

CANADA / JUDGMENT

Selvanayagam v. Canada (Citizenship and Immigration)

2025 FC 1862

COURT

Federal Court

DECIDED

25 November 2025

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Selvanayagam v. Canada (Citizenship and Immigration)

Court (s) Database

Federal Court Decisions

Date

2025-11-25

Neutral citation

2025 FC 1862

File numbers

IMM-21692-24

Decision Content

Date: 20251125

Docket: IMM-21692-24

Citation: 2025 FC 1862

Ottawa, Ontario, November 25, 2025

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

YATHUSAN SELVANAYAGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Applicant, Mr. Yathusan Selvanayagam, seeks judicial review of a September 16, 2024 decision [Decision] by an immigration officer [Officer] refusing his application for a Pre-Removal Risk Assessment [PRRA]. The basis of the Decision was that Mr. Selvanayagam faces no more than a mere possibility of persecution as described in section 96 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] and would not likely be at risk of torture, or likely to face a risk to life of cruel and unusual treatment or punishment pursuant to section 97 of the IRPA if returned to Sri Lanka. The Officer found that Mr. Selvanayagam failed to provide sufficient evidence to establish a forward-looking risk of persecution or harm in Sri Lanka.

[2] For the reasons that follow, this application for judicial review is granted.

II. Background A. Facts [3] A Tamil from northern Sri Lanka, Mr. Selvanayagam alleges that he fears persecution because the Sri Lankan army detained and tortured him as they suspected that his involvement in a Heroes Day event held to commemorate lives lost during the civil war meant that he was connected to the Liberation of Tamil Tigers for Eelam [LTTE].

- [4] On March 5, 2009, a shell bomb destroyed Mr. Selvanayagam's home, killing his sister and father. On March 27, 2009, the LTTE abducted Mr. Selvanayagam's uncle who remains missing. In April 2009, Mr. Selvanayagam and his family unsuccessfully attempted to escape Sri Lanka by boat, but the navy intercepted them and they were detained for six months.
- [5] On November 27, 2019, Mr. Selvanayagam and his family attended an annual Heroes Day event held in honour of Tamils killed during the Sri Lankan civil war. There, Mr. Selvanayagam shared his family's history during the war and ill-treatment with attendees.
- [6] On December 10, 2019, the army arrested Mr. Selvanayagam at his home and detained him at Point Pedro Army camp. The army accused him of spreading false information about the army to the public and he was beaten by army officers.
- [7] On December 11, 2019, the army released Mr. Selvanayagam on the condition that he report to the army camp twice a month and report any information about a potential LTTE revival.
- [8] Mr. Selvanayagam obtained Ayurvedic medical treatment for the injuries he sustained from being tortured while detained.
- [9] Mr. Selvanayagam, not feeling safe in Sri Lanka, planned to seek protection in Canada where an uncle resides. He first relocated to Kokuvil, Jaffna, Sri Lanka and stayed with a cousin while his mother arranged his departure from Sri Lanka through an agent. He obtained a passport during that time.

- [10] On January 23, 2020, Mr. Selvanayagam left Sri Lanka with the help of the agent who paid a bribe at the airport to ensure his safe departure. This was prior to his first reporting date.
- [11] On February 11, 2020, army officers went to Mr. Selvanayagam's home to search for him because he had failed to report as directed. Mr. Selvanayagam's mother informed the officers that he had left Sri Lanka, which the officers allegedly interpreted as evidence of his involvement with the LTTE, resulting in an assault on his mother.

B. Procedural History [12] In terms of his migration history, Mr. Selvanayagam reports that he fled Sri Lanka on January 23, 2020, and travelled through south and central America before arriving in the United States of America [USA]. On December 20, 2020, Mr. Selvanayagam arrived in Canada and attempted to make a claim for refugee protection. He was found to be ineligible to make a claim pursuant to section 101(l)(e) of the IRPA and the Safe Third Country Agreement and was sent back to the USA.

- [13] Mr. Selvanayagam states that he made a claim for refugee protection in the USA, which was refused. He then returned to Canada and presented another claim for refugee protection. The claim was refused pursuant to section 101(1)(c) of the IRPA, specifically because he previously made a claim for protection.
- [14] Thereafter, Mr. Selvanayagam submitted a PRRA application, which was refused on February 27, 2023. Mr. Selvanayagam then applied for a judicial review of this decision and subsequently discontinued the application after a settlement.
- [15] Upon redetermination, Mr. Selvanayagam filed additional submissions and evidence on June 13, 2024.

III. Decision Under Review [16] Mr. Selvanayagam's PRRA application was refused once again on September 16, 2024 and he is seeking judicial review of this Decision before this Court.

- [17] The Officer noted in the reasons for the determination that "there is insufficient documentary evidence to corroborate the foregoing arrest detention and reporting conditions" and furthermore, the Officer observed the following:

I observe that the fact that the applicant was released from detention and was relied on attending of his own accord at a later date suggests that he was not of particular importance or to have a particular profile and that any imputed LTTE connection may have been considered to be at a low level. Documentary evidence informs that if the authorities had continued to suspect him of involvement in the LTTE he would not have been released.

- [18] With respect to the attack on Mr. Selvanayagam's mother, the Officer noted that over 4 years have lapsed since the event and found little evidence to indicate any continuing interest in Mr. Selvanayagam or monitoring of his family by the Sri Lankan authorities.

- [19] The Officer also noted concerns with the personal corroborative evidence. However, the Officer ultimately found that "[n]otwithstanding the foregoing, I accept that the applicant was detained and sustained some injuries."
- [20] The Officer assessed two letters that were submitted by Mr. Selvanayagam, one from Emil Arulrajan Gnanaseeli and the other from Theverasa Anton Nishanhan. The Officer gave minimal weight to these letters because they found insufficient information to link information in these letters to the risk for Mr. Selvanayagam.
- [21] The Officer accepted the country information indicating that people involved in memorialisation initiatives faced monitoring, harassment or arrest by the Sri Lankan authorities. The country information reveals the authorities focus on specific groups of people who are human rights activists, journalists, family members of missing persons and other advocates for justice involved in these events. This means the people in those groups face a greater risk of harm, rather than "ordinary Tamils."
- [22] However, the Officer found insufficient evidence to indicate Mr. Selvanayagam is part of one of those groups or could be perceived to be part of one of those groups.
- [23] The Officer noted Mr. Selvanayagam's passport was issued on January 7, 2020, which was after his detention. The Officer found little evidence that the Sri Lankan government had identified Mr. Selvanayagam as a person of adverse interest at that point in time.
- [24] The Officer considered the documentary evidence showing the risk faced by some Tamils returning to Sri Lanka after a failed refugee claim. However, the Officer explained the sources considered do not suggest the individuals in question were detained or tortured because they had sought refugee protection. The Officer further found there was little information to indicate that Sri Lankan authorities put procedures in place to identify failed refugee claimants.
- [25] Relying on the objective documentary evidence before them, the Officer found the focus of the screening by Sri Lankan authorities is to identify individuals purported to have ties to the LTTE and that only such individuals are at risk of surveillance and interrogation.
- [26] Upon considering Mr. Selvanayagam's risk cumulatively, as well as his profile, and having reviewed the country information, the Officer found there was insufficient evidence to indicate, on a balance of probabilities, that Mr. Selvanayagam will be suspected as an LTTE supporter or be perceived as such.
- [27] Ultimately, the Officer determined that Mr. Selvanayagam did not require Canada's protection as he faced no more than a mere possibility of persecution and would not be subject to a risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Sri Lanka.

[28] The Officer further considered the factors listed at section 167 of the Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR] and determined that a hearing was not required in this case because Mr. Selvanayagam's submissions had been accepted as credible.

IV. Issues and Standard of Review [29] The issue is whether the Decision is unreasonable given the Officer misconstrued and failed to grapple with evidence in finding that Mr. Selvanayagam was not at risk upon return to Sri Lanka.

[30] The parties agree, as do I, that the Decision should be reviewed on a reasonableness standard: Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov] at paras 10, 25. The burden is on the party challenging the Decision to show that it is unreasonable: Vavilov at para 100. To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness - justification, transparency, and intelligibility: Vavilov at para 99. Flaws or shortcomings must be "more than merely superficial or peripheral to the merits of the decision" or a "minor misstep": Vavilov at para 100; Canada (Citizenship and Immigration) v Mason, 2021 FCA 156 at para 36. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: Vavilov at para 125.

V. Analysis [31] In my view, the Decision is unreasonable. Despite deeming the evidence of Mr. Selvanayagam is credible, the Officer misconstrued and failed to properly grapple with his evidence. Furthermore, the Officer misconstrued and failed to grapple with the evidence in the national documentation package for Sri Lanka when the Officer found that he was not at risk upon return to Sri Lanka.

[32] In its Decision, the Officer made the following findings:

I accept the country information indicating people involved in memorialisation initiatives facing monitoring, harassment or arrest by authorities. However, I also note country information informs that the authorities are particularly focused on people who are human rights activists, journalists, family members of missing persons and other advocates for justice involved in these events, and it is those groups of people who face a greater risk of harm, rather than ordinary Tamils.

I note that the most recent DFAT country report on Sri Lanka identifies the following categories of particular interest to the authorities:

- a. Those who held leadership positions in Tamil diaspora groups, particularly those deemed to hold radical views;
- b. Those who were formerly part of the LTTE, particularly in high profile roles;
- c. Those who were suspected of raising funds for the LTTE during the war; and
- d. Those who actively advocate for Tamil statehood.

I find insufficient evidence to indicate that the applicant fits the profile or could be perceived to fit the profile of any of the aforementioned groups.

[...]

There is little evidence to indicate that the Sri Lankan government considered the applicant to have an adverse profile, that he was associated with the LTTE, he had an imputed LTTE profile or to otherwise indicate that he was noted on any government systems as a person of adverse interest at that point in time.

[Emphasis added.]

[33] The Minister of Citizenship and Immigration [Minister] submits it was reasonable for the Officer to find there was insufficient evidence to establish Mr. Selvanayagam would face a risk by reasons of his Tamil ethnicity, being suspected as an LTTE supporter, or as a failed refugee claimant. The Minister argues the Officer considered the evidence that was presented on this point and nonetheless concluded that Mr. Selvanayagam did not fit the profiles identified as being at risk. The Minister submits this particular finding is consistent with the rest of the evidence on the record and the Officer simply found the evidence did not apply in Mr. Selvanayagam's case.

[34] I disagree with the Minister.

[35] I agree with Mr. Selvanayagam that the country condition evidence referenced by the Officer clearly shows that Tamil individuals who have lost family members in the war, are related to missing persons, or have attended memorial events face monitoring, harassment or arrest by Sri Lankan authorities. The PRRA Officer acknowledged this evidence but did not explain how or why Mr. Selvanayagam did not fit into this category of persons at risk given his evidence of the death of his sister and father, the abduction of his uncle who remains missing, and his attendance at the Heroes Day event had been found credible.

[36] At the hearing, when I asked counsel for the Minister where in the Decision the Officer grappled with the country documentation evidence mentioned above in light of Mr. Selvanayagam's own evidence, which seemingly supports the conclusion that he may be at risk, the Minister responded that this was done implicitly in the Decision.

[37] As the Supreme Court of Canada held in *Vavilov*, the principles of justification and transparency require the decision-maker to meaningfully account for the central issues and concerns raised by the parties: *Vavilov* at para 127. In the particular circumstances of this case, given that this finding is a central issue of this case, the Officer's failure to explicitly grapple with this key issue calls into question whether they were actually alert and sensitive to the issue: *Vavilov* at para 128.

- [38] While the Officer found that Mr. Selvanayagam did not fit the profile of individuals that are of “particular” interest to the authorities, this is not evidence that he faces no risk at all. Rather, I agree with Mr. Selvanayagam that while he does not “fit” into the profiles of those most at risk, he may still be at risk. The Decision thus clearly fails to grapple with this key evidence in finding that Mr. Selvanayagam was not at risk upon return to Sri Lanka, thereby making the Decision unreasonable:
- [128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (Newfoundland Nurses, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: Baker, at para. 39.
- (Vavilov at para 128, emphasis added.)
- [39] I agree with Mr. Selvanayagam that the Officer misconstrued the country condition evidence by focusing on part of the country condition evidence that there are three categories of people that are of particular interest to the Sri Lankan authorities and treating these particular risk profiles as being exhaustive. As such, it was unreasonable for the Officer to conclude that because there was no evidence that Mr. Selvanayagam fits into one of these groups, Mr. Selvanayagam himself was not at risk. While such groups of people might be of particular interest to the authorities and may face an increased risk, it was unreasonable for the Officer to find individuals that are not part of these groups face no risk. Mr. Selvanayagam submits, and I agree, that the Officer should have continued his analysis to determine if, even without being part of those particular profiles, Mr. Selvanayagam was still at risk upon return to Sri Lanka given the other country condition evidence showing that Tamil individuals who have lost family members in the war, are related to missing persons, or have attended memorial events face monitoring, harassment or arrest by Sri Lankan authorities.
- [40] There is another finding of the Officer that merits consideration. The Officer found that because it had been more than four years since the events, there was little evidence to indicate any continuing interest in Mr. Selvanayagam or evidence his family was being monitored. Mr. Selvanayagam argues this finding was unreasonable because the Officer ignored the evidence that his mother had advised the authorities that he had left Sri Lanka.

- [41] On the other hand, the Minister submits the Officer did grapple with the letter from Mr. Selvanayagam's mother. The Officer explicitly referred to it and determined there was insufficient evidence to indicate any continuing interest in Mr. Selvanayagam or the monitoring of his family. The Minister further submits the Officer's finding is premised on the authorities not visiting his mother for four years, and the country documentation showing close family members/relatives of individuals suspected to have ties to the LTTE living abroad being harassed, detained or risk being monitored and questioned. The Minister argues it was reasonably open to the Officer to find there was insufficient evidence.
- [42] I disagree with the Minister as there is no indication that the Officer grappled with the fact that Mr. Selvanayagam's mother advised the army that he had left Sri Lanka. Mr. Selvanayagam correctly relies on *Gyamfuah* to state that drawing an inference about a future risk based on the absence of searches where authorities are aware of an individual's absence is unreasonable: *Gyamfuah v Canada (Minister of Employment and Immigration)*, 1994 CanLII 19756 (FC), 25 Imm LR (2d) 89 at para 14.
- [43] In my view, the above-mentioned errors are sufficiently central to the Decision to render it unreasonable: *Vavilov* at para 100; *Yani v Canada (Citizenship and Immigration)*, 2024 FC 73 at para 10; *Moradbeigi v Canada (Citizenship and Immigration)*, 2023 FC 1209 [Moradbeigi] at para 16). Given the above errors are sufficiently central to the Decision to render it, in my view, unreasonable and that the above analysis is determinative of the matter at hand, the Court has not considered the other alleged errors: *Moradbeigi* at para 23.
- [44] Mr. Selvanayagam's risk on return to Sri Lanka has not been reasonably and adequately assessed in his PRRA by the Officer given the important evidence on the record contradicting the Officer's findings without any explanation.

VI. Conclusion [45] The application for judicial review is granted. The matter will be remitted for redetermination by a visa officer not previously involved in this matter.

JUDGMENT in IMM-21692-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is granted.

The matter will be remitted for redetermination by a visa officer not previously involved in this matter.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-21692-24

STYLE OF CAUSE:

YATHUSAN SELVANAYAGAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

November 20, 2025

JUDGMENT AND REASONS:

TSIMBERIS J.

DATED:

november 25, 2025

APPEARANCES:

Maureen Silcoff

For The Applicant

Jennifer Luu

For The Respondent

SOLICITORS OF RECORD:

Silcoff, Shacter

TORONTO, ON

For The Applicant

ATTORNEY GENERAL OF CANADA

TORONTO, ON

For The Respondent

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/fc-cf/decisions/en/item/529384/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/selvanayagam-v-canada-citizenship-and-immigration-2025>

Prepared on 27 October 2026 · Esheria