

Federal Court



Cour fédérale

**Date: 20240904**

**Docket: IMM-4153-23**

**Citation: 2024 FC 1381**

**Toronto, Ontario, September 4, 2024**

**PRESENT: The Honourable Justice Battista**

**BETWEEN:**

**GURWINDER KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the bench in Toronto, Ontario, on August 29, 2024.**

**Edited for clarity and grammar.)**

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division (RAD) refusing the appeal of her rejected claim for refugee protection. Her refugee claim was rejected on the basis of her lack of credibility.

[2] The Applicant claims that a breach of procedural fairness occurred based on the incompetence of her representation before the RAD. She was represented by immigration consultant Mr. Amandeep Singh, who was sufficiently notified of these proceedings pursuant to the protocol for allegations of incompetence described in the Federal Court's *Consolidated*

*Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* and he has not participated in the proceedings before this Court.

[3] I agree with the Respondent that the question for courts in reviewing alleged breaches of procedural fairness is whether the process was fair having regard to all of the circumstances.

[4] Where allegations of incompetent representation are concerned, three criteria must be established: 1) former counsel must be given notice of the allegation, 2) former counsel's actions or omissions must amount to incompetence, and 3) there must be a miscarriage of justice due to the incompetent acts or omissions (*Satkunanathan v Canada (Citizenship and Immigration)*, 2020 FC 470 at paras 36–37). I am satisfied that all three criteria are present in this case.

[5] First, as stated above, Mr. Singh has been notified of these proceedings.

[6] Second, Mr. Singh was incompetent by not providing critical evidence and by misleading the tribunal regarding the absence of critical evidence. The Refugee Protection Division and the RAD both noted that the Applicant was, in large part, not successful because she did not provide evidence from her boyfriend, the most important witness, on the central element of her claim. Moreover, Mr. Singh misrepresented the reason why such evidence was not submitted, indicating that the witness was not willing to provide the evidence when, in reality, the witness was not asked to do so.

[7] Finally, I am satisfied that the incompetence of Mr. Singh resulted in a miscarriage of justice. The RAD identified evidence from the Applicant's boyfriend as having the potential to support "the central allegation from which all her other allegations flow." The absence of such

evidence without a reasonable explanation seriously damaged her credibility, in the RAD's opinion.

[8] Therefore, I am satisfied that in the absence of her incompetent representation, there is a reasonable probability that the outcome of the RAD's decision would have been different.

[9] The application for judicial review is granted. The decision of the Refugee Appeal Division is quashed and the matter will be re-determined by a different panel. There is no question for certification.

**JUDGMENT in IMM-4153-23**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The decision of the Refugee Appeal Division is quashed and the matter will be re-determined by a different panel.
3. There is no question for certification.

“Michael Battista”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4153-23

**STYLE OF CAUSE:** GURWINDER KAUR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 29, 2024

**JUDGMENT AND REASONS:** BATTISTA J.

**DATED:** SEPTEMBER 4, 2024

**APPEARANCES:**

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John Loncar FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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