Federal Court Cour fédérale

Date: 20191203

Docket: IMM-520-19

Citation: 2019 FC 1537

Ottawa, Ontario, December 3, 2019

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

ARAM AHMED MOHAMMED MOHAMMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Aram Ahmed Mohammed Mohammed [the Applicant] seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, LC 2001, c 27 [IRPA] of a decision of the Refugee Appeal Division [RAD] dated December 19, 2018. The RAD upheld the rejection of the Applicant's refugee claim by the Refugee Protection Division [RPD].

[2] The RPD dismissed the Applicant's claim for refugee protection on the basis that he lacked credibility, while the RAD similarly found that the determinative issue was credibility.

[3] This application for judicial review is dismissed for the reasons that follow.

II. Background

[4] The Applicant claims he worked as an auditor accountant for “Unit 70” in the civil force of the Peshmerga, the armed forces of the Kurdish Regional Government in Iraq. He testified that in August 2015, he prepared a list of 115 phantom employees, i.e. people who were receiving salaries but doing no work. Because of his report, the 115 phantom employees were terminated. Sixty-three of the 115 were said to work for “section 136” of the Peshmerga, which is commanded by the notoriously powerful Mahmood Sangawi. The Applicant claims that this led to him being threatened by three armed men who were associated with section 136. They warned him not to search for any more phantom employees.

[5] On October 12, 2015, he prepared another list of people he suspected of being phantom employees and, once again, they were terminated. Of the 130 people on this list, 55 were from section 136. On the same day, the Applicant claims that he learned men were looking for him with the aim of killing him. He immediately went into hiding. He testified that on October 16, 2015, a group of five soldiers came to his family’s home and, when they would not reveal his whereabouts, they beat his brother. While in hiding, he applied for a Canadian visa, pretending he was part of a group attending a trade show in Toronto. The visa was granted, and he left Iraq on November 30, 2015. He claimed refugee status in December 2015.

[6] On September 29, 2017, the RPD heard the Applicant's claim for refugee protection and on November 3, 2017, the RPD dismissed it on the basis that he lacked credibility. The Applicant then appealed to the RAD.

A. RPD and RAD Decisions

[7] The RAD noted that the RPD found that the Applicant was not credible for the following four reasons:

a) It was not satisfied that the Applicant worked for the Peshmerga;
b) A letter from the Applicant's cousin was inconsistent with the Applicant's testimony;
c) The Applicant's testimony about a hospital letter was inconsistent and evolving; and
d) There was an unexplained delay in claiming refugee protection.

1. Applicant working for the Peshmerga

[8] The RPD made the following findings regarding the Applicant working for the Peshmerga in the civilian force:

> (i) His testimony about how he investigated referrals of potential phantom employees was not consistent or detailed.

[9] The RAD reviewed the Applicant's testimony about how he investigated referrals of potential phantom employees and noted it was long and complex and that significant prompting was required from the RPD. However, the RAD did not find inconsistency in the Applicant's testimony in this area, although it found that the Applicant's testimony about his role in determining phantom employees was lacking in the level of detail that would be expected of someone employed as alleged.

(ii) His employee ID document warranted little weight. The RAD noted that the RPD pointed out that the Applicant's official employee identity card showed him dressed in a military uniform and indicated that he had a military ranking.

[10] When asked for an explanation, given his evidence that he was a civilian personnel, the Applicant said that the rank was for the purposes of identifying his pay grade. He further testified that he did not own a uniform, but that he wore one provided by the photographer in order to get his picture taken for his identity card. The RPD concluded that if the organization is willing and, in fact, requires its identification documents to contain false information, by their nature, they are unreliable. It found no independent evidence before it to suggest that these rules or requirements exist or how they are administered, and thus found that the rank and photo do not reflect reality, although the rest of the information is accurate

[11] The RAD agreed with the RPD that it was implausible that a civilian employee would be required to put on a military uniform, furnished by the photographer, in order to have his or her photograph taken for an employee identity card.

[12] The RAD also reviewed the original identity document, and questioned whether it was physically forged. The RAD also looked at a magnified version of the original identity document, from which it concluded that the photograph had been pasted onto the card before it was laminated, and the banner of the card also appeared to have been pasted onto the card with part of the pasted banner being uneven. Despite these apparent physical attributes of the card, the RAD was unwilling to find that the identity card was forged, as it agreed with the Applicant that it would be inappropriate to apply Canadian standards to the Peshmerga.

[13] Nevertheless, the RAD found that the fact that the employee identity document depicted the Applicant, a civilian, in military dress undermined its authenticity. As such, the RAD found that the identity card alone did not prove that the Applicant was an employee of the Peshmerga.

> (iii) The RPD found that a letter from the Ministry of Peshmerga, Unit 70, to the Shorsh Hospital indicating that the Appellant was a "civic employee" and asking that the hospital "help him and do what is necessary" was deserving of minimal weight.

[14] The RPD found that it could give only minimal weight to the letter since it was not clear why the Applicant would need it if he was already with the Peshmerga. The Applicant later submitted that it also served as a “kind of sick note” to allow him to miss work. The RAD found that the letter had probative value, and that the Applicant’s testimony about this letter was not inconsistent.

> (iv) The RPD made a negative inference from the absolute lack of any other evidence to support the claimant’s alleged work with the Peshmerga.

[15] The RAD noted that the RPD held that, given the Applicant alleged that he worked for the Peshmerga for over a year, it would have expected him to provide more supporting evidence, especially given his profession as an accountant. In particular, it mentioned the absence of photographs, emails, letters, and other official documentation. The RPD found that the Applicant's sworn testimony with respect to him being precluded by law from obtaining work-related supporting documentation was not reasonable and not supported.

[16] The RAD noted that the RPD's finding that the Applicant's sworn testimony that he was precluded by law from obtaining work-related supporting documentation was not reasonable, and moreover, had been confirmed by the Applicant in submissions to the RAD. The Applicant had no explanation as to why he was unable to obtain supporting evidence other than his misapprehension of the law. The RAD found that such a misapprehension, arrived at without undertaking any efforts to determine if his understanding was true, did not provide a reasonable explanation for the paucity of documentation to support his claim that he worked for the Peshmerga.

[17] The RAD found that the Applicant provided insufficient supporting documentation to show that he worked for the Peshmerga without a reasonable explanation, citing Rule 11 of the Refugee Protection Division Rules (SOR/2012-256).

> (v) The Applicant claimed to work for an organization other than the Peshmerga on his Canadian visa application.

[18] The RAD noted that the RPD concluded that the Applicant, in his Canadian visa application, did not claim to work for the Peshmerga: he claimed to work at a different job at a different company. Despite the Applicant's testimony, that the information provided on the application was false and that a company aided in this fraud as a favour to him, the RPD concluded that it could not rely on his testimony as he was not being truthful about his employer on his visa application.

[19] The RAD found that the Applicant's testimony that the job outlined on the Canadian visa application was false, and supported by the company that fraudulently claimed him as an employee as a favour. Nevertheless, it provided a reasonable explanation of why his visa application did not show that the Peshmerga employed the Applicant.

2. Letter from Cousin not Inconsistent

[20] The RAD analyzed the letter from the Applicant's cousin and found that while it was confusing, it was not inconsistent with the Applicant’s testimony. However, the RAD also found that while the letter provided support for the Applicant's claim to have stayed with his cousin on the evening of August 20, 2015, the letter was of no value in corroborating the Applicant’s testimony that alleged events took place; it merely featured the Applicant's cousin repeating information that was provided by the Applicant.

3. Doctor’s letter confirming soldiers attending at brother’s house not genuine

[21] The RPD concluded that the Applicant's testimony was inconsistent and evolving regarding a letter from a doctor relating to an injury the Applicant’s brother claimed to have suffered when a group of soldiers came to the Applicant‘s family home searching for him. Among other problems concerning the letter, the Applicant stated that his brother had received the letter more recently, allegedly soon before the hearing, so the date on the letter was wrong. The RPD stated that it would have expected the Applicant to initially point out the misstated date. The RPD found it was more likely that the Applicant created an explanation rather than

spontaneously giving a truthful response. In addition, the RPD deemed the letter unreliable as it was written long after the event, but back dated to the day of the alleged injury.

[22] The RAD concluded that the letter was not genuine and that the Applicant's brother was not injured in the manner described by the Applicant. The RAD found that the Applicant's reliance on a fabricated letter undermined his credibility.

4. Delay in advancing asylum claim

[23] The RPD identified testimonial contradictions that detracted from the Applicant's general credibility concerning the time he took to file his asylum claim after arriving in Canada. The Applicant testified that he required information on how to proceed and did not know how to search the Internet or speak English well enough to do so. The RPD found the explanation improbable given the Applicant's background as an accountant and auditor, that he had completed part of his studies in English, and owned a smartphone. The Applicant changed his testimony to indicate that the problem was that he lacked access to the internet while in hiding. The RAD agreed that the Applicant's testimony that he did not know how to search the internet was implausible, given his profile, and found further that the fact that he changed this testimony later in the hearing - claiming that the internet was unavailable - undermined his credibility.

B. New evidence before the RAD

[24] The Applicant sought to introduce the following documents as new evidence:

a. A copy of an administrative order dated February 11, 2014, indicating that a letter of referral from the Peshmerga was required in order for an employee to receive medical treatment;

b. A letter from the "Ministry of Peshmerga" dated January 10, 2018, stating he had worked for the Peshmerga civilian force as an accountant from June 1, 2014, to October, 2015;

c. Three Peshmerga employee identity cards; and

d. Photographs from his workplace.

[25] The RAD rejected all of the above new evidence because it did not comply with subsection 110(4) of IRPA, noting that the threshold for the admission of new evidence is high. The RAD rejected a "natural justice" submission that a refusal by the RPD to verify his employee identity card was tantamount to the RPD indicating the identity card was not a factual concern.

[26] Concerning the administrative order about the policy for medical treatment, the RAD found there was no indication that this document was not reasonably available or that the Applicant could not reasonably have been expected to present it at the time of the RPD's rejection of the claim. Additionally, the RAD found that the Applicant had every opportunity to submit the document between the hearing and within one month before the RPD rejected the claim.

[27] As for the letter from the “Ministry of Peshmerga” confirming the Applicant’s employment, the Applicant argued that he had not previously requested it because he had mistakenly presumed it was not available unless he requested it in person. The RAD decided that this mistaken assumption could not support a conclusion that the document was not reasonably available. The RAD further noted that an experienced counsel represented the Applicant, who should have advised him of the importance of proving that the Peshmerga employed him.

[28] Regarding the three Peshmerga employee identity cards, , the Applicant had every opportunity to submit the identity cards, including after the hearing but before the claim was denied, yet he once again failed to do so.

[29] Finally, the photographs were found inadmissible because the Applicant’s explanation – that it did not occur to him to submit these photographs – was unreasonable on its face.

C. The Determinative Issue: Credibility

[30] The RAD found that the determinative issue before it was credibility. It reassessed the evidence that was before the RPD and, while not upholding the RPD in many instances, nevertheless, confirmed the significant credibility problems in lengthy and detailed reasons.

[31] In summary, the RAD agreed with the RPD that the evidence of the Applicant’s employment by the Peshmerga - the affidavit of a co-worker, the identity card and the letter from the Peshmerga to a hospital - was limited in nature. Despite finding some aspects of the RPD’s analysis to be in error, the RAD was in agreement with other important aspects of the RPD’s analysis and found that the Applicant provided insufficient evidence to support his claims in

many respects, in addition to having significant credibility problems. When balancing these problems against his supporting documents, not including the rejected findings, the RAD concluded that the Applicant was generally lacking in credibility and on a balance of probabilities, members of the Peshmerga due to his accounting activities were not pursuing the Applicant.

III. Issues

[32] The Applicant submits that this case raises the following three issues:

1. Whether the RAD Member's refusal to accept new evidence was unreasonable;
2. Whether the RAD Member breached natural justice by raising a new argument to which the Applicant did not have a chance to respond; and
3. Whether the RAD Member's decision was unreasonable based on the evidence he agreed to consider.

IV. Standard of Review

[33] With respect to the new evidence, "the RAD's interpretation of subsection 110(4) of the IRPA [is] subject to review on the reasonableness standard, in accordance with the presumption that an administrative body's interpretation of its home statute is owed deference by a reviewing court." (*Canada (Citizenship and Immigration)* v. *Singh*, 2016 FCA 96, para 29).

[34] Whether the RAD breached a rule of natural justice is subject to a correctness standard (*Kastrati v. Canada (Citizenship and Immigration)*, 2008 FC 1141).

[35] Process fact-finding errors, otherwise described in Federal Court jurisprudence as "reviewable errors", are subject to a standard of correctness (*Kallab* v. *Canada (Citizenship and Immigration)*, 2019 FC 706, at paras 31 to 33).

[36] Whether the decision is "defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, para 47) first depends upon what facts have been found by the decision-maker without error. Assessment findings of fact, inferences of fact, and questions of mixed fact and law where the legal issue is not extricable, may only be overturned when the error is palpable (also defined as an error that is plainly seen) and overriding. (*Jean Pierre v Canada (Immigration and Refugee Board)*, 2018 FCA 97 at paragraph 53 [*Jean Pierre*], per *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 S.C.R. 235 at paragraphs 1, 4, 5, 21-23 and 32-33, *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at paragraph 61, *Kallab v. Canada (Citizenship and Immigration)*, 2019 FC 706, and *Aldarwish v. Canada (Citizenship and Immigration)*, 2019 FC 1265, paras 22-42).

V. Analysis

A. Whether the RAD Member's refusal to accept any new evidence was unreasonable.

[37] As indicated, for the most part, the RAD rejected the new evidence because it found there was no indication that the documents were not reasonably available at the time of the RPD hearing, or that the Applicant could not reasonably have been expected to present them before its decision was issued.

[38] Such documentation was available as confirmed by the Applicant's responses to the RPD Member's questions regarding the absence of similar corroborating evidence. When asked whether he had any records from his time working at the Ministry, he replied "No, I only have my ID in order to prove that I was with the Ministry of Peshmerga". When asked why he had no further documents, the Applicant replied as follows "Because nothing happened in order to motivate me to get some documentation, such as I did not seek to get letters of going to hospital or I did not need any kind of support to ask them for letters of support". Similarly, when questioned if he contacted anyone in the force to ask them if they could provide documents or assistance for filing his claim, he replied in the negative and stated "Because I did not know it is necessary. I thought my ID would suffice for all of that". The RAD noted that the same lawyer in both proceedings represented the Applicant.

[39] These admissions are sufficient to dispose of any argument supporting the introduction of the new evidence, including his submission that he could not have reasonably anticipated the requirement to prove employment in the civil force in advance of the hearing (*Shafi v. Canada (MCI)* 2005 FC 714). Furthermore, there is the obvious contradiction of the identification document that depicts and states that he is a member of the military force.

[40] The Applicant also submits that the "Member's argument that the Applicant could have and should have thought to get all this evidence during the time between the hearing and the RPD Member's decision is unreasonable. It was not evidence in his control." First, a reason of the Member is not an "argument", but rather a finding supported by evidence. If the Applicant

thought that obtaining such evidence was beyond his control, he should have advanced that ground rather than saying he did not think it was necessary.

[41] Moreover, it is not logically arguable that a claimant is not required to produce documentation "as long as the documentation is outside of Canada and outside the Applicant's control", (*Owusu-Ansah v. Canada (Minister of Employment and Immigration)*, 98 NR 312 at para 10) when the Applicant subsequently obtained the new supporting documents and placed them before the RAD.

[42] Equally unsupportable is the argument concerning the delay in obtaining such corroborating information from coworkers because "none of them believed that it was possible that a Canadian official would disbelieve I worked in the Peshmerga Unit 70 accounting and payroll office." The RAD quite properly rejected the assertion by the Applicant that "his former co-workers in Iraq did not think it possible that a Canadian official would not accept this" as an unreasonable explanation. In addition, the RAD noted that he ought to have sought advice from his counsel on this issue, not from his coworkers.

[43] Furthermore, the evidence before the RAD intended to demonstrate that the Applicant's coworkers would not believe that a Canadian official would not accept that he was a civilian employee, was contained in an affidavit of the Applicant, and not in affidavits from the coworkers. The fact that the same counsel throughout all the proceedings represented the Applicant suggests that there was some difficulty in obtaining this information directly from the coworkers supposedly reluctant to be of assistance in the first instance.

[44] The Applicant made a second submission for not presenting the new evidence before the RPD: i.e. that issues concerning his identity could not have been reasonably anticipated in advance of the hearing. This conclusion also flies in the face of the evidence. The principal evidence to prove that he was a member of the civil force was based upon his identity card. On its face, the card depicted and stated that the Applicant was a member of the military force. Perhaps somehow the Applicant and his counsel overlooked such an obvious inconsistency in this singularly significant piece of evidence. This is no answer on the part of the Applicant to the significant requirement , to introduce highly objective corroborative evidence from the Peshmerga as the only means to counter the strong presumption that an employer would not issue an employment identity document that purposely misrepresented the employment identity of its bearer.

[45] The Applicant then attempted to advance a natural justice issue raising a similarly unfounded submission of an alleged form of estoppel: that the RPD Member had misled him and his counsel during the hearing, that the authenticity of the identity document was not a factual concern, when it turns out that it was. I reject this argument for a number of reasons.

[46] First, the Applicant relied on the decision in *Sivamoorthy v. MCI*, 2003 FCT 408 [*Sivamoorthy*] for the proposition “that even if a Board Member had not explicitly ruled that an identity document was accepted, the hearing proceeding could leave the impression that it was no longer challenged.” The RAD was entirely correct in stating: “Clearly the facts in *Sivamoorthy* are materially different from those in the instant case as regards to any representations made by the Board decision-maker.”

[47] In *Sivamoorthy*, which did not concern introducing new evidence before the RAD, the facts provided a very sound basis for the RPD to conclude that the decision-maker "left the impression that it [the ID document] was no longer challenged". Those facts bear no resemblance to this matter. In *Sivamoorthy*, the Sri Lanka authorities had confirmed that the original identification document was genuine. At the pre-hearing conference, counsel for the applicant indicated on several occasions that it was his understanding that, since the document had been confirmed genuine, identity was no longer an issue. Specifically, when asked whether the applicant's brother would be testifying, counsel stated "I don't think it's necessary for him to give evidence, since we've verified the NIC. So, I don't intend to call him as a witness." In such circumstances, the admission of further evidence on the authenticity of the identification card was perfectly reasonable given the explicit prejudicial reliance by counsel of his understanding that it was not an issue, which the RPD did not contradict.

[48] Second, I reject the submission that the RPD Member raised unanticipated doubts at the hearing, such that he had no reason to think he still needed to file more evidence before the decision was rendered, as follows:

> The RPD Member raised unanticipated doubts at the hearing and was specifically offered that she could have the identity document verified. She chose not to. Once she chose not to the Applicant had no reason to think he still needed to file more evidence proving he worked for the Peshmerga.

[49] The Applicant misstates the facts that he was left with unanticipated doubts that he had not provided sufficient evidence, or that the RPD Member had somehow induced him into some form of injurious reliance. This is confirmed in the transcript of the discussion on this issue, which I find is accurately summarized by the RAD Member and implicitly points out [with my

emphasis] that the necessary information regarding the misstatement on the card could only be obtained from the Peshmerga forces as follows:

> [38] It is also clear from the recording that the RPD did not, at any time, indicate that it accepted the Appellant's counsel's arguments or that the validity of the identity card was no longer in issue. Instead, it indicated that it did not believe that attempting an authentication would be practical for the following reasons: a) "I doubt that they have a specimen of this particular card -- to compare against "; b) the Appellant's counsel's claim that the Canadian Armed forces work with the Peshmerga sometimes did not "mean the --- RCMP document centre in Canada would have copies of local Peshmerga Forces ID cards"; and, c) the RPD thought it was not practical "to send [the document] to Iraq to be verified by [Canadian] soldiers in Iraq who are working with Peshmerga Forces there." The fact that counsel signalled his client's willingness to consent to the identity card did not create an obligation on the RPD to do so; nor, by not doing so, did the RPD restrict its ability to find the identity card to be problematic.

[50] Third, the Applicant's final submission attempts to incorporate his breach of natural justice arguments relating to an unfounded allegation that the RAD Member found the identification card to be forged, as follows:

> The issue is whether a reasonable person would expect that even after the RPD Member chose not to pursue verification, and even though the Applicant had submitted ample corroboration, the RPD Member would find that the identity card was forged and he had not been a Peshmerga employee.

[51] The argument is largely dealt with by the RAD's rejection of the argument referred to above. It is also highly erroneous to state that the identity card had been amply corroborated, given the significant misstatements on the face of the card. Nonetheless, it is the Applicant's submissions that confuse the concept of physical forgery, which was raised by the RAD and dropped, with "forgery" by the contradictory depiction of him as a member of the military force

of the Peshmerga. This latter issue was always in contention throughout the RPD hearing. I consider and reject this allegation in the second issue of an alleged breach of natural justice, which follows below.

[52] Lastly, the Applicant argues that "[i]t is also unreasonable for the RAD Member to simultaneously insist that the Applicant has provided insufficient evidence that he was employed by the Peshmerga, yet [to refuse] to accept new evidence" to corroborate what was before the RAD. This argument demonstrates that the Applicant does not understand the objective behind subsection 110(4) of IRPA. The policy underlying subsection 110(4) and related provisions is to require parties to put their best case forward before the RPD to prevent wasting valuable decision-making resources by thwarting claimants from rearguing the same issues before the RAD based on evidence that was available before the RPD rendered its decision.

[53] Accordingly, for the reasons described above, the refusal of RAD to admit the new documentation is upheld.

B. Whether Member breached natural justice by raising new argument he did not confront the Applicant with

[54] The Applicant's submission regarding the RAD basing its decision on a new undisclosed argument of forgery is as follows, with the Court's emphasis:

> The RAD Member breached natural justice, by getting a "magnified version" of the Peshmerga identity card made, deciding he could perceive things which are not discernible when the original card is examined, however carefully and basing a decision on his undisclosed methodology without disclosing any of this to the Applicant. Although the identity card's authenticity was

> evidently at issue, the RAD Member's methodology, his creation of a "magnified version" and his new purported concerns were all left undisclosed.

[55] As indicated above, the RAD undertook a physical examination of the original exhibit. This examination is different in terms of the issue it raises concerning the findings of the RPD and the RAD that the contents of the card were irreconcilable with his claim to be a civil member of the Peshmerga force. The statement on the card that the Applicant is a member of the military force describes the authenticity issue in this matter. It is not the physical forgery of the document. The Applicant eventually acknowledged it had no bearing on the decision, recognizing that the RAD Member specifically concluded that the document was not forged after carrying out his physical examination using magnification, stating as follows:

> [34] … Having said that, I am unwilling to find that the identity card was forged. I agree with the Appellant that it would be inappropriate to apply Canadian standards to the Peshmerga: they may have a system of making identity cards by physically pasting pictures and banners onto a card.

[56] This completely disposes of the natural justice argument of the RAD basing its decision on an undisclosed methodology without providing the Applicant with an opportunity to respond. However, the Court will respond to the Applicant's related submissions also advanced under the heading of procedural unfairness, but which are actually unreasonableness submissions regarding the RAD's findings and thus not reviewed on a correctness standard.

[57] The Applicant attempts to move off the misstatement of an alleged failure of natural justice with a number of submissions that challenge the reasonableness of the Member's reasoning. Particularly, the Applicant attempts to make a logical submission that the RAD's

acceptance of the document's physical authenticity should have been equally applied to accept that the contents of the document must be authentic as well. In attempting to support this argument, the Applicant misapprehends and incorrectly cites the decision of *Marshall v. Canada (Citizenship and Immigration)*, 2009 FC 622 [*Marshall*] for the proposition that "an official document is either genuine or forged, so it cannot be ambivalently dismissed as having 'little weight'".

[58] Chief Justice Lutfy makes no such statement as that described above. Instead his comment at paragraph 3 entirely supports the Member's approach, as follows with this Court's emphasis:

> [3] On the other hand, if the PRRA officer accepted that the letter was genuine but was not satisfied with its substantive information, he was required to explain why he assigned little weight to its contents.

[59] A finding on one aspect of the physical authenticity of the document does not preclude its weight being diminished for the purpose of a distinct determination on an issue unrelated to physical appearances of the document. It is obvious in this case why there were questions about the authenticity of the contents of the card that violate its very purpose of reliably identifying the bearer of the card.

[60] The Applicant also argues that there is a contradiction in the reasoning of the Member by dismissing that the card was physically forged because he cannot impose Canadian standards on the Peshmerga, yet not applying the same reasoning to its contents depicting him as a member of the military force. I disagree. It is one thing for the RAD Member to accept that "they may have

a system of making identity cards by physically pasting pictures and banners onto a card". It is quite another to accept that an identity card would intentionally violate the purpose of the document, being that of accurately identifying and describing significant attributes of the bearer of the card.

[61] Despite acknowledging that the Member did not find that the document was forged based on his physical examination, the Applicant nevertheless addressed the issue of impropriety of the examination of a magnified version in paragraphs 28 to 31 and separately thereafter at paragraphs 50 to 57. The Applicant rationalizes his arguments as follows:

> After finding that he cannot find it forged, he finds it inauthentic because he presumed a real Peshmerga card could not have a photograph of a civilian employee in military uniform. This is irrational as an official document either is or is not forged, and there is no difference between saying a document is forged or a document is inauthentic because it includes an improper photograph. The RAD Member has no grasp of his own findings.

[62] Counsel does himself disservice by making such derogatory statements of the like that the RAD Member's reasoning is irrational and that he has no grasp of his own findings. Such statements also violate the Law Society Profession Rules. Section 5.6 of the Rules under the title Encouraging Respect for the Administration of Justice at subparagraph 3 states as follows:

> 3] Criticizing Tribunals - Although proceedings and decisions of tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers.
> ….
> Third, where a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to and should support the tribunal, both because its members cannot defend themselves and because in doing so the lawyer is contributing to greater public understanding of and therefore respect for the legal system.

[63] Moreover, there is no basis for the criticism. The Applicant's complaint was that natural justice was denied because the member obtained a magnified depiction of the identification card

and based his decision on this undisclosed methodology. I repeat that it is obvious that the Member did not base his decision on this methodology, which makes the Applicant's submission misleading.

[64] Instead, the Applicant attempts to tie the undisclosed and ultimately irrelevant methodology of the physical examination of the card to the very relevant and obvious issue that haunted the Applicant from the beginning of his claim of civil status being irreconcilable with the authenticity of the card that depicts and states him to be a member of the military force.

[65] Thus, the statement in the Applicant's memorandum that it was "after finding that he cannot find it forged, he finds it inauthentic" because it does not properly depict the Applicant, is incorrect. The finding was only that its apparent lack of authenticity undermines the weight it provides the Applicant's claim to be a civil member of the Force. Moreover, right from the start, the irreconcilable depiction of the Applicant as a member of the military force was front and centre to this proceeding, and no aspect of it gives rise to any issue of natural justice.

[66] The document is obviously inauthentic because it represents the Applicant as a member of the military force, which he admits is not a true fact. The Applicant testified that the misdepiction and misstatement on the identity document was for providing an appropriate salary scale. This evidence appears highly antithetical to the purpose of the card, and an extremely roundabout and misleading way for a government agency to establish salary scales, rather than managers and owners simply setting the wage scale as is the practice around the world.

[67] The explanation that military ranks are used for the purpose of salary designations also does not appear to be supported by the evidence, at least not from the following line of questions that opened up the issue in the first place.

> Member: Did you ask for personal protection?
> Claimant: You mean someone personally protect me?
>
> Member: Yes.
> Claimant: No, because I was a civilian and it is not part of their policy to give protection to civilian forces.
>
> Member: What does that mean, that you were civilian or civilian forces? What is the difference?
> Claimant: [referring to the interpreter] You know how it is in Kurdistan, the people who are with the armed forces, they are given guards to protect them but the people who are civilians are not given guards to protect them.
>
> Member: Okay, but I'm talking in general in the military, not in this particular [inaudible 1:41:38.5]. What is the difference between civilian forces that you say you're part of and actual armed forces?
> Claimant: When they say "civilian" this person's duty is completely civilian, even in the salary that he is receiving it is noted that this person is a civilian. What does that mean that this person will not pick up arms and will not go to any war scenarios. He is not allowed to use or carry any type of weapon because the Peshmerga are the ones who have the weapons because they would be fighters.
>
> Member: Any other differences other than not going to war?
> Claimant: That is the extent of my knowledge.
>
> Member: Was the ranking system different?
> Claimant: Yes, it is different. Like in the military, for example, they have officers.
>
> Member: What about the civilian side? It is
> Claimant: There is no officer ranks among the civilians.
>
> Member: Did you dress the same?
> Claimant: No, the civilians we wear whatever we wear, the casual, just like this, but the Peshmerga are supposed to wear the uniform, like a military uniform.
>
> Member: Do you have a uniform?
> Claimant: No
>
> Member: Why are you wearing what appears to be military uniform in your ID card?
> Claimant: Yes that is true because I was working in the Peshmerga section. They have given me a rank in order to give me the salary. Also a part of the organisations are the Ministry of Peshmerga. Just for the purpose of that picture we were supposed to have Peshmerga uniform for the photo.

[68] Finally, the Applicant also encounters his own logic anomaly. If the RAD Member were to accept that the card was authentic in describing him as a member of the military force, this would foreclose any submission that he was a member of the civilian force. It was only by finding that the card was not forged, but lacked authenticity in depicting him in this fashion that the Member could provide some weight to the card.

[69] The Applicant does not realize that RAD is accepting his evidence that a government would misrepresent to the world the status of the bearer of an identity card, contrary to the very purpose of the card. The RAD gives the card some weight, contrary to the RPD's conclusion that the irreconcilable depiction prevents him from giving the document any weight. Frankly, it does so without providing an explanation why the RPD erred in its conclusion that the document should be given no weight. In my view, either Board could reasonably have found the "irrational" document should weigh heavily against the Applicant's claim to be a member of the civil force.

[70] The Applicant further argues that the Member should not speculate about how a security force operating under a subtle foreign dictatorship might function stating that "the RAD Member is speculating about a security force that is not even directly administered by a government (sic) would prepare its identity cards." On the same basis, I disagree. Finding authenticity problems in an identity card that misstates the identity of the bearer is not a speculative conclusion.

[71] Appearing on the Applicant's principal identification document as a soldier with a rank called for a probative explanation of the inconsistency. His explanations about a photographer requiring the civil employees to wear uniforms, or suggesting that he was photographed in

military wear for the purpose of determining wage scales, are both improbable and certainly insufficient as an explanation without more objective evidence other than his allegation. I repeat that the concept of issuing an identification card misrepresenting the Applicant's status in order to obtain pay based on military ranks is equally improbable without objective evidence explaining why such a bizarre form of administering salary was adopted.

[72] Accordingly, for the reasons described above, I find no hint of a breach of natural justice on the part of the RAD Member, nor unreasonableness in the RAD Member attributing some lack of authenticity to the identity document because it misstated the Applicant's civil status in the Peshmerga force as submitted by him.

C. Whether the decision was unreasonable based on the evidence the RAD agreed to consider

[73] The Applicant advances a number of submissions to support an argument that the decision was unreasonable. I find none raises a reviewable error. Primarily, the Applicant is asking the Court to reweigh the evidence, which it cannot do.

VI. The RAD Member's reasons are not self-contradictory

[74] The Applicant alleges that the RAD Member's reasons are self-contradictory since the Member found the Applicant was not a Peshmerga employee despite accepting the following evidence:

a. The Peshmerga letter to a hospital confirming that he was a civilian employee of the Peshmerga; and

b. The affidavit from a Peshmerga employee who confirmed every key aspect of his refugee claim.

[75] The Applicant submits that according to *Carll v. M.C.I. (FC)* June 27, 1995 Court no. IMM-3615-94, 56 A.C.W.S. (3d) 366 [*Carll*], a self-contradictory decision must be set aside. In *Carll*, this Court set aside the Board's decision mainly because the RPD failed to make a clear determination regarding credibility, meaning "that the Board had to say whether or not it believed the applicant and, if not, to explain, at least in general terms, why it could not believe him" (*Carll*, para 13).

[76] In the present matter, the Member pointed out concerns with the letter to the hospital. He did not disagree with the RPD's finding that the Applicant's testimony evolved, by adding a second purpose of the letter, but disagreed that the testimony was inconsistent. The Member also did not disagree with the RPD that the letter did not provide specifics as to the Applicant's work, and that there were no original available notes. Nevertheless, the Member found the letter was of some probative value.

[77] The Member similarly accepted that the co-worker's letter supported the Applicant's contention that he was a fellow member of the accounting department with a civil status working on behalf of the civil force of Peshmerga.

[78] However, the problem with all of the evidence was its lack of objective supporting documentation that should have been readily available to someone who was an accountant

working for this organization with the view of demonstrating his civil status. The Member agreed with the RPD that none of the normal documentation that one would expect was provided such as emails, letters, photographs and other official documentation.

[79] The Applicant testified before the RPD that there was a law that third parties could obtain no Peshmerga documents and, because he was outside the country, he could not obtain any such documentation. This explanation was not accepted as reasonable by the RPD, given that he was unable to provide details of the purported law. The RAD referred to Rule 11 of the Refugee Protection Division Rules (SOR/2012-256) which states that a "claimant must provide acceptable documents establishing their identity and other elements of the claim" and that "[a] claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them."

[80] Moreover, the explanation provided to the RPD that the "law" prevented him from providing documents is now acknowledged by the Applicant to be in error. This acknowledgment feeds into and supports the RAD's conclusion that the Applicant was not credible and should have provided more sufficient supporting documentation. There is probative evidence supporting this insufficiency and adverse credibility finding of fact.

[81] The RPD Member made a clear finding of lack of credibility and in an exhaustive review of all of the issues and evidence pointed out the numerous areas where the Applicant lacked credibility. Ultimately, the RAD Member found that in agreeing with the RPD, "the evidence of the Appellant's employment by the Peshmerga -- the affidavit of a co-worker, the identity card in the letter from Peshmerga to a hospital-- was limited in nature." The RAD Member considered

the Applicant's submissions, in some cases finding for him, but in others not, and in weighing and balancing these findings concluded that the Applicant was not employed in the civil force and was not credible. These assessments are not plainly wrong, nor are there reviewable process errors.

VII. The RAD Member's finding about the identity card is also neither self-contradictory nor incoherent

[82] I have already addressed the issues involving the reasonableness of the RAD's treatment of the identity card. The Applicant confuses the concept of physical evidence of a fraudulent card and this very peculiar circumstance where the contents do not match the Applicant's claim to be a member of the civil force. The further cases cited by the Applicant, including that rendered by me in *Agyemang v M.C.I.*, 2016 FC 265 and applied in *Bahati v. Canada (Citizenship and Immigration)*, 2018 FC 1071, all deal with physical alterations, where unless the alteration is plain to see, the document should normally be referred to experts in fraudulent documentation. In any event as indicated, the issue is not one of physically forged cards, which are often referred to experts for determination, but the irreconcilable contents of the Applicant's card which requires no expertise to consider.

[83] I also would agree with the RPD's position that a decision-maker is not required to rely on an identity card that falsely states attributes of the bearer of the card, unless highly probative evidence is offered to explain the obvious conundrum that the identity card raises. There is a strong presumption against any issuer of a legitimate identity document purposely misrepresenting the contents of the document that undermines its very purpose.

VIII. The RAD Member's finding about the doctor's letter is reasonable

[84] The Applicant acknowledges that the doctor backdated his letter on the day of his brother's hospital visit. He argues that the date does not show that the letter is fabricated, even though it is backdated, which most surely is a form of fabrication, rendering it as historical evidence. It demonstrates not only fabrication, but also a willingness to work with the brother of the Applicant in an attempt to mislead the decision-maker. This being the case, there is also no basis for any argument that the brother's affidavit should not similarly be treated as having little probative value.

[85] In addition, the Applicant alleges that the letter contains the doctor's contact information and the name of the hospital. Citing *Paxi v. Canada (Citizenship and Immigration)*, 2016 FC 905 at para 52 [*Paxi*], the Applicant submits that taking "issue with the authenticity of the document yet [making] no further inquiries despite having the appropriate contact information to do so is a reviewable error."

[86] I respectfully disagree with the reasoning in *Paxi*. At paragraph 52 of the reasons referred to by the Applicant, the Court stated as follows, with my emphasis:

> However, the rationale for giving the letter "very little evidentiary weight" for credibility purposes is that it was not dated, it was not notarized, and there were no objective identification documents. The letter is, in fact, dated. The implication that documents must be notarized or accompanied by other "objective identification documents" before they can be given real evidentiary weight overlooks the strong evidence of authenticity contained in the letter itself. Besides the church letterhead, the date, and the signature of the Pastor Eduardo, the letter is detailed and authoritative, and it provides detailed contact information, including a phone number,

> and clearly makes it easy for anyone who doubts its authenticity to check it out.

[87] With respect, I understand that authenticity is a step required to be determined before a decision-maker may rely upon the contents of the document itself as being authentic, particularly in a world where technology has made forging documents considerably more problematic.

[88] More to the point however, I disagree that an administrative tribunal has an obligation to contact a witness to obtain information. This is not its role. The onus rests with the Applicant to bring forward evidence it intends to rely upon and in doing so, always to put the best foot forward. It is not up to the RPD to chase down evidence from a witness to be satisfied that the document is authentic and that a person exists who has sworn to the truth of its contents before someone authorized to confirm that fact. This onus rests with the Applicant who should provide the necessary information authenticating the author and the document.

[89] Nor is it clear how the Member would conduct the telephone interview. The Court in *Paxi* indicates that it would only be for the purpose of authentication, but once in conversation with the witness, it would be expected that the Member would proceed with the normal course of questioning the individual about the contents of the letter and all related matters going to its reliability, including establishing the identity of the witness. Such issues as administering the oath, how the record would be maintained, the nature of the questions - which could require some degree of a form of cross examination, with follow-up by the Applicant as is normally conducted by the Member - or how the conversation could occur without the Applicant being present, also come into play. In essence, it would require a further formal hearing, which cannot be conducted by the Member phoning witnesses for obtaining information.

[90] This having been said, the evidence is a doctor's letter concerning the brother's hospital visit. The document has already been found to be fabricated by falsifying its date. There was no requirement for the RAD to phone the doctor to verify fabricated evidence. Moreover, the doctor's statement as to the cause of the brother's injuries would be hearsay. As well, reporting the attack to the authorities and obtaining a police report is the normal form of corroborating assaults of the nature reported in the doctor's letter. At a minimum, it would be quite a simple matter for the Applicant to have obtained objective materials from the hospital in the form of its records, notes, etc., indicating that he was a patient of the physician that would record the incident, giving rise to the medical treatment.

IX. <u>According little weight to the letter from the Applicant's part-time employer in Iraq and the cousin is reasonable</u>

[91] The Applicant argues that both letters corroborate his statement, and that these letters should have been considered for what they actually say, not what is omitted, citing the decision of *Mahmud v. Canada (MCI)*, 167 F.T.R. 309 [*Mahmud*] in support. In this case, the complaint was that the officer omitted commenting on materials, which were contained in the letter. I agree with the conclusions of the RAD that the RPD did not err with respect to these documents, but merely stated that an understanding of why the Applicant had to hide in his house has little probative value in that it is was provided by the Applicant.

[92] Evidence of this nature after the fact has little probative value where the witness has no personal information, but relies upon the statements or conduct of an Applicant. It is comparable to self-serving evidence, where the giving of evidence of statements on other occasions by the witness is advanced to confirm testimony. Such evidence is problematic due to the risk of

fabrication in accordance with the rule that no person should be allowed to create evidence for him or herself. Such evidence also has little probative value because the Applicant's story is not made more probable or trustworthy by any number of repetitions of it. (Sidney N. Lederman, Alan W. Bryant and Michelle K. Fuerst, *The Law of Evidence in Canada*, 5th edition (Toronto: LexisNexis Canada, 2018) at 7.1-7.3).

[93] As well, I respectfully disagree with the principle enunciated in *Mahmud* that in making findings of credibility and insufficiency of probative value, documentary evidence must be considered for what it says, not for what it does not say. The relevant passages from *Mahmud* are as follows, with my emphasis:

> 6 In coming to these conclusions, the panel considered the letters submitted by the applicant's uncle and the Demra JJS president. The letters mentioned only in general terms the problems that the applicant claimed to have suffered. The uncle's letter does not mention any arrest or detention, while the other letter states that the applicant was detained for two days. Neither letter mentions torture. About the letters, the CRDD said this:
>
> > The panel finds it reasonable to expect that the letters, tendered by the claimant purposely to corroborate his story of persecution in Bangladesh, would have been more consistent with each other and with the claimant's story. ...The panel gave the claimant ample opportunity to explain why the authors of the two letters did not corroborate his purported problems that were supposed to have given rise to his well-founded fear of persecution in Bangladesh, but he failed to give any reasonable explanation.
>
> […]
>
> 10 In *Ahortor v. Canada*, [1993] F.C.J. No. 705 (93-A-237, 14 July 1993), Mr. Justice Teitelbaum held that the CRDD erred in finding an applicant not credible because he was not able to provide documentary evidence corroborating his claims. Thus, while a failure to offer documentation may be a valid finding of

> fact, it cannot be related to the applicant's credibility, in the absence of evidence to contradict the allegations.
>
> 11 In the present case, in effect, the CRDD found the letters submitted by the applicant to be contradictory of the applicant's evidence, not for what they say, but for what they do not say. To follow established authority, the letters must be considered for what they do say. On their face they support the applicant's evidence, and do not provide evidence contradicting that evidence.

[94] First, the decision in *Mahmud* does not appear reconcilable with the Court of Appeal decision of *Dehghani v Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 587 (C.A.) at paragraph 6, as follows with my emphasis:

> It is important to note that it is not damaging information the applicant was cajoled into telling the immigration officer that nourished the tribunal's doubt as to the credible basis of his claim; it was, rather, what he did not mention. The omissions included his royalist political activities, the confiscation of his business and the arrest and execution of his daughter. While we may be obliged to accept the applicant's affidavit evidence as to his state of mind and perception of the secondary examination, the tribunal was under no such constraint in assessing both the applicant's credibility and the value of that evidence as a reasonable explanation of the omissions. That assessment was entirely within its terms of reference.

[95] Second, the reference to the *Ahortor* decision concerned the failure to provide corroborating evidence that the Board relied on to support an adverse credibility finding of the applicant testifying at the hearing where *Maldonado v. M.E.I.* (1979) 31 N.R. 34 (F.C.A.) [*Maldonado*] stands for the principle that sworn evidence is presumed true . The issue was not that discussed here pertaining to a document from an out-of-court witness to which *Maldonado* does not apply and who is presumed could provide salient evidence on issues before the Board, but which are not addressed in the document. Moreover, the adverse inference drawn from the

absence of expected corroborating evidence from a corroborating witness is relevant to the sufficiency and trustworthiness of sworn statements in paragraph 170(h) and Rule 11. These are discussed further below. Third, the evidentiary rules of immigration and refugee tribunals and other decision-makers admit out-of-court or hearsay evidence, including that contained in documents. Having already been granted an exception to the admission of documents when the author is not available for cross-examination or questioning, it follows that the Applicant must put forward his or her best foot concerning such evidence. This means that the Applicant, and even more so when represented, must ensure that the document addresses all of the significant evidence that it is presumed the author of the document would have knowledge about, and be in a position to provide the Tribunal. The failure to address these issues is not only an insufficiency problem, but also one of credibility.

[96] The situation is akin to that where a party has an available supporting witness who is not called to give evidence. In such circumstances, the failure to call a witness raises a presumption that the evidence of the witness would be contrary to the party's case, or at least would not support it. The same applies to omissions in documents on matters that could have been deposed to by the author, and stand out by their absence (Sidney N. Lederman, Alan W. Bryant and Michelle K. Fuerst, *The Law of Evidence in Canada*, 5th edition (Toronto: LexisNexis Canada, 2018) at 6.471-6.473).

[97] The situation is similarly analogous to an omission that forms a misrepresentation. A person may be liable for misrepresentation even when no express misrepresentation is made, but instead makes a representation, which is misleading because it partially suppresses or conceals information that contradicts the statement or its tenor.

X. The submission that the RAD presumes sworn evidence to be false unless it is corroborated by documents misstates both the law and the RAD's finding

[98] The Applicant argues that "[t]he RAD Member's presumption that sworn evidence must be presumed false unless it is proved with documents is entirely wrong in law because it violates the rule in Maldonado that affirms that sworn evidence is presumed true". The Applicant adds "[e]ven when [the RAD] accepts an affidavit corroborating aspects of the claim, he finds the corroboration insufficient." With respect to the first submission, this again misstates the Officer's reasons. With respect to the latter statement, the Court is not entirely sure what the Applicant is referring to, since no paragraphs are referred to where this issue may be substantiated.

[99] However, in addressing the need for corroboration of factual allegations by the Applicant, the RAD correctly stated the law and its application as follows:

> [50] The RPD is, of course, entitled to expect a claimant to "provide acceptable documents establishing their identity and other elements of the claim." This is required by RPD Rule 11. It is also obliged to consider a claimant's explanation as to why he or she did not provide such documents and what steps he or she took to obtain them. Once again, this is provided by RPD Rule 11. That his testimony was sworn does not obviate the need for supporting evidence (citing the recent decision of this Court in *Murugesu v. MCI*, 2016 FC 819, at para 30 in support.)

[100] In *Kallab v. MCI*, 2019 FC706 at paras 147-57, I concluded to a similar effect that the acknowledgment of the truthfulness of sworn statements in *Maldonado* applies only to the credibility of the truth of the claimant's sworn statement. It does not apply to the "trustworthiness" of the statement in reference to paragraph 170(h) of the IRPA, which defines the mandate of the RPD. Accordingly, a refugee claimant is required to make genuine efforts to substantiate the statement, including pursuant to Rule 11, as a condition to obtain "the benefit of

the doubt" that the statement is trustworthy and in accordance with the UNCHR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

[101] I find no reviewable process error in the failure to adhere to the principles of *Maldonado*, or that the finding that insufficient evidence was provided to corroborate the Applicant's statements was plainly in error.

XI. The RAD Member's reasons finding the Applicant not to be credible are reasonable.

[102] Citing the decision of *Hilo v. M.E.I.* (1991) 130 N.R. 236 [*Hilo*] at paragraph 6, the Applicant submits that the Board failed in its duty to provide reasons for casting doubt upon his credibility in clear and unmistakable terms, because it is couched in vague and general terms without particulars of the lack of detail and inconsistencies in the evidence.

[103] First, I am not certain that *Hilo* does not overstate the law with respect to credibility findings or the reasons supporting them in light of the statements contained in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62, at para 12, that "the court must first seek to supplement them [the reasons] before it seeks to subvert them". As long as there is some probative evidence supporting the factual finding on credibility, the Court may not intervene unless the error is palpable and overriding, a conclusion that is even more limiting when applied to credibility findings. This follows from Federal Court of Appeal stipulating in *Jean Pierre* that the principles in *Housen* apply to the

standard of review of findings of fact and inferences of fact, both of which encompass credibility findings.

[104] Second, and more substantively, I disagree that the RAD did not explain its reasoning. It pointed out numerous areas where credibility issues arose relating to being photographed in military uniform for the identification document, concocted explanations such as those provided for the delay in making the claim, and even fabricated documents, along with the absence of any corroborating documentation regarding his employment status that would be expected for someone in the Applicant's circumstances.

[105] The RAD concluded its thorough and detailed decision over 80 paragraphs by balancing the areas where weight was given to the Applicant's testimony, against his significant lack of credibility and failure to provide expected corroboration in support of his conclusion that the Applicant generally lacked credibility. I find no reviewable error in the decision.

B. Advocacy Rules

[106] The Court hesitates to add to these already lengthy reasons, but it is of the view that Applicant's submissions have contributed to this result. It take this opportunity therefore, to restate some long-standing advocacy rules that counsel should follow in presenting their cases as Officer's or the Court. They are as follows:

1. As indicated, counsel should not criticize the decision-maker, only the decision, and even then do so respectfully so as not to undermine the public's confidence in the administration of justice.

2. Counsel should avoid misstating facts or issues, such as facts relied upon to demonstrate a breach of natural justice. This is particularly to be avoided if such statements may result in granting leave to proceed with the application.

3. Counsel should avoid misstating the principles drawn from their cited jurisprudence. This is best accomplished by including quoted passages from a decision as a persuasive means to ensure that the case is being cited for the proper principle.

4. Counsel should not engage in submitting innumerable issues, most of which will have no effect on the outcome. This practice engages unnecessary time of the decision-maker and the Court. A party will be fortunate to have one or two good issues that it may rely on. Courts expect that the first and second issues found in the memorandum to be the most significant. They must generally describe errors that are plain to see and relatively simple to explain. It is not the duty of a decision-maker or the Court to consider every issue placed before it, only those that may affect the outcome. That the Court did so is an exception, not the rule.

XII. Conclusion

[107] The Applicant's application is dismissed for the reasons described. The RAD's decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and the law, while supported by a decision-making process that demonstrates the characteristics of justification, transparency and intelligibility. No questions are certified for appeal.

JUDGMENT IN IMM-520-19 IS:

1. The application is dismissed for the reasons described.

2. No questions are certified for appeal.

"P. Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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