

Federal Court



Cour fédérale

**Date: 20200923**

**Docket: IMM-2041-20**

**Citation: 2020 FC 928**

**Toronto, Ontario, September 23, 2020**

**PRESENT: Mr. Justice A.D. Little**

**BETWEEN:**

**DINESH NEWMAL PALLIYARALALAGE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Respondent commenced this motion, with the consent of the Applicant, for an Order setting aside the decision of the Refugee Appeal Division (“RAD”) dated February 25, 2020 and remitting the matter back to the RAD for re-determination, without costs.

[2] I have reviewed the decision of the RAD and the Applicant’s position in his written submissions filed with his Notice of Application. I have also read the motion record and

subsequent correspondence from the Respondent's counsel, provided at the request of the Court having regard to *Garshowitz v. Canada (Attorney General)*, 2017 FCA 251 at paras 17-19 and related cases.

[3] The written representations provided by the Respondent on this motion advised that the RAD "committed an error of natural justice" in rendering its decision.

[4] Counsel's correspondence advised that the parties agree that the RAD applied an "unreasonable view of the law" and that the RAD "repeated a similar error as identified by this Court in its initial review of the matter".

[5] That "initial review" was this Court's decision in *Palliyaralalage v. Canada (Citizenship and Immigration)*, 2019 FC 596. The Court set aside a decision of the RAD dated August 27, 2018, concluding that the RAD had "breached procedural fairness by making new credibility findings without providing him notice and an opportunity to respond". In his reasons, Justice Campbell referred to *Ojarikre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 896 at paras 20-21 and *Husian v Canada (Minister of Citizenship and Immigration)*, 2015 FC 684 at paras 9-10.

[6] In this application, with an eye to *Garshowitz*, I accept the parties' conclusion that the RAD has again failed to provide the Applicant with procedural fairness. Although the parties' agreement and the submissions did not refer to the specific "similar error" made by the RAD this time, there were new credibility findings in the RAD decision at paras 25, 32, 42-45, 56 and 71.

[7] The motion is granted on consent. The RAD's decision will be set aside and Judgment issued on the terms proposed and agreed by the parties, with a slight modification to ensure that the matter is heard by a different member of the RAD than heard either of the Applicant's appeals that have been set aside by this Court.

[8] On the basis of the parties' agreement that no costs will be awarded to either party, there will be no order as to costs.

**JUDGMENT in IMM-2041-20**

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

1. The decision of the Refugee Appeal Division of the Immigration and Refugee Board dated February 25, 2020, in which the Board confirmed the decision of the Refugee Protection Division that the Applicant was not a Convention refugee or a person in need of protection, is set aside.
2. The matter is returned for redetermination by a different Refugee Appeal Division panel than heard either of the previous appeals from the Refugee Protection Division related to this Applicant.
3. No costs are awarded to either party.

"Andrew D. Little"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2041-20

**STYLE OF CAUSE:** DINESH NEWMAL PALLIYARALALAGE v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** IN WRITING

**REASONS FOR JUDGMENT  
AND JUDGMENT:** A.D. LITTLE J.

**DATED:** SEPTEMBER 23, 2020

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT