Federal Court  Cour fédérale

Date: 20131024

Docket: IMM-12630-12

Citation: 2013 FC 1078

Ottawa, Ontario, October 24, 2013

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

KARAMJEET KAUR PUNIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board, dated November 21, 2012 [Decision], in which the IAD declared the Applicant's appeal from the decision of a visa officer to be *res judicata* and declined to hear it.

BACKGROUND

[2] The Applicant is a 32-year-old Canadian citizen originally from India. Her husband is a 39-year-old citizen of India. They were married on November 24, 2007. The Applicant is presently residing in Canada, and her husband in India.

[3] The Applicant initially sponsored her husband to come to Canada in 2008, but that application was refused by a letter dated November 25, 2008. The visa officer determined that the marriage was not genuine and was entered into primarily for the purpose of the husband acquiring a status or privilege under the Act. The Applicant appealed that decision to the IAD, and her appeal was dismissed on March 30, 2010. Her subsequent application for leave and judicial review to this Court was dismissed on August 6, 2010.

[4] The Applicant again sponsored her husband's Canadian permanent resident application in 2011, and was again refused by letter on August 1, 2011. The visa officer's reason for refusal was, as with the 2008 decision, that the marriage between the Applicant and her husband was not genuine and was entered into primarily for the purpose of the husband acquiring a status or privilege under the Act. In coming to that conclusion, the visa officer considered that:

- the Applicant and her husband were incompatible in terms of marital status;
- the husband was unable to provide a credible explanation for the Applicant's divorce;
- the husband's parents and sister reside in Canada;

- the photographs submitted in support of their claim were devoid of the comfort one would expect from a couple who had been married for three years;

- there was a delay of eight months between the refusal of the first application for permanent residence and the submission of a new sponsorship application; and

- the appeal from the 2008 refusal to approve the permanent resident application was dismissed by the IAD.

[5] The Applicant appealed the 2011 refusal decision to the IAD. The appeal was heard by the same IAD member [Member] who dismissed the first IAD appeal. The Member dismissed the second appeal by application of the doctrine of *res judicata*, and that Decision now forms the basis of this application for judicial review.

DECISION UNDER REVIEW

[6] The Member first noted that although he was the decision-maker on the first appeal, there was no evidence of any reasonable apprehension of bias. The Member cited *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 629 [*Rodriguez*], as support for this conclusion.

[7] The Member identified the sole issue as being whether the doctrine of *res judicata* applied. He noted that *res judicata* has two forms – cause of action estoppel and issue estoppel – and that issue estoppel was the form applicable in the circumstances. For issue estoppel to apply, three requirements must be met:

a. The same question has been decided;

b. The judicial decision which is said to have created the estoppel must have been final; and

c. The parties to the judicial decision, or their privies, must have been the same as the parties to the proceedings in which estoppel is raised.

The Member explained that the application of the doctrine of issue estoppel avoids the potential for a previous decision to be undermined by a subsequent finding on a repeat appeal. However, even where all three criteria are met, a repeat appeal can only be barred by *res judicata* if no special circumstances exist that bring the appeal within the established exceptions of that doctrine.

[8] The exceptions to the application of *res judicata* noted by the Member are fraud or misconduct in the previous proceeding that raises issues of natural justice, or the existence of "decisive new evidence" that could not have been discovered by the exercise of reasonable diligence in the previous proceeding. The Member further noted that the rules governing *res judicata* should not be applied mechanically, and that even if the criteria for *res judicata* are met, whether or not the doctrine should be applied in any given case is within the IAD's discretion to determine.

[9] The Member determined that the three requirements for the application of issue estoppel had been met in this case: (i) the first IAD appeal in 2010 was final; (ii) the parties to that appeal were the Applicant and the Minister of Citizenship and Immigration; and (iii) the issue was decided in the context of an application for permanent residence for the same applicant, wherein the question was whether the Applicant had met the onus to prove that her marriage to her husband was genuine, or

that it was not entered into primarily for the purpose of acquiring any status or privilege under the Act.

[10] The Member explained that the "decisive new evidence" exception to the application of issue estoppel extended to evidence that existed at the time of the first appeal, but was not reasonably attainable, or evidence that did not exist at the time of the first appeal, but rather came about between the dismissal of the first appeal and the second appeal. However, such evidence must be probative of the intention of the parties at the time they became members of the family class. It cannot be evidence created to bolster or create such an intention. Furthermore, the evidence must be credible and, if accepted, sufficient to have affected the result of the previous proceeding.

[11] In the case at hand, the Applicant's arguments to the IAD were that there had been a breach of natural justice in the previous IAD hearing because of interpretation issues, and that there was decisive new evidence capable of changing the outcome of the first proceeding. She submitted as new evidence medical letters and evidence of In Vitro Fertilization (IVF) treatment, material related to her two return visits to India since the first hearing, affidavits from her two siblings, phone bills, financial documents, identification documents reflecting the change in her marital status, her 2011 Income Tax and Benefit returns, affidavits and petitions from friends and relatives, and photographs of the Applicant spending time with her husband's family in Canada.

[12] Regarding the Applicant's interpretation argument, the Member determined that she had failed to establish that any of the alleged errors were relevant to the determinative issues, or had resulted in a material misunderstanding that was pertinent to the Member's Decision. The Applicant's previous counsel was a Punjabi-speaking barrister and solicitor, and the written application for judicial review of the first IAD decision did not raise any issue around the adequacy

of interpretation as a ground for review. It was incumbent upon the Applicant to raise such an issue at the earliest opportunity, and in this case doing so two years later at a subsequent appeal proceeding was not reasonable.

[13] The Member then addressed the Applicant's new evidence, and determined that it was similar in nature to the evidence that was before him on the previous appeal. It was not fresh new evidence, but rather an attempt to bolster and supplement the type of evidence that was adduced at the previous hearing. The evidence submitted at the first hearing was not sufficient to overcome the Member's concerns that the Applicant's relationship with her husband lacked commitment over time. The issue of the couple's plans to have children together was considered in the previous appeal, and the Member had nevertheless concluded that the marriage was not genuine and was entered into primarily to gain status or privilege under the Act. Therefore, the Member reasoned, the evidence of the Applicant's efforts after the first appeal to undergo IVF treatment was not decisive fresh evidence.

[14] The Member concluded that, on a balance of probabilities, there was no decisive new evidence submitted that could not have been discovered by the exercise of reasonable diligence in the first proceeding. He therefore found that there were no special circumstances that warranted the non-application of *res judicata*, and dismissed the appeal on the basis of that doctrine.

ISSUES

[15] The Applicant raises the following issues in this application:

a. Was the Member, having heard the IAD appeal in 2010, biased, or did his involvement in the second appeal raise a reasonable apprehension of bias?

b. Did the Member err in law in applying the doctrine of *res judicata* in a mechanical fashion contrary to the Supreme Court of Canada's guidance in *Danyluk v Ainsworth Technologies*, 2001 SCC 44 [*Danyluk*], by:

   i. failing to appropriately weigh the evidence with respect to whether or not decisive new evidence exists;

   ii. failing to adhere to the principle of judicial consistency in assessing such evidence; or

   iii. unreasonably failing to consider the extensive new evidence proffered relating to a continued marital relationship of five years?

c. Did the Member err in law by rendering a decision that stands in stark contrast to decisions of similarly situated individuals who provided similar evidence, thus violating the principles of judicial consistency in administrative decision-making?

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in these proceedings:

Selection of Permanent Residents	**Sélection des résidents permanents**
Family reunification	**Regroupement familial**
12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.	12. (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

[…]	[…]
Sponsorship of foreign nationals	**Parrainage de l'étranger**
13. (1) A Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law — or any combination of them — may sponsor a foreign national, subject to the regulations.	13. (1) Tout citoyen canadien, résident permanent ou groupe de citoyens canadiens ou de résidents permanents ou toute personne morale ou association de régime fédéral ou provincial — ou tout groupe de telles de ces personnes ou associations — peut, sous réserve des règlements, parrainer un étranger.
[…]	[…]

[17] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] are applicable in these proceedings

Division 2 **Family Relationships**	**Section 2** **Notion de famille**
Bad faith	**Mauvaise foi**
4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	4. (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

(b) is not genuine.	b) n'est pas authentique.
[…]	[…]

STANDARD OF REVIEW

[18] The Supreme Court of Canada, in *Dunsmuir v New Brunswick* 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[19] The Supreme Court of Canada held in *Baker v Canada (Minister of Citizenship and Immigration*, [1999] 2 SCR 817 [*Baker*] at paragraph 45 that "[p]rocedural fairness… requires that decisions be made free from a reasonable apprehension of bias by an impartial decision-maker." In *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29 [*C.U.P.E.*], the Supreme Court held at paragraph 100 that it "is for the courts, not the Minister, to provide the legal answer to procedural fairness questions." Further, the Federal Court of Appeal in *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paragraph 53 held that the "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." Thus, the first issue will be evaluated on a correctness standard.

[20] The application of the doctrine of *res judicata* is a question of law (*C.U.P.E.* at paragraph 18). As explained in *Sami v Canada (Minister of Citizenship and Immigration)*, 2012 FC 539 [*Sami*] at paragraph 30, this is an issue on which no deference is owed, and should be evaluated on a standard of correctness.

[21] As regards the third issue, the Applicant calls into question the Member's evaluation of her evidence. This is a matter that is reviewable on a reasonableness standard (*Dunsmuir*). When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

[22] The Applicant submits that the Member committed a clear breach of natural justice, was procedurally unfair to the Applicant, and committed an error of law and fact when he disposed of this particular appeal after having heard and rendered a decision on the same issue during an earlier appeal.

[23] The same Member sat in review and appeal of his own earlier decision and reasons, and thus there is a reasonable apprehension of bias on the part of the Member and the IAD, which constitutes an error in law.

[24] The Applicant further submits that the Member erred in law and committed a breach of natural justice and procedural fairness when he failed to invite submissions on the issue of bias or the reasonable apprehension of bias. The issue of bias was only brought to the Applicant's attention in the Member's Decision and reasons, so that the Applicant had no opportunity to make submissions on this issue.

[25] Furthermore, the Member's Decision is unreasonable as he decided that a reasonable apprehension of bias did not exist without allowing the opportunity for evidence or submissions on point. The IAD further erred when it did not advise the Applicant that the same Member who sat on the first appeal would also decide the second appeal.

[26] The Applicant submits that the Member also erred in his analysis of the "decisive new evidence" exception to the doctrine of *res judicata* when he stated that "decisive new evidence must be probative of the intention fixed in time by the relevant definition of the Act and must be fresh evidence, which genuinely affects an evaluation of the intention of the parties at the time they purport to become a member of the family class, rather than being evidence, which is created to bolster or create the intention." The evidence of the Applicant's attempts at IVF treatment and desire to have a child constitutes decisive new evidence. Furthermore, since the hearing of the first appeal, the Applicant has made two extended visits to India totalling approximately eight and a half months, which is further evidence of the genuineness of the couple's marriage.

[27] The Applicant also says that the Member misconstrued the Supreme Court of Canada's decision in *Danyluk* respecting the application of *res judicata* in administrative proceedings, and failed to follow the Supreme Court's instruction that *res judicata* ought not to be applied mechanically. He further failed to follow this Court's decision in *Sami*, above, wherein I stated as follows:

> 79 If a relationship is genuine and continues over time, it stands to reason that more photographs, cards, letters, and telephone bills will become available. Although evidence of the same kind may have been introduced before, it speaks to an aspect of the marriage which was not previously present: the commitment over time.

[28] The Applicant finally submits that the Member erred when he did not adhere to the long-standing principle of judicial consistency in administrative decision-making and rendered a decision in stark contrast to a myriad of other IAD decisions on the same legal issue involving similarly situated individuals and similar evidence.

The Respondent

[29] The Respondent submits that there was no breach of natural justice. A reasonable person would not find that the Member was biased merely because he presided over both appeals. There is nothing to suggest that the Member prejudged the appeal and the mere fact that he presided over both appeals does not give rise to a finding of bias (*Fogel v Canada (Minister of Manpower and Immigration)*, [1975] FCR 121 (FCA); *Khalife v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1145; *Re Charhaoui*, 2004 FC 624; *Canada (Minister of Citizenship and Immigration) v Jaballah*, 2006 FC 180).

[30] The Respondent further submits that the Applicant's first IAD appeal addressed substantially the same issues and evidence raised in the second appeal. The first appeal addressed credibility issues with respect to the genuineness of the marriage, the nature of the relationship between the Applicant's father-in-law and the marriage broker, the timeline of the marriage negotiations and the marriage arrangements, the nature and length of communication, the evidence of the couple's intermingling with each other and their respective families, the evidence of the couple's time spent together after the marriage, the lack of the Applicant's return to India after the marriage, and the couple's future plans together.

[31] At the appeal currently under review, the Member examined both the reasons for the original refusal and the new evidence put forward to establish the basis for a new hearing. He specifically noted all of the new evidence with particular attention given to the IVF treatments. His findings were not unreasonable given all the circumstances in the case.

[32] Finally, the Respondent submits that the Applicant's argument that the Member ignored cases involving similarly situated individuals has no merit. This Court has upheld findings of *res judicata* with respect to similarly situated individuals. More importantly, each case must be assessed on its own merits. In this case the Member reviewed the evidence, analyzed it and provided a reasonable determination that the evidence was not decisive.

Applicant's Reply

[33] The Applicant replies that a reasonable person would find that the Member was biased or that there was a reasonable apprehension of bias because the Member had personally and solely adjudicated the first appeal and dismissed it. A reasonable person would find that the Member

would be, if not consciously then at least unconsciously, predisposed or actively reluctant to overturn his own findings of fact leading to his own previous dismissal of the Applicant's appeal.

[34] Furthermore, a reasonable person would be of the view that such a decision-maker would be inclined in advance not to see any fault in the evidentiary analysis or paucity in the rendering of written reasons when he was the previous decision-maker. The Member's position, sitting in review of his own conduct and evidentiary analysis, is untenable and does not accord with long-established notions of fundamental and natural justice.

[35] With respect to the issue of *res judicata*, the Applicant submits that the Member's cursory listing of the extensive relevant and probative evidence provided does not amount to a sufficient analysis of whether the evidence proffered constitutes decisive new evidence.

[36] Moreover, the Member failed to consider all the evidence cumulatively to determine whether, taken together, it is decisive new evidence demonstrably capable of altering the result of the first proceeding. Instead, the member focused solely on the IVF treatments. This is clearly a deficient evidentiary analysis and also an error in law insofar as the evidence before the Member was not assessed or weighed.

[37] Finally, the Applicant submits that the Respondent incorrectly referred to the Applicant as a refused refugee claimant, which is reflective of an entirely different judicial review application, as the Applicant is Canadian, as is her child-to-be-born.

ANALYSIS

[38] The parties spent a lot of time before the Court debating whether the actions of the Member in this case give rise to a reasonable apprehension of bias within the meaning of the test established by the Supreme Court of Canada at page 394 of *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369. In particular, they presented and discussed case law on whether a tribunal member sitting on and re-hearing a matter which he or she has previously heard gives rise to a reasonable apprehension of bias. As the able arguments from counsel on both sides demonstrate, there is no ready answer to this question. Many factors may come into play and, in my view, it will all depend upon the decision in question and the complete context in which the decision is made.

[39] Generally speaking, bias issues are raised by one of the parties to a proceeding and, as the jurisprudence of this Court makes clear, they should be raised first of all before the tribunal in question at the earliest opportunity. See *Jerome v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1419 at paras 17-18; *Toora v Canada (Minister of Citizenship and Immigration)*, 2006 FC 828 at paras 17-18; *Chamo v Canada (Minister of Citizenship & Immigration)*, 2005 FC 1219 at para 9; *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892 at paras 88-91 (per Dickson CJ) and paras 177-179 (per McLachlin J, dissenting in part); *E.C.W.U., Local 916 v Atomic Energy of Canada Ltd.* (sub nom *Re Human Rights Tribunal and Atomic Energy of Canada Ltd.*), [1986] 1 FC 103 (FCA).

[40] That did not happen in this case. In fact, it could not happen because the identity of the Member did not become known until after the Decision was made. This was a paper decision in which there was no hearing and no opportunity for the parties to know who would be considering their submissions and making the Decision. Hence, the first opportunity to raise bias is in this application before the Court.

[41] What is strange about this Decision is that the Member concerned actually raises the issue of bias himself and deals with it in the Decision. He does this without informing the parties that this is an issue he must decide and without giving them the opportunity to make submissions on point. So, quite apart from the issue of whether a reasonable apprehension of bias existed in this case, there is the anterior issue of whether procedural fairness was breached and, if it was, whether that really matters.

[42] The Member deals with the bias issue as follows:

> The appellant sponsored the applicant initially in 2008, but that application was refused by letter dated November 25, 2008 (Record, pages 33 and 46). The appellant appealed against the refusal, and the appeal was dismissed on March 30, 2010 (*Punia v Canada (Minister of Citizenship and Immigration)*, (IAD VA8-05755), Nest, March 30, 2010). I made the decision in the first appeal. In deciding whether I should consider the second appeal in this matter, I have provided the Reasons and Decision in 2010 with detailed reasons why the appellant has not met her evidentiary burden of proving, on balance of probabilities, that her marriage to the applicant is genuine and was not entered into primarily to acquire any status under the *Act*. I have made my decision in 2010 based on all the circumstances in the case. There is no evidence of any reasonable apprehension that, due to my past involvement in this matter, my decision to consider the second appeal, rises to a reasonable apprehension of bias. In coming to this conclusion I am guided by the Federal Court decision in *Rodriguez v Canada (Minister of Citizenship and Immigration)*, Phelan, May 5, 2005, 2005 FC 629.

[43] The Member's reliance upon *Rodriguez*, above, is indicative of the rationale for his conclusion that there was no evidence of a reasonable apprehension of bias in this case. In relevant part, *Rodriguez* reads as follows:

> 15 The fact that the same Member decided both re-opening applications and signed the Abandonment Decision raises no legitimate grounds of attack per se. The case of *Arthur v. Canada (Minister of Citizenship and Immigration)*, [1993] 1 F.C. 94 confirmed that the mere fact of a second hearing before the same adjudicator, without more, does not give rise to a reasonable apprehension of bias.
>
> 16 The Member's signature on the Abandonment Decision is a purely administrative act based entirely on the objective fact that neither the Applicant nor her counsel appeared at the scheduled hearings.
>
> 17 There was nothing said or done in the first re-opening decision which would preclude the Member from hearing the second application.
>
> 18 The second re-opening application, like the first, is restricted to the issue of whether there had been a breach of national [sic] justice in the Abandonment Decision. The Applicant's alleged health and emotional difficulties, about which the Applicant had never informed the RPD, would not be relevant to the natural justice issue.

[44] There are many differences between the present case and *Rodriguez*, above. What the Member decided in the present case was not a purely administrative act based entirely upon an objective fact. In this case, the Member was making a final decision which has prevented the Applicant from having a *viva voce* hearing on a matter of acute personal importance for the rest of her life.

[45] On the issue of whether there was anything said or done in the Member's earlier decision that would preclude him from hearing the second appeal, the Member considers this in a summary way and concludes that "there is no evidence" to this effect. It does not seem to have occurred to the Member that the Applicant might not see it his way and might wish to make representations on point and ask him to recuse himself. Had this occurred, there is no way of knowing whether the Member might have taken a different view and might have decided that a reasonable apprehension of bias did exist. In a matter concerning his own conduct, the Member acted as sole advocate and judge in his own case.

[46] The Member was clearly of the view that the potential for a reasonable apprehension of bias existed. Otherwise, there would have been no reason to mention it in the Decision. He could have left it for the Applicant to raise before me. But he chose, instead, to make it an integral part of his own Decision, and he came to a conclusion that has had significant consequences for the Applicant and with which she disagrees. Yet she was not given the opportunity to ask the Member to recuse himself and to explain why, on the facts of this case, he should do so.

[47] Without full argument before the Member on this point, and the Member's full response to those arguments, it is not possible for the Court to say whether, on the facts of this case, the Member should have recused himself.

[48] *Rodriguez*, above, was a very different decision on the facts, and the guidance of the Federal Court of Appeal in *Arthur v Canada (Minister of Citizenship and Immigration)*, [1993] 1 FC 94 (FCA) [*Arthur*] is perhaps more instructive:

> 15 The most accurate statement of the law would thus appear to be that the mere fact of a second hearing before the same adjudicator, without more, does not give rise to reasonable apprehension of bias, but that the presence of other factors indicating a predisposition by the adjudicator as to the issue to be decided on the second hearing may do so. Obviously one consideration of major significance will be the relationship of the issues on the two hearings, and also the finality of the second decision. If, for instance, both decisions are of an interlocutory character, such as two decisions on detention (as in *Rosario*), it may be of little significance that the matter in issue is the same, but where the second decision is a final one as to a claimant's right to remain in the country, the avoidance of a reasonable apprehension of bias may require greater distinction in the issues before the tribunal on the two occasions.

[49] In the present case, the Applicant was deprived of the opportunity to present evidence and argument indicating a predisposition by the Member to decide the second hearing against her. She can present that evidence before me, but I do not have the Member's response. In effect, the Applicant was deprived of the opportunity to argue and convince the Member that her case should be decided by another member who might not have the same predisposition.

[50] In my view, this is a breach of procedural fairness that requires this matter to go back for reconsideration.

[51] I have reviewed the *res judicata* issue and have some concerns about the Member's assessment of whether there was decisive new evidence demonstrably capable of altering the result of the first proceeding. However, I think this matter must be returned on the issue of procedural fairness, and there is no need to assess the Member's handling of the *res judicata* issue.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different IAD member.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12630-12
STYLE OF CAUSE:	KARAMJEET KAUR PUNIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JULY 17, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	RUSSELL J.
DATED:	OCTOBER 24, 2013

APPEARANCES:

Narindar S. Kang Jasdeep S. Mattoo	FOR THE APPLICANT
Jennifer Dagsvik	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kang & Company Barristers and Solicitors Surrey, British Columbia	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT