Federal Court Cour fédérale

Date: 20230524

Docket: IMM-9568-22

Citation: 2023 FC 720

Ottawa, Ontario, May 24, 2023

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

SOFIANE SAGHIRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Unusually, the Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated August 31, 2022, which allowed his appeal of a decision by the Refugee Protection Division [RPD] and referred the matter back to the RPD for redetermination. The Applicant seeks to have the RAD's decision quashed and the matter sent back to the RAD for redetermination of his appeal.. The Respondent seeks to uphold the RAD's decision which

would result in the matter being referred back to the RPD for redetermination. The controversy arises from the RAD's holding that the RPD had erred in not first considering whether the Applicant was excluded as a Convention Refugee on the ground of criminality.

[2] For the reasons that follow, the application is dismissed.

II. **Facts**

A. *Background Facts*

[3] The Applicant is a citizen of Algeria. He first came to Canada in 2016 on a visitor visa to assist his sister in Montreal and to testify at a trial. He then moved to British Columbia and made a claim for refugee protection in 2020.

[4] The Applicant claims to fear being killed or seriously harmed in Algeria by ex-members of the Front Islamique du Salut [FIS] and an associated criminal gang.

[5] While living in Italy in the early 2000s, the Applicant was arrested along with gang members associated with the FIS in connection with a shipment of 60 kg of hashish. The Applicant claims the gang members pressured him in jail to accept responsibility for the shipment but he refused to do so and was eventually released and the charges against him were dropped in 2003.

[6] After his return to Algeria, the Applicant says he and his family were pressured by gang members to pay them up to 15,000 euros for the loss of the hashish shipment. The Applicant alleges he was stabbed multiple times by members of the gang.

[7] The Applicant was also arrested and convicted twice in Algeria for drug related offences.

[8] Prior to the claim being heard by the RPD, on January 28, 2022 the Minister gave the RPD notice of its intention to intervene on the grounds of credibility and that the Applicant was excluded under section 98 of the IRPA as a person referred to in section 1F(b) of the Refugee Convention. However, four months later and just days before the RPD hearing and decision, the Minister notified the RPD that it was withdrawing its intervention. No reasons were provided.

B. *RPD Decision*

[9] In a decision delivered orally following a virtual hearing on May 3, 2022, the RPD found that the Applicant had not satisfied his burden of established a serious possibility of persecution on a convention ground under section 96 of *IRPA*, or that he would be personally subjected to a risk to life or cruel and unusual treatment under section 97 of *IRPA*. The panel identified two main issues with his claim: credibility and state protection.

[10] The RPD asked the Applicant a few questions during the hearing about his criminal history and accepted that he had a criminal record in Algeria. There is no reference in the transcript of the Member’s oral reasons to the Applicant’s possible exclusion for criminality under the Convention.

[11] The RPD found discrepancies between the Applicant's Basis of Claim narrative and his testimony, and held that his explanations for those discrepancies or inconsistencies were not reasonable. Moreover, the RPD found that the Applicant claiming he fears the FIS undermined his credibility because the organization no longer existed. The RPD also found that the Applicant's reasons for not providing corroborative evidence were insufficient and similarly undermined his credibility.

[12] Moreover, the RPD found that the Applicant did not rebut the presumption of state protection and did not provide clear and convincing evidence, on a balance of probabilities, that the police would not be able to help him. Therefore, the RPD found that the Applicant would be afforded adequate state protection if he were to return to Algeria even if he has a criminal history.

[13] For a lack of credible and trustworthy evidence, and for not having rebutted the presumption of state protection, the RPD rejected the Applicant's claim under sections 96 and 97 of *IRPA*.

C. *Decision under review*

[14] In a decision dated August 31, 2022, the RAD allowed the Applicant's appeal of the RPD decision on a ground that the Applicant had not raised. The RAD found that the RPD had erred by failing to undertake an analysis under section 98 of *IRPA* with respect to whether the Applicant is a person referred to in article 1F(b) of the Refugee Convention. The RAD found that the RPD did not demonstrate in its reasons that it considered the Applicant's criminal history in

Italy and Algeria to determine "if there are serious reasons for considering that he committed a serious non-political crime in either country within the meaning of Article 1F(b) of the Refugee Convention".

[15] The RAD then found that it was unable to remedy this error because there was insufficient evidence on the record to allow the panel to conduct an exclusion analysis as the RPD did not question the Applicant in sufficient depth on his criminal history. Thus, the RAD concluded, it could not proceed with a review of the RPD's determination with respect to inclusion (credibility and state protection) without this prior analysis on exclusion.

[16] The RAD held that the obligation on the part of the RPD to determine whether s 98 applies to the claimant exists regardless of whether or not the Minister intervenes in the claim. The RAD further held that this obligation must be undertaken before proceeding with an analysis of inclusion.

[17] In reaching these conclusions, the RAD relied on *Ezokola v Canada (Minister of Citizenship and Immigration),* 2013 SCC 40 at paras 32-36, *Badriyah v Canada (Minister of Citizenship and Immigration),* 2016 1002, at paras 22-34 [*Badriyah*] and *Ospina Velasquez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 273, at para 15.

[18] The RAD referred the matter back to the RPD for redetermination by a differently constituted panel.

III. **Issues and standard of review**

[19] According to the parties, and I agree, the sole issue is whether the RAD decision was procedurally unfair to the Applicant by not giving him notice and allowing him the opportunity to make submissions on the application of Article 1F(b) of the Convention.

[20] The standard applicable to issues of procedural fairness is whether, "having regard to all of the circumstances and focusing on the nature of the substantive rights involved and the consequences for the individual affected," the procedure followed by the decision-maker was fair: *Canadian Pacific Railway Company v Canada (Transportation Agency),* 2021 FCA 69 at paras 46-47. This standard involves no deference to the decision-maker. See also *Khaleel v Canada (Citizenship and Immigration),* 2022 FC 1385 at para 17.

IV. **Legislative framework**

[21] Section 111 of *IRPA* outlines the decisions the RAD can make as follows:

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:	**111 (1)** La Section d'appel des réfugiés confirme la décision 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;	

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

(2) The Refugee Appeal Division may make the referral described in paragraph (1)(c) only if it is of the opinion that

(a) the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and

(b) it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.

(2) Elle ne peut procéder au renvoi que si elle estime, à la fois :

a) que la décision attaquée de la Section de la protection des réfugiés est erronée en droit, en fait ou en droit et en fait;

b) qu’elle ne peut confirmer la décision attaquée ou casser la décision et y substituer la décision qui aurait dû être rendue sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.

[22] Rules 24 and 26 of the *Refugee Appeal Division Rules*, SOR/2012-257 provides that:

24 (1) Before using any information or opinion that is within its specialized knowledge, the Division must notify the parties and give them an opportunity to,	**24 (1)** Avant d'utiliser des renseignements ou des opinions qui sont du ressort de sa spécialisation, la Section en avise les parties et leur donne la possibilité de faire ce qui suit :
(a) if a date for a hearing has not been fixed, make written representations on the reliability and use of the information or opinion and provide written evidence in support of their representations; and	**a)** présenter des observations écrites sur la fiabilité et l'utilisation du renseignement ou de l'opinion et transmettre des éléments de preuve par écrit à l'appui de leurs observations, si aucune date d'audience n'a été fixée;
(b) if a date for a hearing has been fixed, make oral or written representations on the reliability and use of the information or opinion and provide evidence in support of their representations.	**b)** présenter des observations oralement ou par écrit sur la fiabilité et l'utilisation du renseignement ou de l'opinion et transmettre des éléments de preuve à l'appui de leurs observations, si une date d'audience a été fixée.
(2) A party must provide its written representations and evidence first to any other party and then to the Division.	**(2)** Toute partie transmet ses observations écrites et ses éléments de preuve par écrit à toute autre partie, puis à la Section.
(3) The written representations and evidence provided to the Division must	**(3)** Les observations écrites et les éléments de preuve transmis à la Section sont

be accompanied by proof that they were provided to any other party.	accompagnés d’une preuve de la transmission à toute autre partie.
[…]	[…]
26 (1) The Division may require the parties to participate at a conference to discuss issues, relevant facts and any other matter in order to make the appeal fairer and more efficient.	**26 (1)** La Section peut exiger que les parties participent à une conférence pour discuter de points litigieux, de faits pertinents ou de toute autre question afin que l’appel soit plus équitable et efficace.
(2) The Division may require the parties to give any information or provide any document, at or before the conference.	**(2)** La Section peut exiger que les parties, avant ou pendant la conférence, lui communiquent tout renseignement ou lui transmettent tout document.
(3) The Division must make a written record of any decisions and agreements made at the conference.	**(3)** La Section note dans un procès-verbal toutes les décisions prises et les accords conclus à la conférence.

[23] Section 98 of *IRPA* states:

98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	**98** La personne visée aux sections E ou F de l’article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[24] The related Article 1F(b) of the Refugee Convention indicates that:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	**F.** Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

English	French
[…]	[…]
(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

V. **Analysis**

A. Applicant's submissions

[25] The Applicant argues that the RAD completely ignored the Applicant's submissions and unilaterally decided to reject the RPD's findings and decision, and that at no point in time had the RAD provided any opportunity for the Applicant to address its concerns related to Article 1F(b), especially as this issue was never raised before the RPD. Nor was it raised on appeal by either party.

[26] Since the issue was considered for the first time by the RAD and was considered crucial to the claim, the Applicant argues the RAD should have held a pre-hearing conference under Rule 26 of its Rules to discuss the concern and grant the Applicant the opportunity to address the issue. Similarly, the Applicant argues pursuant to Rule 24 of its Rules, the RAD was obligated to provide a notice to the Applicant that it was raising a new issue.

[27] The Applicant submits the RAD has a duty to allow parties to address pivotal new matters not raised by the RPD: *Fu v Canada*, 2017 FC 1074 at para 14. The Applicant also

submits that the duty of procedural fairness requires the RAD to provide the appellant with an opportunity to make submissions on issues that were not raised by an appellant or by the RPD: *Ehondor v Canada (Citizenship and Immigration),* 2016 FC 1253 at para 13 [*Ehondor*]. Thus, the Applicant argues that the fact that the RAD unilaterally raised an issue considered material to the case and decided it without notice or participation is a serious breach of principles of procedural fairness.

[28] The Applicant argues the issue of Article 1F(b) carries serious consequences for him as it can prevent him from making a refugee claim and impose restrictions on his ability to seek protection in Canada.

[29] The Applicant also argues the RAD breached section 111(2) of *IRPA,* which only allows the RAD to refer the matter back for reconsideration if the decision of the RPD is wrong in law, in fact or in mixed law and fact, and it cannot make a decision without hearing evidence that was presented to the RPD: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103 [*Huruglica*]; *Ogbonna v Canada (Citizenship and Immigration),* 2020 FC 180 at para 29; *Liao v Canada,* 2017 FC 1163 at paras 31-32.

B. Respondent's submissions

[30] The Respondent submits it was fair and reasonable for the RAD to refer the matter back to the RPD for re-determination as the RAD granted the Applicant one of the remedies he sought in his appeal. There was evidence that the Applicant had a criminal history, which raised the

possibility that Article 1F(b) might apply to the Applicant. The RAD considered whether it could do its own analysis but found that there was not enough evidence before it to do so and therefore could not proceed to a consideration of inclusion.

[31] The Respondent notes the Applicant has not challenged the RAD's holding that the application of Article 1F(b) had to be considered before any determination can be made as to whether his refugee claim should be accepted. Given this and the fact that there was insufficient evidence before the RAD to make this determination, the Respondent submits it was reasonable and fair for the RAD to refer the matter back to the RPD.

[32] It is the Respondent's view that the Applicant has no cause for complaint: the RAD's decision has not denied the Applicant an opportunity to make submissions on whether he may be excluded under Article 1F(b), and it did not decide whether the Applicant is excluded under Article 1F(b); it simply granted one of the orders being sought by the Applicant and referred the matter back to the RPD to consider the possible application of Article 1F(b). The Respondent argues the Applicant will have the opportunity to make submissions on this issue to the RPD.

C. Analysis

[33] As stated by Madame Justice Roussel in *Badriyah* at para 26, the RPD is required to determine whether s 98 of the IRPA is applicable to a claimant regardless of whether or not the Minister decides to intervene. When put on notice that exclusion was a possible concern, the RPD in this instance should have conducted a more thorough questioning of the Applicant to adequately assess whether he was excluded under Article 1F(b) of the *Refugee Convention*. The

failure of the RPD to conduct such an examination in this case was an error that the RAD was entitled to consider in exercising its jurisdiction to conduct an independent assessment of the evidence: *Huruglica* at para 103.

[34] The evidence of criminality in this matter included the Applicant's testimony before the RPD and statements in his Basis of Claim narrative regarding his jailing in Italy in relation to the possession of cannabis for the purpose of distribution and Algerian court records of drug related convictions provided by the Applicant. As noted by the RAD, the most serious of the charges against the Applicant appeared to correspond to a similar offence in Canada punishable by a term of imprisonment of up to 14 years.

[35] There is no dispute between the parties that it would have been reasonable for the RPD to proceed with an assessment of whether the Applicant, as claimant, was excluded from consideration for refugee protection under s 98 of *IRPA*. The RPD having failed to do so, however, was it open to the RAD to make a determination that this was a fatal error in the RPD's decision without giving the Applicant notice and an opportunity to be heard on the issue?

[36] In view of what transpired before the RPD, including the Minister's decision to withdraw its notice of intention to intervene, I agree with the Applicant that these circumstances required that he be given notice and an opportunity to make submissions on the issue before the RAD made any findings regarding exclusion. The failure to do so amounts, in my view, to a breach of procedural fairness.

[37] Rule 24 of the RAD Rules provides that before using any information or opinion that is within its specialized knowledge, the RAD must give the parties an opportunity to make written submissions. Whether the RPD had erred by failing to undertake an analysis under section 98 of *IRPA* with respect to whether the Applicant is a person referred to in article 1F(b) of the Refugee Convention falls within the RAD's specialized knowledge of the law applicable to refugee claims.

[38] Similarly, it is established that the duty of procedural fairness requires the RAD to provide the appellant with an opportunity to make submissions when considering an issue that was not raised by the appellant or by the RPD: *Ehondor* at para 13. When neither party raises or where the RPD does not determine an issue, it is not open to the RAD to raise it and to make a determination on the issue, as this raises a new ground of appeal not identified or anticipated by the parties, thus breaching the duty of procedural fairness by depriving the party of an opportunity to respond: *Tan v Canada (Minister of Citizenship and Immigration),* 2016 FC 876 at para 40.

[39] The Supreme Court has stated that a finding that procedural fairness has not been observed will result in a determination that the decision of the tribunal is invalid: *Cardinal v Kent Institution,* [1985] 2 S.C.R. 643 at para 23. This has been subsequently read to mean a breach of an essential requirement of the duty of fairness such as the denial of a hearing: *Uniboard Surfaces Inc. v Kronotex Fussboden GmbH and Co. KG,* 2006 FCA 398 at para 13. In the particular circumstances of this matter, notifying the Applicant that exclusion was under

consideration was, I believe, an essential requirement of the RAD's duty of fairness on the appeal.

[40] The Court has the discretion to dismiss judicial review notwithstanding a breach of procedural fairness if the result would nonetheless be the same: *Bergeron v Canada (Attorney General)*, 2017 FC 57 at para 73. Here, the breach of procedural fairness was the Applicant's inability to make submissions on a new issue in front of the RAD. To grant this application would require that the matter be remitted to the RAD for reconsideration by a different Member. That Member would be confronted with the same insufficient factual basis from the record before the RPD that led the RAD panel in this instance to send the matter back for redetermination. That in my view would be futile.

[41] Another way of looking at this case is that the Applicant has failed to exhaust his administrative remedies before proceeding to the Court. On a rehearing by the RPD, he would have the opportunity to provide evidence and arguments in response to the allegation that he was excluded under Article 1F(b). The Applicant's concerns about procedural fairness in respect of the RAD's decision are not "exceptional circumstances" so as to justify the Court's intervention before the administrative process has run its course: *C.B. Powell Limited v Canada (Border Services Agency),* 2010 FCA 61 at para 33.

[42] As stated by the Federal Court of Appeal in *Rebello v Canada (Attorney General)* 2023 FCA 67:

> [16] That said, assuming that this amount**s** to a breach of procedural fairness, this breach does not justify the setting aside of the impugned order since, in my view, the outcome of the respondents' motion to strike the Statement of Claim is inevitable (*Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 S.C.R. 202 at 228; *Ilaslan v. Hospitality & Service Trades Union*, 2013 FCA 150 at para. 28). In other words, remitting the matter to the Federal Court so as to allow the appellant to make oral submissions in response to the respondents' motion, which is the only substantive remedy this Court could reasonably grant if it was to allow this appeal, would be futile (*Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56 at para. 117).

[43] In the particular circumstances of this matter, to grant the application and refer the matter back to the RAD for a redetermination would, in my view, be futile as that tribunal, having repaired the breach of procedural fairness by giving notice, would likely find itself in the same position as the Panel below. Dismissal of the application would result in the matter being returned to the RPD to conduct the assessment that it should have done in the first place, as instructed by the RAD.

VI. Certified question

[44] At the conclusion of the hearing, I invited counsel to consider whether in light of the novelty of the matter they wished to propose serious questions of general application for certification in post-hearing written submissions.

[45] The Applicant proposed the following questions for certification:

1. Can RAD remit the matter back for reconsideration to the RPD in circumstances not covered by Section 111(2) of the Immigration and Refugee Protection Act?

2. Does the RAD have jurisdiction to conduct an analysis of an issue not considered by the RPD, and then decide the said issue on its merits, and substitute its decision for that of the RPD?

3. What circumstances engage the provisions of Section 111(2) of IRPA?

4. Does the RAD have jurisdiction to refer a matter back for reconsideration to the RPD, under Section 111(2) of the IRPA, when no evidence was presented before the RPD on an issue considered by the RAD?

5. Does the RAD have jurisdiction to refer a matter back for reconsideration to the RPD, under Section 111(2) of the IRPA, after allowing an appeal on an issue not considered by the RPD?

6. Can the RAD conduct its own hearing on an issue never considered by the RPD?

7. Does the scope of Section 111(2)(b) of IRPA, include instances where no evidence on an issue considered by the RAD to be determinative of an appeal, was ever presented to the RPD?

8. What is the scope and meaning of the phrase "without hearing evidence that was presented to the Refugee Protection Division"? Does it include instances where no evidence was heard by the RPD on an issue that was only considered for the first time by the RAD?

[46] The Respondent submits that the Applicant's proposed questions do not meet the test for certification, and that no serious question of general importance arises from this case. The Respondent notes the Applicant submitted eight questions but that serious questions of general importance are rare and it is exceptional that a single case would raise more than one question: *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at para 28. The Respondent argues the Applicant's questions either are answered by settled case law or

constitute references for declaratory judgments on fine questions which are not dispositive of the appeal.

[47] On the first question, the Respondent submits that the question is already answered by the plain wording of subsection 111(2) of *IRPA* itself, and that this Court confirmed the RAD may make a referral to the RPD only if it is of the opinion that the criteria in paragraphs (a) and (b) exist: *Canada (Citizenship and Immigration) v Hayat*, 2022 FC 1772 at paras 26-33; *Canada (Citizenship and Immigration) v Denis*, 2022 FC 552 at para 18.. The question is therefore unnecessary and inappropriate.

[48] On the second question, the Respondent submits subsection 111(1)(b) explicitly allows the RAD to substitute its own decision for that of the RPD, and that it is also settled law that the RAD can make findings on an issue that was not considered by the RPD: *Huruglica* at para 78. If an issue never considered by the RPD is raised by the RAD and not by the parties, then the principles of procedural fairness come into play.

[49] For the third question, the Respondent submits subsection 111(2) of *IRPA* already answers this question by describing the criteria necessary for a referral to the RPD, and it is a futile exercise to attempt to create a list of all the possible circumstances that could meet this criteria.

[50] On question 4 and 5, the Respondent argues question 5 is a subset of question 4 and that the RAD has jurisdiction to refer a matter back to the RPD when the criteria of subsection 111(2)

are met. Paragraph 111(2)(a) is discretionary and fact dependant, thus it is not an appropriate question of general importance.

[51] For the sixth question, the Respondent submits the Court of Appeal has already considered the circumstances under which the RAD may hold a hearing under subsection 110(6) of *IRPA*, and that the RAD does not have jurisdiction to hold a hearing if it does not receive any new evidence: *Canada (Citizenship and Immigration) v Singh,* 2016 FCA 96 at para 51 [*Singh*].

[52] Finally, the Respondent finds questions 7 and 8 to be very similar. The Respondent acknowledges that paragraph 111(2)(b) of *IRPA* is awkwardly written in both the French and English versions. However, the Respondent submits the RAD's ability to remit a claim to the RPD for new or further evidence was contemplated by the Court of Appeal to apply to circumstances where the RAD thinks that oral testimony is critical or determinative, or where the RAD finds that all of the evidence should be heard again in order to make an informed decision: *Huruglica* at para 69; *Singh* at para 51. The Respondent adds that a purposive interpretation of paragraph 111(2)(b) of *IRPA* "allows the RAD to remit a refugee claim for further evidence because otherwise restricting the evidence on the RPD's redetermination would bring about an absurd consequence", since the RAD can only confirm, substitute or return a decision under section 111(1) of *IRPA*. If the RAD needs more evidence, but cannot refer a claim to the RPD, then the RAD would be "hamstrung".

[53] I agree with the Respondent that the proposed questions have either already been resolved by the jurisprudence or are not of general importance as they are dependent upon the particular facts of this matter.

[54] Paragraph 111(2)(b) is indeed "awkwardly written" in both languages as the Respondent acknowledges. As stated in para 69 of *Huruglica,* para 111(2)(b) says that the RAD may refer the matter back for redetermination with the directions that it considers appropriate only if it is "of the opinion" that it cannot make a decision confirming or setting aside the RPD decision without "hearing the evidence presented before the RPD" [sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.]. According to the Court of Appeal:

> "…This possibility acknowledges the fact that in some cases where oral testimony is critical or determinative in the opinion of the RAD, the RAD may not be in a position to confirm or substitute its own determination to that of the RPD"

[55] That is the dilemma in which the RAD found itself in this instance. There was no or insufficient evidence before the RPD on the issue of exclusion which it could have heard that would have allowed it to confirm or substitute its own determination of the issue. Thus the only remedy was to send it back to the RPD for all of the evidence relating to the claim to be heard again in order to make an informed decision on the question of exclusion.

VII. Conclusion

[56] In the result, I am satisfied that this application for judicial review must be dismissed and the finding of the RAD granting the appeal and remitting the matter to the RPD for reconsideration should be allowed to stand. For the Court to interfere with the RAD's decision, notwithstanding the breach of procedural fairness, would result in a futile outcome.

JUDGMENT IN IMM-9568-22

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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