

Federal Court



Cour fédérale

Date: 20160623

Docket: IMM-2967-15

Citation: 2016 FC 710

Ottawa, Ontario, June 23, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ITUA OSADOLOR IRIVBOGBE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada (“RAD”), dated June 10, 2015, in which the RAD confirmed the finding of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to s 96 or s 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

Background

[2] The Applicant is a citizen of Nigeria. On December 29, 2012, he arrived in Canada on a student visa. He subsequently applied for a work permit to complete a co-op work placement and then for a further work permit after completing his studies, both of which were granted. The Applicant later applied for an extension of his work permit; however, his application was refused on October 17, 2014. On October 31, 2014, the Applicant applied for refugee status on the basis of his sexuality.

[3] As set out in his Basis of Claim form (“BOC”), the Applicant is married and has two children. He claims that his true sexual orientation, as a bisexual, was exposed in Nigeria on October 26, 2014, when compromising photographs of him and his same sex partner were discovered. He claims that his partner was beaten and humiliated by the community, that his sexuality was reported to his mother who threatened to disown him, and, that he fears persecution in Nigeria on the basis of his sexual orientation.

[4] In a decision dated January 7, 2015, the RPD denied the Applicant’s claim, the determinative issue being credibility. The RPD noted that while the Applicant testified that he had met his current partner, Godwin Ogundipe (“Ogundipe”) on October 15, 2014, the Applicant had not mentioned him in his BOC, which was signed on October 31, 2014. The RPD did not accept the Applicant’s explanation for this omission, being that he did not think it had anything to do with his persecution, given that the basis of his entire claim rested on his bisexuality and such evidence would have directly supported his purported bisexual identity. The RPD also

found that the December 30, 2014 affidavit sworn by Ogundipe, stating that he is the Applicant's current partner in Canada ("Ogundipe Affidavit"), was evasive and lacking in detail. Further, while the Applicant stated during the hearing that Ogundipe would provide testimony, he was not called as a witness. The RPD ascribed little weight to this untested affidavit evidence. The RPD also noted that the Applicant could produce only one text message between himself and Ogundipe, which had been sent the morning of the hearing, and that he could not access their messaging history. Nor could he produce any other messages or emails. Given these facts, which undermined the Applicant's credibility, the RPD drew a negative inference with respect to his claim that he is in a same sex relationship with Ogundipe.

[5] The RPD also had concerns with the timing of the Applicant's application for refugee protection, which occurred 14 days after the refusal of an extension of his most recent work permit. In November 2014, nearly two years after his arrival in Canada and a month after he submitted his claim for refugee protection, the Applicant joined various Lesbian Gay Bisexual or Transgender ("LGBT") organizations in Toronto. The Applicant explained that he had not joined the organizations earlier because he was not "out" in Nigeria and did not want his sexual identity to be exposed. It was only after it became known there in October 2014 that he became a member of the organizations.

[6] The RPD found that this was not a reasonable explanation for the two year delay in making efforts to seek out organizations for sexual minorities and that the Applicant had not engaged in homosexual activities in Canada. The RPD therefore drew a negative inference as to

the Applicant's overall credibility and found that he had undertaken these activities to advance his refugee claim.

[7] The RPD accepted that the Applicant attended meetings at various LGBT organizations, but found that the primary purpose of the Applicant's involvement was to further his refugee claim and to bolster his allegations of his sexual orientation.

[8] The RPD also noted that the Applicant was unable to recall the names of any venues frequented by the gay community except those in which he claimed membership. The RPD found that photographs submitted by the Applicant in support of his claim did not offer persuasive evidence to support a conclusion, on a balance of probabilities, that the Applicant is bisexual and, therefore, the photographs did not overcome the RPD's credibility concerns with respect to the Applicant's sexual orientation.

[9] As to a December 19, 2014 affidavit of Tochukwu Nwachi ("Nwachi Affidavit"), which stated that he had witnessed the October 2014 incident in Nigeria involving the Applicant's same sex partner, and an email of October 26 from the Applicant's brother expressing his disappointment and shame stemming from the Applicant being gay, the RPD acknowledged the consistency between those documents and the Applicant's testimony concerning the discovery of compromising pictures of himself and his same sex partner. However, the RPD found that the two documents lacked detail and failed to overcome its credibility concerns. It afforded them little weight in establishing the sexual orientation of the Applicant as a bisexual.

[10] Finally, the RPD found the psychological report submitted by the Applicant to be unpersuasive as the allegations in that report originated from the Applicant. Because the RPD had found the Applicant not to be credible in respect of those same allegations, it gave the report little weight in terms of establishing the Applicant's sexual orientation.

[11] Considering the Applicant's evidence as a whole and its credibility concerns cumulatively, the RPD found on a balance of probabilities that the Applicant was not a credible witness and that there was insufficient persuasive evidence as to his sexual orientation and concluded that he had not established his sexual identity as a bisexual.

Decision Under Review

[12] On the issue of the Applicant's Canadian same sex partner, the RAD found that if the Applicant was truly involved with a same sex partner, it was reasonable to expect that he would have noted this in his BOC since his entire claim rested on his identity as a bisexual and the relationship would have provided direct evidence of his bisexuality. The Applicant was represented by counsel at the time he filed his BOC and the importance of including this information was evident. Although the RPD had made other findings that also undermined the Applicant's allegation that he is involved in a same sex relationship in Canada, these had not been contested. However, the RAD stated that, based on its own review and assessment of the evidence, it found no errors with the RPD's uncontested findings. On this basis, the RAD agreed with the RPD that the credibility of the Applicant's allegation that he was involved in a same sex relationship was undermined.

[13] The RAD noted that the RPD had also drawn adverse credibility findings regarding the Applicant's sexual identity based on the combination of his immigration history, the timing of his claim, and, his testimony concerning his activities in Canada. The RAD found the Applicant's explanation for the two year delay in joining LGBT organizations in Canada to be unconvincing, given that the risk of his sexual orientation becoming known to his family through his homosexual activities in Nigeria was much higher than through his involvement with support groups in Canada.

[14] However, the RAD agreed with the Applicant that the RPD erred by impugning his credibility based on an inability to provide the names of venues frequented by the LGBT community. The RPD had failed to explain why it would be reasonable to expect the Applicant to possess such knowledge. However, despite this error, the RAD found that the remaining findings of the RPD were sufficient to undermine the Applicant's claim based on his bisexual identity. Based on the totality of the adverse findings and on a balance of probabilities, the RAD agreed with the RPD's finding that the Applicant did not engage in any same sex activities in Canada and had attempted to create that persona to advance his refugee claim.

[15] The Applicant had submitted to the RAD that the RPD had merely dismissed the affidavits and other corroborating evidence which he had submitted in support of his claim. The RAD was not persuaded by this argument and noted that the RPD had provided rationale beyond its credibility findings in its analysis of the weight it should afford to the evidence. The RAD further noted that it was open to the RPD to place little weight on the psychologist's report given the RPD's credibility finding regarding the Applicant's claim and the fact that the report was

based on self-reporting. The RAD stated that following its own assessment of the evidence, it agreed with the RPD's findings.

[16] Based on the totality of the evidence, the RAD found and agreed with the RPD that the Applicant had not established his identity as a bisexual. As the basis for his claim for refugee protection rested on that identity, the claim could not succeed.

Issues

[17] In my view, the points raised in the application for judicial review can be distilled into a single issue, which is whether the RAD's assessment of the evidence and the Applicant's credibility was reasonable.

Standard of Review

[18] The Applicant submits that reasonableness is the standard of review applicable to the RAD's assessment of the evidence but that the RAD's interpretation and application of the law attracts a correctness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]). The Respondent submits that the RAD's assessment of the findings of the RPD with respect to credibility attracts the standard of reasonableness (*Dunsmuir* at para 51).

[19] I would note that subsequent to the RAD's decision in this matter the Federal Court of Appeal issued its decision in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica FCA*]. This found that the standard of review applied by this Court to RAD decisions

is reasonableness (*Huruglica FCA* at para 35; also see *Gebremichael v Canada (Citizenship and Immigration)*, 2016 FC 646 at para 8; *Ghauri v Canada (Citizenship and Immigration)*, 2016 FC 548 at para 22 [*Ghauri*]; *Voloshyn v Canada (Citizenship and Immigration)*, 2016 FC 480 at para 15 [*Voloshyn*]; *Sui v Canada (Citizenship and Immigration)*, 2016 FC 406 at para 14; *Ketchen v Canada (Citizenship and Immigration)*, 2016 FC 388 at para 20).

[20] In *Ghauri*, Justice Gleeson found with respect to the standard of review applied to the RPD by the RAD, that:

[23] The RAD must apply the correctness standard of review with respect to reviewing findings of law, as well as findings of fact and mixed fact and law of the RPD that raise no issue of credibility of oral evidence and must take a case-by-case approach to the level of deference it owes to the relative weight of testimony and their credibility or lack thereof (*Huruglica* at paras 37, 69-71, 103).

[21] In this case the parties made no submissions concerning the appropriate standard by which the RAD must review decisions of the RPD nor has the Applicant asserted an error in that regard. I would note that at the outset of its decision the RAD, referring to the then unsettled state of the law concerning its role, relied on *Alyafi v Canada (Citizenship and Immigration)*, 2014 FC 952 for the proposition that, in the face of this uncertainty, it was open to the RAD to apply either of the potentially applicable approaches to the scope of its review of decisions of the RPD until the matter was resolved by the Federal Court of Appeal or the Supreme Court of Canada. Accordingly, it stated that it would follow *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 and conduct its own assessment of the RPD's decision and come to an independent assessment of whether the Applicant is a Convention refugee. Deference would be afforded to the RPD's credibility or other findings where the RPD had a particular advantage

in reaching its conclusions. This approach was open to the RAD at the time that it made its decision (*Siliya v Canada (Citizenship and Immigration)*, 2015 FC 120 at para 21; *Djossou v Canada (Citizenship and Immigration)*, 2014 FC 1080 at para 91; *Canada (Citizenship and Immigration) v Alsha'bi*, 2015 FC 1381 at para 36).

Analysis

Applicant's Position

[22] The Applicant's submissions are repetitive, largely unfocused and include many dated case references and quotes purporting to support principles that the Applicant has not tied to the facts of the claim or to an alleged reviewable error by the RAD. In essence, the Applicant asserts that the RAD failed to appreciate the basis of the Applicant's claim, a fear of persecution based on his sexual orientation, and that this was an error of law. Further, he asserts that it was inappropriate for the RAD to rely on stereotypes in evaluating claims based on sexual orientation (*Ogunrinde v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 760 at para 42). The Applicant also submits that, despite evidence that he is being sought in Nigeria because of his sexuality, the RAD unreasonably and microscopically assessed his testimony and the documentary evidence. Further, whether or not he has satisfactorily established his sexual identity in Canada, he argues that he is still regarded as a bisexual in Nigeria and is at risk for that reason.

[23] The Applicant also submits that it was unreasonable for the RAD to ignore all of the evidence that corroborated his claim and to impugn his credibility because he was not involved

in same sex activities and could not recall the names of locations in Toronto frequented by the LGBT community. While the Applicant recognizes that a tribunal need not refer to all the evidence in the record, he points out that it cannot take a selective approach or ignore evidence that supports an applicant's claim. The Applicant argues that the RAD's decision is unreasonable because it failed to give adequate reasons to explain why this evidence did not support his claim.

[24] The Applicant further submits that the RAD unreasonably failed to consider the merits of the Applicant's claim just because it found the documentary evidence submitted by the Applicant not to be credible in supporting his sexual identity. Minor inconsistencies in the Applicant's story are insufficient to reject all of the evidence (*Mahathmasseelan v Canada (Employment and Immigration)*, [1991] FCJ No 1110 (FCA)). Further, the RAD's negative findings as to the Applicant's sexual identity coloured its overall consideration of, and it was no longer capable of fairly or reasonably adjudicating, the claim.

[25] The Applicant finally submits that a plain reading of s 111(1)(a) of the IRPA does not permit the interpretation articulated by the RAD. The RAD had the authority to undertake its own analysis of the evidence and to substitute the impugned decision with a determination that should have been made. Here the RAD's decision does not show that it considered all of the evidence presented to the RPD or that it conducted its own analysis.

Respondent's Position

[26] The Respondent submits that the RAD did not err in assessing the RPD's findings or in its own assessment with respect to the Applicant's credibility. The RAD assessed the RPD's findings in light of its own review of the evidence and agreed with the bulk of the RPD's findings. The RAD reasonably rejected the Applicant's explanations as to his failure to mention his same sex relationship in Canada in his BOC and why he delayed joining various LBGT organizations. Although the Applicant asserts that the RAD erred in impugning the Applicant's credibility based on a lack of knowledge of LGBT venues, the RAD in fact overturned the RPD's finding on that point, but found that the remaining findings were sufficient to undermine the Applicant's bisexual identity. The Respondent also submits that there is no merit to the Applicant's assertion that the RAD failed to appreciate the basis of his claim.

[27] The Respondent further submits that the Applicant's assertions with respect to the treatment of the corroborating evidence essentially concern the weighing of the evidence. Despite the Applicant's assertion that the RAD attached no weight to his evidence, the Respondent submits that the RAD, in fact, properly noted some credible aspects of the Applicant's claim, but found they were insufficient to establish his sexual identity. And while the Applicant asserts that the RAD ignored documentary evidence and testimony and adopted a microscopic analysis, the Applicant does not specify the evidence that was ignored. While the Applicant asserts that his alleged same sex partner's affidavit should not be disbelieved simply because he was not cross-examined, this ignores the additional facts on which the non-credibility findings were grounded by the RPD and agreed with by the RAD.

[28] Finally, the Respondent notes that while the Applicant raises many legal propositions and makes various unsupported claims, nothing in his submissions suggests a reviewable error.

Analysis

[29] Pursuant to s 111(1) of the IRPA, the RAD, after considering the appeal shall make one of the following determinations: confirm the determination of the RPD (s 111(1)(a)); set aside the RPD's determination and substitute a determination that, in its opinion, should have been made (s 111(1)(b)); or, refer the matter to the RPD for re-determination, giving directions to the RPD that it considers appropriate (s 111(1)(c)). In this case, the RAD stated that, pursuant to s 111(1)(a), it confirmed the determination of the RPD and dismissed the appeal. Accordingly, I see no merit in the Applicant's undeveloped assertion that the RAD misinterpreted s 111(1)(a). While it is true that the RAD also has the authority to set aside the RPD's decision and substitute its own determination, it is not a reviewable error, in and of itself, to decline to do so.

[30] The Applicant also submits that the RAD failed to appreciate the basis of his claim, a fear of persecution based on his sexual orientation. There is no merit in this assertion. The RAD acknowledged that the RPD had noted that the Applicant's entire claim rested on his identity as a bisexual and the RAD's decision concerns the Applicant's credibility with respect to his same sex relationship in Canada and the establishment of his sexual identity as a bisexual. Similarly, the Applicant's submission that the RAD based its decision on stereotypes and Western standards has no merit. The Applicant does not tie this assertion to any specific aspect of the RAD's decision. However, I would note that the RAD specifically overturned the RPD's finding that the Applicant was not credible because, other than one club, he could not name venues in

Toronto frequented by the LGBT community. The RAD found that the RPD's finding was not supported by reasons or the record.

[31] The Applicant also submits that the RAD ignored or failed to "adequately refer" to documentary evidence. It is well-established that, absent contradictory evidence that goes unmentioned, decision-makers are presumed to have considered all of the evidence and need not refer to every piece of evidence in the record (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*NL Nurses*]; *Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, (1998) 157 FTR 35 (Fed TD) at para 16). The bar for finding a decision unreasonable based on a failure to mention evidence is high; the evidence must relate to a central issue and contradict a decision-maker's finding (*Voloshyn* at paras 17-18). As the Respondent points out, the Applicant does not specify what evidence the RAD allegedly ignored. It is also difficult to reconcile the Applicant's submission that the RAD unreasonably microscopically and zealously reviewed the evidence with his submission that the RAD ignored it.

[32] The RAD also noted, as found by the RPD, that the Applicant's alleged same sex partner was not mentioned in his BOC. The RAD agreed with the RPD that, because the Applicant's entire claim rested on his identity as a bisexual, it was reasonable to expect that if he was involved with a same sex partner in Canada that he would have included this information in his BOC, as it would have provided direct evidence of his bisexuality. I note that jurisprudence has established that omissions from a BOC narrative may ground adverse credibility findings where the omission is significant, material or central to the claim (*Akhigbe v Canada (Citizenship and*

Immigration), 2002 FCT 249 at paras 15-16 (Fed TD); *Samseen v Canada (Citizenship and Immigration)*, 2006 FC 542 at paras 14-17). Although the Applicant is correct that minor inconsistencies are not grounds to undermine his credibility, the RAD clearly found this inconsistency to be significant. As the RAD noted, the Applicant's sexuality is the basis for his claim and, because he was represented by counsel when he prepared his BOC, he would have known the importance of proving this aspect of his claim. In my view, this conclusion and the RAD's finding that the credibility of the Applicant's allegation that he was involved in a same sex relationship in Canada was thereby undermined were reasonable.

[33] Similarly, the RAD's rejection of the Applicant's explanation as to why he delayed in joining LGBT community organizations, until nearly two years after his arrival in Canada and a month after he made his refugee claim, was reasonably open to the RAD and has not been challenged by the Applicant. The RAD's conclusion, on the basis of the totality of the adverse findings, that it agreed with the RPD that the Applicant did not engage in any same sex activities in Canada and had attempted to create this persona to advance his refugee claim was also reasonably open to it based on the record.

[34] The RAD stated that it would defer to the RPD's credibility findings where the RPD had a particular advantage in reaching its conclusions. In its reasons, when adopting the RPD credibility findings, it did not indicate what the advantage of the RPD might have been. It did state throughout its decision that it had conducted its own, independent assessment of the evidence, which is evident from the fact that it overturned the RPD's adverse credibility finding based on the Applicant's inability to recall the names of LGBT venues and its reasoning in

rejecting the Applicant's explanation for his delay in joining LGBT support groups. However, as the Applicant submits, the RAD mainly adopted the reasoning and findings of the RPD. It did not identify the evidence that it considered, other than the explanations of the Applicant which it rejected and the psychologist's report, or specifically refer to the transcript or his testimony.

[35] In that regard, with respect to the corroborating documents, the RAD noted the Applicant's submission that the documents had been dismissed by the RPD on the ground that he was not credible and that the veracity of the documents had not been weighed. The RAD also noted that the RPD had drawn an adverse credibility finding based on the Applicant's allegation that he was involved in a same sex relationship in Canada which was grounded on three factors: his failure to mention his Canadian same sex partner in his BOC; limited evidence of their relationship; and, while he testified that his partner was willing and able to testify at the hearing, the Applicant failed to arrange for him to do so. Before the RAD, the Applicant challenged only the RPD's finding concerning the omission from the BOC and, as discussed above, the RAD assessed this and reached its own negative credibility finding. However, the RAD also stated that, based on its own review and assessment of the evidence, there were no errors with the uncontested findings. While its reasons did not specify this, the limited corroborative evidence of the alleged relationship was comprised of the Ogundipe Affidavit, which the RPD found lacked detail and was not sufficiently persuasive to overcome its credibility concerns. In my view, the RPD's assessment of this document relied in part on an assessment of the Applicant's testimony. The RPD discussed the Applicant's testimony about Ogundipe in its decision, including his lack of electronic communication with his alleged partner and Ogundipe's failure to appear to testify. It was within this context that the RPD made its credibility findings on the

Ogundipe Affidavit. Therefore, in my view, although not explicitly challenged by the Applicant, it was also reasonable for the RAD to defer to or adopt these findings given that the RPD had the advantage of hearing the Applicant's testimony.

[36] As to the psychologist's report, which post-dates the Applicant's claim for refugee protection, the RAD found that because it was based on self-reporting by the Applicant and because the RPD had found the Applicant not to be credible, it was open to the RPD to give it little weight and, based on its own assessment of the evidence, the RAD agreed with the RPD's finding. Thus, contrary to the Applicant's submissions, the report was not ignored. It is also of note that the RAD does not take issue with the diagnosis that the Applicant suffers from a major depressive disorder, moderate, single episode, high anxiety and has had a panic attack. Nor has the Applicant alleged that the RAD erred in failing to consider the impact of the diagnosis should he be returned to Nigeria. Rather, because of the lack of credibility and regardless of the diagnosis, the report does not assist the Applicant in establishing his sexual identity as a bisexual, which is what the RPD found and which finding was adopted by the RAD. I see no error in this finding as the recounting of events to a psychologist does not make the events themselves more credible (*Rokni v Canada (Citizenship and Immigration)*, [1995] FCJ No 182 at para 16; *Danailov v Canada (Employment and Immigration)*, [1993] FCJ No 1019 at para 2; *Egbesola v Canada (Citizenship and Immigration)*, 2016 FC 204 at para 12; *Moya v Canada (Citizenship and Immigration)*, 2016 FC 315 at para 57).

[37] Two other corroborating documents referred to by the RPD were the Nwachi Affidavit and an email from the Applicant's brother. The RPD acknowledged that these documents were

consistent with the Applicant's testimony that compromising pictures had been discovered in Nigeria. However, it found that they failed to overcome its other credibility concerns. For that reason, they were afforded little evidentiary weight in establishing the sexual orientation of the Applicant.

[38] As noted above, with the exception of the psychologist's report, the RAD referred to the corroborative evidence only generally. It made no specific reference to the Nwachi Affidavit, the email, or the photographs and letters submitted by the Applicant. It stated that, having reviewed and assessed the evidence, it found that "the RPD provided rationale beyond the credibility of the Appellant in its analysis of the weight it should afford the Appellant's supporting documents". Later in its reasons the RAD found that based on the totality of the evidence, the Applicant had not established his identity as a bisexual.

[39] The Nwachi Affidavit and the email from the Applicant's brother speak to the discovery in Nigeria of the Applicant's bisexuality in October 2014. Thus, in addition to corroborating his identity as a bisexual, the documents also support the Applicant's explanation for his delay in joining LGBT organizations in Toronto as they suggest that the Applicant's community in Nigeria was unaware of his sexuality prior to October 2014. However, the RPD acknowledged this consistency but found that the documents lacked detail and failed to overcome its credibility concerns, and it afforded them little weight. The RAD stated that it had conducted its own assessment of the evidence and agreed with the RPD's finding. While it would have been preferable for the RAD to have explained why it agreed, as it was adopting the RPD's reasons it did not err by failing to repeat them. Further, the fact that the RAD did not refer specifically to

the evidence does not preclude the Court from understanding why the RAD made its decision and permits it to determine whether the conclusion is within the range of acceptable outcomes (*NL Nurses*).

[40] For these reasons I find that the RAD's decision was reasonable and the application for judicial review is therefore dismissed.

[41] The Applicant submits the following question for certification pursuant to s 74(d) of the IRPA:

Whether finding of credibility [sic] on the applicant's gay activities in Canada by extension discredits the applicant's claim respecting his bi-sexual persona in Nigeria.

[42] The Respondent opposes the Applicant's request to certify a question and submits that the question does not meet the test for certification (*Gechuashvili v Canada (Citizenship and Immigration)*, 2016 FC 365 at para 26).

[43] The test for certification was restated by the Federal Court of Appeal in *Lin Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 as follows (at para 9):

... that to be certified, a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance. As a corollary, the question must also have been raised and dealt with by the court below and it must arise from the case, not from the Judge's reasons.

(Also see *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at paras 28-30;
Canada (Citizenship and Immigration) v Zazai, 2004 FCA 89 at para 11)

[44] In my view the question as proposed does not transcend the interests of the immediate parties to the litigation nor contemplate issues of broad significance or general importance. I therefore decline to certify the question proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There is no order as to costs.
3. The question proposed by the Applicant is not certified.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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