Federal Court  Cour fédérale

Date: 20191128

Docket: IMM-1489-19

Citation: 2019 FC 1522

Ottawa, Ontario, November 28, 2019

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

JIABIN RUAN
SHUIJIAO LI
CHANGHAI RUAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants - Shuijiao Li, Changhai Ruan, and their son Jiabin Ruan - are citizens of China. Ms. Li and Jiabin Ruan allege they are practitioners of Falun Gong and are sought by the Chinese authorities. Mr. Changhai Ruan alleges he faces risk as he did not report them.

[2] Both Ms. Li and Jiabin Ruan allegedly began practicing Falun Gong in response to stress - Ms. Li in October 2013 after being introduced by her aunt, and Jiabin Ruan in April 2014 after being introduced by his mother. They attended small group sessions on Wednesdays, and practiced privately in their home on other days.

[3] In September 2014 while the Applicants were abroad in South Korea, the Chinese Public Security Bureau (the local police, or "PSB") allegedly raided their Falun Gong practice group. After returning to China and being informed of the raid by Ms. Li's father, they immediately went into and remained in hiding with a friend of Ms. Li. A few days later, Ms. Li's father allegedly told Ms. Li the PSB had gone to their home to look for them. The PSB allegedly visited their home 5-6 times prior to the hearing.

[4] The Applicants hired a "snakehead" (a smuggler) to help them leave China. They flew from Guangzhou to Los Angeles on December 12, 2014, flew again to Seattle, and then crossed irregularly into Vancouver on December 13, 2014. They filed their in-Canada claim for refugee protection on December 31, 2014.

[5] On November 17, 2017, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] dismissed the Applicants' claims on the basis their allegations were not credible, and that they were not genuine Falun Gong practitioners in Canada. The Applicants appealed the RPD's decision on January 24, 2018. About one year later, on February 4, 2019, the Refugee Appeal Division [RAD] of the IRB dismissed their appeal and confirmed the RPD's finding that the Applicants are not Convention refugees or persons in need

of protection as defined in sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], pursuant to IRPA s 111(1)(a).

[6] For the reasons that follow, this application for judicial review of the RAD's decision is granted. In addition, having regard to the documentary evidence, as well as Rules 47(1) and 76(a) of the *Federal Courts Rules, SOR/98-106,* the style of cause shall be amended to reflect the principal Applicant's proper name "Jiabin Ruan" to correct an apparent clerical error in the spelling of his name as "Jianbin Ruan" on the first page of the Application for Leave and for Judicial Review dated March 1, 2019. I note that the principal Applicant's name is spelled correctly as "Jiabin Ruan" underneath his signature on the third page of the Application, as well as in the RPD and RAD decisions.

II. RPD and RAD Decisions

[7] After refusing to admit proposed new evidence under Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257, the RAD summarized the RPD's decision and the Applicants' submissions, and provided its own *de novo* assessment.

A. *Exit from China*

[8] The RPD found the PSB would have known the Applicants had exited China as they used their own passports to leave the country. As the Applicants did not have any difficult passing through the airport's security checkpoints, this indicated Chinese officials had no interest in them and did not wish to restrict their travel because of alleged illegal involvement with Falun Gong.

The RPD thus drew an adverse inference regarding the Applicants' general credibility, as they alleged and testified they were wanted by the PSB.

[9] Before the RAD, the Applicants argued that it was not implausible for a person to leave China on their own passport with the assistance of a smuggler who bribed the appropriate person(s), and that the RPD made a blanket implausibility conclusion without assessing the facts of their particular case. Further, the Applicants also asserted that while the RPD made reference to vague testimony, it did not explain what was vague or lacking.

[10] The RAD concluded the RPD did not err in finding the Applicants were not wanted by the Chinese authorities for practising Falun Gong at their time of departure. The RAD found the Applicants' information would have been in the Golden Shield database. Hence, the RAD also concluded the Applicants' allegation they were able to exit China because of the smuggler's assistance undermined their credibility. Accepting it may be possible for a smuggler to help the Applicants bypass *some* of the security controls, the RAD found that the evidence suggested it was highly unlikely the Applicants could have bypassed *all* of the security controls in place. Given the Applicants were able to leave China using their genuine passports, the RAD further found this undermined their identity as persons who were wanted by the PSB for practising Falun Gong.

B. *Lack of Supporting Documentation*

[11] The RPD found the Applicants' lack of documentation from state authorities showing they were persons of interest was unreasonable, given the documentary evidence showed a summons often is left with or shown to family members when the police want someone to come

to their department. As the PSB allegedly had gone to the Applicants' home 5-6 times prior to the hearing, the RPD found it was reasonable to expect that a summons would have been shown to, or left with, a family member. The RPD further noted no actions had been taken against the Applicants' family members in China.

[12] Before the RAD, the Applicants argued the RPD made an erroneous negative credibility finding by requiring the Chinese authorities' summons to be produced to corroborate their claim, as there was no evidence to contradict their allegations they had visited but not left a summons. The Applicants submitted that the documentary evidence showed a summons was not always left with or shown to family members, and that the RPD only questioned them about whether a summons was left with a family member, not whether a summons was shown to them.

[13] The RAD concluded the RPD did not err by requesting corroborating documentation establishing Ms. Li and Jiabin Ruan were under investigation by the authorities in China. Pointing to Article 105 of the *Criminal Procedure Law*, the RAD found summonses, notices, and other court documents shall be served on the addressee or their family members. Acknowledging the Applicants had been in contact with family members in China, as it was through this contact the Applicants allegedly learned they were still under investigation, the RAD concluded it was reasonable to expect the Applicants to provide corroborating evidence such as a letter, email, or affidavit from a family member. In concluding so, the RAD considered the following:

a) the Applicants were represented by experienced legal counsel;

b) the information the PSB continue to go to their home seeking them was hearsay evidence;

c) the Basis of Claim forms request corroborating documents for aspects of their claims;

d) the Applicants were able to acquire other corroborating documents to support other aspects of their claims;

e) the Applicants had maintained contact with family members;

f) the Applicants were aware that visits from the PSB were important to establishing their claims, as they were questioned at the hearing on this topic; and

g) the Applicants were able to exit China despite being under investigation.

[14] As a result, the RAD drew a negative credibility inference from the Applicants' lack of corroborating documentation. The RAD found the corroborating evidence would have been reasonably available, and that it was reasonable to expect such given its doubts about the Applicants' credibility regarding their ability to exit China with their own passports.

C. *Sur Place Claim*

[15] The RPD found there was no evidence to indicate the submitted photographs of the Applicants practising Falun Gong in Canada were on the internet, or that the Chinese authorities were aware of the Applicants' presence at Falun Gong events. The RPD concluded the Applicants' practice of Falun Gong in Canada was not genuine, given the Applicants were found to not be genuine Falun Gong practitioners and were not wanted in China.

[16] The RAD concluded the RPD did not err in finding Ms. Li and Jiabin Ruan had not established on a balance of probabilities they were Falun Gong practitioners in either China or Canada. Noting the Applicants' alleged their practice in Canada extended from their practice in

China, and finding "no evidence of an impetus to practice in Canada", the RAD concluded the Applicants engaged in Falun Gong activities in Canada "only for the purposes of supporting a fraudulent refugee claim," and would not continue the practice should they return to China. Having concluded Ms. Li and Jiabin Ruan were not genuine Falun Gong practitioners and not wanted by the Chinese authorities, the RAD concluded Mr. Changhai Ruan was not as risk by virtue of being associated with them.

[17] In sum, the RAD concluded the Applicants failed to establish, on a balance of probabilities, they were wanted by the Chinese authorities, or were under investigation for Falun Gong activities at any time while in China or Canada. Given these concerns, the RAD found the Applicants failed to establish they were practitioners of Falun Gong in China.

III. Issues

[18] The Applicant raised the following issues:

A. *Did the RAD err by upholding the RPD's negative credibility findings?*

B. *Did the RAD err by upholding the RPD's rejection of the sur place claim?*

C. *Did the RAD err by failing to address the Applicants' arguments that the RPD applied the wrong standard of proof to their claims?*

IV. Standard of Review

[19] The parties agree the RAD is a specialized administrative body applying its home statute to questions of fact and mixed fact and law. Therefore, the appropriate standard of review on all

of its decisions is reasonableness: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 27.

[20] Under the reasonableness standard, this Court will "defer to any reasonable interpretation adopted by an administrative decision maker, even if other reasonable interpretations may exist": *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 40; *Canada (Attorney General) v Heffel Gallery Limited*, 2019 FCA 82 at para 48; *Delios v Canada (Attorney General)*, 2015 FCA 117 at paras 27-28. The decision maker's conclusions made must fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47.

[21] If the decision maker's reasons, read in context with the evidence, allow this Court to understand why the Tribunal made its decision, the decision will be justifiable, transparent, and intelligible: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*NL Nurses*] at paras 15-18; *Dunsmuir*, above at para 47. Before seeking to subvert the decision maker's decision, the Court first must seek to supplement it: *NL Nurses*, above at para 12. This does not create, however, a "*carte blanche* to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result": *Petro-Canada v British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 [*Petro-Canada*] at paras 53 and 56, adopted in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta*] at para 54, and in *Delta Air Lines Inc v Lukács*, 2018 SCC 2 [*Delta*] at para 24.

V. Relevant Provisions

[22] See Annex A for the applicable provisions of the IRPA.

VI. Analysis

[23] As a preliminary issue, the Minister noted the Applicants relied on the affidavit of Josef Brown, a law clerk with their counsel, and not their own personal affidavit, when they filed their Application for Leave and for Judicial Review. The Minister submits such reliance is fatal, especially given the concerns regarding the Applicants' credibility: *Huang v Canada (Citizenship and Immigration)*, 2017 FC 1193 at para 7; *Canada (Human Rights Commission) v Pathak*, [1995] 2 FC 455 (Fed CA); *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, Rule 12(1). In the alternative, the Minister submits that where there is no evidence based on personal knowledge filed in support of an application for judicial review, any error must appear on the face of the record: *Moldeveanu v Canada (Citizenship and Immigration) (1999)*, 235 NR 192 (FCA) at para 15; *Turcinovica v Canada (Citizenship and Immigration)*, 2002 FCT 164 at paras 12-14; *Ling v Canada (Citizenship and Immigration)*, 2003 FC 1198 [*Ling*] at paras 11-14.

[24] Josef Brown's affidavit introduced four (4) documents attached as exhibits to the affidavit: the Applicants' Basis of Claim [BOC] forms; the RPD's November 17, 2017 decision; Item 3.24 of the National Documentation Package for China, version 31 March 2017; and Item 10.4 of the National Documentation Package for China, version 31 October 2016. I fail to see the necessity of a personal affidavit of one of the Applicants to introduce such

documentation. Accordingly, though there are conflicting decisions of this Court on the issue, I agree with the position that the lack of a personal affidavit from the Applicants is not fatal to their application for judicial review, so long as the errors in issue are apparent on the face of the record: *Koky v Canada (Citizenship and Immigration)*, 2011 FC 1407 at para 54, citing Ge *v Canada (Citizenship and Immigration)* 2007 FC 890 at paras 19-20. I also am mindful that the issue was raised initially before this Court when leave was sought to proceed with the judicial review application.

A. *Did the RAD err by upholding the RPD's negative credibility findings?*

[25] The Applicants assert the RAD made an unjustified plausibility finding by concluding the Applicants were not Falun Gong practitioners solely because they were able to leave on their own passports despite being sought by the authorities for that very practice: *He v Canada (Citizenship and Immigration)*, 2017 FC 1089 [*He 2017*] at paras 10-11. Here, Campbell J. found two possible inferences arose from a "person not being stopped when transiting security measures at an airport in China having used their own genuine passport": (i) the person was lying about being a Falun Gong practitioner; or (ii) no record existed in the Golden Shield system that negatively related to the person: *He 2017*, above at para 9. Campbell J. found it was unreasonable for the RAD to have considered only the first option was plausible, as there was no "verifiable evidentiary base" to support the second inference, and granted the judicial review: *He 2017*, above at paras 10-11.

[26] In contradistinction, the Minister asserts the RAD reasonably was entitled to rely on the fact the Applicants were not stopped at the airport as proof they were not actually Falun Gong

practitioners: *He v Canada (Citizenship and Immigration)*, 2019 FC 728 [*He 2019*], above at paras 12-15. Here, O'Reilly J. found the RAD's conclusion that facial recognition technology and the advanced passenger information system would have detected them, and they would not have been permitted to leave if they were truly Falun Gong practitioners, was reasonable. This Court has drawn similar conclusions in *Li v Canada (Citizenship and Immigration)*, 2018 FC 877 [*Li*] at para 20 and *Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064 at paras 18-29, among others.

[27] It is well accepted implausibility findings are permissible only in the clearest of cases: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. Where relying on documentary evidence as justification for an implausibility finding, the record must show the event could not have happened in the manner asserted by the claimant. This has been interpreted as requiring there be *no other* reasonable inferences available on the evidence (*Divsalar v Canada (Citizenship and Immigration)*, 2002 FCT 65 at para 24); that the outcome be outside the realm of what reasonably could be expected (*Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 11); or that the underlying facts support the inference the witness was not truthful to such a degree it would be *highly unlikely* a reasonable person would disagree with that conclusion (*KK v Canada (Citizenship and Immigration)*, 2014 FC 78 at para 69).

[28] In my view, the documentary evidence of record, combined with the Applicants' own evidence, reasonably could support the inferences summarized below. Unlike in *He 2017* (at

para 9), however, the RAD in this case did not fail to consider the possible alternative inferences altogether, but rather considered and concluded inferences 2 and 3 were not plausible:

1) The Falun Gong group was raided but the Applicants were not implicated because Ms. Li and Jiabin Ruan were not practising members (in other words, the Applicants were not truthful);
2) The Falun Gong group was raided but the Applicants were not detained because they were in South Korea at the time, and hence their information was not entered into the Golden Shield database; or
3) The Falun Gong group was raided and, though the Applicants Ms. Li and Jiabin Ruan were not present, the authorities obtained identification information about the Applicants from other members of the group or from other sources and entered it into the Golden Shield database; the Applicants, however, were able to avoid detection on exiting China because of their use of a smuggler.

[29] Specifically, regarding inference 2 above, the RAD found the Applicants' information had been entered into the database given their profiles (as they allegedly were under investigation) and repeat visits (by the authorities or PSB). In other words, the fact that the Applicants were not in China at the relevant time, in and of itself, would not have prevented their information from being collected and entered. Because the Applicants themselves allege that the PSB looked for them on several occasions following the raid, it was not unreasonable in my view for the RAD to infer that the Applicants' information was stored in the PSB system.

[30] Regarding inference 3 above, the RAD found there was insufficient evidence that corruption in China extends to the airport security apparatus and hence, while a smuggler might be able to bypass some of the security controls in place, it is unlikely a smuggler would be able to bypass all of them including the Golden Shield and facial recognition systems. In my view, this finding is unreasonable for several reasons.

[31] The RAD noted the following in paragraph 17 of its decision (emphasis added):

> "There is little testimony on the record regarding any efforts made by the smuggler on the Appellants' behalf in exiting China **other than that he accompanied the Appellants when they showed their passports to an official and helped them acquire US visas**. …The Appellants provided **no information** at the [RPD] hearing or in the BOC regarding payment of a bribe by the smuggler. Nevertheless, even if a bribe was paid, it does not account for the additional level of screening conducted by the airline at the gate and for how the Appellants were able to by-pass the **covert facial recognition system**."

[32] The RPD noted, however, in paragraph 28 of its decision, "…the Claimants testified that the snakehead [smuggler] made all the arrangement including bribery of the official at the airport to facilitate their departure from China." Though there was no corroborative evidence the Applicants' smuggler actually paid any bribes, it is difficult to imagine the circumstances under which a smuggler would be prepared to corroborate bribing airport officials or what other corroborative evidence there might be in this regard. None was articulated by the RAD.

[33] Furthermore, the statement that there was no account for how the Applicants were able to bypass the covert facial recognition system was unreasonable in light of the National Documentation Package in the RPD Record for China, July 20, 2017 [NPD]. A Canadian

embassy official is quoted as follows, at pages 535-536 of the Certified Tribunal Record [CTR], regarding facial recognition technology at Guangzhou International Airport (from which the Applicants left China):

> "[w]hen passengers [pass] through [the] immigration counter, they [are] photographed by a mini-camera to record each passenger's face. Facial recognition technology is applied to the images; however, it is unclear as to the total scope of the database against which the images are assessed."

[34] The same official explained, however, at CTR page 536 (emphasis added):

> "Chinese border officials do not take photographs of passengers at international departure at every airport in China. In Beijing, photographs were taken in the past, but are not being taken now. If photographs are being taken (e.g., Guangzhou), they would be taken at China Immigration Inspection departure counters at airports. **The only facial recognition procedure applied is a comparison between the photo on the travel document and the passenger's face**."

[35] The above information in the NPD does not support the inference that any photographs that may have been taken of the Applicants covertly at Guangzhou airport were shared with any Golden Shield or PSB databases and hence, the Applicants would have been flagged before being permitted to leave China. There is also a recounting in the CTR at page 555 of a dissident who was permitted to leave China "likely due to a clerical error." In other words, it is not implausible that the Applicants could have been in the PSB system and yet able to leave China on their own passports.

[36] Having concluded the RAD's implausibility assessment was erroneous, this Court still must consider whether the RAD's outcome is justifiable as a whole. The Minister submits the Applicants provided insufficient evidence to base their claim, and this nonetheless justifies the

outcome: *Dunsmuir*, *above* at paras 47-48; *NL Nurses*, *above* at para 12. As mentioned above, the reasonableness standard does not create, however, a "*carte blanche* to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result": *Petro-Canada*, above at paras 53 and 56, adopted in *Alberta*, above at para 54, and in *Delta*, above at para 24.

[37] The RAD expressly concludes it sought corroborative evidence because the Applicants were deemed not credible (emphasis added):

> [25] … The RAD takes a negative credibility inference from the lack of corroborating documentation regarding being wanted by the PSB when such documentation would have been reasonably available.
>
> [26] **The RAD has considered the lack of corroborating documentation when it would reasonably have been available, and the Appellants' ability to exit China using their own passports at a time when they were allegedly wanted by the authorities. The RAD notes that the Federal Court has stated that where there are valid reasons to doubt a claimant's credibility, a failure to provide corroborating documentation is a proper consideration.** In this case, the RAD has considered that it found the Appellants not to be credible in regard to "being wanted by the authorities at the time they exited China; that the Appellants testified that they learned about the PSIB visits while in contact with family via video chat; and that they have not provided documentation regarding these conversations even though they were able to provide the principal Appellant's girlfriend's we chat page, which shows that they have the capacity to acquire this sort of information.

[38] The RAD indicated the need for corroborative documentation because it found the Applicants were not credible. It found the Applicants were not credible because they failed to provide corroborative evidence (an erroneous analysis in itself, and in these circumstances circular in nature: *Wei v Canada (Citizenship and Immigration)*, 2019 FC 230 at para 14;

Magyar v Canada (Citizenship and Immigration), 2015 FC 750 at para 42) and because their testimony was implausible (based on an erroneous analysis). This unreasonable chain of analysis, coupled with an apparent misreading or misapprehension of documentary evidence, cannot be ignored in favour of an insufficiency argument that was not well articulated. In the words of Justice Hughes "if the RAD chooses to take a frolic and venture into the record to make further substantive findings, it should give some sort of notice to the parties and give them an opportunity to make submissions:" *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10.

[39] Given the above, in my view the RAD's upholding of the RPD's negative credibility findings lacked intelligibility, justification and transparency. As this determination fundamentally impacted the rest of the RAD's consideration of the claim, this was a determinative error. In the circumstances, I find it unnecessary to consider the remaining two issues the Applicants raised.

VII. Conclusion

[40] To justify an implausibility conclusion, the administrative decision maker must rule out all other reasonable inferences that could arise from the evidence. This was not done. The RAD used its erroneous implausibility conclusion to impugn the Applicants' general credibility, which precluded them from relying on their own testimony to support their claim. In other words, the RAD used the general negative credibility finding to justify not considering the Applicants' testimony they were Falun Gong practitioners, and to not assess the Applicants' *sur place*

refugee claims. The judicial review therefore is granted; the matter is to be remitted to a differently constituted RAD for redetermination.

[41] Neither party proposed a serious question of general importance for certification.

JUDGMENT in IMM-1489-19

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted.

2. The matter is to be remitted to a differently constituted RAD for redetermination.

3. There is no question for certification.

4. The principal Applicant's name is amended in the style of cause to Jiabin Ruan.

"Janet M. Fuhrer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1489-19
STYLE OF CAUSE:	JIABIN RUAN ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 5, 2019
JUDGMENT AND REASONS:	FUHRER J.
DATED:	NOVEMBER 28, 2019

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Annex A: Relevant Provisions

[1] Part 2 of the *IRPA* governs Canada's refugee regime. Canada confers refugee protection upon individuals who are found to be Convention Refugees or Persons in Need of Protection: IRPA ss 95-97.

95 (1) Refugee protection is conferred on a person when	**95 (1)** L'asile est la protection conférée à toute personne dès lors que, selon le cas :
(a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;	**a)** sur constat qu'elle est, à la suite d'une demande de visa, un réfugié au sens de la Convention ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection;
(b) the Board determines the person to be a Convention refugee or a person in need of protection; or	**b)** la Commission lui reconnaît la qualité de réfugié au sens de la Convention ou celle de personne à protéger;
(c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection.	**c)** le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).
(2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).	**(2)** Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).
96 A Convention refugee is a person who, by reason of a	**96** A qualité de réfugié au sens de la Convention — le réfugié

well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	— la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the	**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection

protection of that country,	de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[2] The RPD is the authorized decision maker in respect of a refugee claim: IRPA s 107(1).

107 (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.	**107 (1)** La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.

[3] Applicants who are not otherwise precluded from doing so may appeal their negative RPD decisions to the RAD: IRPA 110(1).

110 (1) Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection.	**110 (1)** Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile.

[4] On appeal to the RAD, applicants may present only evidence that arose after the rejection of their claim, that was not reasonably available at the time of their claim, or that they could not reasonably have been expected in the circumstances to have presented: IRPA s 110(4).

110 (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	**110 (4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[5] The RAD may uphold or replace the RPD decision, or refer the matter back for re-determination: IRPA s 111(1).

111 (1) After considering the appeal, the Refugee Appeal	**111 (1)** La Section d'appel des réfugiés confirme la décision

Division shall make one of the following decisions:	attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.
(a) confirm the determination of the Refugee Protection Division;	