

Federal Court



Cour fédérale

**Date: 20190408**

**Docket: IMM-4318-18**

**Citation: 2019 FC 428**

**Edmonton, Alberta, April 8, 2019**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**TAMAS HEGEDUS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] dismissing the Applicant's application to re-open his claim for refugee protection.

## **Background**

[2] The Applicant is a citizen of Hungary. He arrived in Canada on March 16, 2018, and made a refugee claim two days later alleging persecution in Hungary as a result of his sexual orientation. At that time, the Canadian Border Services Agency [CBSA] provided the Applicant with information about making his refugee claim. As he speaks only Hungarian, a translator was utilized in this regard. The Applicant claims that the interpreter told him that the hearing date for his claim was July 20, 2018, but did not inform him that, if he failed to submit his Basis of Claim [BOC] in the following 15 days, he would have to attend a special hearing on April 10, 2018. He claims that the interpreter told him to seek assistance in completing the BOC from shelter workers. The Applicant moved into a shelter on March 18, 2018, and claims that on March 21, 2018 a shelter worker filled in address information and said she would send it to immigration officials. He assumed that the shelter worker would follow through.

[3] The Applicant claims that on April 13, 2018, at an appointment with a shelter worker, he was advised that the shelter had sent in the forms required by immigration and not to worry. No mention was made of the April 10, 2018 special hearing date. In May 2018, as the hearing date of July 20, 2018 was approaching, shelter workers advised the Applicant to apply for legal aid. After receiving his legal aid certificate, the Applicant retained counsel on June 5, 2018. After several meetings at his counsel's office to prepare his BOC narrative, he claims that his BOC and relevant documents were submitted by his counsel to the RPD on June 29, 2018. The Applicant remained at the shelter until July 1, 2018, and then moved into rented premises.

[4] On July 18, 2018, two days before the Applicant's scheduled hearing date, his counsel received a fax from the RPD advising that the Applicant's claim had been declared abandoned because he had not attended the special hearing on April 10, 2018. The Applicant claims that he did not receive a copy of the April 17, 2018 Notice of Decision advising him that because he had failed to appear to explain why he had not submitted his BOC, the RPD had determined that his claim had been abandoned.

[5] The Applicant's counsel contacted the RPD on July 19, 2018, and was advised that the hearing that had been scheduled for the next day had been cancelled. Nevertheless, the Applicant and his counsel presented themselves at the RPD offices on July 20, 2018. They were again told that the hearing had been cancelled, but were advised of the option of filing an application to re-open his claim, which the Applicant subsequently did on July 31, 2018.

### **Decision Under Review**

[6] By letter of August 17, 2018, the RPD dismissed the application to re-open the claim as it was not satisfied that there had been a failure to observe a principle of natural justice which, pursuant to subsection 62(6) of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules], was required to re-open.

[7] The RPD observed, in response to the Applicant's assertion that he had not received notice of the April 10, 2018 special hearing date, that all claimants are notified of important dates when they commence the process of making their claim for protection. The Applicant had received a Notice to Appear [NTA], which contained important information, including the date

for submission of his BOC and special hearing dates. In response to the Applicant's allegation that the NTA was not translated for him, the RPD stated that the record contained an interpreter's declaration, which indicated that the entire "transaction" had been interpreted, and an officer's declaration, which indicated that everything had been explained to the Applicant, including the BOC deadline and consequences. The RPD preferred that evidence to the Applicant's as the former was in keeping with the standardized practice followed during intake interviews.

[8] The RPD also found that the Applicant had not made diligent efforts to pursue his claim. It observed that he failed to file his BOC until July 31, 2018, and only at the same time as filing the application to re-open. The RPD noted that this was despite having the assistance of a shelter worker who was apparently knowledgeable enough about the process to know to submit contact information and also concerned enough to advise the Applicant to get counsel for his upcoming hearing.

[9] The RPD also noted that claimants are provided with detailed instructions when they request protection, including a "Claimant's Kit", available in Hungarian. Further, the Applicant was required but failed to provide his contact information within 10 days of commencing his claim. When he moved out of the shelter on July 1, 2018, he similarly failed to notify the RPD of his change of address. While the Applicant blamed the shelter for the first omission, he did not explain why he did not notify the RPD of his July move. The RPD stated that the fact that the Applicant did not receive any mail from it at the shelter was the result of his own failure to provide his address. Further, it found that his failure to update his address showed that the Applicant was not diligent in pursuing his claim and did not carry out his responsibilities, even

those which he did that he was aware of, and that it was the Applicant's responsibility to ensure that these requirements were met.

[10] In response to the Applicant's submission that he took steps to retain a lawyer in May 2018 after being told to do so by a shelter worker, the RPD noted that a lawyer was not required to file the BOC or appear before the IRB. Further, it observed that if the shelter worker was aware enough to send in contact information and of the hearing date, it was reasonable to expect they would also have known of the BOC date and requirement to appear. The RPD found that the Applicant was being selective about what the shelter worker told him and did for him.

[11] The RPD also found that the Applicant had not acted diligently, even after retaining counsel on June 5, 2018, as the BOC and application to re-open were not submitted until July 31, 2018, several months after the BOC was due and months after his claim was abandoned.

[12] Further, the RPD found that the Applicant had not been denied an oral hearing. Rather, he had the opportunity for an oral hearing, but failed to attend.

[13] Given this, the RPD concluded that the Applicant "has not been diligent at all times in pursuing his claim and has not demonstrated that there has been a breach of procedural fairness" and dismissed the application to re-open.

## Relevant Legislative Provisions

*Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*

### **Abandonment of proceeding**

168 (1) A Division may determine that a proceeding before it has been abandoned if the Division is of the opinion that the applicant is in default in the proceedings, including by failing to appear for a hearing, to provide information required by the Division or to communicate with the Division on being requested to do so

### **Désistement**

168 (1) Chacune des sections peut prononcer le désistement dans l'affaire dont elle est saisie si elle estime que l'intéressé omet de poursuivre l'affaire, notamment par défaut de comparution, de fournir les renseignements qu'elle peut requérir ou de donner suite à ses demandes de communication.

*Refugee Protection Division Rules, SOR/2012-256*

### **Reopening a Claim or Application**

*Application to reopen claim*

62 (1) At any time before the Refugee Appeal Division or the Federal Court has made a final determination in respect of a claim for refugee protection that has been decided or declared abandoned, the claimant or the Minister may make an application to the Division to reopen the claim.

[...]

### **Réouverture d'une demande**

*Demande de réouverture d'une demande d'asile*

62 (1) À tout moment avant que la Section d'appel des réfugiés ou la Cour fédérale rende une décision en dernier ressort à l'égard de la demande d'asile qui a fait l'objet d'une décision ou dont le désistement a été prononcé, le demandeur d'asile ou le ministre peut demander à la Section de rouvrir cette demande d'asile.

[...]

*Factor*

(6) The Division must not allow the application unless it is established that there was a failure to observe a principle of natural justice.

*Factors*

(7) In deciding the application, the Division must consider any relevant factors, including

(a) whether the application was made in a timely manner and the justification for any delay; and

(b) [...]

**Abandonment**

*Opportunity to explain*

65 (1) In determining whether a claim has been abandoned under subsection 168(1) of the Act, the Division must give the claimant an opportunity to explain why the claim should not be declared abandoned,

(a) immediately, if the claimant is present at the proceeding and the Division considers that it is fair to do so; or

*Élément à considérer*

(6) La Section ne peut accueillir la demande que si un manquement à un principe de justice naturelle est établi.

*Éléments à considérer*

(7) Pour statuer sur la demande, la Section prend en considération tout élément pertinent, notamment :

a) la question de savoir si la demande a été faite en temps opportun et, le cas échéant, la justification du retard;

b) [...]

**Désistement**

*Possibilité de s'expliquer*

65 (1) Lorsqu'elle détermine si elle prononce ou non le désistement d'une demande d'asile aux termes du paragraphe 168(1) de la Loi, la Section donne au demandeur d'asile la possibilité d'expliquer pourquoi le désistement ne devrait pas être prononcé :

a) sur-le-champ, dans le cas où le demandeur d'asile est présent à la procédure et où la Section juge qu'il est équitable de le faire;

(b) in any other case, by way of a special hearing.

b) au cours d'une audience spéciale, dans tout autre cas.

*Special hearing — Basis of Claim Form*

*Audience spéciale — Formulaire de fondement de la demande d'asile*

(2) The special hearing on the abandonment of the claim for the failure to provide a completed Basis of Claim Form in accordance with paragraph 7(5)(a) must be held no later than five working days after the day on which the completed Basis of Claim Form was due. At the special hearing, the claimant must provide their completed Basis of Claim Form, unless the form has already been provided to the Division.

(2) L'audience spéciale sur le désistement de la demande d'asile pour défaut de transmettre en vertu de l'alinéa 7(5)a) un Formulaire de fondement de la demande d'asile rempli, est tenue au plus tard cinq jours ouvrables après la date à laquelle le formulaire devait être transmis. À l'audience spéciale, le demandeur d'asile transmet son Formulaire de fondement de la demande d'asile rempli, à moins qu'il ne l'ait déjà transmis à la Section.

*Special hearing — failure to appear*

*Audience spéciale — omission de se présenter*

(3) The special hearing on the abandonment of the claim for the failure to appear for the hearing of the claim must be held no later than five working days after the day originally fixed for the hearing of the claim.

(3) L'audience spéciale sur le désistement de la demande d'asile pour défaut de se présenter à l'audience relative à la demande d'asile est tenue au plus tard cinq jours ouvrables après la date initialement fixée pour l'audience relative à la demande d'asile.



*Factors to consider*

(4) The Division must consider, in deciding if the claim should be declared abandoned, the explanation given by the claimant and any other relevant factors, including the fact that the claimant is ready to start or continue the proceedings.

[...]

*Éléments à considérer*

(4) Pour décider si elle prononce le désistement de la demande d'asile, la Section prend en considération l'explication donnée par le demandeur d'asile et tout autre élément pertinent, notamment le fait qu'il est prêt à commencer ou à poursuivre les procédures.

[...]

**Issues and Standard of Review**

[14] The Applicant identifies the following issues:

- i) Did the RPD fail to consider the explanation of the Applicant?
- ii) Did the RPD fetter its discretion?
- iii) Does the decision to declare the Applicant's refugee claim abandoned breach principles of natural justice and procedural fairness contrary to section 7 of the *Charter* and common law principles?

[15] Conversely, the Respondent submits that the issue is whether the RPD's decision to reject the application to re-open the Applicant's refugee claim is reasonable.

[16] In my view, the issues raised by this application are all captured, and can be framed, by asking whether the RPD's conclusion that there was no failure to observe a principle of natural justice, which would justify the re-opening of the claim, was reasonable. The question of whether the Applicant has established that there was a failure to observe a principle of natural

justice is a question of mixed fact and law as is demonstrated by RPD Rules 62(6) and 62(7).

Accordingly, in my view, the appropriate standard of review is reasonableness (*Anni v Canada (Citizenship and Immigration)*, 2017 FC 134 at paras 13-14; *Noel v Canada (Citizenship and Immigration)*, 2018 FC 271 at para 24; *Djilal v Canada (Citizenship and Immigration)*, 2014 FC 812 at paras 5-7 [*Djilal*]; (*Huseen v Canada (Citizenship and Immigration)*, 2015 FC 845 at paras 12-13 [*Huseen*]).

## **Analysis**

### *Applicant's Submissions*

[17] The Applicant submits that, pursuant to RPD Rule 65(4), the RPD has to consider the explanation provided by a claimant to justify their default along with any other relevant information. The Applicant submits that the test is whether an applicant's conduct amounts to an expression of intention by that person to pursue the refugee claim with diligence (*Ahamad v Canada (Employment and Immigration)*, [2000] FCJ No 289 at para 32 [*Ahamad*]).

[18] The Applicant also submits that the RPD misconstrued or ignored the explanation provided by him, including his allegation of not receiving information as to the special hearing date from the translator, and speculated that the shelter worker would have made the Applicant aware of that date, as well as about the Applicant's reliance on those persons. He states that, at all times, he intended to pursue his claim in good faith, which is demonstrated by the fact that he made his claim immediately after arriving in Canada, communicated with shelter workers to inquire about his file, applied for a Legal Aid certificate, retained counsel, prepared for the

hearing on the merits, and appeared at the July 20, 2018 hearing even knowing it had been cancelled. The Applicant argues that the RPD fettered its discretion in failing to consider his explanation and making speculative assumptions as to the knowledge and abilities of a shelter worker. The RPD also erred in preferring the statement of the interpreter, as standardized procedures upon making a refugee claim, over the Applicant's evidence. The Applicant provided a reasonable explanation for missing the BOC filing deadline and therefore, under Rule 62, he should have been permitted to re-open his claim. The RPD's failure to consider his evidence also led to its statement that the Applicant refused his right to an oral hearing, in turn resulting in a breach of a principle of natural justice.

[19] Further, the Applicant submits that the RPD misapprehended the facts. Specifically, it indicated in its reasons that the BOC form was only received on July 31, 2018 when the material was actually submitted on June 29, 2018.

[20] Given that he was denied an oral hearing, the Applicant alleges a breach to the principles of natural justice and procedural fairness contrary to section 7 of the *Charter*. On this issue, the Applicant relies on the Supreme Court of Canada's decisions in *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177 at 205-207 and 212-213, and *Baker v Canada (Employment and Immigration)*, [1999] 2 SCR 817 at 819.

#### *RPD Rule 62*

[21] In considering these submissions and, as a starting point, I note that this is an application for judicial review of the refusal by the RPD of an application to re-open the Applicant's refugee

claim. Thus, it is governed by RPD Rule 62. The prior decision made by the RPD on April 17, 2018, finding that the claim had been abandoned because the Applicant had not filed his BOC within 15 days of commencing his claim and had failed to appear to explain this at the scheduled special hearing on April 10, 2018, was made under s 168 of the IRPA and RPD Rule 65. That decision is not under review before me.

[22] For the purpose of the refusal to re-open, I am tasked with determining if the RPD reasonably found that there had been no failure to observe a principle of natural justice in relation to the abandonment determination.

[23] This Court has held that the RPD's power to re-open a claim is very limited as demonstrated by the restrictive language used in RPD Rule 62(6) (*Huseen* at para 14) but that the RPD can re-open a claim where there has been a denial of natural justice or procedural unfairness to the applicant (*Huseen* at paras 19-20). The burden of proof is on the Applicant (*Djilal* at para 28). Further, a failure to observe a principle of natural justice does not have to be the result of an error or mistake of the RPD (*Djilal* at para 29). Negligence on the part of an applicant's counsel has been recognized, in certain circumstances, as being sufficient to cause the applicant to have been denied natural justice in relation to an abandonment hearing (*Osagie v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1368 at para 27 [*Osagie*]; *Khan v Canada (Citizenship and Immigration)*, 2005 FC 833 paras 26-30).

[24] And, as noted above, an application for judicial review of the dismissal of an application to re-open a refugee claim is distinct from an application for judicial review of the abandonment

of a refugee claim. Thus, although the Applicant relies and largely bases his submissions on *Ahamad*, which found that the test when reviewing abandonment decisions made by the RPD is whether, in all of the circumstances and taking into account all relevant facts, the applicant's behaviour evidenced in clear terms an intent to proceed with the claim (*Ahamad* at para 37), that test pertains to abandonment decisions made pursuant to s 168 of the IPRA and RPD Rule 65. This Court has held that the intention to proceed with a refugee claim is not directly relevant to the type of application before me, under RPD Rule 62 (*Djilal* at paras 30-32).

[25] Contrary to the Applicant's view, in deciding whether to re-open a claim under Rule 62, it is clear that the RPD has limited discretion. RPD Rule 62(6) states that the RPD "must not" allow the application unless it is established that there was a failure to observe a principle of natural justice. However, in making the determination of whether to re-open a claim, the RPD must consider "any relevant factors", including whether the application to re-open was made in a timely manner and the justification for the delay (RPD Rule 62(6) and (7)). In this sense, to the extent that it is relevant to the timeliness and justification for the delay in seeking to re-open the claim, the RPD may be required to consider, in cases like the one before me, the steps that an applicant took both prior to and after the dismissal of their claim.

#### *Failure to Consider Evidence*

[26] In my view, there is no merit to the Applicant's submission that the RPD failed to consider his evidence as to why he failed to attend the April 10, 2018 special hearing. From its reasons, it is clear that the RPD was aware that the Applicant asserted that the translator failed to interpret the part of the NTA stating that if the BOC was not filed within 15 days then the

Applicant was required to appear, to explain why, on April 10, 2018. The RPD was also aware of the Applicant's assertion that shelter workers had failed to file his address information with the RPD, failed to advise the Applicant of the BOC special hearing date, and led him to believe that all necessary submissions had been made. The RPD simply did not accept those explanations and gave its reasons for this. I would add that the RPD was not required to accept this explanation simply on the basis that the Applicant asserts that it was reasonable. The reasonableness of the RPD's findings concerning the translation of his claims documents and the role of the shelter workers is addressed below.

*Omissions in Interpretation*

[27] The March 18, 2018 Interpreter's Declaration contained in the Certified Tribunal Record [CTR] states that during the examination the named translator interpreted the verbal exchange between the officer and the Applicant; the content of the forms identified in the declaration by the officer; and, the content of the declaration. The identified documents include an Acknowledgement of Conditions [AOC] and the NTA. The AOC is a standard form. As completed in this case, amongst other things, it confirms that the Applicant will provide CBSA with his residential address within 48 hours, report a new residential address in person and in writing at a CBSA office, and inform the Citizenship and Immigration Canada Call Centre of the new residential address by calling the number provided. Under "other conditions", it states that the Applicant will send his address notification to the IRB within ten days and provide the completed original and one copy of the BOC to the RPD within fifteen days of the date thereof (March 18, 2018). This form is signed by the Applicant.

[28] The NTA is also a standard form. It sets out various pieces of information such as the date and place of the refugee claim hearing (July 20, 2018), and a special hearing date if the Applicant failed to attend the set hearing date (July 27, 2018). Under “contact information”, it states that claimants who did not provide their address to Immigration, Refugees and Citizenship Canada [IRCC] or the CBSA when their claim was referred must provide it to the relevant department and the RPD no later than 10 days after receiving the notice. For further information, it refers claimants to their Claimant’s Guide or to contact the RPD office at the given address.

Importantly, on the second page of the NTA it states:

**Providing the Basis of Claim Form:**

The RPD must receive your completed Basis of Claim Form no later than 15 days after the date your claim was referred to the RPD. If you fail to provide your completed Basis of Claim Form on time, you must appear at a special hearing with your completed form. For the date and time of your special hearing, please refer below.

**Special Hearing Date if Basis of Claim Form is not received on time:**

If the RPD does not receive your Basis of Claim form on time, you must appear on April 10, 2018 at 9:00 (24 hr clock), at the same location indicated on page 1, to explain why your Basis of Claim Form was not received by the RPD within the specified period. If you do not appear, the RPD may declare your claim abandoned. If the RPD is satisfied with your explanation and your claim is not declared abandoned, the hearing of your claim will take place as scheduled.

[29] In addition, the CTR contains the Minister’s Delegate Notes of March 18, 2018, which also indicate that the NTA, refugee claimant documents and the BOC, amongst other documents, were issued to the Applicant. Included under “additional comments” is information relating to

the identity of the interpreter used and a statement that everything had been explained to the Applicant, who had no questions. This form is signed by the delegate.

[30] In my view, the RPD was entitled to weigh the evidence before it as to translation (see *Osagie* at para 13). It was open to and reasonable for the RPD to prefer the confirmation of interpretation arising in the usual course of a refugee claimant intake over the Applicant's claim that the NTA was given to him on March 18, 2018, that he was informed of the 15-day period within which the BOC must be filed, but that there was no interpretation concerning the April 10, 2018 special hearing date.

[31] In the result, it was reasonable for the RPD to conclude the Applicant had notice of the special hearing date and was aware of the need to provide his address to the RPD. Accordingly, that the Applicant's failure to attend the special hearing and to receive notice of the April 17, 2018 abandonment decision did not give rise to a failure to observe a principle of natural justice.

#### *Reliance on Shelter Workers*

[32] The Applicant also asserted that he had relied upon shelter workers to submit his address information to the RPD and as to the date of his hearing but that they failed him in this regard.

[33] The Applicant acknowledges that the interpreter told him that he would be provided with a BOC form by CBSA and states that the interpreter told him to show it to the shelter workers to receive assistance with it over the next 15 days. In the statutory declaration that the Applicant



filed in support of his request that his claim be re-opened, he states that on March 21, 2018, a shelter worker filled out his address information and said she would send it to “immigration” and that the Applicant believed and relied on this. Further, he states that the shelter workers did not tell him that there was a special hearing date and, like him, they thought the hearing was on July 20, 2018. He states that he had an appointment with a shelter worker on April 13, 2018 (the purpose of which appointment is not stated), and that she advised him that the forms that were required by immigration had been sent and not to worry about it, but made no mention of the April 10, 2018 hearing date.

[34] When appearing before me, and in response to a question I raised, counsel stated that the Applicant was not suggesting that it was his belief that the shelter workers had submitted his BOC to the RPD, but rather that they had submitted his address information. Indeed, I note that unlike providing the shelter address on the Applicant’s behalf, shelter workers could not prepare a BOC without the involvement of the Applicant to give his story as to why he was seeking protection. There is also nothing in his statutory declaration, which was provided to the RPD, suggesting that shelter workers assisted him in the preparation of his BOC. Nor does the declaration provide any explanation as to why, although the Applicant acknowledged that he was advised of the 15-day deadline by CBSA and that this information was translated to him, the BOC was not filed on time.

[35] As to the Applicant’s reliance on shelter workers, the RPD appears to draw inferences as to the advice they provided to him, stating:

The claimant failed to submit his BOC until 31 JUL along with this application to reopen. This is despite having the assistance of a

shelter work [*sic*] who was apparently knowledgeable enough about the process to know to submit contact information and also concerned enough to advise the claimant to get counsel for his upcoming hearing.

[...]

None the less, if the shelter worker was aware enough to send in contact information and of the hearing date, it is reasonable to expect they would also have known of the BOC date and requirement to appear. The claimant is being selective about what the shelter worker told him and did for him.

[36] These findings are speculative. The RPD seems to have implicitly found that the shelter workers had sufficient expertise to assist the Applicant with his refugee claim and, based on this and contrary to the Applicant's sworn testimony, they advised him of his BOC filing date and of the requirement to appear at the April 10, 2018 special hearing date should he not file his BOC on time. In my view, this inference is not supported by the evidence that was before the RPD.

[37] That being said, the RPD's speculation in this regard does not serve to negate its finding that, as a result of the claimant materials provided and interpreted to him, the Applicant was aware of the April 10, 2018 special hearing date or its finding that it was his obligation to advise the RPD of his address and of any change of address. And while an applicant may, in some circumstances, reasonably rely on their counsel to protect their interests with respect to the advancement of their immigration claim, in my view the same cannot be said for reliance on shelter workers for that purpose.

[38] In these circumstances, the RPD's failure to find that the alleged acts or omissions by shelter workers established a failure to observe a principle of natural justice was not unreasonable.

*Delay in Bringing the Application to Re-Open*

[39] As a preliminary observation, I note that while the RPD, the Applicant, and the Respondent have placed considerable emphasis on the diligence of the Applicant in pursuing his claim, as stated in *Djilal*, an applicant's actions in pursuing their claim are not directly relevant considerations in a re-opening application.

[40] Instead, pursuant to RPD Rule 62(6), the RPD was required to consider whether there was a failure to observe a principle of natural justice, and pursuant to Rule 62(7), to consider "any relevant factor" in that regard, including whether the application to re-open was brought in a timely manner and, if it was not, the justification offered for the delay. As RPD Rule 62(6) states that the RPD "must not" allow the application unless it is established that there was a failure to observe a principle of natural justice, whether a failure to observe a principle of natural justice has been established is the overarching question for the RPD.

[41] In some circumstances, the evidence presented in a re-opening application may cover much of the same evidentiary ground that would come into play if the RPD were making an abandonment decision under s 168 of the IRPA and RPD Rule 65, to the extent that it also serves to explain a lack of timeliness in bringing the application to re-open or to otherwise ground an assertion of a breach of procedural fairness. For example, if an applicant reasonably relied on

their counsel to advise them and to assist them in advancing their claim and were poorly advised, resulting in their failure to submit their BOC on time and subsequent absence at the special hearing, that is evidence that could have grounded an explanation at a special hearing under Rule 65 as to why the applicant failed to exercise diligence in pursuing their claim, even if they always intended to pursue their refugee claim (see *Osagie* at paras 24-26). That same evidence may serve to justify a delay in bringing on an application to re-open the applicant's claim and to establish that there was a resultant failure to observe a principle of natural justice under RPD Rule 62(6) and (7).

[42] That being said, I agree with the Applicant that in this case the RPD made an error in fact when it was considering the timeframe within which the Applicant brought his application to re-open his claim. The Applicant's evidence was that he had several meetings with his lawyer to prepare his BOC, which was submitted to the RPD on June 29, 2018. I also note that a July 30, 2018 letter from his counsel to the RPD making application under RPD Rule 62 to re-open the Applicant's claim, which is found in the CTR, also states that the BOC was submitted on June 29, 2018. This is not disputed by the Respondent. Accordingly, I am satisfied that the RPD erred when it stated that although the Applicant retained counsel on June 5, 2018, his "BOC was still not submitted until 31 JUL 2018, several months after it was due and months after the claim was declared abandoned". Based on this, the RPD stated that it was reasonable to expect that if counsel was retained in early June that the application to re-open should have been made earlier than the end of July, that applicants are responsible for their counsel and the fact that the issue was not addressed for two months indicated that the Applicant was not serious about pursuing his claim. This finding, in effect, speaks to the Applicant's explanation for the

timeliness of his application to re-open and the justification that he offered pursuant to Rule 62(7).

[43] However, regardless of this error, no explanation was given by the Applicant to the RPD as to why his counsel did not realize, at the time he was retained, that the 15-day period for filing the BOC had lapsed on or about April 3, 2018, as the Applicant had commenced his claim on March 18, 2018. Counsel would have known that it is standard practice to assign a special hearing date in the event that the BOC is not filed on time and that the failure to attend that hearing would likely result in the claim being declared abandoned. The RPD recognized this, stating that it was unlikely that counsel would not have indicated to the Applicant, when counsel was retained, that these important deadlines had been missed and the claim had likely been determined to be abandoned.

[44] Similarly, the Applicant claims that he did not receive the April 17, 2018 Notice of Decision that his refugee claim had been declared abandoned and it was not until July 18, 2018, two days before the hearing date, that counsel told the Applicant that the RPD had advised him that this had occurred. Putting aside the RPD's finding that it was the Applicant's obligation to provide his address information to the RPD and that he failed to do so, there was again no explanation given as to why, in these circumstances, immediate efforts were not made to file the BOC and apply to re-open the claim.

[45] And, regardless of the consideration that the RPD gave to the Applicant's diligence in pursuing his claim, as opposed to commencing the application to re-open, the test when applying

Rule 62 is, ultimately, whether there has been a failure to observe a principle of natural justice. Here, as the RPD stated, the Applicant was offered a special hearing at which he could have explained why his claim should not be declared abandoned because he had not presented his BOC within the required 15 days. The RPD did not accept that he was not advised of this by the translator or otherwise unaware of the hearing. Thus, he was offered a hearing and, if he had attended, he could have explained his delay in filing his BOC. Accordingly, there was no resultant failure to observe a principle of natural justice.

[46] Reasonableness is a deferential standard and questions that arise before administrative tribunals may give rise to a number of possible, reasonable conclusions. In judicial review, reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47). In this case, while its reasons were not perfect, the RPD decision falls within that range.

**JUDGMENT in IMM-4318-18**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

\_\_\_\_\_  
"Cecily Y. Strickland"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4318-18  
**STYLE OF CAUSE:** TAMAS HEGEDUS v MCI  
**PLACE OF HEARING:** TORONTO, ONTARIO  
**DATE OF HEARING:** MARCH 27, 2019  
**JUDGMENT AND REASONS:** STRICKLAND J.  
**DATED:** APRIL 8, 2019

**APPEARANCES:**

Roger Rowe

FOR THE APPLICANT

Lianne Briscoe

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Law Offices of Roger Rowe  
Barristers & Solicitors  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT