Federal Court Cour fédérale

Date: 20220412

Docket: IMM-1550-21

Citation: 2022 FC 522

Ottawa, Ontario, April 12, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ALI MAHBOBI NIK
SHAHRZAD SHEIGHALI
& SHAYLIN MAHBOBI NIK

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family and citizens of Iran. They claim refugee protection in Canada because they fear persecution by the Iranian government.

[2] The Principal Applicant, Ali Mahbobi Nik, describes that in 2009, he began to identify with the Green Movement in Iran and participated in peaceful demonstrations against the government. Mr. Nik was arrested and detained for questioning, until he was released on bail. He continued to protest during which time a friend was killed by Iranian authorities, he later learned.

[3] Mr. Nik further describes that Iranian authorities detained, beat and interrogated him, following the death of his friend. Mr. Nik states that he received 70 lashes and was released on conditions. He avers that authorities continued to pursue him coming to his home, detaining him for questioning repeatedly, and requiring him to check-in weekly with authorities and to promise not to leave Tehran, requiring permission to travel and exit Iran for trips that were more than one week. He states that he continued to protest during the period 2009-2018, but became depressed and worried for his family which led him to look for a way to leave Iran. He further describes that, with the help of a family friend, the Applicants obtained Canadian visas and fled; and that, following his arrival in Canada, Mr. Nik's mother notified him that Iranian authorities have enquired about his whereabouts.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected the Applicants' claim for lack of credibility, finding that they are neither Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Refugee Appeal Division [RAD] dismissed the Applicants' appeal on February 2, 2021 [Decision], finding credibility to be determinative of the Applicants' claim. The RAD also found:

(a) The objective evidence did not support the Applicants' assertion that they did not need permission to leave Iran for Canada because they were not planning to

return; those who have been of interest to government authorities would have difficulty exiting Iran;

(b) The 2019 subpoena provided by the Applicants, although a crucial piece of evidence, was not credible and trustworthy based on its content;

(c) The Principal Applicant's testimony about his ongoing political activism was evolving; when questioned about his revised basis of claim narrative and the assertion that he "continued to demonstrate anytime there was a protest from 2009-2018," he admitted during the RPD hearing to demonstrating only once in 2018;

(d) The Applicants did not put forward gender-based concerns about returning to Iran, noting that: (i) the associate Applicants (the Principal Applicant's spouse and daughter) did not provide separate narratives but rather they relied on the Principal Applicant's narrative; (ii) his worries about his family, including his daughter as a child in Iran, did not amount to an allegation of gender-based risk; and (iii) his spouse was asked at the RPD hearing if she wanted to testify and she declined.

[5] The Applicants now seek judicial review of the Decision. I find this matter raises the following main issues for the Court's determination: (1) the reasonableness of the Decision, including the RAD's treatment of corroborative evidence; (2) breach of procedural fairness; and (3) incompetent counsel.

[6] I am not persuaded that the Decision was either unreasonable or procedurally unfair. Nor am I persuaded that a miscarriage of justice occurred because of previous counsel's conduct. For the reasons below, I therefore dismiss this application for judicial review. In addition to the main issues, the Analysis deals with two preliminary issues at the outset, the first involving the Principal Applicant's affidavit, and the second involving the RPD decision.

[7] See Annex "A" below for relevant legislative provisions.

II. Standard of Review

[8] The presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (para 99). A decision may be unreasonable if the decision maker misapprehended the evidence before it (paras 125-126). The party challenging the decision has the onus of demonstrating that the decision is unreasonable (para 100).

[9] Breaches of procedural fairness are subject to a "reviewing exercise … 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The focus of the reviewing court is whether the process was fair, bearing in mind the duty of procedural fairness is variable, flexible and context-specific: *Vavilov*, above at para 77; *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

III. Analysis

(i) First preliminary issue – acceptance of affidavit

[10] Regarding the Principal Applicant's affidavit served and filed in support of the judicial review application, I note that the Commissioner's signature is missing from the jurat and it does not comply with Rule 80(2.1) of the *Federal Courts Rules*, SOR/98-106 [*FCR*]. This raises in the Court's mind the issue of whether the affidavit was sworn properly. Following discussion of this

issue at the outset of the hearing, the Respondent subsequently advised the Court that because they did not take issue with the affidavit before the hearing, they would not do so now. In the circumstances, I am prepared to accept the affidavit, notwithstanding my initial reservations, subject to the discussion below regarding the issue of allegedly incompetent counsel: *Huang v Canada (Minister of Citizenship and Immigration)* (January 27, 1999), Court File No. IMM-4352-98 (FCTD).

(ii) Second preliminary issue – RPD decision

[11] Contrary to the Applicants' written and oral submissions, the RPD decision is not in issue in this proceeding. Their Application for Leave and Judicial Review appropriately mentions only the Decision: *FCR*, Rule 302. This is consistent in my view with Division 8 of the *IRPA* which prescribes that a judicial review application cannot be made until any right of appeal under the Act has been exhausted: *IRPA* s 72(2)(a). Absent a decision by the RAD to refer the matter back to the RPD for redetermination, in the limited circumstances permitted under the *IRPA*, the door to challenging the RPD decision at this stage is closed: *IRPA*, s 111(1)(c) and 111(2).

(1) Reasonableness of the Decision

[12] I am not persuaded that the Decision was unreasonable. The Applicants submissions in my view amount to a request to reweigh the evidence which is not the role of the Court on judicial review: *Vavilov*, above at para 125.

[13] According to the Supreme Court, the reasonableness standard is **not** about the reviewing court asking itself what decision it would have made instead of that of the decision maker, or attempting to ascertain a "range" of possible conclusions the decision maker could have reached, or conducting a *de novo* review, or seeking to determine the "correct" solution. Rather, as the Supreme Court instructs, "the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable": *Vavilov*, at para 83. As noted by my colleague Justice Little, a judicial review is not an appeal and is not a "do-over": *Agbeja v Canada (Citizenship and Immigration)*, 2020 FC 781 at para 22. Bearing in mind that reasonableness review also is not a "line-by-line treasure hunt for error," the reviewing court simply must be satisfied that the decision maker's reasons "add up": *Vavilov*, at paras 102 and 104.

[14] I find that the RAD's reasons permit the Court to understand why the RAD concluded, based on its review of all of the evidence, that Mr. Nik likely would have faced difficulty leaving Iran, and further that his testimony on this point was inconsistent with the documentary evidence. It is open to the RAD to reject evidence if it is inconsistent with the probabilities affecting the case as a whole, or if inconsistencies are found in the evidence: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 26; *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 415 (FCA) (QL) at para 2. As the Respondent argues, the RAD is entitled to draw conclusions concerning an applicant's credibility based on implausibility, common sense and rationality.

[15] The fact that the RAD preferred some evidence (i.e. the bulk of the evidence which notes that those who have been of interest to government authorities would have difficulty exiting Iran) over other evidence, does not indicate in my view that the RAD ignored evidence. To ground the RAD's alleged missteps, as the Applicants have done here, by focussing on errors the Applicants assert the RPD made in assessing the evidence, is tantamount to asking the Court to reweigh evidence the RAD is presumed to have considered: *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 28.

[16] Further, contrary to the Applicants' submissions, the presumption of an applicant's truthfulness in relation to sworn allegations is rebuttable: *Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CarswellNat 168 at para 5, [1980] 2 FC 302 (FCA). An applicant's lack of credibility may be sufficient to rebut it, where, for example, the evidence is inconsistent with the applicant's sworn testimony or where the decision maker is not satisfied with the applicant's explanation for the inconsistencies: *Lawani*, above at para 21.

[17] The RAD identified other inconsistencies and contradictions in Mr. Nik's narrative that largely are uncontested here. For example, Mr. Nik gave inconsistent evidence regarding the extent of his involvement with the Green Movement, such as the number of actual demonstrations he attended in the period 2009-2018 which the RAD highlighted in the Decision. In the end, I am satisfied that the RAD reasonably analyzed the evidence before it and provided careful, comprehensive and well-considered reasons explaining why Mr. Nik was not found credible with respect to his continued political activism.

(2) Asserted breach of procedural fairness

[18] I also am not persuaded that the RAD's treatment of the subpoena was either unfair or unreasonable for that matter.

[19] Although the RAD concluded the RPD erred in finding the document non-genuine because of factors outside the document itself, the RAD also found the subpoena to be not credible and untrustworthy following its own independent assessment with reference to the country conditions documentation. The RAD's reasons are coherent and represent a logical chain of analysis that permit the Court to understand why the RAD came to the conclusion it did regarding the subpoena.

[20] I agree with the Respondent that the RAD was not required to hold an oral hearing regarding the legitimacy of the subpoena because the credibility of this document was already at issue in the RPD's decision, and therefore it cannot be said that the RAD raised a new issue by performing its own assessment: *Jiang v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1064 at paras 15-17; *Han v Canada (Minister of Citizenship and Immigration),* 2019 FC 858 at paras 22-24; *Bakare v Canada (Minister of Citizenship and Immigration),* 2017 FC 267 at paras 18-19; *Lin v Canada (Minister of Citizenship and Immigration),* 2017 FC 1175 at paras 18-22. I thus find that, in the circumstances, the fact the Applicants could not have known that the RAD would address the subpoena the way it did is not a relevant consideration.

(3) Allegation of incompetent counsel

[21] Finally, I am not satisfied that the Applicants have demonstrated breach of procedural fairness by previous, allegedly incompetent counsel (including the immigration consultant) failing to assert gender-based fear of persecution.

[22] This Court long has recognized that, in extraordinary circumstances, counsel's behaviour may ground a breach of natural justice allegation, warranting redetermination by the decision maker, including a new hearing, but only if the conduct "falls within professional incompetence [or, negligence] and the outcome of the case would have been different had it not been for counsel's wrongful conduct" (citations omitted): *Rezko v Canada (Citizenship and Immigration)*, 2015 FC 6 at para 5. See also *Shirwa v Canada (Minister of Employment and Immigration)*, [1994] 2 FC 51, 1993 CanLII 3026 (FCA) at pp 60-61; *Osagie v Canada (Minister of Citizenship and Immigration),* 2004 FC 1368 at paras 24-27; *Rodrigues v Canada (Minister of Citizenship and Immigration)*, 2008 FC 77, [2008] 4 FCR 474 at paras 39-40; *Memari v Canada (Citizenship and Immigration)*, 2010 FC 1196 at paras 36, 64; *El Kaissi v Canada (Citizenship and Immigration)*, 2011 FC 1234 at paras 15-19, 33; *Pathinathar v Canada (Citizenship and Immigration)*, 2013 FC 1225 at para 38; *Mcintyre v Canada (Citizenship and Immigration)*, 2016 FC 1351 at paras 33-34.

[23] The test for reviewable counsel conduct is three-part, and the onus is on an applicant to establish that:

(i) the previous representative's acts or omissions constituted incompetence or negligence;

(ii) but for the impugned conduct, there is a reasonable probability that the outcome would have been different (in other words, a miscarriage of justice has occurred as a result of the conduct); and

(iii) the representative had a reasonable opportunity to respond to an allegation of incompetence or negligence: *Rendon Segovia v Canada (Citizenship and Immigration),* 2020 FC 99 at para 22; *Gombos v Canada (Citizenship and Immigration)*, 2017 FC 850 at para 17 [*Gombos*].

[24] There is an initial presumption that counsel conduct falls within a wide range of what is considered reasonable professional conduct, and the onus is on the Applicants in this case to establish the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment; the wisdom of hindsight has no place in this analysis: *R v GDB,* 2000 SCC 22, [2000] 1 SCR 520 [*GDB*] at para 27; *Gombos*, above at para 17. Further, a formal complaint to the former representative's regulatory body is not necessary; notice of the allegation and an opportunity to respond to it are sufficient: *Guadron v Canada (Citizenship and Immigration)*, 2014 FC 1092 at para 16; *Basharat v Canada (Citizenship and Immigration)*, 2015 FC 559 at paras 14-15.

[25] The Applicant has complied partially with prerequisite steps outlined in the Court's Procedural Protocol dated March 7, 2014 and entitled "Re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court." The exhibits to the affidavit of Mr. Nik, which the Court has accepted, include correspondence from previous counsel in response to whatever notification the Applicants sent to previous counsel.

[26] The Applicants, however, have not provided the Court with a copy of their notification to their previous counsel (including their immigration consultant). Nor is there any evidence that the Applicants served the previous counsel with a copy of the Court's order dated September 28, 2021 granting leave for the Applicants to commence this judicial review proceeding, and thus alerting the previous counsel to the opportunity to request leave to intervene in this matter. Although this would be sufficient basis, in my view, for the Court not to deal with the issue of alleged incompetent counsel, I nonetheless have considered it because of the correspondence from previous counsel in evidence: *Shirvan v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1509 [*Shirvan*] at para 32.

[27] I disagree with the Respondent that the appropriate remedy was for the Applicants to have to put their concerns regarding the alleged incompetence of counsel to the RAD through a request to reopen their claim. Although it was open to the Applicants to have pursued this option, there was no obligation on them, in my view, to have done so prior to bringing their application for leave and judicial review: *Sabitu v Canada (Citizenship and Immigration)*, 2021 FC 165 at paras 54-55.

[28] In my view, however, the Applicants here simply have not established that the former representatives' conduct resulted in substantial prejudice and affected the outcome of the decision, and thus, they have not satisfied their onus regarding the applicable test. While incompetence on the part of counsel representing a refugee claimant may amount, in extraordinary circumstances, to a failure to observe a principle of natural justice or a breach of procedural fairness, I do not agree that such circumstances arise in this case: *Brown v Canada*

(Citizenship and Immigration), 2012 FC 1305 at paras 30, 55–56, 59; *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250 at paras 83–84.

[29] For example, I find the Principal Applicant's characterization of his basis of claim [BOC] narrative as demonstrating an intention to make a claim of gender-based fear of persecution (with regard to his worry about the safety of his family, especially his daughter, in Iran) is unpersuasive and amounts to a request for this Court to reweigh the evidence before the RAD. I further agree with the Respondent that such a characterization contradicts the Applicants' complaint that the previous counsel did not elicit any details of a gender-based claim. In fact, the Applicants' Memorandum of Fact and Law submitted by previous counsel to the RAD plainly argues that the RPD erred in finding the associate claimants have not put forward any gender concerns about returning to Iran because the Principal Applicant's BOC narrative describes his concern for the safety of his wife and child in Iran. This is the same argument that the Applicants' counsel seeks to advance before this Court in challenging the Decision. As the Supreme Court guides, the issue of alleged incompetence is determined according to the reasonableness standard: *GDB*, above at para 27.

[30] In addition, the complaint that previous counsel did not question the associate Applicant spouse about gender-related issues at the RPD hearing effectively is answered in my view by the fact that the RPD asked the associate Applicant if she wanted to testify and she declined. To now provide Ms. Sheighali's statement as part of an exhibit to the Mr. Nik's affidavit, which I otherwise accepted, is an improper attempt, in my view, to place before the Court evidence that was neither before the RPD nor the RAD and to shield Ms. Sheighali from cross-examination. I

therefore find the statement inadmissible and have disregarded it. The Court nonetheless is able to understand the Applicants' submissions on this issue without it.

[31] I also agree with the Respondent that the associate Applicants chose to rely on the Principal Applicant's BOC narrative which did not refer to a gender-based fear of persecution, no matter how the Applicants attempt to recast it. The responses provided by the previous counsel and immigration consultant indicate that the associate Applicants were asked about and had opportunity to add any relevant details to their claims, but declined. Further, as noted above, the associate Applicant spouse was asked by the RPD if she wanted to testify but she declined.

[32] In any event, the Decision turns on the Applicants' credibility which was the determinative issue for the RAD, albeit in respect of the alleged fear of persecution based on Mr. Nik's political activities in Iran. The Applicants have not shown, to the Court's satisfaction however, that any act or omission on the part of previous counsel would have changed this key conclusion: *Shirvan*, above at para 29. The RAD's credibility finding turned on the inconsistencies and contradictions in their evidence.

[33] In other words, I am not persuaded that there was a miscarriage of justice in the circumstances.

[34] In my view, the Applicants' complaints about the conduct of their previous counsel, including the immigration consultant, do not amount to incompetence of counsel to put forth relevant information, but rather the complaints are informed by hindsight. I find that the

circumstances here point, on a balance of probabilities, to a failure of the Applicants themselves to provide counsel with sufficient information that would permit them to put their "best foot forward": *Olori v. Canada (Citizenship and Immigration),* 2021 FC 1308 at para 24, referencing *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at para 14.

IV. Conclusion

[35] For the above reasons, I am not persuaded that the Decision is unreasonable or unfair or that previous counsel's representation amounted to incompetence. I therefore dismiss the Applicants' judicial review application.

V. Proposed Question for Certification

[36] For the reasons below, I decline to certify the question proposed by the Applicants in this matter.

[37] Without advance notice to the Respondent and the Court, the Applicants proposed the following question for certification at the end of the hearing, and subsequently confirmed it in writing:

> To be considered a competent counsel in a refugee proceeding, does the counsel have to explain the fundamentals of refugee law, such as the meaning of political opinion and the membership in a particular social group, and in advising his/her clients to write their narratives and answering the questions in their Basis of Claim Form, does she/her have to ask questions [of] his/her clients in light of those fundamentals?

[38] Although I indicated to the parties that I would consider the question, I remind them of the Court's November 5, 2018 "Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings." These Guidelines provide (at page 4) that "[w]here a party intends to propose a certified question, **opposing counsel shall be notified at least five [5] days prior to the hearing**, with a view to reaching a consensus regarding the language of the proposed question." [Emphasis added.] The Guidelines were not followed in this case. Parties who not do so bear the risk that, in the circumstances of the particular case, the Court may decline to consider the question altogether or may stipulate conditions under which the question nonetheless will be considered.

[39] I agree with the Respondent that for this Court to certify a question, pursuant to subsection 18(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the question must be dispositive of the appeal and it must transcend the interests of the parties in that it contemplates issues of broad significance or general importance. The corollary of this threshold is that the question must have been raised and decided by the lower court: *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at para 16; *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paras 11-12; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46.

[40] Turning to the question proposed by the Applicants, as noted above, there is an initial presumption that counsel conduct falls within a wide range of what is considered reasonable professional conduct. There is well established jurisprudence from this Court on the issue of counsel competence.

[41] Further, I agree with the Respondent that the Applicants have not established why the current test regarding competency of counsel, as set out above, is not sufficient here. The first prong of the test, for example, is broad enough in my view to capture the conduct contemplated by the proposed question. In addition, in considering the general approach to the issue of counsel's competence, the Supreme Court emphasized that there is a wide ambit of reasonable professional assistance, without providing any examples that later could be construed as somehow restricting the breadth inherent their guidance on this point: *GDB*, above at para 27.

[42] I find that in the absence of a miscarriage of justice, the competence of counsel is a question better left to the relevant provincial or territorial law society (or the relevant professional regulator) to consider in the context of applicable professional ethics: *GDB*, above at para 29.

JUDGMENT in IMM-1550-21

THIS COURT'S JUDGMENT is that: the Applicants' judicial review application is dismissed, and the Court declines to certify the Applicants' proposed question.

"Janet M. Fuhrer"

Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**
***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27**

Judicial Review **Application** **72(2)** The following provisions govern an application under subsection (1): (**a**) the application may not be made until any right of appeal that may be provided by this Act is exhausted;	**Contrôle judiciaire** **Application** **72(2)** Les dispositions suivantes s'appliquent à la demande d'autorisation : **a)** elle ne peut être présentée tant que les voies d'appel ne sont pas épuisées;
Convention refugee **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, (**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 (**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.	**Définition de réfugié** **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)** 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)** 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 (**a**) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	**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)** 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 **(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.	**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.
Person in need of protection	**Personne à protéger**
(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.
Appeal	**Appel**
Procedure	**Fonctionnement**
110 (3) Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.	**110 (3)** Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.
Hearing	**Audience**

(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3) **(a)** that raises a serious issue with respect to the credibility of the person who is the subject of the appeal; **(b)** that is central to the decision with respect to the refugee protection claim; and **(c)** that, if accepted, would justify allowing or rejecting the refugee protection claim.	**(6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois : **a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause; **b)** sont essentiels pour la prise de la décision relative à la demande d'asile; **c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.
Decision **111 (1)** After considering the appeal, the Refugee Appeal Division shall make one of the following decisions: … **(c)** refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate. **Referrals** **(2)** The Refugee Appeal Division may make the referral described in paragraph (1)(c) only if it is of the opinion that **(a)** the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and **(b)** it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.	**Décision** **111 (1)** La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés. **Renvoi** **(2)** Elle ne peut procéder au renvoi que si elle estime, à la fois : **a)** que la décision attaquée de la Section de la protection des réfugiés est erronée en droit, en fait ou en droit et en fait; **b)** qu'elle ne peut confirmer la décision attaquée ou casser la décision et y substituer la décision qui aurait dû être rendue sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.

***Refugee Protection Division Rules*, SOR/2012-25**
***Règles de la Section de la protection des réfugiés*, DORS/2012-256**

Reopening a Claim or Application	**Réouverture d'une demande**
Application to reopen claim **62 (1)** At any time before the Refugee Appeal Division or the Federal Court has made a final determination in respect of a claim for refugee protection that has been decided or declared abandoned, the claimant or the Minister may make an application to the Division to reopen the claim.	**Demande de réouverture d'une demande d'asile** **62 (1)** À tout moment avant que la Section d'appel des réfugiés ou la Cour fédérale rende une décision en dernier ressort à l'égard de la demande d'asile qui a fait l'objet d'une décision ou dont le désistement a été prononcé, le demandeur d'asile ou le ministre peut demander à la Section de rouvrir cette demande d'asile.

***Federal Courts Rules*, SOR/98-106**
***Règles des Cours fédérales*, DORS/98-106**

Affidavit Evidence and Examinations	**Preuve par affidavit et interrogatoire**
Affidavit by deponent who does not understand an official language **80(2.1)** Where an affidavit is written in an official language for a deponent who does not understand that official language, the affidavit shall **(a)** be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and **(b)** contain a jurat in Form 80C.	**Affidavit d'une personne ne comprenant pas une langue officielle** **80(2.1)** Lorsqu'un affidavit est rédigé dans une des langues officielles pour un déclarant qui ne comprend pas cette langue, l'affidavit doit : **a)** être traduit oralement pour le déclarant dans sa langue par un interprète indépendant et compétent qui a prêté le serment, selon la formule 80B, de bien exercer ses fonctions; **b)** comporter la formule d'assermentation prévue à la formule 80C.
Limited to single order **302** Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought	**Limites** **302** Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

***Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22**
***Règles des cours fédérales en matière de citoyenneté, d'immigration et de protection des réfugiés*, DORS/93-22**

Disposition of Application for Judicial Review	**Jugement sur la demande de contrôle judiciaire**
18 (1) Before a judge renders judgment in respect of an application for judicial review, the judge shall provide the parties with an opportunity to request that he or she certify that a serious question of general importance, referred to in paragraph 22.2(d) of the Citizenship Act or paragraph 74(d) of the Immigration and Refugee Protection Act, as the case may be, is involved.	**18 (1)** Le juge, avant de rendre jugement sur la demande de contrôle judiciaire, donne aux parties la possibilité de lui demander de certifier que l'affaire soulève une question grave de portée générale, tel que le prévoit l'alinéa 22.2d) de la Loi sur la citoyenneté et l'alinéa 74d) de la Loi sur l'immigration et la protection des réfugiés.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1550-21
STYLE OF CAUSE:	ALI MAHBOBI NIK, SHAHRZAD SHEIGHALI & SHAYLIN MAHBOBI NIK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 21, 2022
JUDGMENT AND REASONS:	FUHRER J.
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APPEARANCES:

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Idorenyin Udoh-Orok	FOR THE RESPONDENT

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