Ottawa, Ontario, February 29, 2024

PRESENT: **Madam Justice Azmudeh**

BETWEEN:

ARIEL MASSAGUE CABRERA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

I.   <u>Overview</u>

[1]   Under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the Applicant, Ariel Massague Cabrera [the "Applicant"], is seeking a Judicial Review of the rejection of his refugee claim by the Refugee Protection Division ["RPD"] of the Immigration and Refugee Board of Canada ["IRB"].

[2]   Because the RPD member had also made a finding of No Credible Basis ["NCB"] under section 107(2) of IRPA, the Applicant lost his right of appeal to the Refugee Appeal Division ["RAD"] and applied for a judicial review directly.

[3]   The Applicant is a Cuban citizen and a seaman. The Applicant's Basis of Claim Form ["BOC"] is on the record. Here is a brief summary of his allegations for the purpose of this application:

•   After the Applicant purchased a cell phone in 2019, he realized that the Cuban media hid the reality. The Applicant became disappointed with the government and its politics but understood that he could not say anything because it would be viewed as a crime.

•   Once the Applicant went to Venezuela as a seaman, he found the situation to be similar in many ways to Cuba, but he noted that food and medication were available in greater variety and they were more affordable. It was at his next destination, Mexico, where he could appreciate a sharper contrast with the conditions in Cuba. In the meanwhile, currency reform in Cuba led to a further decline in purchasing power of basic goods such as food and medication and other living conditions in Cuba.

•   The Applicant then went to Spain for a new marine assignment. The contrast with Cuba was even sharper in Spain. He alleged that due to the tight control of the personnel on merchant ships, he did not have the option to escape, but he started to talk to other seamen about how the real situation was different in Cuba from what the officials told. The discussion heated and some other men started to insult and intimidate him. Some colleagues also informed him to keep quiet, as there are often informers on ships. When the ship arrived from Spain to Canada, the claimant left and made a refugee claim.

[4]   The RPD member rejected the claim on credibility and made an NCB finding.

II.   Decision

[5]   I grant the Applicants' judicial review application because I find the decision made by the RPD to be unreasonable.

III.   The Issues and Standard of Review

[6]   The parties submitted, and I agree with them that the only issue before me in this case is whether the RPD decision is reasonable.

[7]   The standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

IV.   Analysis

A.   *Legal Framework: Credibility Findings*

[8]   There is generally a great degree of deference given to the credibility findings of an

expert administrative tribunal such as the RPD. Generally, this Court will not interfere with a

decision if the evidence before the Board, taken as a whole would support its negative

assessment of credibility, if its findings were reasonable in light of the evidence, and if

reasonable inferences were drawn from that evidence (T*sigehana v Canada (Citizenship and*

Immigration), 2020 FC 426, at paras 33-35.)

[9]   Where the necessary preconditions are satisfied based on the facts, subsection 107(2) of

IRPA does not grant any discretion to decision-makers as it "shall state" in its reasons for the

decision that the claim has no credible basis (NCB) *Yared Belay v* Canada (Citizenship and

Immigration), 2016 FC 1387 at para 16.

[10]   However, credibility assessment is a fact-finding exercise. The decision-maker can accept

or reject the facts on a balance of probabilities. Facts that the decision-maker accepts or rejects

are then linked to their rationally connected legal consequence. If the claimant's testimony

cannot be relied upon, and that there is no independent evidence to sufficiently corroborate the

facts relevant to the claim, the decision-maker is left with insufficient credible evidence to find

that the fact is established to support the claim. Therefore, the starting point is to understand and

consistently use well-defined concepts such as credibility, probative value, relevance,

materiality, weight and sufficiency. My colleague Justice Grammond has offered guidance on

this in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 that I will not repeat here.

Concisely, by understanding and using concepts related to accepting or rejecting evidence

consistently, administrative decision-makers increase the likelihood of rendering reasonable

decisions.

[11]   The formal rules of evidence, which make irrelevant or immaterial evidence inadmissible

to a court proceeding, do not apply to an administrative tribunal such as the RPD. However, this

does not mean that all facts, irrespective of their relevance, probative value or materiality, are

created equal. Even though nearly all evidence is admitted, relevance and materiality remain key

to the weight of the evidence. Therefore, generally speaking, an exercise in making credibility

assessment of individual facts, irrespective of how they matter in the context of the refugee case,

in and of itself may not support an overall reasonable decision. This is because a decision where

the member refers to all facts as equal, irrespective of their relevance and materiality in the

context of the refugee claim, could lose the logical chain of reasoning contemplated by *Vavilov*:

> [85]   Developing an understanding of the reasoning that led to the
> administrative decision enables a reviewing court to assess whether
> the decision as a **whole is reasonable**. As we will explain in
> greater detail below, a reasonable decision is one that is based on
> an internally coherent and rational chain of analysis and that is
> justified in relation to the facts and law that constrain the decision
> maker. The reasonableness standard requires that a reviewing court
> defer to such a decision (my emphasis).

[12]   Putting it differently, likening the situation to puzzle pieces, individual credibility

findings represent fragments of evidence. Each piece might be accurate on its own, but without

assembling and examining the complete puzzle, the overall picture – the comprehensive

credibility assessment – may fail to reflect the true nature of the case. It underscores the

necessity of a holistic approach to ensure the integrity and accuracy of the decision-making

process. Without it, the chain of reasoning is lost and the reasons are no longer intelligible (*Patel

v Canada* (*Citizenship and Immigration*), 2024 FC 28 at para 24).

B.   *Was the RPD decision unreasonable?*

[13]   In this case, the RPD member's impeachment of the Applicant's credibility was divorced from the context of Applicant's refugee claim. To summarize, the Applicant had claimed refugee status based on his political opinion and had used his BOC narrative to show that it was developed slowly and over time. The RPD limited its credibility analysis on a handful of perceived contradictions on the record without ever assessing the credibility of Applicant's political opinion. As a result, the member also failed to assess the Applicant's prospective risk of return to Cuba. This, in and of itself, renders the decision unreasonable. However, I find that it is worth also mentioning how the member went about assessing the credibility of past events was also unreasonable.

[14]   In effect, the member based his negative credibility finding on these perceived contradictions:

- A contradiction in the exact timing of the Applicant's fear for his life in Cuba: he had testified that his fear started in 2019 where at the at the Port of Entry ("POE") and in answer to the officer's question on whether he feared for his life, the Applicant had stated "no". The member then found further contradiction between the Applicant's allegation that he had problems in Cuba in 2019, the fact that his problems started in July 2021, or when he said he could not remember when he first spoke against the government in Cuba. The member did not engage with the evidence on the BOC where the Applicant had described the circumstances of a slow-developed political opinion without a triggering date for a fear to his life. The member's unwavering expectation to commit the Applicant to an exact date is not based on the totality of the evidence before him or the context of the refugee claim he was adjudicating.

- At the POE, in a 3-page handwritten interview, when the officer had asked why he claimed asylum, the applicant had answered that it was for a better future, to help his family and that the situation in Cuba was not good. There were no follow-up questions by the POE officer and there is nothing in the RPD reasons to suggest that the member engaged with these, short of putting it to the Applicant as a contradiction. There is therefore no indication that the member engaged the Applicant with what he might have meant by stating that the situation was not good. There is no analysis on why the member might have thought that the first two points are mutually exclusively from the third, or why the third is contradictory with the Applicant's basis of claim on political opinion as stated on his BOC. Again, there is a large gap in the member's chain of reasoning.

- It was The RPD member who limited the Applicant's complaint about currency reform first to a generalized problem faced by all in Cuba and then to a complaint about money. At no time did the RPD attempt to assess the credibility of this complaint in the context of the Applicant's basis of making a refugee claim, political opinion. Once more, it was the member who assumed that the currency reform was a generalized financial complaint, even when the Applicant's own evidence was in direct contradiction of this assumption. The Applicant had stated that in fact he was better off than most as someone who worked on ships abroad.

- In response to my question to the parties on the credibility of the Applicant's political opinion, counsel for the Respondent stated that when the claimant's counsel at the RPD asked him about his recollection of what he had stated on board the ship that got him into trouble, he could not remember it clearly. Therefore, there was no need for the member to explore political opinion. I disagree. It was the member's duty was to assess whether the Applicant was a Convention Refugee or a person in need of protection as per the application of ss. 96 and 97(1)

of the Act. The test is prospective and the context in this case is the Applicant's political opinion. Testing the Applicant's recollection of what he said onboard the ship, while relevant, is not sufficient. Further, it was the Respondent counsel and not the RPD member who turned her mind into the potential reason for not asking further on the credibility of the Applicant's political opinion.

[15]   Returning to the earlier puzzle analogy in *Patel* (*Patel v Canada (Citizenship and Immigration)*, 2024 FC 28 at para 24), in this case, the member's approach appears to have been overly fixated on scrutinizing each individual piece of evidence without stepping back to consider the broader context or the overarching narrative. By becoming consumed with the minutiae of each isolated detail, he failed to provide a cohesive analysis that integrated these findings into a comprehensive understanding of the case. This narrow focus ultimately led to an incomplete and flawed decision, as the big picture – the holistic assessment of credibility – was overlooked or neglected.

[16]   In summary, the RPD member went after individual pieces of evidence one by one and with little regard for whether or how they might fit into the Applicants' refugee claim. The member's analysis took place piece by piece and divorced from any theory of case supporting or rejecting the Applicants' refugee claim under the requirements of sections 96 or 97(1) of IRPA. As seen above, the process became microscopic and the logic circular, which ultimately broke a rational chain of reasoning and resulted in a decision that lacked intelligibility.

[17]   As stated, more importantly, the member also completely failed to assess the credibility of Applicant's political opinion, which is key to whether he faced a prospective risk of

persecution. This is particularly relevant in light of the relevant country documents on record on the Cuban government's lack of tolerance for dissent.

[18]   What makes the decision further unreasonable is the RPD's finding of NCB. This Court has noted in several cases that a NCB determination cannot be based on "a summary of insufficiency and weighing of evidence pros and cons" (*Mohamed v Canada (Minister of Citizenship and Immigration*), 2017 FC 598 at para 31; *Mahdi v Canada (Minister of Citizenship and Immigration),* 2016 FC 218 at para 10; *Boztas v Canada (Citizenship and Immigration),* 2016 FC 139 at paras 11-12).

[19]   This Court has returned and can return the finding of NCB to the RPD for redetermination by a different member if it finds that the decision is otherwise reasonable (see for example *Omar v Canada (Minister of Citizenship and Immigration)*, 2017 FC 20 at paras 20-22; *Hadi v Canada (Minister of Citizenship and Immigration)*, 2018 FC 590 at para 55). However, in this case, the NCB determination is intertwined into the entire reasoning that is deemed to be unreasonable and cannot be separated from the decision. The NCB finding, which curtails the right to appeal or an automatic statutory stay of removal, were largely based on the perceived significance of facts and over-reliance on the member's assumption not founded on evidence. In these circumstances, the appropriate remedy is to send the whole matter back for redetermination (*Adeshina v Canada (Citizenship and Immigration)*, 2022 FC 1559).

V.   Conclusion

[20]   The Application for Judicial Review is granted because the RPD's reasons are unreasonable.

[21]   There is no question to be certified.

JUDGMENT IN IMM-3924-23

THIS COURT'S JUDGMENT is that

1.   The application for Judicial Review is granted. The case is returned to RPD to be

decided by a different decision-maker.

2.   There is no question for certification.

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"Negar Azmudeh"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

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