

CANADA / JUDGMENT

Balendra v. Canada

(Citizenship and Immigration)

2026 FC 423

COURT

Federal Court

DECIDED

31 March 2026

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20260331 Docket: IMM-4362-25 Citation: 2026 FC 423 Toronto, Ontario, March 31, 2026 PRESENT:
Mr. Justice Brouwer BETWEEN: BENO RAMESH BALENDRA Applicant and THE MINISTER OF
CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] Beno Ramesh Balendra, a Tamil refugee claimant from Sri Lanka, seeks judicial review of the decision refusing his application for a Pre-Removal Risk Assessment [PRRA]. For the reasons that follow, this application must be allowed. I. Background [2] The Applicant is a 59-year-old citizen of Sri Lanka and is Tamil from the Northern Province. He entered Canada in June 2017 and sought refugee protection, alleging a well-founded fear of persecution from Sri Lankan authorities who, he said, suspected him of having links to the banned Liberation Tigers of Tamil Eelam [LTTE]. His claim was rejected at first instance by the Refugee Protection Division [RPD]. In a decision dated August 30, 2017, the RPD found that although the Applicant had been questioned three times by the Criminal Investigation Department [CID] in Sri Lanka, that was all in the past and there was no future risk: “the claimant is not wanted by the authorities in Sri Lanka (including police and/or CID), nor do they have an ongoing interest in him such that he faces a likelihood of harm.”
- [3] The Applicant retained present counsel for an appeal to the Refugee Appeal Division [RAD], which was dismissed on January 8, 2019. Counsel then applied for leave for judicial review of the RAD decision, which was also dismissed, before filing an application for a PRRA on the Applicant’s behalf. In support of the PRRA, counsel filed reports about human rights conditions in Sri Lanka published between 2009 and 2023, as well as, inter alia, two Sri Lanka Police Message Forms, dated March 2, 2018, and June 15, 2018, respectively, instructing the Applicant to appear at, according to the translation, the “Terrorist Investigation Branch,” and a warrant for the Applicant’s arrest issued by the Sri Lankan Magistrate Court on March 24, 2022. Counsel made no submissions regarding the admissibility of any of the evidence he adduced on the Applicant’s behalf.

- [4] By decision dated November 19, 2024, a Senior Immigration Officer [the Officer] rejected the Applicant's PRRA.
- [5] Regarding the Police Message Forms, the Officer found, pursuant to subsection 113(a) of the Immigration and Refugee Protection Act, SC 2001, c 27: [T]he applicant does not disclose when, where, and how he obtained the copies of these two forms. In his submission letter, the counsel does not explain if these two Message Forms have been submitted as new evidence in this PRRA application. In terms of the dates of the forms, I note that both forms predated the RAD decision on 2019/01/08 while postdated the RPD decision on 2017/08/30. If the applicant submitted these two forms to the RAD, the panel should have examined them during the appeal due to the significance of these two forms in corroborating the development of the alleged risks. However, the panel only focused on those alleged incidents which happened before the applicant left Sri Lanka, including the allegations that the applicant was questioned by the Criminal Investigation Department (CID) three times and he received several threatening calls from them. In effect, these Message Forms and the related incidents were not mentioned in the RAD Reasons and Decision. On a balance of probabilities, it is unreasonable that the RAD would have overlooked them. On the other hand, if the applicant did not submit these two forms to the RAD, there has been little explanation as to why the applicant was unable to do so. It is evident that these documents were reasonably available to the applicant in terms of timing and they appear to be in favor of his allegations. In these circumstances, the applicant has been reasonably expected to have presented them at the time of the RAD rejection. Due to these reasons, the two forms cannot be accepted as new evidence.
- [6] The arrest warrant, in contrast, was properly accepted as new evidence, as it clearly post-dates the RAD decision. However, the Officer found that it was related to the two Police Message Forms and therefore attracted little weight: According to the English translation, the Warrant demands that the applicant be arrested and produced before the court; The name of the complainant is the "Terrorist Investigation Branch" in Colombo; and the "Particulars of alleged offence or reasons for Issue of Warrant" is "not attended". In this case, the issuance of the Warrant was based on the "alleged offence" that the applicant failed to attend the interviews with the "Terrorist Investigation Branch" as shown in the two Sri Lanka Police Message Forms. The Warrant does not specify any offences related to the LTTE. Although I accept the Warrant as new evidence in terms of its date, I note that the Warrant is legally and logically based on the two Message Forms as analyzed above. As the applicant has not provided convincing explanation to justify these Message Forms as new evidence, the Warrant merits low probative value in support of the Sri Lankan authorities' ongoing interest in the applicant.
- [7] The Officer acknowledged and quoted from a Response to Information Report issued by the Immigration and Refugee Board of Canada entitled Sri Lanka: Situation and treatment of returnees, including failed asylum seekers (2020-March 2022), which reports that Sri Lankan authorities maintain a "stop" list and a "watch" list at the airport, and that the "stop" list

includes those who are under an existing warrant. While those who are on the “watch” list may be permitted to leave the airport but be subjected to further surveillance by local authorities, those on the “stop” list are arrested/detained on arrival. The Officer determined, without reference to the arrest warrant, that the Applicant would not be on the airport “watch” list and adopted the finding of the RAD that at most the Applicant might be “subjected to a higher level of screening at the airport because he is a Tamil who has lived abroad,” but that this did not amount to persecution. II. Issues [8] In his memorandum of argument, the Applicant’s counsel characterizes the issue for review simply as “Did the Officer err in finding the Applicant was not at risk if returned to Sri Lanka?” His single paragraph of written “argument” is merely a series of unsupported statements of fact, but it does at least show that his concern is with the Officer’s findings regarding the warrant. Properly framed, the question for determination is, therefore, whether the Officer’s treatment of the warrant was unreasonable. The Respondent properly identified this issue and responded to it.

[9] The role of this Court on judicial review is to determine whether the PRRA Officer’s decision is reasonable. Reasonableness review entails an assessment of whether a decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law bearing upon it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]). The hallmarks of reasonableness are justification, transparency and intelligibility (Vavilov at para 99). The reasons must reflect the stakes, which are very high in PRRA decisions (Vavilov at para 133). III. Analysis [10] Having failed to argue for their admission in the first place, the Applicant cannot and does not contest the Officer’s refusal to admit the Police Message Forms. Nor does he challenge the Officer’s finding that the arrest warrant was “legally and logically based on the two Message Forms.” As noted by the Respondent, the only question the Applicant’s counsel has asked this Court to decide is whether it was reasonable for the Officer to assign “low probative value” to the arrest warrant on the basis of its connection to the police documents that were not admitted. I find it was not.

[11] The arrest warrant was admitted by the Officer as new evidence. The warrant was apparently issued by a Judge of the Magistrate Court pursuant to a proceeding initiated by the “Terrorist Investigation Branch” in Sri Lanka. The Officer raised no concerns about the authenticity or continuing validity of the warrant. The Officer’s findings that the warrant was linked to the Police Information Forms that were not admitted and that it “does not specify any offences related to the LTTE” does not change the fact that the Applicant is under an active arrest warrant. Given the objective evidence before the Officer regarding the “stop” list at the airport, the heightened suspicion faced by Tamil returnees to Sri Lanka, and the well-documented human rights abuses committed against Tamil suspects by the Sri Lankan authorities, the Officer’s finding is unintelligible and unjustified, falling well below the standard of reasonableness articulated by the Supreme Court of Canada in Vavilov. IV. Conclusion and note [12] For the reasons explained above, the decision must be quashed and the application remitted for redetermination by a different officer. This positive

outcome for the Applicant should not, however, be taken as a reflection of his counsel's representation.

- [13] As noted, the Applicant's counsel's written representations to the Court were almost nonexistent, containing a single paragraph of undeveloped and unsupported "argument." Counsel admitted, when asked for clarification during the hearing, that even in the span of that brief memorandum of argument he cited a non-existent affidavit and attributed a finding to the PRRA Officer that simply wasn't made. Though the Applicant's counsel may have been acting on informed instructions, the Court also observes that he did not provide a reply memorandum in respect of leave and did not provide a further memorandum after obtaining leave. Although the record shows that the same counsel has been representing the Applicant for the better part of a decade, including in respect of an unsuccessful appeal to the RAD, a dismissed application for leave for judicial review of the RAD decision, the PRRA application, and now this application for judicial review, when asked during the hearing whether he had represented the Applicant before the RAD the Applicant's counsel said he wasn't sure, but he might have. When asked why he had not put the Police Message Forms before the RAD he responded that "in all likelihood" he wasn't aware of them at the time. When asked if he had made any submissions regarding their admissibility in support of the PRRA application, he conceded he had not and offered no explanation. When asked by the Court, during the hearing, to turn to documents in the certified tribunal record [CTR], the Applicant's counsel advised that he had tried to access the CTR the night before the hearing but that the link had expired. It is unclear that he ever reviewed the CTR prior to this failed attempt, and he made no attempt to rectify the issue. The Applicant's counsel also declined to present any argument in oral reply.
- [14] At the close of the hearing, the Court expressed its dismay about these matters, which raise real concerns about the degree of diligence exercised by the Applicant's counsel in his representation of the Applicant. Although it should not be necessary to order that counsel provide and explain this Court's decision, including these closing comments, to the Applicant, given the quality of representation that this Court witnessed from counsel in this matter, the Court has little confidence that this will happen without an explicit order. The Applicant's counsel will therefore be ordered to provide this judgement and reasons directly to the Applicant, and unless the Applicant confirms in writing that he is entirely fluent in English, counsel will be required to provide him promptly with a Tamil translation of this judgment and reasons, prepared by an accredited translator at counsel's sole personal expense.
- [15] The parties have not proposed a serious question of general importance for certification, and I agree that none arises.
- [16] As the Applicant has misidentified the Respondent as "The Minister of Immigration, Refugees and Citizenship," the style of cause will be amended with immediate effect to correctly identify the Respondent as the Minister of Citizenship and Immigration (Federal Courts Citizenship, Immigration and Refugee Protection Rules, r 5(2); Immigration and

Refugee Protection Act, SC 2001, c 27, s 4(1); Federal Courts Rules, r 76). JUDGMENT in IMM-4362-25 THIS COURT'S JUDGMENT is that: The style of cause is amended with immediate effect to identify the Respondent as the Minister of Citizenship and Immigration. The application is granted. The matter is remitted to a different officer for redetermination in accordance with these reasons. The Applicant shall be provided with a reasonable opportunity to update the record and submissions. The Applicant's counsel shall provide a copy of this judgment and reasons directly to the Applicant, and unless the Applicant confirms in writing that he is entirely fluent in English, counsel shall also provide him with a Tamil translation of this judgment and reasons, prepared by an accredited translator at counsel's sole personal expense. No question is certified. "Andrew J. Brouwer" Judge
FEDERAL COURT SOLICITORS OF RECORD Docket: IMM-4362-25 STYLE OF CAUSE: BENO RAMESH BALENDRA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: TORONTO, ONTARIO DATE OF HEARING: February 26, 2026 JUDGMENT AND REASONS: BROUWER j. DATED: MARCH 31, 2026 APPEARANCES: JOHN O. GRANT For The Applicant ELI LO RE For The Respondent SOLICITORS OF RECORD: John O. Grant Barrister & Solicitor Mississauga, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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