Federal Court  Cour fédérale

Date: 20110708

Docket: IMM-6440-10

Citation: 2011 FC 827

Ottawa, Ontario, July 8, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AGIMELEN ORIAZOUWANI WINIFRED
AFUAH AARON
AFUAH OMONIGHA

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The paradigm of the story of the Emperor's New Clothes applies to the first instance decision (wherein, due to inattention to adequate justification, transparency, intelligibility, reasonableness is sorely lacking). The lesson applied from the decision in *Dunsmuir v New*

Brunswick, 2008 SCC 9, [2008] 1 SCR 190, that reasonableness be the hallmark to the analysis of factual evidence by a decision-maker, is as wholly absent as is the Emperor of clothes.

[2] An acknowledgment of deference to a decision-maker by a reviewing Court is warranted when a decision reviewed appears reasonable unless analysis demonstrates that the primordial component, evidence, pertinent to support its reasonableness, is not only missing, but actually runs contrary to its reasoning. All relevant evidence submitted in review, not only the country conditions, but the point-specific pertinent evidence presented in regard to an applicant, himself or herself, must always be assessed. Country conditions of origin of an applicant must not be read in the abstract, in an existential void; they must be read in relation to the specific narrative as related by an applicant to the first instance decision-maker.

[3] In this case, the decision-maker heard the evidence presented but it appears that the decision-maker, neither truly listened, and certainly did not assess, that which clearly appears from the evidence in review. Each case is a case unto itself; and, when a decision-maker's guard is down in that regard, the assessment of evidence becomes null and void; and reasonableness is the casualty as may become the Applicant; who, as, in this case, was given an erroneous assessment on evidence that can lead to loss of life due to the grave consequences of neglect or inattention to key evidence. (In the present case, dire consequences are specifically indicated by the non-contradicted subjective evidence when assessed together with the objective country of origin evidence submitted.)

[4] Thus, the Board was in possession of informative evidence; furthermore, the strands of evidence were woven together by the Board; they demonstrate that it had the knowledge for an adequate assessment; yet, its conclusive reasoning is missing the wisdom of reasonableness.

[5] Therefore, the decision, subsequent to the ratio in *Dunsmuir*, above, is as naked of reasonableness as it is of common sense.

II. Introduction

[6] The Applicant is a young mother of two children who the Board, itself, categorized, by specifying in their regard, that "… recent research and consultation … paints a grim picture of the reality facing such women and their children..." (at para 20).

[7] The Board further sates:

> [17] As regards the impact of the police's notorious corruption on accessing this protection, the panel acknowledges the documentary evidence that essentially reports corruption and extortion as defining characteristics associated with the police forces. However, systems for investigating police misconduct exist, and though in practice these are too often a charade, especially when dealing with extra-judicial killings by the police, they nevertheless result in police officers being disciplined and dismissed … [Emphasis added].

[8] Nevertheless, the Board insists that there are alternate means by which to obtain protection. The Court notes that the evidence cannot be assessed without recognizing that protection needs to be analyzed in its entirety; without a male presence, the realistic chances for a woman alone, with two minor children, are categorized as to their predicament by the Board, itself. (The Board assessed that, however, without concluding in that direction, as is evident in paragraph 6 above.)

III. Judicial Procedure

[9] This is an application for a judicial review of a decision of the Board, dated October 20, 2010, rejecting the Applicants' claim for asylum and finding that the Applicants are not Convention refugees, nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

IV. Background

[10] The principal Applicant, Ms. Winifred Agimelen Oriazouwani, was born on June 17, 1978. The minor applicants are her daughter, Omonigha Afuah, born August 28, 2006, and her son, Aaron Afuah, born February 2, 2003. All of the Applicants are citizens of Nigeria from the city of Uromi. The principal Applicant studied at the Edo State University in public administration.

[11] The Applicants are claiming protection for reasons of risk to their lives as members of a particular social group.

[12] In the beginning of 2007, Mr. Alhaj Mustafa allegedly began to threaten the Applicants and the principal Applicant's husband because he was owed money by the Applicant's father-in-law. The Applicant alleges that Mr. Mustafa is an influential business man. She also refers to him as a "local cult man" who allegedly has been implicated in human sacrifice and female genital mutilation.

[13] Allegedly, due to the unpaid debt, the Applicant believed that the debtors' elder son had disappeared. As a result, in March 2008, Mr. Mustafa allegedly kidnapped the Applicants and then

threatened to exact revenge by circumcising the Applicant's daughter and sacrificing all three of them.

[14] Two days before the date set for the circumcision of the minor female Applicant, one of Mr. Mustafa's servants helped the Applicants to escape from captivity. Seeking refuge at the village church, the Applicants were then assisted by a local clergy member, Pastor Veladego.

[15] The Applicants and the Pastor fled to Ghana where they remained for one week prior to the Applicants' journey to Canada. The Applicants arrived on March 27, 2008 and immediately filed their request for asylum. The principal Applicant was by that time several months pregnant. All members of the family were detained for identity purposes until the end of April 2008.

[16] During their stay in Ghana, both the Pastor – who made and paid for the travel arrangements – and the principal Applicant, attempted, in vain, to contact her husband.

[17] The Board heard the matter on July 2, 2010. Subsequently, the Applicant's lawyer sent further written submissions to the Board on September 2, 2010 (in respect of identity, credibility, State protection and Internal Flight Alternative [IFA]). The Board's decision was rendered on October 20, 2010.

V. Decision under Review

[18] The Board rejected the application, finding that the Applicants had not demonstrated the absence of an IFA or rebutted the presumption of State protection. The Board found:

> [10] Indeed, the claimants did not meet their burden of establishing on a balance of probabilities that there was a serious possibility of persecution or a probable risk of harm everywhere in Nigeria and that it would be unreasonable for them to seek refuge in another part of their country, namely Abuja. Failure to do so is, in and of itself, sufficient to dispose of their claims.

[19] The Board found that the Applicant had not demonstrated the absence of an IFA, in Abuja, Nigeria's capital had the Applicant fled there (at para 10); however, the Applicant fled elsewhere, outside of Nigeria to Ghana. The Board also noted that the alleged persecutor had likely lost interest in the Applicant, as he had apparently not inquired about her whereabouts since April 2008 despite, his having been domiciled in the same village as the Applicant's mother (at para 13).

VI. Position of the Parties

[20] The Applicant alleges that a "local cult man" in her village planned to sacrifice both her and her children (and had decided to circumcise her daughter before doing so), due to the debt described above. The Applicant disagrees with the Board's findings and claims that if she were returned to Nigeria, her alleged persecutor would learn of her presence through friends and family. Mr. Mustafa would then find the Applicants in Abuja and attempt to eliminate them. The Applicant submits that the alleged persecutor ceased his search for her because he had heard that she had left the country.

[21] In addition, the Applicant submits that if she were to return with her children to Abuja as proposed by the Board, she would not be able to survive. She does not know anyone who could assist her in that city; therefore, she asserts that her relocation to Abuja would be unrealistic.

[22] The Applicant argues that the Board erred in finding that the Applicant would be able to find assistance from non-governmental organizations [NGO]; this, to her, appears problematic as State

protection can only be assessed with regard to available police resources. The Respondent agrees with the Board's findings that NGOs would direct the Applicant to the appropriate police resources.

[23] The Respondent submits that the Board's reasoning is clear and complete; and it is speculative to believe that a village cult man would have the resources to be aware that the Applicants will have returned to Nigeria. In addition, the Respondent is of the view that the Applicants have not demonstrated that State protection would be inadequate against their persecutor.

VII. Issue

[24] Is the Board's decision reasonable in respect of an IFA as to the State protection?

VIII. Pertinent Legislative Provisions

[25] Sections 96 and 97 of the *IRPA* are pertinent to the present case:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

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

Personne à protéger

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

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

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

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

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

(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,

(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(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) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IX. Analysis

Internal Flight Alternative

[26] A two-pronged test for an IFA has been established by the jurisprudence (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 31 ACWS (3d) 139 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 45 ACWS (3d) 141 (CA)): the Board must be satisfied, on a balance of probabilities, that no serious possibility exists for the Applicant to be persecuted in the proposed IFA; and, furthermore, due to circumstances, particular to the Applicant, the proposed IFA is not unreasonable for the Applicant. In *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, 102 ACWS

(3d) 592, the Federal Court of Appeal specified that *Thirunavukkarasu* establishes a "very high threshold for the unreasonableness test":

> [15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.

[27] In *Sinnathamby v Canada (Minister of Citizenship and Immigration)*, 2007 FC 334, 156 ACWS (3d) 678, Justice Michael Phelan explains that the notion of "undue hardship" is not solely restricted to the physical safety of an applicant, therein, but also on the journey to the potentially destined IFA:

> [14] The consideration of whether an IFA is reasonable for an applicant cannot be a disguised full force humanitarian and compassionate (H & C) application. Likewise, it is not solely restricted to considerations of physical safety. An IFA analysis focuses on whether the alternative place is safe from the risks found to exist and whether it is reasonable for the particular applicant to avail themselves of that alternative location in their home country.
>
> [15] As Justice James Hugessen pointed out in *Ramanathan v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 1210, the consideration of whether an IFA is unreasonable or unduly harsh is bound to involve some of the same factors as taken into account in an H & C application. If those factors were excluded, the only thing left to consider is safety which is only the first branch of the IFA test. Therefore, the Board erred in its consideration of the test for an IFA and failed to consider whether for this Applicant the IFA was unreasonable or unduly harsh.

[28] In the present case, the Applicant argues that the Board's decision does not meet the second part of the test. She is a young mother with two minor children; she faces financial constraints and

has neither family nor friends to help her in Abuja. As for her alleged financial constraints, the Board concluded:

> [25] Finally, in terms of economic factors, the panel appreciates that the claimant's former revenue-generating business was insufficient, even with her husband's contribution, to meet all the family's financial needs. Like most Nigerians, the claimants undoubtedly will face a number of economic constraints. Nigeria has no welfare system and people mainly rely in their immediate and extended family in times of need and crisis. Fortunately for the claimants, the claimant's immediate and extended family are accessible, and nothing in the evidence suggests that they could not provide some form of support, regardless of whether or not they live in the same city …

[29] This conclusion is more speculation in respect of the evidence that was before the Board. The Applicant testified that her family owes an unpaid debt. The Board did not consider the specific evidence of the case whatsoever in respect of the specific evidentiary documents on file as submitted to the Court. The Applicant is a young mother of two children and the Board itself wrote: "… recent research and consultation … paints a grim picture of the reality facing such women and their children …" [Emphasis added] (at para 20). The hearing, on July 2, 2010, focused almost entirely on the Applicant's identity and very little else.

State Protection and Change of Circumstances

[30] Without mentioning changing country conditions, per say, the Board is relying on progress being made in that the decision-maker is of the opinion that protection is becoming more prevalent, and, thus, that the principal Applicant, if in another part of the country, would be able to avail herself of that protection.

[31] In the case *Mahmoud v Canada (Minister of Employment and Immigration)* (1993), 69 FTR 100, 44 ACWS (3d) 577, Justice Marc Nadon applied Professor James Hathaway's test of changing country conditions, and concluded:

> [25] I have concluded that the Board erred in law by not applying the proper test for a consideration of changing country conditions. I have also concluded that the Board, in finding that the changes in circumstances were of an enduring nature, made a finding which it could not possibly have made based on the evidence before it. In other words, this finding was made without consideration of the material before it.
>
> [26] In so concluding, I have adopted as the proper test of changing country conditions the one proposed by James Hathaway in The Law of Refugee Status, Butterworths, Toronto, 1991, at pages 200-203. Hathaway writes as follows:
>
> > First, the change must be of substantial political significance, in the sense that the power structure under which persecution was deemed a real possibility no longer exists. The collapse of the persecutory regime, coupled with the holding of genuinely free and democratic elections, the assumption of power by a government committed to human rights, and a guarantee of fair treatment for enemies of the predecessor regime by way of amnesty or otherwise, is the appropriate indicator of a meaningful change of circumstances. It would, in contrast, be premature to consider cessation simply because relative calm has been restored in a country still governed by an oppressive political structure. Similarly, the mere fact that a democratic and safe local or regional government has been established is insufficient insofar as the national government still poses a risk to the refugee.
> >
> > Secondly, there must be reason to believe that the substantial political change is truly effective. Because, as noted in a dissenting opinion in Ruiz Angel Jesus Gonzales, "...there is often a long distance between the pledging and the doing...", it ought not to be assumed that formal change will necessarily be immediately effective:
> >
> > …
> >
> > Third, the change of circumstances must be shown to be durable. Cessation is not a decision to be taken lightly on the basis of transitory shifts in the political landscape, but should rather be reserved for situations in which there is reason to believe that the positive conversion of the power structure is likely to last. This

> condition is in keeping with the forward-looking nature of the refugee definition, and avoids the disruption of protection in circumstances where safety may be only a momentary aberration.
>
> [27] Although the author discusses changing country conditions in the context of cessation, the nature of the changing circumstances of a country must nonetheless be considered in the context of an application seeking convention refugee status. (See *M.E.I. v. Obstoj*, File No. A-1109-91, May 11, 1992 (F.C.A.) [Please see [1992] F.C.J. No. 422], and *M.E.I. v. Paszkowska* (1991) 13 Imm. L.R. (2d) 262 (F.C.A.).)

[32] Thus, The Court faces a three-pronged test:

a. the change must be of substantial political significance;

b. there must be reason to believe that the substantial political change is truly effective;

c. the change of circumstances must be shown to be durable.

[33] In its decision, the Board describes the improvement in the country conditions of Nigeria. The Board's decision reviews the fact that "some of the documentary evidence reports that female genital mutilation [FGM] is considered a private matter and that Nigerian authorities **generally** do not interfere"; nevertheless, the Board specifies that it "however prefers the more recent documentary evidence" (at para 15). The Board thus, quotes the National Documentation Package on Nigeria, 17 March 2010, explaining that the law criminalizes the removal of any part of a sexual organ, and, thus, that parents and girls have the real possibility of resorting to protection from police officers. The legislation may be what it is, however, the situation on the ground, in widespread fashion, demonstrates a very different picture. What is criminalized through legislation has not, as yet, become generalized in practice in respect to tenable protection, in the Board's very own words, as stated above.

[34] The situation according to evidence remains what it is: "sources on the ground confirm that the protection is weak, but it is progressing" [Emphasis added] (at para 16). The Board's decision omits to even consider the jurisprudential three-pronged test. The Board's decision demonstrates the opposite that Nigeria is undergoing changes (when it, itself, speaks of changes) in respect of protection of women facing female mutilation; however, the decision does not demonstrate, in fact, that the changes in the country conditions are either substantial or truly effective, nor are they durable. The Board erred in its reading, or lack thereof, by which the Court could state that the Board's decision is reasonable. It is unreasonable, as clearly, the evidence has not been adequately taken into account.

[35] In addition, the Board was obliged to consider contradictory documentary evidence, which it did not, as per the evidence submitted to the Court which the Board had before it:

> **Female genital mutilation**
>
> 23.19 Female genital mutilation (FGM) is a cultural tradition that is widely practised in Nigeria, as noted in the USSD 2008 Human Rights Report:
>
> …
>
> The federal government publicly opposed FGM but took no legal action to curb the practice. Because of the considerable impediments that anti-FGM groups faced at the federal level, most refocused their energies on combating the practice at the state and local levels. Beyelsa, Edo, Ogun, Cross River, Osun, and Rivers states banned FGM. However, once a state legislature criminalized FGM, NGOs found that they had to convince the local government authorities that state laws were applicable in their districts. The Ministry of Health, women's groups, and many NGOs sponsored public awareness projects to educate communities about the health hazards of FGM. They worked to eradicate the practice, but financial and logistical obstacles limited their contact with health care workers on the harmful effects of FGM.
>
> [Emphasis added].

(Tribunal Record [TR], Country of Origin information Report: Nigeria, 9 June 2009 at p 211).

Were Gender-related Guidelines taken into consideration?

[36] In respect of the guidelines concerning Women Refugee Claimants Fearing Gender-Related Persecution, the Board's decision although it specifies: "in making the decision the panel followed the *Chairperson's Guideline for Women Refugee Claimants Fearing Gender-Related Persecution*", it cearly did not (at para 7). With regard to IFAs, the Gender-related Guidelines provide:

> 4. **In determining the reasonableness of a woman's recourse to an internal flight alternative (IFA), decision-makers should consider the ability of women, because of their gender, to travel safely to the IFA and to stay there without facing undue hardship**. In determining the reasonableness of an IFA, the decision-makers should take into account factors including religious, economic, and cultural factors, and consider whether and how these factors affect women in the IFA. [Emphasis added].

[37] The Board did not take the Gender-related Guidelines into consideration at all; and, if it had, it should have mentioned which parts of the Applicant's narrative it did not deem credible in its consideration of the religious, economic and cultural factors of the Applicants so as to set aside the application of Gender-related Guidelines in this case. The conclusions reached by the Board do not take into account each aspect of the Applicant's story, nor a composite whole of its entirety. The narrative of the principal Applicant is neglected, as is the country condition documentation.

[38] The Applicant submitted a Psychological Report, dated June 11, 2010 (TR at p 489). Dr. Sylvie Laurion, Psychologist, examined and treated Ms. Agimelen and specified that she had been diagnosed with post-traumatic stress disorder and was given prescribed medication for the condition (TR, Psychological follow-up of Ms. Winnifred Agimelen, born 17 July 1978 and her son, Aaron Afuah, born 2 February, 2003 at p 489). In addition, Dr. Harry Kadoch certified that Ms. Agimelen was indeed diagnosed with a post-traumatic stress disorder and that she had

undergone female circumcision (TR at p 480). The Board mentioned these reports and concluded that erroneously that, "[t]hough she suffered from a mental health condition at the outset of her ordeal, these appear to have largely been addressed according to the evidence" (at para 22).

The Board did not assess the Applicant's credibility

[39] With regard to the principal Applicant's credibility, the Board considered the essence or core of the principal Applicant's narrative as credible; in respect of the peripheral aspects, the Board did not determine in any manner their validity, or lack thereof, except for a passing remark, without any specifics, whatsoever:

> [9] The claimants having generally established their main allegations, despite the lack of credibility of several aspects of the claimant's story, the determinative issue in this matter is the existence of an internal flight alternative (IFA).

[40] In *Edobor v Canada (Minister of Citizenship and Immigration),* 2007 FC 883, 160 ACWS (3d) 866, Justice Maurice E. Lagacé allowed a judicial review:

> [21] The jurisprudence of this Court supports the notion that the Board has a duty to consider documentary evidence that supports the Applicant's position (*Bains v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 497 (QL); *Maldonado v. Canada (Minister of Employment and Immigration),* [1980] 2 F.C. 302). Justice Shore recently held, in *Assouad v. Canada (Minister of Citizenship and Immigration),* [2006] F.C.J. No. 1216 (QL) that "A Board is under a duty to justify its credibility findings with specific and clear reference to the evidence, particularly when the evidence is cogent and relevant to the Applicant's allegations."
>
> [22] The applicants submitted documents central to their claims including two notes from her mother stating that threats were still being made against the principal applicant, a letter from the Family Services of Peel confirming that the principal applicant received counselling services for her trauma from her abusive relationship, and a medical certificate from a doctor confirming that the female minor applicant had not been circumcised. While, it is open for the Board to find the applicants not credible, the Board still had a duty to address whether or not the evidence submitted by the applicants affected its decision. [Emphasis added].

[41] In *Owobowale v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1150, Justice Russel Zinn of this Court reviewed and granted an application for judicial review with regard to female genital mutilation case:

> [7] … The United Nations High Commissioner for Refugees' May 2009 *Guidance Note on Refugee Claims Relating to Female Genital Mutilation*, at paragraph 10, provides direction as to a more reasonable approach to assessing the daughters' subjective fear:
>
> > It can happen that a girl is unwilling or unable to express fear, contrary to expectations. … This fear can nevertheless be considered well-founded since, objectively, FGM is clearly considered as a form of persecution. In these circumstances, it is up to the decision-makers to make an objective assessment of the risk facing the child, regardless of the absence of an expression of fear.
>
> …
>
> [12] … In *Alexandria v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1616, at para. 4, Justice Campbell found that "it was incumbent on the RPD to consider the following evidence: the daughter is Nigerian, is of tender years, and FGM is prevalent in Nigeria."

X. Conclusion

[42] For all of the above reasons, the Applicants' application for judicial review is granted and the matter is remitted for redetermination anew by a differently constituted panel.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be granted and the matter be remitted for redetermination anew by a differently constituted panel. No question for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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