Federal Court  Cour fédérale

Date: 20190208

Docket: IMM-839-18

Citation: 2019 FC 165

Ottawa, Ontario, February 8, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

A.B.

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION
MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a Senior Immigration Officer's (the Officer) negative Pre-Removal Risk Assessment (PRRA) decision, dated February 6, 2018.

I. Background

[2] The Applicant says he came to Canada and claimed refugee protection in order to flee Mexican cartels which are trying to track him down and kill him because he provided

information to the United States Drug Enforcement Agency (DEA). He says the cartels pursued him over an extended period in Mexico, and he would be at risk if he is returned to that country.

[3] The Applicant did not have a hearing on the merits of his refugee claim. He was found to be inadmissible to Canada, and ineligible to submit a refugee claim, because he had been convicted in the United States of assault and assault with a weapon. These offences fall within the definition of "serious criminality," which is a basis for exclusion from a refugee claim under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. A deportation order was issued on November 23, 2017.

[4] On December 13, 2017, the Applicant applied for a PRRA, and made extensive submissions in support of his claim for protection. The Officer rejected the PRRA application on February 6, 2018. The Applicant now seeks judicial review of this decision under section 72(1) of *IRPA*.

[5] Two preliminary matters should be noted. First, a stay of the removal of the Applicant was granted by this Court on July 11, 2018. Second, on August 16, 2018, the Court granted the Applicant's motion to replace his name with the initials "A.B." in the style of cause and any other publicly available information or reporting of his case. This order was not challenged before me, and I see no reason to disturb it, in light of the particular circumstances of this case and the jurisprudence (see *AB v Canada (Citizenship and Immigration)*, 2017 FC 629 at para 9 [*A.B. (2017)*]).

II. Issues

[6] This case raises two issues:

A. Did the Officer err in failing to hold an oral hearing before making negative credibility findings about the core issues of the Applicant's claim?

B. Did the Officer err in finding that Mexico could provide adequate state protection to the Applicant?

[7] The parties do not agree on the appropriate standard of review on both issues. I will deal with the appropriate standard of review in the analysis of each issue.

III. Analysis

A. *Did the Officer err in making negative credibility findings without holding an oral hearing?*

(1) Standard of Review

[8] The Applicant argues that the question of whether to hold an oral hearing is a matter of procedural fairness, which should be assessed against a correctness standard, citing *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at para 13 [*Zmari*]. The Respondents point to the statutory and regulatory provisions which govern whether an oral hearing is required (described in more detail below), and argue that the standard of review is reasonableness, citing *Bicuku v Canada (Citizenship and Immigration)*, 2014 FC 339 at para 19.

[9] The starting point is that most PRRA applications are dealt with in writing. Paragraph 113(b) of *IRPA* provides that "a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required." The prescribed factors are listed in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]:

Hearing – prescribed factors	**Facteurs pour la tenue d'une audience**
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[10] There is a division in the jurisprudence of this Court regarding the standard of review that is applicable to whether or not an oral hearing is required. Some decisions have found that correctness is the applicable standard of review, on the basis that this is a matter which goes to procedural fairness. Other decisions have found that the appropriate standard is reasonableness, since the question involves an application of the statutory framework to the particular facts of the case, *i.e.*, a question of mixed fact and law. I will not review the lines of authority since this has

been done in a comprehensive fashion in several recent decisions: see, for example, *Zmari* at paras 10-13; *A.B. (2017)* at paras 13-17; *Haji v Canada (Citizenship and Immigration)*, 2018 FC 474 at paras 9-10; *Boakye v Canada (Citizenship and Immigration)*, 2018 FC 831 at para 16; *Perampalam v Canada (Citizenship and Immigration)*, 2018 FC 909 at paras 14-16.

[11] I find that the more recent case law on this point has tended to find that the reasonableness standard should be applied, in light of the statutory framework governing the exercise of an officer's discretion. It is worth recalling that the leading authority on procedural fairness, *Baker v Canada (Citizenship and Immigration*), [1999] 2 SCR 817 at paras 23-27, lists the legislative framework as one of the five factors to be considered in assessing procedural fairness. More recently, the Supreme Court of Canada has affirmed once again that there is a presumption that the reasonableness standard applies to a decision-maker interpreting their governing (or "home") statute: see *Canada (Canadian Human Rights Commission) v Canada (Attorney Genera*l), 2018 SCC 31.

[12] The framework and criteria for an officer's decision of whether to hold an oral hearing are fixed by *IRPA* and the *IRPR*, and in regard to other questions of an officer's interpretation of the statute or regulations, the Court would generally apply the reasonableness standard. I would note that the standard of correctness may more easily apply if the question is whether an officer's decisions about how the oral hearing will proceed give rise to questions of procedural fairness.

[13] On the facts of the case before me, however, I do not find the application of the usual standard of review analysis to be particularly helpful (see *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 52-55 [*Huang*]). Rather, I find it more appropriate to apply

the recent guidance of the Federal Court of Appeal in *Canadian Pacific Railway Company v Canada (Attorney Genera*l), 2018 FCA 69:

> [54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed.…

[14] In considering this question, the following factors are particularly relevant. The Applicant made a specific and detailed request for an oral hearing, with reference to the factors enumerated in section 167 of the *IRPR*. The Officer, however, made no mention of this nor is there any indication of whether or how these factors were assessed by the Officer. In that sense, there is simply no "decision" to review, beyond the fact that the Officer did not hold a hearing. Furthermore, it is relevant that the Applicant has not had a prior oral hearing – this is not a case where the Refugee Protection Division (RPD) has already assessed the claim – and so the Applicant has not had an opportunity to demonstrate his credibility, or to answer any concerns about it (*A.B. (2017)* at para 19). Finally, as I will explain below, in my view the Officer's concerns about the Applicant's credibility form a significant part of the decision, and these concerns meet the criteria listed in section 167. In light of these considerations, the question before me is "whether a fair and just process was followed." I find that it was not.

(2) Did the Officer make veiled credibility findings?

[15] The Applicant submits that the Officer made unwarranted negative credibility findings on crucial questions relating to his fear of prospective risk of return to Mexico. Specifically, the

Officer did not believe that the Applicant had been targeted for death by Mexican cartels. Making credibility findings on the core element of an applicant's claim without an oral hearing contravenes section 167of the *IRPR* and constitutes a denial of procedural fairness.

[16] In this case, the Applicant's PRRA application included his detailed sworn statement, which recounted why he believed the cartels were pursuing him, and details regarding a series of encounters with members of the cartels, as well as how he managed to escape each time. Several elements of this statement raised concerns for the Officer. A brief summary of the core elements of the Applicant's history will help to put this into context.

[17] The Applicant states that while he was living without status in the United States, he was arrested because the vehicle he was driving was found to contain drugs, guns and a large amount of money. He pled guilty to these charges. He was then arrested by U.S. immigration officials, and while in detention he was interviewed by an agent of the DEA. During this interview, which was videotaped by the agent, the Applicant states that he provided information about his employer in the U.S., and his suspicions regarding connections to organized criminals in Mexico. The Applicant was deported to Mexico in August 2015.

[18] Approximately six months later, a series of encounters with the Mexican cartels began. The Applicant received a telephone call from his partner (who is also the mother of his daughter) indicating that she was being held hostage by cartel members. He recorded this and other telephone calls, and transferred the recordings to the hard drive of his computer. He was also pursued by men outside of his residence, but he managed to evade them. He later returned to

uninstall the hard drive, which he gave to his grandmother for safekeeping. On a subsequent occasion, the Applicant retrieved the hard drives.

[19] Over the following period, from January 2016 until October 2017, the Applicant moved to several different cities and lived with friends, and then with his father, and later with a friend of his father's. In each place he says he was watched by men, whom he believed to be members of the cartels. He tape recorded other threatening conversations. On one occasion, when he feared that members of the cartels were about to seize him, the Applicant called the police. Although this will be described in more detail below, it is sufficient to note here that the police did come, and again the Applicant managed to evade the cartel.

[20] It is also important to note that the Applicant said he was being sought by the cartels because information he had provided to the DEA had been leaked, and that a friend who worked for the police warned him not to trust police in relation to cartel matters because of the extent of police corruption.

[21] Following a physical attack by two men which left him cut and injured, the Applicant went into hiding and then fled to Canada in October 2017.

[22] With this background, I now turn to the analysis of the question of whether the Officer made a veiled credibility finding.

[23] Section 167 of the *IRPR* requires an oral hearing to be held if all three criteria are met. If no issue of credibility arises in an officer's decision, then no oral hearing is required. The failure

to hold an oral hearing can amount to a denial of procedural fairness in a situation where the decision rests on a credibility finding which an applicant has never had an opportunity to answer (*Tekie v Canada (Citizenship and Immigration)*, 2005 FC 27).

[24] If there is no explicit finding as to the credibility of an applicant, the Court must look beyond the words of the decision to determine whether the issue was central to the decision, either expressly or implicitly: see, for example, *Majali v Canada (Citizenship and Immigration)*, 2017 FC 275 [*Majali*]. If the decision rests on an implicit, or "veiled," credibility finding that meets the test of section 167 of the *IRPR*, the failure to hold an oral hearing is a basis to overturn the decision.

[25] On the other hand, if an officer did not make a veiled credibility finding, but rather simply decided that an applicant had not met his or her burden of persuasion because there was insufficient evidence to support the claim, the failure to hold an oral hearing does not contravene section 167 of the *IRPR* and therefore does not amount to a breach of procedural fairness (*Nhengu v Canada (Citizenship and Immigratio*n), 2018 FC 913 [*Nhengu*]).

[26] It can be difficult to distinguish between a finding of insufficiency of evidence and a veiled credibility finding: *Gao v Canada (Citizenship and Immigration)*, 2014 FC 59, cited in *Majali* at para 32. This requires a careful consideration of the decision of an officer, in light of the record.

[27] In undertaking this analysis, it is helpful to recall the useful guidance provided by Justice Russel Zinn in *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*]. In

that case Justice Zinn found that the applicant bears the burden of proof in a PRRA, and that an officer could either assess the credibility of the evidence submitted and then determine the weight to be attributed to it, or simply move to examine the probative value or weight of the evidence, without making a determination as to credibility. Where the evidence tendered by the applicant is to be given little or no weight, it may not be necessary to assess its credibility.

[28] In *Ferguson*, the key question related to whether the applicant had met her burden of proof of establishing her sexual orientation, since this was the basis of her claim. The only evidence of this was contained in a statement of her former counsel. The officer found that she had not met her burden, and so did not accept the PRRA. Justice Zinn refused to overturn the decision, finding "[t]he officer neither believes nor disbelieves that the Applicant is lesbian – he is unconvinced. He states that there is insufficient objective evidence to establish that she is lesbian" (para 34). It is worth noting, however, the following passage from the decision:

> [32] When, as here, the fact asserted is critical to the PRRA application, it was open to the officer to require more evidence to satisfy the legal burden. Had the statement been affirmed by the Applicant in a sworn affidavit submitted with her application, it would have been deserving of somewhat greater weight than it was given. Had it been supported by other corroborative evidence such as evidence from her lesbian partner(s), public statements, and the like, it would have attracted even more weight.

[29] In this case, the Applicant argues that much of the review of the evidence by the Officer amounts to either questioning the veracity of the Applicant's story, or considering whether his actions reflect what the Officer considers to be reasonable behaviour by a person in such circumstances. The Applicant points to two key findings of the Officer as examples of this reasoning.

[30] First, the Officer had concerns that on two occasions the Applicant did not tell the police that he was being pursued by the cartels. The Applicant said in his affidavit that he called the police when he feared that cartel members were about to enter a house in which he was hiding. He pretended to be a neighbour, and called the police to complain about noise; he did not report that he was fleeing the cartel. Later, the Applicant was assaulted by two men, whom he says were members of the cartels.

[31] While the Officer accepts that this attack occurred, he notes that the Applicant did not mention to the police that it was related to the cartels, nor did he provide the recordings of the telephone conversations, which would have provided proof that he was being pursued. The Officer states that he "finds it reasonable" that the Applicant would have provided this information to the police if he was truly being stalked, threatened and harassed by the cartels for over one year.

[32] Second, the Officer had concerns about the Applicant's failure to produce the hard drives with the evidence of the taped telephone conversations. The Applicant states that he learned why he was being sought by the cartels by listening to the messages with the aid of audio software. He stated that he took steps to safeguard the hard drives, and brought them with him to several different locations as he sought to escape from the cartels. The Officer notes: "It is clear that the hard drives are valuable to [the Applicant] as he kept them close to him despite fleeing from city to city. Based on his history, it is reasonable to believe that he would have brought the hard drives with him to Canada; however, I note that he did not provide them as evidence to support his PRRA application."

[33] The Applicant points to these, and other findings, in support of his claim that the Officer's decision was based on serious questions of his credibility, about evidence which is central to his claim for protection, and which would have justified accepting the PRRA if the evidence was believed. This falls squarely within the factors set out in section 167 of the *IRPR*, and therefore an oral hearing should have been held.

[34] The Respondent argues that the officer did not make credibility findings, but rather simply found that the Applicant had not submitted sufficient evidence to meet his burden of persuasion (*Manickavasagar v Canada (Citizenship and Immigration)*, 2012 FC 429).

[35] The Respondents contend that although the Officer does mention the lack of corroborating evidence, this was not the basis for the negative decision. Rather, the Officer considered the inconsistencies and overall implausibility of the Applicant's version of events, together with the adequacy of state protection, as the key elements in support of the negative conclusion. The Respondents argue this is a reasonable result, on the facts and the law.

[36] A review of the decision shows that the Officer made a number of key findings, without specifically mentioning the credibility issue. The question arises, therefore, whether the Officer made veiled credibility findings. In assessing this, there are no magic words, but it is worthwhile to recall some basic legal concepts. The question of credibility essentially involves whether the evidence is believable; it is a different concept than weight or probative value. In the words of Justice Denis Gascon in *Huang*, at para 42:

> [42] The term "credibility" is often erroneously used in a broader sense of insufficiency or lack of persuasive value. However, these are two different concepts. A credibility assessment goes to the

> reliability of the evidence. When there is a finding that the evidence is not credible, it is a determination that the source of the evidence (for example, an applicant's testimony) is not reliable. Reliability of the evidence is one thing, but the evidence must also have sufficient probative value to meet the applicable standard of proof. A sufficiency assessment goes to the nature and quality of the evidence needed to be brought forward by an applicant in order to obtain relief, to its probative value, and to the weight to be given to the evidence by the trier of fact, be it a court or an administrative decision-maker[.]…

(See also the recent decision of Justice Sébastien Grammond in *Magonza v Canada (Citizenship and Immigration*), 2019 FC 14.)

[37] The Officer expressed concerns about several elements of the Applicant's story. The Applicant stated that he had recorded telephone conversations which confirmed that members of the cartels were searching for him, and he took steps to transfer these recordings to computer hard drives and then to retrieve the hard drives on several occasions. The information on the hard drives was not provided to the Officer, and the Applicant did not explain why it was unavailable. Further, the Applicant stayed with several family members and friends during this period, but no information from them was provided to corroborate his story. Moreover, he made contact with the police on two occasions, but did not mention that he was in danger from the cartels either time. While the Officer accepts that the Applicant was attacked, he finds the behaviour of the attackers to be inconsistent with a "targeted attempt of murder."

[38] After reviewing the evidence, the crux of the Officer's findings are contained in the following passage:

> While I accept that the applicant was robbed and attacked by two men on 09 July 2017, I find that he has provided little evidence to demonstrate that cartel members targeted, harassed, and threatened him from May 2016 to July 2017 in Mexico. Regardless of

> whether sufficient corroborate [*sic*] evidence was provided to substantiate his allegations, I find that the applicant has failed to rebut the presumption of state protection.

[39] The question is whether, reading the decision in its entirety and considering the record, the Officer made a veiled credibility finding. The Respondents argue that the Officer simply found that there was not sufficient evidence to support the Applicant's claim. The Applicant submits that the detailed sworn statement should be believed, unless there are valid reasons to doubt its veracity (*Maldonado v Canada (Employment and Immigration)* (1979), [1980] 2 FC 302, 31 NR 34 at para 5 (FCA)). Furthermore, a negative inference "may only be drawn where the applicant has been unable to provide a reasonable explanation for his or her lack of corroborating material" (*Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026 at para 22).

[40] This case is not simple because there are valid arguments on both sides of the matter. On the one hand, it is understandable that the Officer would expect the Applicant to provide the hard drives with the recordings of the telephone conversations, or to explain why they are not available. This is obviously highly relevant and probative evidence, and the fact that the Applicant went to some lengths to safeguard the hard drives and to bring them with him to various places, shows that he valued them. The onus is on the Applicant to put his best case forward (*Nhengu* at para 6). The Officer therefore did not err in noting that they had not been provided nor had any explanation been offered to explain their absence. In the same vein, the Applicant states that he stayed with friends and relatives during this period, but no information was provided from them, or any explanation of why such evidence could not be obtained. The Officer similarly did not err in noting this as part of the analysis.

[41] On the other hand, the Officer does not express any specific reason for doubting the detailed sworn statement of the Applicant. There is no explicit credibility finding – the question is not dealt with in the Officer's decision. The Officer does not explain why the specific request for an oral hearing is rejected, despite the findings regarding the lack of corroborative evidence and the concerns regarding the Applicant's credibility (see *Gombos v Canada (Citizenship and Immigration)*, 2017 FC 850 at paras 42-43; *Csoka v Canada (Citizenship and Immigration*), 2016 FC 653 at para 14). It is also a relevant consideration that the Applicant did not have a hearing before the RPD, and so has never had an opportunity to meet any credibility concerns (*A.B. (2017)* at paras 15-19).

[42] In addition, the Officer measures the Applicant's conduct against a standard of what the Officer finds would have been reasonable behaviour in the circumstances. From a reading of the decision, in applying this standard, the Officer is indicating – if only implicitly – that he had serious doubts about the veracity of the Applicant's narrative.

[43] For all of these reasons, I find that the Officer did make a veiled credibility finding, in relation to evidence from the Applicant which falls within the criteria listed in section 167 of the *IRPR*. I find that the failure to hold an oral hearing was not a fair and just process in the circumstances of this case. It was therefore an error not to hold an oral hearing.

B. *Did the Officer err in finding that Mexico could provide adequate state protection?*

(1) Standard of Review

[44] The Applicant contends that the Officer's state protection analysis is unreasonable because the Officer misunderstood and misstated the law on state protection, and because the Officer gave undue weight to some evidence while ignoring the majority of the most relevant evidence.

[45] The Applicant submits that the standard of review in regard to the statement of the proper test is correctness, and the standard of reasonableness applies to the application of that test to the facts. The Respondents argue that the state protection analysis is subject to review on a standard of reasonableness. I agree with the Applicant's description of the proper approach to the standard of review, in light of the consistent jurisprudence of this Court (see *Szalai v Canada (Citizenship and Immigration)*, 2018 FC 972 at para 27).

(2) Did the Officer err in finding that Mexico could provide adequate state protection?

[46] The law requires an assessment of whether a refugee claimant can obtain adequate protection from the persecution they fear. This involves an assessment of several factors. States are presumed to be capable of protecting their citizens, except in the case of a state that is in complete breakdown. In order to rebut the presumption of adequate state protection, there must be clear and convincing evidence of the state's inability or unwillingness to protect its citizens, which satisfies the decision-maker on a balance of probabilities (see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689; *Flores Carrillo v Canada (Citizenship and Immigration)*, [2008] 1

FCR 3 (FC)). What is required is that the state take effective measures that result in adequate state protection; good faith efforts that don't achieve results are not sufficient. However, the protection need only be "adequate"; no state can guarantee perfection (*Canada (Citizenship and Immigration) v Villafranca* (1992), 18 Imm LR (2d) 130 (FCA)).

[47] The Officer's analysis of this question rests on two pillars. First, the Officer finds that each time the Applicant went to the police he obtained the response he sought. The police came to the house and told the men watching it to leave, and then returned a short time later when the Applicant complained that the same men had returned. Following the physical attack, the Applicant's complaint was accepted by the police. As the Officer observed, the police cannot be faulted for failing to deal with these events as related to the cartels, when the Applicant never stated this as a concern.

[48] Second, the Officer notes the efforts being made by Mexico to improve the security situation and to address official corruption, including deploying new military personnel, the creation of a new coordinating agency to combat kidnapping, and improvements in criminal investigations involving organized crime-related activities. On the basis of the review of the evidence, the Officer states:

> I acknowledge that the level of state protection in Mexico is not perfect and that problems involving official corruption still exist; however, I am satisfied that the government of Mexico has taken serious initiatives to combat the problem and has demonstrated its commitment and ability to provide an acceptable level of state protection for its citizens.

[49] The Officer finds that the Applicant has failed to rebut the presumption of state protection.

[50] The Applicant complains that the Officer has misstated the legal test, and has ignored the bulk of the evidence while giving undue weight to the evidence of progress. In the words of the Applicant's written submissions: "Arresting five hundred people [for participation in organized crime related activities] in a country of 130 million with 20,000 annual murders is not a reasonable indicator of effective policing."

[51] While I have sympathy for the argument of the Applicant, and agree that some of the evidentiary references do not appear to be particularly convincing, I am unable to accept this argument because the Applicant is essentially asking the Court to re-weigh the evidence. This is not the role of the Court on a judicial review, as has been affirmed on many occasions (see, for example, *Gari v Canada (Citizenship and Immigration)*, 2018 FC 660 at para 14). Assessing the question of state protection lies at the core of the Officer's expertise, and is fundamentally a factual inquiry. As Justice Alan S. Diner observed in *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 23 [*Lakatos*]: "… this Court has repeatedly held that whether a state protection analysis will withstand scrutiny on judicial review is case-specific, and depends on how the decision-maker conducted its analysis in light of the evidence tendered with respect to the claimant's particular circumstances…"

[52] While the Officer's statement of the legal test is not perfect, this in and of itself is not a basis to overturn the decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 17-18). The reasons do not have to be perfect.

In this case, it is evident that the Officer examined both the steps taken by the government of Mexico, and their actual impact. While he does not use the term, the Officer was clearly examining whether the evidence indicated that the steps taken are operationally adequate. This is consistent with the legal test (*Lakatos* at para 21).

[53] Furthermore, I do not find that the Officer erred in finding that the Applicant received a response from the police when he sought their assistance, and in finding that the government of Mexico has taken steps which have demonstrated some impact in improving state security and combatting organized crime. Both findings are supported in the record, and it is for the Officer to decide what weight to assign to the particular evidence before him or her.

IV. Conclusion

[54] For the reasons set out above, I am granting this application for judicial review. The matter shall be returned for reconsideration by a different officer.

[55] The Applicant proposed a question for certification regarding the appropriate standard of review of an Officer's decision whether to convoke an oral hearing in a PRRA application, but only if that question was determinative of the outcome. The Respondents opposed the request for certification, noting that each case turns on its particular facts.

[56] In view of the analysis set out above, it is not necessary to consider whether such a question could meet the test for certification.

JUDGMENT in IMM-839-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is returned for reconsideration by a different officer.

3. No question of general importance is certified.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Kevin Wiener	FOR THE APPLICANT
Stephen Jarvis	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Wiener Law Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS