had to leave Israel due to what they found out to be a poor prospect for asylum in that country.

- [29] The evidence before me is that the Appellants left Israel due to their belief that asylum would not be forthcoming, yet they did not file their claim for asylum in Canada until XXXX months after their arrival. In the case of the Principal Appellant, his work visa had already expired. Given that the Appellants had actively researched asylum opportunities in Israel and had to leave this country to find safe refuge, I find that there is no adequate explanation for why they would make more effort to secure their status in Canada. Both Appellants were required to extend their visas to remain in Canada so would have been well aware that work and visitor visas did not grant the permanency sought by the Appellants and there was a risk of visas not being renewed and them being sent back to Sri Lanka. I have no evidence before me which indicates that the Appellants consulted with anyone in Canada regarding the pathway to Canadian permanent residency. I agree with the RPD that if the Appellants were fearful of a return to Sri Lanka they would have made enquiries much sooner in Canada as to how to secure their status, much like they testified to doing so in Israel. I also considered that Principal Appellant purported to have received a warrant for his arrest in XXXX 2014, but despite this event, the Appellants did not submit a claim for asylum until almost a year later.
- [30] For the reasons above, I find that the fact that the Appellants' waited XXXX months before filing their refugee claim is without an adequate explanation and is behaviour which the RPD correctly found to undermine subjective fear and the credibility of their assertions that they faced risk in their home country.

Objective Component of Well-Founded Fear is Not Established and Credibility Concerns Are Well Supported

- [31] In addition to alleging risk on religious grounds, which I have found has not been established, the second reason for fearing a return to Sri Lanka relates to the Principal Appellant fearing that he will be targeted for harm by authorities because he was at the helm of a protest against the XXXX XXXX in Sri Lanka which began in 2008. The RPD found that there was nothing in evidence to support the Principal Appellant's claim that he played a key role in the objections to the XXXX XXXX and that he used his brother's participation in the XXXX dispute as a means of establishing a story for a refugee claim. The RPD also found that the Principal Appellant's participation in a news interview in 2011, along with other

persons, undermined the credibility of his assertion that he was in hiding and being pursued by the authorities.

- [32] On appeal, it is submitted that the RPD erred by relying on the absence of the Principal Appellant's name on some of the documentary evidence as support for its determination that he was not a leader in the dispute. If the RPD would have asked the Principal Appellant why his name was absent he would have testified that, as he did at his first hearing, the RPD would have heard from the Principal Appellant that his lawyer in Sri Lanka advised him to put down his brother's name due his higher business profile. Further, it is submitted that the RPD erred when it found that it was implausible that the Principal Appellant would emerge from hiding to expose government corruption to the media. It is submitted that the video footage is both probative and compelling evidence in support of the Principal Appellant's lead role in the dispute.
- [33] Having independently reviewed the evidence, I agree with the RPD that the evidence does not establish, on a balance of probabilities, that the Principal Appellant played a central role in what is now a 12-year-old dispute. I have reviewed the RPD decision of June 11, 2015 and note that the RPD rejected the Principal Appellant's explanation that his lawyer had advised him to put his brother's name on the documentation and found that it was his brother who was at the helm of the protest. In addition to the RPD's finding, I note that there is no evidence before me to corroborate that it was the Principal Appellant's lawyer who advised him to put his brother's name on official documentation which I find to be an explanation lacking in credibility. As I see no error in the RPD's analysis of the role of the Principal Appellant in this dispute, I adopt their reasons as my own.³⁰ Further, I find that the Principal Appellant's embellishment of his role in the XXXX XXXX dispute undermines his credibility.
- [34] Turning to the RPD's treatment of the video footage of the Principal Appellant giving an interview, I find that this evidence simply establishes that Principal Appellant was one of several people interviewed and I do not agree with the Appellants that is compelling evidence for the purpose of establishing the Principal Appellant's leadership role in the dispute or that he is at forward looking risk as a result of a dated interview. Further, I see no error with the RPD finding that the Appellant's behaviour of appearing on television was an action in contradiction to his claim that he was hiding in fear for his life.
- [35] Turning to the arrest warrant, I observe that the RPD in 2015 gave no weight to this document and drew a negative inference on the Principal Appellant's credibility. The RPD's concerns related to the fact that the Principal Appellant never mentioned in his narrative or his oral testimony that he was the subject of a warrant of arrest. The RPD also noted that the Principal Appellant did not produce an original and testified that he received a copy through an email. The RPD rejected the Appellant's explanation which was that it was a mistake and the reason why it was not mentioned was because the case was ongoing and it was found that there was never any warrant against the Principal Appellant, and gave the document no weight.³¹ The RPD assessed the same document for a second time and determined that the

document was manufactured by the Principal Appellant in a attempt to establish that the police were looking for the Principal Appellant six years after the initial dispute. The RPD found that it was not credible that the police would be issuing an arrest warrant in 2014 over problems that emerged over the XXXX XXXX XXXX XXXX and a subsequent arrest of five protestors in 2008. Further, the RPD found that it would be reasonable to determine that if the Principal Appellant was wanted on anti-government charges that an arrest warrant would have been issued in 2008, 2009 or 2010 when the Principal

Appellant testified that the police were looking for him. As well, the RPD observed that if the authorities were serious about arresting him that he would have been arrested at the airport on his trip to Israel in XXXX 2012.

- [36] On appeal, it is submitted that the RPD erred when it speculated about the actions and mental processes of foreign police authorities and that the Appellants' other evidence corroborates risk to the Appellants. This evidence includes the death certificate for the Principal Appellant's father which indicates that he died of a sudden heart attack after an assault, the letter from the church which states that the Appellants have been victims of social injustices and threats to their lives, and a letter from the Appellants' lawyer in Sri Lanka which states that the Appellants were threatened by the police, a leading businessman and a powerful politician.
- [37] I now turn to the warrant of arrest document, which is dated XXXX XXXX, 2014.³² In my analysis of the weight to be given to this document, I first reviewed the Principal Appellant's first BOC form narrative submitted for his first hearing before the RPD and observe that there is nothing mentioned in this BOC form about a 2014 warrant for his arrest. For the Appellants' second RPD hearing, however, a BOC form amendment is made and at paragraph 20, the following is added, "In XXXX 2014 the police served a warrant for arrest on my mother."³³ I assign no weight to this document towards establishing forward-looking risk to the Appellant. First, I find that the omission of the arrest warrant document from the first BOC form narrative undermines his credibility and the authenticity of the document. Second, I considered that the Principal Appellant's evidence regarding the court processes after he was initially detained in 2008 was confusing and evolving in nature. Third, I considered that the Principal Appellant had no other documentation to corroborate his assertion that he missed three prior court appearances, and that the warrant was finally issued after he missed the fourth court appearance. The Appellant testified that his lawyer appeared for him on each occasion, but I have no evidence from this lawyer that this is the case. The only letter from a lawyer in Sri Lanka is very vague and does not detail a lengthy relationship with the Appellants, nor does this lawyer describe appearing in court for the Appellant on multiple occasions.³⁴ Fourth, I also considered the RPD's concern that the issuance of such a warrant some six years after the incident in question strains credibility. Fifth, there is no evidence before me to indicate that there has been any further arrest warrants issued, and it is now six years later. Sixth, there is no evidence before me that any of the other persons listed in the original 2008 document have faced any persecution or

harm in Sri Lanka. When I consider these cumulative issues, I find that little weight can be assigned to the warrant of arrest document in assessing forward-looking risk.

[38] I have reviewed the evidence referred to by the Appellants and find it insufficient to establish that the Appellants face risk arising from a dispute with the XXXX XXXX, which is now 12 years old. The death certificate for the Principal Appellant's father states the cause of death was a heart attack due to an assault, but there is no information as to the motivation for this attack.³⁵ The letter from the church is also of low probative value towards establishing forward-looking risk given its vague nature. Specifically, the church letter states, "Mr. XXXX is a very friendly and honest and always stood up against unfairness and Injustices and because of this nature he and his family has been a victim of social Injustices and life threats. Due to this unbearable torture and fear for his life Mr. XXXX had to leave this country and is presently residing in Canada."³⁶ I also note that I have no way of assessing how the letter writer became aware of this information, and given the vague nature of what is written, it would appear that the letter writer has no first hand knowledge of what kind of risks the Appellants faced in Sri Lanka or would face in the future.

[39] Finally, I considered a letter which is purportedly from a lawyer in Sri Lanka,³⁷ but I put low weight on this letter towards establishing that the Appellants face forward-looking risk in Sri Lanka arising from a dispute with the XXXX XXXX. First, I observe that the letter writer provides no information as to the nature of his relationship with the Appellants and how he came to be aware of the information which is outlined in this letter. The letter writer states that the Principal and Associate Appellants had to face life threats from the police, from a leading businessman in the area and from a powerful politician while they are in Sri Lanka. I note the vague nature of this statement and the lack of dates and names. Further, the letter writer states that it would be dangerous for the Principal Appellant to come back and live in Sri Lanka because he has a warrant of arrest, but again, no further details are provided. For these reasons, I

find that this lawyer letter and the Appellants' cumulative documentation is insufficient to establish that there is forward-looking risk awaiting the Appellants arising from a dispute with the Electricity Board from 2008.

[40] In conclusion, I agree with the RPD that, on a balance of probabilities, the Principal Appellant and family members were involved in a dispute over whether or not the XXXX XXXX had a right to encroach on private land in order to XXXX XXXX XXXX. As demonstrated by the Appellants' documentation, there was and is a process for dispute resolutions of this kind in Sri Lanka, and it was the Principal Appellant's evidence that compensation was offered to those persons affected by the project. There is nothing in evidence which would establish, on a balance of probabilities, that the Appellants could not return to Sri Lanka and deal with any outstanding issues over the dispute. Thus, I agree with the RPD that the objective component of the well-founded fear of persecution has not been established.

- [41] Given the issues noted above, I find that the Appellants have failed to discharge their burden of establishing that there exists a serious possibility of persecution or a probability of harm from police, politicians or any other party in Sri Lanka due to a 2008 dispute. The determinative issue in this claim is the objective component of the well-founded fear of persecution, notably who the appellants fear would persecute them should they return to Sri Lanka.

Forward Looking Risk to the Associate Appellant Not Established

- [42] The RPD found that the Principal Appellant was not credible that he was being pursued by the police authorities in 2008, 2009 and 2010 and thus placed no weight on the Associate Appellant's evidence that she was assaulted during these visits. Further, the RPD determined, on a balance of probabilities, that the Associate Appellant manufactured the story of assault in an attempt to embellish the claim and include herself as also subject to persecution. The RPD placed no weight on a medical note and determined that the note was produced in an attempt to embellish her claim.
- [43] On appeal, it is submitted that the RPD erred when it rejected out of hand the Associate Appellant's evidence that she was assaulted in 2008, 2009 and 2010 because it found that the Principal Appellant was not credible.
- [44] I have independently reviewed the evidence and find that there is insufficient credible evidence to establish that the Associate Appellant is at forward-looking risk arising from her husband's involvement in a dispute with the XXXX XXXX in 2008. The RPD found that the Principal Appellant failed to establish, with credible evidence, that he was pursued by the police in 2008, 2009 and 2010 which is not disputed on appeal. A number of well supported credibility concerns and findings have been made by the RPD related to the central elements upon which the Associate Appellant's claim is based on and I see no error in the RPD extending these concerns to the Associate Appellant.
- [45] I have independently reviewed the evidence of the Associate Appellant to assess whether this evidence would be sufficient to overcome the credibility concerns identified and find that it is not. There is a medical note dated XXXX XXXX, 2008³⁸ which describes the Associate Appellant seeking treatment for a burn. There is nothing in this note to indicate the circumstances by which this injury occurred, and I find that it is of no probative value in establishing forward-looking risk to her in Sri Lanka now 12 years later. Further, I note that in none of the other documentation submitted by the Appellants is there corroboration of any of the incidents described as occurring to the Associate Appellant in 2008, 2009 or 2010. I also note that the original BOC form submitted by the Appellants did not include any assaultive behaviour occurring to the Associate Appellant in 2009 or 2010.³⁹ A subsequent BOC form amendment for the Appellants' second appearance before the RPD included a BOC form amendment, and that is that the Associate Appellant was taken into custody in 2009 where she was physically and sexually assaulted.⁴⁰ In assessing forward-looking risk I also note that the Associate Appellant re-availed herself of the country against which she

purportedly feared by returning to Sri Lanka from Israel on two occasions between 2010 and 2012, which I find is a relevant factor in the assessment of her subjective fear. Her testimony was that she was questioned at the airport and encountered no danger.

[46] I have already found that there is no objective or well-founded basis for the Principal Appellant's concern that he will be persecuted or harmed from anyone in Sri Lanka who is associated with a now 12-year-old dispute with the XXXX XXXX XXXX and this finding extends to the Associate Appellant. Her evidence is insufficient to overcome the credibility concerns in this case. Furthermore, given the objective documentation and considering that there was no evidence adduced that the Associate Appellant has experienced any religious persecution or harm in Sri Lanka, I find that the Associate Appellant also failed to discharge her burden that she would face a serious possibility of forward-looking risk of persecution on religious grounds or a probability of harm due to her Christian religious identity in Sri Lanka.

CONCLUSION

[47] For all the reasons above, I find that the RPD was correct to find that the Appellants had not satisfied their burden of establishing a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, that they would be subjected personally to a danger of torture or a risk to life or cruel and unusual treatment upon return to Sri Lanka.

[48] I dismiss this appeal and confirm the decision of the RPD that the Appellants are neither a Convention refugee nor a person in need of protection.

(signed)

Kim Polowek

Kim Polowek

August 26, 2020

Date

1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, section 111(1)(c).

2 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention.

3 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93, [2016] 4 FCR 157; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145, [2019] 2 FCR 597.

4 Exhibit RPD-1, RPD Record, Principal Appellant's Basis of Claim (BOC) form, at p. 20, at para. 2.

5 Exhibit RPD-1, RPD Record, RPD decision of June 11, 2015, at p. 80.

6 RPD Transcript (September 21, 2018), at p. 26.

7 RPD Transcript (September 21, 2018), at p. 29.

8 Ibid.

9 Ibid.

10 RPD Transcript (September 21, 2018), at p. 39.

11 RPD Transcript (September 21, 2018), at p. 30.

12 Exhibit RPD-1, RPD Record, at p. 740.

13 Ibid.

14 RPD Transcript (September 21, 2018), at p. 30.

15 Exhibit RPD-1, RPD Record, at pg. 740.

16 National Documentatio Package for Sri Lanka (March 31, 2020), item 12.2: Confronting intolerance: Continued violations against religious minorities in Sri Lanka, Minority Rights Group International, 8 December 2016.

17 Ibid.

18 Ibid, item 1.11; item 12.1: Sri Lanka. International Religious Freedom Report for 2018., United States. Department of State. 21 June 2019; and item 12.3: Country Policy and Information Note. Sri Lanka: Minority religious groups. Version 1.0., United Kingdom. Home Office, March 2018.

19 Ibid, items 12.1 and 12.2.

20 Ibid, item 12.1.

21 Ibid.

22 Ibid, item 1.9: DFAT Country Information Report: Sri Lanka, Australia. Department of Foreign Affaris and Trade, 4 November 2019; item 1.11; items 12.1-12.3.

23 Ibid, item 12.1.

24 Ibid, item 12.3.

25 Ibid, item 12.2.

26 RPD Transcript (July 26, 2018), at p. 27.

27 Ibid.

28 RPD Transcript (September 21, 2018), at p. 41.

29 Ibid.

30 Exhibit RPD-1, RPD Record, RPD decision, at para. 17.

31 Exhibit RPD-1, RPD Record, RPD decision of June 11, 2015, at para. 25.

32 Exhibit RPD-1, RPD Record, at p. 684.

33 Exhibit RPD-1, RPD Record, at p. 23.

34 Exhibit RPD-1, RPD Record, at p. 748.

35 Exhibit RPD-1, RPD Record, at p. 734.

36 Exhibit RPD-1, RPD Record, at p. 740.

37 Exhibit RPD-1, RPD Record, at p. 748.

38 Exhibit RPD-1, RPD Record, at p. 688.

39 Exhibit RPD-1, RPD Record, Appellants' BOC narrative, at p. 34, at para. 12.

40 Exhibit RPD-1, RPD Record, Appellants' amended BOC narrative, at p. 22, at para. 12.

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Board of Canada

Refugee Appeal Division

Commission de l'immigration

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Section d'appel des réfugiés

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