Federal Court  Cour fédérale

Date: 20190123

Docket: IMM-1343-18

Citation: 2019 FC 99

Vancouver, British Columbia, January 23, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JILA AGHAZADEH
ARYA KHADEMI (BY HIS LITIGATION GUARDIAN JILA AGHAZADEH)

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Jila Aghazadeh and her son Arya Khademi, are citizens of Iran. Ms. Aghazadeh's political opposition to the Iranian government caused the applicants to flee Iran with Ms. Aghazadeh's husband, Arya's father. They fled to Hungary, where they were granted "subsidiary protection" status. They then came to Canada and sought protection.

[2] The applicants' claim was initially found eligible for referral to the Refugee Protection Division [RPD]. However, a Canada Border Services Agency [CBSA] Officer subsequently found the claim was ineligible for referral pursuant to paragraph 101(1)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], on the basis that their "subsidiary protection" status was equivalent to Convention refugee status. On reconsideration, the Officer maintained that the applicants were ineligible as they were "persons who had been granted protection." The applicants now seek judicial review of that reconsideration decision pursuant to subsection 72(1) of the IRPA.

[3] The applicants submit that the Officer erred in finding their "subsidiary protection" status rendered them ineligible under paragraph 101(1)(d). The respondent submits that the Officer did not err.

[4] For the reasons that follow, the application is granted.

II. Background

[5] The applicants report that they fled Iran in September 2014, travelling to Turkey and then Hungary, where they sought asylum. The Hungarian government refused their claim for recognition as Convention refugees. They were, however, recognized as persons enjoying "subsidiary protection" in Hungary.

[6] The applicants state that due to difficulties in Hungary related to anti-migrant rhetoric and discrimination, they travelled to Canada in September 2017. Upon arrival, they initiated a

claim for refugee protection, indicating a fear of return to both Iran and Hungary. The applicants were interviewed, and they disclosed their asylum claim and right to reside in Hungary. Their claim was initially found eligible for referral to the RPD under subsection 100(1) of the IRPA.

[7] However, after the applicants filed their Basis of Claim [BOC] documentation and before an RPD hearing took place, a CBSA Officer determined the claims were not eligible for referral to the RPD. The Officer found them to be ineligible pursuant to paragraph 101(1)(d) as the applicants had been recognized as Convention refugees in Hungary. The applicants sought reconsideration of that decision and submitted additional documentation with that request.

III. Legislation

[8] Section 96 of the IRPA defines Convention refugee status, and section 97 defines persons who, not being Convention refugees, are nonetheless persons in need of protection. Where a CBSA officer receives a claim for protection, the officer will determine if the claim is eligible to be referred to the RPD, a division of the Immigration and Refugee Board [IRB] (IRPA, s 100). The RPD determines whether a claimant is a Convention refugee (IRPA, s 95).

[9] Section 101 of the IRPA sets out when a claim is not eligible for referral to the RPD.

[10] Subsection 101(1) of the IRPA is reproduced below:

Ineligibility	**Irrecevabilité**
101 (1) A claim is ineligible to be referred to the Refugee Protection Division if	**101 (1)** La demande est irrecevable dans les cas suivants :

(a) refugee protection has been conferred on the claimant under this Act;	a) l'asile a été conféré au demandeur au titre de la présente loi;
(b) a claim for refugee protection by the claimant has been rejected by the Board;	b) rejet antérieur de la demande d'asile par la Commission;
(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;	c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;
(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;	d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;
(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or	e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).	f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)c) —, grande criminalité ou criminalité organisée.
[Emphasis added]	[Soulignement ajouté]

IV. The Decision under Review

[11] The request for reconsideration of the Officer's decision was made in late September 2017. In seeking reconsideration, the applicants provided the Officer with the decision of the Hungarian government granting them subsidiary protection and refusing their request for recognition as a refugee. In addition, they provided a copy of their Hungarian travel documents stating that they were persons enjoying "subsidiary protection" as well as an extract from the website of the Hungarian Immigration and Asylum Office. This website describes "refugee" status and "subsidiary protection" as follows:

> REFUGEE: Refugee status may be granted to a person whose life and liberty are threatened in his/her country of origin on account of race, religion, nationality, membership of a particular social group or political opinion, or whose fear of being subject to persecution is well founded.
>
> PERSONS ADMITTED FOR SUBSIDIARY PROTECTION: A person may be admitted for subsidiary protection if he/she does not qualify as a refugee but in respect of whom there is a reason to believe that the person concerned, if returned to his/her country of origin would face a real risk of suffering serious harm, and is unable, or owing to such risk, unwilling to avail himself or herself of the protection of that country.

[12] After initially declining to render a second decision, the Officer issued a decision on the reconsideration request dated March 6, 2018. The Officer advised the applicants that their new evidence had been considered and that they were ineligible to have their claims heard by the RPD pursuant to subsection 104(1) and paragraph 101(1)(d) of the IRPA.

[13] On reconsideration, the Officer concluded the applicants were ineligible as they were "persons who have been granted protection." This is in contrast to the Officer's initial decision finding them ineligible on the basis that they had Convention refugee status in Hungary.

V. Issue

[14] The application raises the following issue:

A. Did the Officer err in determining that the applicants' subsidiary protection in Hungary rendered them ineligible under paragraph 101(1)(d) of the IRPA?

VI. Standard of Review

[15] The applicants note that the Officer's reconsideration decision is brief. They submit the decision alone does not indicate whether the Officer erroneously interpreted paragraph 101(1)(d) to encompass types of protection beyond Convention refugee status or whether the Officer simply erred in fact by finding the applicants had been granted Convention refugee status in Hungary.

[16] The applicants submit that the Officer addressed the initial error of fact, the finding that the applicants had been recognized as "Convention refugees," finding on reconsideration that they were "persons who have been granted protection". They argue that the issue raised is therefore one of interpretation of paragraph 101(1)(d) that is to be reviewed on a correctness standard.

[17] In advocating that no deference be given to the Officer's interpretation of the IRPA, the applicants rely on *Wangden v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1230, aff'd 2009 FCA 344 [*Wangden*], where Justice Richard Mosley found that the interpretation of paragraph 101(1)(d) of the IRPA ought to be reviewed on a standard of correctness (*Wangden* at para 18). The applicants also rely on *Canada (Minister of Citizenship and Immigration) v Tobar Toledo*, 2013 FCA 226 [*Tobar Toledo*]. In considering paragraph 101(1)(b) of the IRPA – ineligibility on the basis that a claim for refugee protection had been previously rejected by the IRB – the Federal Court of Appeal held that "findings of law reached by the border services officer in the context of paragraph 101(1)(b) are reviewable on the standard of correctness" (*Tobar Toledo* at para 48).

[18] The respondent submits that the Officer was interpreting the IRPA as a "home statute" of the CBSA. Therefore, the presumptive standard is reasonableness, and that presumption has not been rebutted in this case (*Alberta (Information and Privacy Commissioner) v Alberta Teachers Association*, 2011 SCC 61 at paras 34, 39 [*Alberta Teachers*]; *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 30 [*Huruglica*]). The respondent notes that *Wangden* predates *Alberta Teachers* and cites the Federal Court of Appeal's decision in *Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274 [*Majebi*], where the Court states that authorities pre-dating *Alberta Teachers* "must be approached with caution" (*Majebi* at para 5).

[19] The respondent also submits that *Tobar Toledo* is distinguishable, noting the Court made no reference to *Alberta Teachers* and did not address the presumptive standard of reasonableness. In addition, it is submitted that the question raised in *Tobar Toledo* related to the

interpretation of paragraph 101(1)(b) of the IRPA and did not engage the decision maker's specialized expertise. In this case, the respondent argues that the interpretation of paragraph 101(1)(d) involves consideration of the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) [*Refugee Convention*] and that the Federal Court of Appeal has held that the interpretation of the *Refugee Convention* does not fall within the category of questions reviewable against a standard of correctness (*Majebi* at para 5).

[20] The strong presumption favouring a reasonableness standard of review where a decision maker has engaged in the interpretation of a "home statute" is not carved in stone, as the Supreme Court of Canada explained in *McLean v British Columbia (Securities Commission),* 2013 SCC 67 [*McLean*] at paragraph 22:

> The presumption endorsed in *Alberta Teachers*, however, is not carved in stone. First, this Court has long recognized that certain categories of questions — even when they involve the interpretation of a home statute — warrant review on a correctness standard (*Dunsmuir*, at paras. 58-61). Second, we have also said that a contextual analysis may "rebut the presumption of reasonableness review for questions involving the interpretation of the home statute" (*Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, [2012] 2 S.C.R. 283, at para. 16). [Emphasis added]

[21] *McLean* recognizes that the presumption of a reasonableness standard of review may be rebutted where a contextual analysis demonstrates that deference is not owed to a decision maker's interpretation of a home statute. This appears to have been the case in *Tobar Toledo,* where the Court noted that the administrative decision maker who had engaged in the interpretation of paragraph 101(1)(b) of the IRPA had been a border services officer who "does not decide these issues on behalf of a tribunal. At the most, he decides questions of law as a

delegate of the Minister of Public Safety and Emergency Preparedness" (*Tobar Toledo* at para 42). The Court then stated the following at paragraph 43:

> [T]he case law pertaining to the deference owed to an administrative tribunal that decides questions of law in the course of an adversarial proceeding does not apply to an administrative decision-maker "who is not acting as an adjudicator and who thus has no implicit power to decide questions of law." [Emphasis in original]

[22] As was the case in *Tobar Toledo*, the decision maker in this matter was not determining the issue on behalf of a tribunal. However, the Federal Court of Appeal has more recently restated the strong presumption in favour of reasonableness where the interpretation of a home statute is under review (*Huruglica* at para 30). I agree with Justice Richard Southcott's conclusion in *Farah v Canada (Citizenship and Immigration)*, 2017 FC 292 [*Farah*], to the effect that the recent jurisprudence favours the application of a reasonableness standard of review in these circumstances (*Farah* at para 12). However, I need not decide the question, as on the facts before me, I am of the view that the Officer's interpretation of paragraph 101(1)(d) was both unreasonable and incorrect.

VII. Analysis

[23] In advancing their respective positions both parties rely on Justice Richard Mosley's decision in *Wangden*. An overview of *Wangden* will therefore be of some assistance.

A. *Wangden Overview*

[24] In *Wangden*, the applicant was found to be ineligible under paragraph 101(1)(d) as he held "withholding of removal" status in the United States, which the decision maker concluded was equivalent to Convention refugee status. Judicial review was sought. Expert evidence was placed before Justice Mosley as to the legal effect of "withholding of removal status" under US law.

[25] Relying on the expert evidence, Justice Mosley found that the status of "asylum" in the United States is available to claimants with a well-founded fear of persecution based on a Convention ground and was equivalent to section 96 of the IRPA (*Wangden* at para 61). In contrast, he noted "withholding of removal" status protected claimants from removal or deportation to a country where they are at risk, but it did not prevent exclusion or deportation to another hospitable, safe country willing to accept them (*Wangden* at para 63). Justice Mosley further found that "withholding of removal" status was available to refugees who were able to demonstrate that it was more likely than not they would be threatened if they were to return to their home country (*Wangden* at 63). On this basis, he concluded that individuals with "withholding of removal" status were necessarily Convention refugees because they had established a well-founded fear of persecution in their country of nationality based on a Convention ground (*Wangden* at para 65).

[26] Justice Mosley noted that the interpretation of the term "Convention refugee" as it is used in Article 1 of the *Refugee Convention* and in paragraph 101(1)(d) was at the heart of the issue

before the Court. He acknowledged that a plain reading of paragraph 101(1)(d) showed it restricted the eligibility of "all claimants who have been granted Convention refugee protection or status in another country and can be returned there" but recognized that the meaning of the statute could not be determined based on the words of the legislation alone; he was required to consider the words of the statute in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Wangden* at paras 68–69). In doing so, he considered the relationship between the United States and Canada in the refugee law context and reciprocal agreements in place between the two countries. He found that the applicant could be safely returned to the United States where he would not face persecution, a factor that was consistent with the primary purpose of the IRPA (*Wangden* at paras 69–71). He further found that in applying paragraph 101(1)(d), the issue was whether an applicant was protected from risk and that to require a CBSA officer to conduct "a more expansive review of claimants' status in another country" would be incompatible with the expeditious and relatively straightforward screening process envisaged under subsection 101(1) (*Wangden* at paras 72, 76).

[27] Justice Mosley concluded that the factual conclusions reached were reasonable and that the decision was correct in law in light of his earlier conclusion that those granted "withholding of removal status in the United States are Convention refugees within the meaning of paragraph 101(1)(d) of the IRPA" (*Wangden* at para 77).

B. *Positions of the Parties*

(1) Applicants

[28] The applicants submit that the fact that they are not recognized as Convention refugees in Hungary is not in dispute. They argue that the substitution of the initial finding that the applicants were Convention refugees in Hungary with the more general finding that they have been "granted protection in Hungary" results in a decision in which the initial finding was wrong in fact but correct in law while the subsequent decision is correct in fact but wrong in law.

[29] They argue that a plain reading of paragraph 101(1)(d) does not extend its application to "persons who have been granted protection." Paragraph 101(1)(d) applies only to Convention refugees, and as the definition of that term is well established in law, Parliament clearly did not intend for paragraph 101(1)(d) to apply beyond its clear definition. Had Parliament intended otherwise, it would have said so explicitly, as it has in other provisions of the IRPA.

[30] The applicants distinguish *Wangden* on the basis that Mr. Wangden was never expressly denied Convention refugee status, he had not provided the decision maker with supporting documents to clarify his status, and the decision maker had received information from US Customs to the effect that Mr. Wangden had "asylum" status in the US. The applicants also submit that, contrary to the expert evidence in *Wangden* attesting to the equivalency of the two statuses in issue in that case, the evidence in this case clearly showed that subsidiary protection status is meant for individuals who do not meet the requirements of Convention refugee status and that the applicants did not have Convention refugee status. Finally, they argue that the

evidence in *Wangden* demonstrated that the "standard of proof for granting withholding of removal is more demanding than the standard for asylum" (*Wangden* at para 64), whereas in this case, it appears the legal standard for the granting of subsidiary protection is lower.

[31] The applicants argue that they have not been recognized as Convention refugees and that the evidence shows subsidiary protection is distinct from, not equivalent to, Convention refugee status. They argue the decision is inconsistent with a plain reading of paragraph 101(1)(d), its interpretation in accordance with the principles of statutory interpretation, and the *Wangden* decision.

[32] While the applicants agree that it would be inappropriate for front-line officers to conduct an expansive review of a claimant's status in another country, they submit that such an expansive review was not required here. The evidence was clear and easy to apply.

(2) Respondent

[33] The respondent relies on *Wangden* to argue that the interpretation of paragraph 101(1)(d) must be considered within the context of the IRPA as a whole, including its objectives, one of which is to save lives and offer protection to the displaced and persecuted. It is submitted an officer's finding that an applicant's claim is ineligible for referral to the RPD is correct where the applicant possesses status in another country that is equivalent to Convention refugee status, even if it is not labelled as such.

[34] The respondent submits that the evidence shows asylum in Hungary (1) includes both refugee status and subsidiary protection; and (2) allows the foreign national to reside in Hungary and prevents refoulement, expulsion, and extradition. Both statuses grant an applicant the right to live in Hungary. The evidence also indicates that the applicants hold subsidiary protection status in Hungary. The respondent argues the applicants are presuming, without an evidentiary basis, that there is a material difference in the statuses that affects their eligibility simply because they were denied one but granted the other. As was the case in *Wangden,* the minor differences in entitlement do not change the fact that the applicants are protected from refoulement in Hungary.

[35] The respondent submits that *Wangden* cannot be distinguished on the basis of standard of proof, submitting that this issue does not alter the extent of protection the applicants received in Hungary. The respondent states that even if this issue were material, no evidence has been placed before the Court relating to the standard of proof applicable to subsidiary protection compared to Convention refugee status.

[36] The respondent submits the applicants' reliance on other sections of the IRPA referring to persons "in similar circumstances" does not support a narrower interpretation of paragraph 101(1)(d). The term "person in similar circumstances" is defined and has no application to paragraph 101(1)(d). The Court should not interpret paragraph 101(1)(d) more narrowly than has been established in binding jurisprudence.

C. *Did the Officer err in determining that the applicants' subsidiary protection in Hungary rendered them ineligible under paragraph 101(1)(d) of the IRPA?*

[37] As noted above, the parties do not dispute that the Hungarian immigration and asylum process differentiates between "refugee" status and "persons admitted for subsidiary protection." It is also undisputed that Hungarian authorities refused the applicants' request to be recognized as Convention refugees but did grant them subsidiary protection. That status granted the applicants the right to reside in Hungary and not to be refouled to Iran. The respondent takes the position that subsidiary protection is equivalent to being recognized as a Convention refugee and that the Court should not intervene. I disagree.

[38] The respondent argues that labels adopted and used in foreign domestic law to describe protection cannot be determinative of an assessment under paragraph 101(1)(d). I do not disagree. What is determinative for the purposes of paragraph 101(1)(d) is whether the protections extended by a country other than Canada arise as a result of the state having recognized the individual as a Convention refugee. Such recognition, regardless of the terminology used, triggers a state's international legal obligations as a party to the *Refugee Convention*. In my view, it is this circumstance—whether a country's international obligations have been triggered—that paragraph 101(1)(d) is intended to capture.

[39] As in *Wangden*, the issue in this case turns on the interpretation of the term "Convention refugee" as it is used in paragraph 101(1)(d). Those words must be considered in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21).

[40] The main objectives of the IRPA with respect to refugees are set out at subsection 3(2). The objectives include (1) recognizing that the refugee program is about saving lives and offering protection to the displaced and persecuted; and (2) fulfilling Canada's international legal obligations with respect to refugees and affirming Canada's commitment to international efforts to provide assistance to those in need of resettlement (IRPA, ss 3(2)(a), (b)).

[41] These principles are neither consistent with, nor advanced through, an interpretation of paragraph 101(1)(d) that results in excluding from consideration claims by persons who have been refused Convention refugee status in another country but have been granted some other form of protection. To render a claim ineligible on the basis that some other form of protection has been granted—protection that a granting state is under no international legal obligation to grant or maintain—even where those protections might be similar to those a state is obligated to provide where a person is recognized as a Convention refugee, is inconsistent with the stated objectives of the IRPA.

[42] The interpretation the respondent urges the Court to adopt is also inconsistent with the plain meaning of the language used in paragraph 101(1)(d). Had Parliament intended the provision to be interpreted in the broad manner the respondent advances, it could have indicated this intention through the adoption of clear and unambiguous language. It has not.

[43] It is worth noting that Parliament has adopted language that captures a broader class of individuals than "Convention refugees" in other parts of the IRPA. For example, subsection 95(1) states that refugee protection shall be conferred on a person "determined to be a

Convention refugee or a person in similar circumstances." The respondent argues that the phrase "person in similar circumstances" is defined in section 146 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and could have no application in paragraph 101(1)(d). The respondent's argument misses the point. It is evident that Parliament has seen fit to broaden the term "Convention refugee" by the use of express, clear, and unambiguous language in other sections of the IRPA. It has not done so in paragraph 101(1)(d), a provision that in my view directly impacts upon the objective of fulfilling Canada's international legal obligations.

[44] I would also note that the screening of claims pursuant to section 101 of the IRPA is intended to be an expeditious and relatively straightforward administrative process performed by front-line immigration officers (*Wangden* at para 76). To expect a screening officer to engage in a detailed consideration of an individual's status in a country other than Canada would be inconsistent with this straightforward administrative role. It would also open the door to front-line officers engaging in the very analysis that the IRPA mandates the RPD, with its specialized expertise, to perform.

[45] Having considered the term "Convention refugee" in its grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament, I am unable to conclude that the term can be interpreted as including persons who have been refused Convention refugee status but granted some other form of protection by a country other than Canada.

[46] The respondent argues this conclusion is contrary to binding jurisprudence interpreting paragraph 101(1)(d). Again, I disagree.

[47] In *Wangden*, Justice Mosley found that the US system provided two mechanisms for an otherwise "deportable alien" with a fear of persecution to seek relief (*Wangden* at para 60). He concluded that individuals granted withholding of removal status are "necessarily Convention refugees since they have established that they have a well-founded fear of persecution in their country of nationality on one of the Convention grounds" (*Wangden* at para 65). In other words, Justice Mosley concluded that Mr. Wangden's status as a Convention refugee had been recognized in the US. *Wangden* is a case where the Court concluded that, despite the domestic law label, the protections extended by the US arose as a result of the state having recognized Mr. Wangden as a Convention refugee. No such conclusion can be drawn here.

[48] The applicants sought refugee protection in Hungary and were told that Hungary "refuses the request for recognition as [*sic*] refugee." Based on the definition of "refugee" reproduced at paragraph 11 of these Reasons, it is clear that "refugee" status in Hungary corresponds to Convention refugee status. As a result, unlike the situation in *Wangden*, it is beyond doubt that the applicants have *not* been recognized as Convention refugees by another country. The protections extended to the applicants by way of a grant of subsidiary protection do not arise as a result of the applicants being recognized as Convention refugees.

[49] I therefore find that the Officer's conclusion that the applicants are Convention refugees, as that term is used in paragraph 101(1)(d), was both unreasonable and incorrect.

VIII. Certified Question

[50] The respondent proposes the following question for certification:

> Is a claim for refugee protection ineligible pursuant to paragraph 101(1)(d) of the *Immigration and Refugee Protection Act* if the person making the claim has not been "recognized as a Convention refugee" in another country, but has status in another country that protects against refoulement and grants a right of return?

[51] The respondent submits that an answer to this question will be dispositive of an appeal of the decision in this case, will decide the proper scope of paragraph 101(1)(d), and will provide guidance to decision makers assessing the eligibility of individual claims.

[52] The applicants oppose certification of this question, arguing it is framed too broadly, would not be dispositive of the application, and does not arise on the facts of this application. In the event a question were to be certified, the applicants propose it be framed as follows:

> Can a claim for refugee protection be determined ineligible pursuant to paragraph 101(1)(d) of the *Immigration and Refugee Protection Act* if the person making the claim has been expressly refused "recognition as a Convention refugee" in another country?

[53] To be certified, a question "must be dispositive of the appeal, must transcend the interests of the parties and must raise an issue of broad significance or general importance. In consequence, the question must have been dealt with by the Federal Court and must necessarily arise from the case itself (as opposed to arising out of the way in which the Federal Court may have disposed of the case)" (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36 [*Lewis*]).

[54] The respondent's question does not satisfy these criteria. The issue before the Court involved the unique question of whether a claimant who had been refused Convention refugee protection in another country but granted another form of protection is ineligible pursuant to paragraph 101(1)(d) of the IRPA. The question was answered in light of those unique facts by applying established jurisprudence, affirmed by the Federal Court of Appeal, interpreting paragraph 101(1)(d).

[55] The applicants' reformulation of the question more accurately portrays the facts before the Court but ultimately suffers from the same defect as the respondent's formulation.

[56] In the circumstances, I am unable to conclude that the proposed question engages an issue of broad significance or general importance. I decline to certify the proposed question.

IX. Conclusion

[57] The application is granted. No question is certified.

JUDGMENT IN IMM-1343-18

THIS COURT'S JUDGMENT is that:

1. The application is granted;

2. The matter is returned for redetermination by a different decision maker; and

3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1343-18
STYLE OF CAUSE:	JILA AGHAZADEH ARYA KHADEMI (BY HIS LITIGATION GUARDIAN JILA AGHAZADEH) v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 30, 2018
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JANUARY 23, 2019

APPEARANCES:

Benjamin Liston	FOR THE APPLICANTS
Sharon Stewart Guthrie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Benjamin Liston Barrister and Solicitor Refugee Law Office Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT