Federal Court  Cour fédérale

Date: 20100104

Docket: IMM-1754-09

Citation: 2010 FC 2

Ottawa, Ontario, January 4, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

CHI YU LIAO
SHU HAN LIAO
MEI NENG LEE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This concerns an application pursuant to section 72 of the *Immigration and Refugee Protection Act* (the "Act") submitted by Chi Yu Liao (the "Principal Applicant"), his wife Mei Neng Lee and his son Shu Han Liao (all three being collectively referred to as the "Applicants") who are all citizens of the Republic of China (also known as Taiwan), seeking judicial review of a decision of Diane L. Tinker, a member of the Refugee Protection Division of the Immigration and

Refugee Board (the "Panel") dated March 17, 2009 and finding that the Principal Applicant and his wife are excluded from refugee protection, and alternatively finding that all Applicants are not persons in need of protection.

[2] In their application for judicial review and in their written submissions, the Applicants had initially raised arguments relating to the constitutionality of section 98 of the Act. They also challenged the reasonableness of both the Panel's decision to exclude the Principal Applicant and his wife from refugee protection pursuant to section 98 and the Panel's alternative finding that the Applicants were not persons in need of protection. However, at the hearing before me, the Applicants, through their counsel, withdrew these arguments and limited their representations to their claims that the Panel had breached the principles of procedural fairness by not granting them the adjournment they had requested under section 48 of the *Refugee Division Protection Rules*. Consequently, the submissions before me concerned only this matter.

Background

[3] The Principal Applicant and his wife travelled to Canada in February of 1999 on the basis of a short term temporary employment authorization which was eventually granted to the Principal Applicant. On July 13, 1999, an arrest warrant was issued by the Taipei District Court prosecutor's office against the Principal Applicant. The Principal Applicant asserts that he was not aware of this arrest warrant prior to coming to Canada.

[4] In August of 2000, the Principal Applicant was arrested by Canadian immigration authorities on the basis of the arrest warrant issued by the Taiwanese authorities alleging that the Principal Applicant and his wife had participated in a fraud for which criminal charges in Taiwan were pending. The Principal Applicant was subsequently released.

[5] On May 23, 2002, adjudicator C. Simmie of the Immigration and Refugee Board found the Principal Applicant to be a person described in paragraphs 19(1)(c.1) and 27(2)(a) of the former *Immigration Act* R.S.C. 1985, c. I-2 (the "former Act") and issued a deportation order against the Principal Applicant pursuant to subsection 32(6) of the former Act. Paragraph 19(1)(c.1) of the former Act provided that, subject to certain exceptions, no person shall be granted admission in Canada if there are reasonable grounds to believe that that person has committed an act or omission outside Canada that constitutes an offence under the laws of the place where the offence was committed and would constitute an offence under An Act of Parliament punishable by a maximum term of imprisonment of ten years or more.

[6] The decision of adjudicator C. Simmie was set aside by Justice Russell of this Court in a judgment dated May 28, 2003.

[7] Subsequent to that decision, the Respondent did not pursue the deportation of the Principal Applicant. However, the Principal Applicant claims that he and his wife received information from their lawyer in Taiwan that the arrest warrant was still in effect and that they would not receive a fair trial on the charges against them should they return. Consequently, in December of 2003 the

Applicants applied for status as persons in need of protection under the meaning of subsection 97(1) of the Act.

[8] Hearings to adjudicate this matter were first held before S. Padachi of the Refugee Protection Division of the Immigration and Refugee Board, but these proceedings ended after problems related to translation came to light. A *de novo* hearing was eventually held before Diane L. Tinker commencing February 9, 2009.

[9] During the course of those *de novo* proceedings, the Applicants, through their counsel, sought an adjournment in order to produce additional material. This adjournment was refused on February 10, 2009. The circumstances surrounding this refusal will be more fully reviewed below. The Panel issued its final decision on March 17, 2009.

The Decision

[10] The Principal Applicant and his wife were seeking protection under paragraph 97(1) of the Act on the basis of their fear that they would not receive a fair trial in Taiwan on the charges of fraud originating in that country. The Principal Applicant's son was seeking protection on the basis that if he were to return to Taiwan, he could be held as ransom to secure the return of his parents to that country.

[11] The Respondent took the position that the Principal Applicant and his wife were excluded from refugee protection pursuant to the terms of section 98 of the Act and paragraph F(b) of Article 1 of the *United Nations Convention Relating to the Status of Refugees* (the "Convention") set out in

the schedule to the Act. In response, the Applicants challenged the constitutional validity of section 98 of the Act.

[12] The Panel found that the constitutional challenge of the Applicants was without merit. As already noted above, the Applicants are no longer pursuing their constitutional challenge before this Court.

[13] Concerning the exclusion of the Principal Applicant and his wife from refugee protection pursuant to the terms of section 98 of the Act and paragraph F(b) of Article 1 of the Convention, the Panel found, based on the production and acknowledgement of the outstanding charges from Taiwan, together with the additional information provided by Interpol and Taiwanese officials, together with the inconsistencies in the Principal Applicant's arguments, that there were serious reasons for considering under paragraph F(b) of Article 1 the Convention that the Principal Applicant and his wife had committed a serious non-political crime outside of Canada prior to their admission to Canada. This finding resulted in the Principal Applicant and his wife being excluded from protection pursuant to section 98 of the Act.

[14] The Panel also found, as a subsidiary conclusion, in the event the Panel's analysis under section 98 of the Act and paragraph F(b) of Article 1 of the Convention was found to be wrong, that the Applicants were not persons in need of protection under section 97 of the Act. The Panel came to this conclusion for, *inter alia*, the following reasons (at page 13 of the Panel's decision):

> The principal and female claimant's case is neither political nor high-profile and the panel concludes that given the principal claimant has already had a fair trial in Taiwan, that he and the female claimant would obtain another fair trial. Also, as previously indicated, the

> principal claimant's testimony concerning his version of the fraud is not credible, nor were any reasons given by Mr. Liao, the lawyer in Taiwan, as to how he reached the conclusion that the principal and female claimant would not receive a fair trial in that country. The panel also considers the level of democracy in Taiwan. Therefore, the panel finds, on a balance of probabilities, that the claimants have failed to establish that they would be subjected personally to a risk to their lives or to a risk of cruel and unusual treatment or punishment or to a danger of torture.

[15] Concerning the request for an adjournment which had been previously refused verbally on February 10, 2009, the Panel explained its prior decision on the basis that the Applicants had ample opportunity to obtain any documentation needed with respect to their claims throughout the many years these proceedings were outstanding. The Panel also noted that the Applicants would have had no difficulty obtaining such documentation from a democratic country such as Taiwan.

The positions of the parties

[16] The Applicants assert that the decision of the Panel both on their exclusion pursuant to section 98 of the Act and on the rejection of their protection claim pursuant to subsection 97(1) of the Act, largely centres on the Panel's negative credibility findings concerning the Principal Applicant. The Applicants further assert that these negative credibility findings were based on the fact that the Panel a) did not believe that the Principal Applicant had endorsed the cheques which were the object of the fraud charges since he had failed to produce the back of these instruments where his signature was said to have been placed, b) did not believe that the company which had issued the fraudulent cheques had been previously sold by the Principal Applicant to a third party, c) had found the reasons provided by the Applicant's Taiwanese lawyer insufficient to demonstrate

that the Principal Applicant and his wife would not receive a fair trial in Taiwan upon their return, and d) did not have the benefit of a confirmation that the Principal Applicant had no other pending charges against him in Taiwan.

[17] The Applicants' counsel submitted that the failure to produce the back of the cheques and the documentation relating to the sale of the company which had issued the cheques had not been raised as evidentiary problems in the previous hearings concerning the Applicants, and only became an issue in the last set of hearings before the Panel. Consequently, the Applicants sought an adjournment from the Panel to adduce additional evidence to address these matters. This adjournment was refused, and the Panel proceeded to its decision, including the negative credibility findings, on the basis of what is alleged to be an incomplete file.

[18] Following the Panel's decision, the Applicants did seek additional information and produced to the Court additional documents which include a) photocopies of the back of cheques which the Principal Applicant asserts show his signature; b) additional documents to bolster the claim that the company was indeed sold by the Principal Applicant prior to the fraudulent cheques being issued, c) additional information from the Principal Applicant's Taiwanese lawyer to bolster the claim that the Principal Applicant would be subject to an unfair trial and d) documentation to demonstrate that the Principal Applicant and his wife are not the subject of additional charges in Taiwan.

[19] The Applicants thus assert that by refusing the adjournment, the Panel did not provide them a fair hearing. They request that this Court return the matter back to the Panel for another hearing in

order to offer them an opportunity to submit this new evidence and to convince the Panel, in light of this new evidence, that the prior negative credibility findings were erroneously made.

[20] The Respondent answers that the new materials which were not before the Panel are irrelevant to this judicial review and should thus be given no weight.

[21] The Respondent adds that the Applicants knew about the documents they wished to obtain many years before their request for an adjournment and could have obtained that documentation prior to the hearing. It was in light of the Applicants' clear knowledge of the case they had to meet that the Panel refused the adjournment. The decision of the Panel was thus reasonable and caused no procedural injustice.

Pertinent provisions of the Act and the Rules

[22] The provisions of the Act which are most pertinent to this judicial review are the definition of "Refugee Convention" in section 2, subsection 97(1), section 98 and paragraph F(b) of Article 1 of the Convention set out in Schedule 1 of the Act:

2. (1) The definitions in this subsection apply in this Act.	2. (1) Les définitions qui suivent s'appliquent à la présente loi.
[…]	[…]
"Refugee Convention" means the United Nations Convention Relating to the Status of Refugees, signed at Geneva on July 28, 1951, and the Protocol to that Convention, signed at New York on January 31, 1967. Sections E and F of Article 1 of the Refugee Convention are set out in the schedule.	« Convention contre la torture » La Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, signée à New York le 10 décembre 1984 dont l'article premier est reproduit en annexe.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

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

SCHEDULE
(Subsection 2(1))

[…]

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

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.

ANNEXE
(paragraphe 2(1))

[…]

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 :
[…]	[…]
(*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;

[23] The most pertinent provision of the *Refugee Protection Division Rules* for the purposes of this judicial review is Rule 48, which appears to have been inspired by the Federal Court of Appeal decision in *Siloch v. Canada (Minister of Employment and Immigration) (F.C.A.)*(1993), 151 N.R. 76, [1993] F.C.J. No. 10. Rule 48 reads as follows:

48. (1) A party may make an application to the Division to change the date or time of a proceeding.	48. (1) Toute partie peut demander à la Section de changer la date ou l'heure d'une procédure.
(2) The party must	(2) La partie :
(*a*) follow rule 44, but is not required to give evidence in an affidavit or statutory declaration; and	*a*) fait sa demande selon la règle 44, mais n'a pas à y joindre d'affidavit ou de déclaration solennelle;
(*b*) give at least six dates, within the period specified by the Division, on which the party is available to start or continue the proceeding.	*b*) indique dans sa demande au moins six dates, comprises dans la période fixée par la Section, auxquelles elle est disponible pour commencer ou poursuivre la procédure.
(3) If the party wants to make an application two working days or less before the proceeding, the party must appear at the proceeding and make the application orally.	(3) Si la partie veut faire sa demande deux jours ouvrables ou moins avant la procédure, elle se présente à la procédure et fait sa demande oralement.
(4) In deciding the application, the Division must consider any relevant factors, including	(4) Pour statuer sur la demande, la Section prend en considération tout élément pertinent. Elle examine notamment :

(*a*) in the case of a date and time that was fixed after the Division consulted or tried to consult the party, any exceptional circumstances for allowing the application;

a) dans le cas où elle a fixé la date et l'heure de la procédure après avoir consulté ou tenté de consulter la partie, toute circonstance exceptionnelle qui justifie le changement;

(*b*) when the party made the application;

b) le moment auquel la demande a été faite;

(*c*) the time the party has had to prepare for the proceeding;

c) le temps dont la partie a disposé pour se préparer;

(*d*) the efforts made by the party to be ready to start or continue the proceeding;

d) les efforts qu'elle a faits pour être prête à commencer ou à poursuivre la procédure;

(*e*) in the case of a party who wants more time to obtain information in support of the party's arguments, the ability of the Division to proceed in the absence of that information without causing an injustice;

e) dans le cas où la partie a besoin d'un délai supplémentaire pour obtenir des renseignements appuyant ses arguments, la possibilité d'aller de l'avant en l'absence de ces renseignements sans causer une injustice;

(*f*) whether the party has counsel;

f) si la partie est représentée;

(*g*) the knowledge and experience of any counsel who represents the party;

g) dans le cas où la partie est représentée, les connaissances et l'expérience de son conseil;

(*h*) any previous delays and the reasons for them;

h) tout report antérieur et sa justification;

(*i*) whether the date and time fixed were peremptory;

i) si la date et l'heure qui avaient été fixées étaient péremptoires;

(*j*) whether allowing the application would unreasonably delay the proceedings or likely cause an injustice; and

j) si le fait d'accueillir la demande ralentirait l'affaire de manière déraisonnable ou causerait vraisemblablement une injustice;

(*k*) the nature and complexity of the matter to be heard.

k) la nature et la complexité de l'affaire.

(5) Unless a party receives a decision from the Division allowing the application, the party must appear for the proceeding at the date and

(5) Sauf si elle reçoit une décision accueillant sa demande, la partie doit se présenter à la date et à l'heure qui avaient

time fixed and be ready to start or continue the proceeding.	été fixées et être prête à commencer ou à poursuivre la procédure.

Analysis

[24] A procedural fairness issue is raised in this case. As noted by the Federal Court of Appeal in *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No.2056 (QL) at para. 53:

> CUPE [*Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, 2003 SCC 29] directs a court, when reviewing a decision challenged on the grounds of procedural fairness, to isolate any act or omission relevant to procedural fairness (at para. 100). This procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty.

[25] In this case, the Applicants assert that their right to a fair hearing was denied when they were not awarded an adjournment in order to adduce additional evidence on certain issues. This Court has held that a refusal to grant an adjournment in a refugee determination case may, in appropriate circumstances, constitute a breach of procedural fairness: *Chohan v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 390, [2006] F.C.J. No. 509 (QL) at paras. 11 and 14; *Pal v. Canada (Minister of Employment and Immigration* (1993), 70 F.T.R. 289, [1993] F.C.J. No. 1301 (QL) at para. 9. As a general rule, issues of natural justice and procedural fairness are to be reviewed on the basis of a correctness standard: *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at para. 43. Since the refusal to grant the adjournment is said to have breached the Applicants' right to a fair hearing, I will apply a correctness standard of review to this aspect of the Panel's decision.

[26] Justice Reed noted the following in *Pal, ibid.* at para.9:

> The question to be answered, then, is whether the breach of natural justice was one which could have little or no effect on the outcome of the decision as a whole. A decision of this Court to grant relief under section 18.1(4) of the Federal Court Act is discretionary. This is reflected in the text of that subsection which provides that the Court "may grant relief if it is satisfied that" the Board has "failed to observe a principle of natural justice [or] procedural fairness". This wording reflects the discretionary nature of the old prerogative writs which section 18.1(4) replaces. Thus, if no prejudice is caused by an erroneous procedure or decision an order quashing the decision will not normally be given. If no real purpose will be served by requiring another hearing, one will not be ordered.

[27] Though the *Pal* decision was cited approvingly by the majority of the Supreme Court of Canada in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at para. 40 to support the Federal Court's discretion to award relief, the proposition set out in the above citation from *Pal*, *supra*, however needs to be qualified. A judge must indeed act with extreme caution to avoid reviewing the legality of a decision as a process of reviewing its merits (*Cartier v. Canada (Attorney General) (C.A.)*, 2002 FCA 384, [2003] 2 F.C.317; [2002] F.C.J. No. 1386 (QL) at para.33). Consequently, what must first be determined is if a breach of natural justice has indeed occurred, and only if such a breach is established can a court then consider whether that breach was inconsequential or would have little or no effect on the outcome of the decision as a whole.

[28] The Respondent raises as a preliminary matter the admissibility in this Court of the new evidence which the Applicants wish to submit to the Panel. Though as a general proposition, judicial reviews are to be carried out on the basis of the record before the tribunal whose decision is being reviewed, there are many exceptions to this approach, including particularly where breaches

of natural justice and procedural fairness are raised: *Abbott Laboratories Ltd. v. Canada (Attorney General)*, 2008 FCA 354, [2008] F.C.J. No. 1580 (QL) at paras. 37-38. In *Liidlii Kue First Nation v. Canada (Attorney General)* (2000), 187 F.T.R. 161, [2000] 4 C.N.L.R. 123, [2000] F.C.J. No. 1176, Justice Reed stated the following (at para. 32):

> Challenges to decisions on the ground that procedural fairness has not occurred, because the affected party has not been given adequate opportunity to present its case, are likely to involve the adducing of information that was not before the decision-maker. In the present case, evidence relating to the status of an applicant, and whether a duty to consult exists, and the scope of that duty, is relevant, even though it may not have been before the decision-maker. To the extent that the new evidence relates to those issues, it is properly a part of the application records.

[29] Consequently, the additional documents submitted by the Applicants will be examined by this Court, but not as proof of the facts they purport to sustain, since none of these documents have been subject to a review as to their authenticity nor have they been subject to examination by the Respondent. Rather, these documents will simply be considered for the purpose of setting out clearly the type and scope of new evidence the Applicants were seeking to adduce before the Panel in the context of their request for an adjournment.

[30] I will first deal with two of the four evidentiary matters the Applicants raise. The additional evidence the Applicants sought to adduce included copies of the back of certain cheques as well as additional documents to establish that the Principal Applicant had sold to a third party the company which had issued the cheques.

[31] A review of the record shows conclusively that the Principal Applicant has been aware of the importance of these documents for many years yet took no measures to adduce this evidence in time for the hearing. The Applicant rather sought a last minute adjournment to complete a document search he could have easily carried out long before the hearing.

[32] Concerning the back of the cheques, the following extracts of the transcripts of the hearing held on February 10, 2009 are revealing:

> Transcript, February 10, 2009 pages 55-56:
>
> > COUNSEL FOR CLAIMANTS: ---but – and how much, how much or what part of the cheques would have to be photocopied?
> >
> > CLAIMANT (MR. LIAO): I told my lawyer, “The front and the back of the cheque, I need both of them”.
> >
> > COUNSEL FOR CLAIMANTS: Why did you need both the front and the back?
> >
> > CLAIMANT (MR. LIAO): I wanted proof there’s – there’s no my wife signature on the back of the cheque.
> >
> > […]
> >
> > COUNSEL FOR CLAIMANTS: And now, Exhibit C-1, number 3 – (inaudible) I apologize, C-4, paragraph 3, “Lawyer Cheng (ph.) told me it could not be photocopied from the court, meaning the obverse – the other side of the cheque – could not be photocopied.” Now, (inaudible), why not Lawyer Cheng (ph.) explain to you why the back of the cheque could not be copied”
> >
> > CLAIMANT (MR. LIAO): My lawyer told me copy provided by the court is also made from copies. They only had the front of the cheque.
> >
> > COUNSEL FOR CLAIMANTS: So were you made aware by Lawyer Cheng (ph.) or by anyone where the originals of the cheque were?

> CLAIMANT (MR. LIAO): At the settlement agreement, it was, say, the cheque was returned to Lin Wan Chee (ph.)

[33] Consequently, since at least the alleged settlement agreement of April 2000, the Principal Applicant claims he knew who had the concerned cheques. The Principal Applicant could consequently have undertaken measures to secure the documentation in the ensuing period of almost nine years between the alleged settlement and the hearing before the Panel.

[34] It is noteworthy to add that the Principal Applicant's testimony that the reverse sides of the cheques were not available at the Court in Taiwan is expressly contradicted by his Taiwanese solicitor's letter dated March 4, 2009 in which copies of both sides of the cheques are forwarded to the Principal Applicant with the note that these were secured from the District Court files in Taiwan.

[35] In addition, the Principal Applicant did not produce any documents at the hearing showing that the company had been previously sold even though this was certainly an important aspect of his case regarding exclusion under section 98 of the Act. The Principal Applicant rather sought an adjournment for this purpose.

[36] The third evidentiary matter raised by the Applicants concerns additional submissions made by the Taiwanese lawyer of the Principal Applicant bolstering a claim that the Principal Applicant and his wife would "not receive the same treatment as others". The Applicants had indeed submitted

to the Panel a one paragraph written statement from the Principal Applicant's solicitor in Taiwan which read as follows:

> This is to certify that Chi Yu Liao (Certificate of Identity #: B101229761) and Mei Neng Lee (Certificate of Identity #: B220033036) are presently wanted by the Department of Justice of the Republic of China. If they were to return to Taiwan, and be arrested by the court to face charges, they will not receive the same treatment as others. This certificate is proof.

[37] The obviously self-serving and highly deficient nature of this document did not go unnoticed at the hearing before the Panel, and the Principal Applicant was questioned about this, both by his counsel and by the Panel member. The following extract from the transcript summarizes the long exchanges on this matter:

Transcript, February 10, 2009 page 62:

> MEMBER: Okay. Let me see if I can help. Your lawyer has filed the certificate of proof from Lawyer Liao. He states in the certificate of proof that if you and your wife were to return to Taiwan and be arrested by the court to face charges, you will not receive the same treatment as others. But that's all he says. Your counsel asked you the reasons as to why he said that and you've provided us today with a number of reasons. Okay. But what your Counsel is asking you, sir, is, why did you not ask either Mr. Liao, like Lawyer Liao, or Lawyer Cheng (ph.) to provide reasons for this statement for this hearing? Do you understand?
>
> CLAIMANT (MR. LIAO): Understand now.
>
> MEMBER: Okay.
>
> CLAIMANT (MR. LIAO): I recalled I did ask Lawyer Liao to ask him to ask him to write more clearly ---
>
> COUNSEL FOR CLAIMANTS: I think it's a she.

> CLAIMANT (MR. LIAO): -- so I could give to my lawyer. Lawyer Liao told me she cannot speculate at what will happen. She can only base on her experience and observations, told me for sure I would not receive same treatment as with others.

[38] Following the Principal Applicant's own testimony, the issue had been discussed with his Taiwanese lawyer who had refused to provide anything more than generalities concerning the alleged special treatment the Principal Applicant and his wife would receive from the judicial authorities in Taiwan.

[39] The fourth and last evidentiary matter raised by the Applicants concerned a report from their Taiwanese solicitor which states that the Principal Applicant and his wife are not subject to additional criminal charges in Taiwan. This matter was never raised before the Panel, and consequently need not be dealt with further here.

[40] The Panel's verbal conclusions rejecting the adjournment request are also instructive (Transcript, February 10, 2009 at pages 72 -73):

> MEMBER: I am denying the request for the adjournment for the following reasons.
>
> Upon my review of the file, it looks as though the personal information forms were filed in January of 2004. That was five years ago.
>
> As Mr. Hung has indicated, central to the claim are these three cheques, and also indicated the sale of the company because – to determine the name of the company on the cheques.
>
> I look at the settlement agreement, and I believe that it was signed in April of 2000, and I believe that Mr. Liao indicated he found out

from Mr. Lin (ph.) about this settlement – or he called Mr. Lin (ph.) in August of 2000 and he obtained the settlement agreement at some point, and that would be – it looks it would be sometime in August of 2000, based on his receipt from the Lawyer Cheng (ph.). That's eight and-a-half years ago.

The Claimants have had ample opportunity to obtain these documents. As of August of 2000, Mr. Liao knew that Mr. Lin had the original cheques. Okay, now the certificate of proof, I believe, was from 2006. Okay. That was nearly three years ago. And I also refer to the letter – I think it is marked as C-4 – that as dated April of 2007. That's nearly two years ago, after which time Counsel or Mr. Liao could have contacted Mr. Lin for the original cheques.

As counsel has indicated, these matters are central to the claim. And, as such, the Claimant['s] have had nearly six years to obtain all these documents. That's more than sufficient time.

As indicated, Taiwan is a democratic country. There's telephones, fax machines, e-mails with attachments. These documents could have been produced. And same when you saw there was no reasons put in the certificate of proof, you could have easily asked for those back in 2006.

And I've looked at the FOS notes. They were filed in December of 2003. I don't have the certificate of service, but I would think that copies of those FOS notes would have been in – well, they're dated March of 2006, so I take it they would be sent out at that time, prior to the first hearing in April of '06.

And so that's with respect to the company.

The Claimant's have had ample opportunity since – well, I would think since 2006 with respect to the FOS notes to obtain the sale documents.

I think it would be an injustice to delay this process, given that this is a 2003 file and none of these items that Counsel wishes to have an adjournment for are a surprise, since, in his own words, they were central to the claim and, thus, the Claimant should have been prepared.

[41] In conclusion, all the additional evidence the Applicants were seeking to introduce through an adjournment was easily available to them prior to the hearing before the Panel. The Applicants also had a very long period comprising many years to prepare their case, and they were assisted by able counsel throughout this period.

[42] This is a case which has been outstanding for a very long time. To assert on the last day of the *de novo* refugee claim hearing that no prejudice would be caused by another delay of at least four months is simply not a proposition this Court is ready to endorse in the circumstances of this case.

[43] In *Chohan v. Canada (Minister of Citizenship and Immigration), supra*, at paragraph 11, the circumstances in which an adjournment may constitute a breach of natural justice were stated as follows:

> A refusal to grant an adjournment, where fairness demands it, constitutes a breach of the rules of natural justice. According to Mullan in *Administrative Law* (3rd edition) at para. 170, a breach of this duty occurs where the adjournment is reasonably required for a party seeking an opportunity to meet a new issue or to review crucial evidence introduced at the hearing. The authority cited for this proposition is *Pal v. Canada (Minister of Employment and Immigration)* [1993] F.C.J. No. 1301. [Emphasis added]

[44] Likewise in *Pal v. Canada (Minister of Employment and Immigration), supra*, a new hearing was ordered where the administrative tribunal did not provide for an adjournment to allow a party to review and respond to new evidence which had not been previously disclosed. At paragraph 8 of this decision, the following is stated:

> In any event, a refusal by the tribunal to allow a recess to respondent's counsel to review documents being introduced into evidence, which he had not previously seen, before cross-examining the applicant would equally be an inappropriate way of proceeding. The second reasons given by the tribunal for not granting a recess, that exhibit C-1 and exhibit C-3, are essentially the same, is not borne out by a review of those documents. Exhibit C-1 contains much more detailed information and describes specific acts of violence and examples of ideological pronouncements. It is much more persuasive evidence than exhibit C-3. In refusing to allow the applicant and his counsel an opportunity to review this evidence, the applicant was denied the opportunity to answer the case against him and a breach of natural justice occurred. [Emphasis added]

[45] This is not a case where the Applicants were taken by surprise by some new evidence submitted at the hearing to which they needed time to respond to or in which a new issue was raised. Rather the Applicants sought an adjournment essentially on the basis that they had not adequately prepared their case and needed more time to adduce additional evidence in order to bolster the evidence they had already submitted.

[46] To grant additional delays in the particular circumstances of this case where the Applicants knew the case they had to meet, had years to prepare, and could easily have accessed all the new evidence they sought to adduce prior to the hearing, would be to affect the very credibility and coherence of the refugee adjudication process.

[47] I have no hesitation finding that the Panel adequately took into account and considered the relevant factors set out in Rule 48 of the *Refugee Protection Division Rules* in refusing to grant the

adjournment, and that the Panel did not breach any duty of fairness toward the Applicants in so deciding.

[48] This judicial review application will thus be denied.

[49] The parties confirmed at the hearing that this case did not raise any question justifying certification under paragraph 74(d) of the Act, and I agree. Consequently no question is so certified.

JUDGMENT

THE COURT JUDGES AND DECIDES that the application for judicial review is denied.

"Robert Mainville"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	Toronto, Ontario
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