Federal Court  Cour fédérale

Date: 20240308

Dockets: IMM-5085-22
IMM-6165-22

Citation: 2024 FC 401

Vancouver, British Columbia, March 8, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

JUAN DIEGO MEDINA RODRIGUEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Juan Diego Medina Rodriguez, is a citizen of Colombia. In a decision dated December 15, 2021 [RPD Decision], the Refugee Protection Division [RPD] of the Immigration Refugee Board rejected Mr. Rodriguez' claim for refugee protection under both sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as it found that Mr. Rodriguez had not established that he faced a personalized forward-looking risk

in Colombia. Furthermore, Mr. Rodriguez' appeal of his negative RPD Decision was dismissed by the Refugee Appeal Division [RAD] on February 9, 2022 [RAD Decision], for lack of jurisdiction due to the application of paragraph 110(2)(d) of the IRPA. This provision prohibits a right of appeal of a negative RPD decision for individuals captured by the *Agreement between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* [2004] Can TS No 2 [STCA].

[2] In Court file no. IMM-5085-22, Mr. Rodriguez is seeking judicial review of the RPD Decision whereas, in Court file no. IMM-6165-22, he is seeking judicial review of the RAD Decision.

[3] With respect to the RPD Decision, Mr. Rodriguez submits that the RPD erred in law by improperly assessing his refugee claim as if he were an adult, despite him having arrived in Canada as an unaccompanied minor. Mr. Rodriguez further submits that the RPD erred in finding that there was no nexus to a Convention ground pursuant to section 96 of the IRPA simply because he was no longer a child, and unreasonably assessed whether he would face a forward-facing risk if returned to Colombia.

[4] With respect to the RAD Decision, Mr. Rodriguez submits that paragraph 110(2)(d) of the IRPA infringes sections 7 and 15 of the *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 [*Charter*]. Mr. Rodriguez further claims that the RAD erred in not considering his circumstances at the time of his refugee claim—notably, the fact that he was an unaccompanied minor.

[5] These applications for judicial review raise three questions: 1) whether the RPD Decision is reasonable; 2) whether the RAD's finding that it lacked jurisdiction is reasonable; and 3) whether paragraph 110(2)(d) of the IRPA infringes sections 7 and 15 of the *Charter*.

[6] For the following reasons, Mr. Rodriguez' applications for judicial review will be dismissed. Mr. Rodriguez has failed to demonstrate how the RPD Decision is unreasonable or how the RAD could have come to any conclusion other than declining jurisdiction to hear his appeal in light of the specific wording of paragraph 110(2)(d) of IRPA. Finally, Mr. Rodriguez' constitutional argument cannot be considered by the Court as he has omitted to send the required notice of constitutional question. In any event, considering the existing jurisprudence regarding sections 7 and 15 of the *Charter*, I do not find any merit to Mr. Rodriguez' contemplated constitutional challenge.

II. Background

A. *The factual context*

[7] In August 2016, when Mr. Rodriguez was 14 years old, he and his friends were approached by members of the Fuerzas Armadas Revolucionarias de Colombia [FARC], who attempted to entice them to join the FARC with promises of a decent life and 1 million pesos a month. Mr. Rodriguez said that the FARC threatened them and their families if they refused to join.

[8] Fearing for her son's safety, Mr. Rodriguez' mother immediately began making arrangements for him to leave Colombia and to travel to the United States [U.S.] where she has a sister living in Florida. Mr. Rodriguez' mother feared the FARC and felt the Colombian

authorities would not help due to the alleged connections they have with the FARC. She was further worried as Mr. Rodriguez' grandparents had had previous encounters with the FARC, which led to his grandfather having his finger cut off and his great-grandparents and grandfather's brother being killed by the FARC.

[9] The request for a visa to the U.S. took time to process and, in the meantime, Mr. Rodriguez stopped attending school in Colombia for fear of being seen by the FARC. On November 3, 2016, Mr. Rodriguez travelled to the U.S. to stay with his aunt after having received a visa. Mr. Rodriguez remained in the U.S. until he had finished school.

[10] On September 13, 2019, for fear of then-President Donald Trump's immigration policies, Mr. Rodriguez entered Canada as an unaccompanied minor when he was only 17 years old, at a land border crossing between the U.S. and Canada. Mr. Rodriguez then made a refugee claim on the recommendation of his uncle, who had also had problems with the FARC in the past and who was living in Canada as a refugee. In his claim, Mr. Rodriguez alleged that he fears the FARC and other illegal armed groups that may seek to recruit him due to his age.

B. *The RPD Decision and the RAD Decision*

[11] Mr. Rodriguez' refugee claim was heard in November 2021—when Mr. Rodriguez was an adult—and the RPD rejected it on December 15, 2021. In its reasons, the RPD found that the country conditions evidence indicates the FARC targets minors and adolescents for forced recruitment and that, since Mr. Rodriguez was now a young adult, he would not face risks from the FARC or other illegal armed groups upon his return to Colombia.

[12] Mr. Rodriguez' appeal of the negative RPD Decision to the RAD was dismissed for lack of jurisdiction. In a short decision, the RAD determined that Mr. Rodriguez is subject to paragraph 110(2)(d) of the IRPA, which bars access to an appeal before the RAD for claimants who are allowed to make a refugee claim pursuant to an exception to the STCA.

C. *The standard of review*

[13] It is not disputed that the standard of reasonableness applies to the RPD and RAD Decisions under review (*Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296 at para 8; *Canada (Citizenship and Immigration) v Abdul Salam*, 2018 FC 676 at para 10, citing *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30-35). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in all judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 7).

[14] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[15] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention," seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[16] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[17] Mr. Rodriguez has also challenged the constitutionality of paragraph 110(2)(d) of the IRPA. Since the RAD has not ruled on the issue and the Court is acting as a court of first instance, no standard of review is applicable to this issue with respect to this matter (*Dor v Canada (Citizenship and Immigration)*, 2021 FC 892 at para 45 [*Dor*]).

III. Analysis

A. *The RPD Decision is reasonable*

[18] With respect to the RPD Decision, Mr. Rodriguez submits that the RPD erred in law by improperly assessing his refugee claim as if he were an adult, despite him having arrived in Canada as an unaccompanied minor. Mr. Rodriguez further submits that the RPD erred in

finding that there was no nexus to section 96 IRPA simply because he was no longer a child, and in determining that he would not face a forward-facing risk if returned to Colombia.

[19] I am not persuaded by Mr. Rodriguez' arguments.

[20] It is well established law that the RPD assesses a claimant's risk on a forward-looking basis. It was therefore open to the RPD to conclude that Mr. Rodriguez failed to establish a nexus to a Convention ground since, on a forward-looking basis, his fear of persecution is not connected to a Convention ground (*Kim v Canada (Citizenship and Immigration)*, 2022 FC 1408 at paras 18-22 [*Kim*]; *Arocha v Canada (Citizenship and Immigration)*, 2019 FC 468 at para 21; *AB v Canada (Citizenship and Immigration)*, 2015 FC 450 at para 29).

[21] As noted by the respondent, the Minister of Citizenship and Immigration [Minister], Mr. Rodriguez alleged that he had been targeted for recruitment when he was 14 years old. The RPD noted that the country condition evidence indicates that illegal armed groups in Colombia primarily target minor children and adolescents. As Mr. Rodriguez is now a young adult, he no longer fits the profile of those at risk for forced recruitment by the FARC or other illegal armed groups. While Mr. Rodriguez has argued that the RPD erred in finding that the country condition evidence suggests that illegal armed groups primarily target minors and adolescents, he has not pointed to any documentary evidence establishing that the RPD's assessment was unreasonable.

[22] In support of his claims, Mr. Rodriguez brings to the Court's attention this Court's decision in *Marco Tulio Moreno Hernandez v Canada (Citizenship and Immigration)*, 2013 FC 976 [*Hernandez*]. In *Hernandez*, Justice Roy concluded that the matter ought to be re-

determined, as the immigration officer in that case did not have regard for the particular facts of the case—notably, that at the material time, Mr. Hernandez was a 17-year-old child.

[23] However, *Hernandez* can be differentiated from the case at bar. *Hernandez* was a matter dealing with an application for permanent residence on humanitarian and compassionate [H&C] grounds. In the H&C analysis, one of the primary considerations Justice Roy grappled with was the best interests of the child—a fundamental consideration in H&C applications. Here, however, in the context of a refugee claim—as opposed to an H&C application—the RPD was tasked with assessing any potential forward-facing risk Mr. Rodriguez might face if he were to eventually return to Colombia (*Kim* at para 19). Indeed, when the RPD is conducting such an analysis, its determination will inherently involve an assessment of whether an applicant would, upon their return to their country, at a point in time after the RPD or RAD's decision, suffer from persecution or treatment from which they should be protected by the IRPA (*Kim* at para 19).

[24] The RPD undertook precisely this exercise in its Decision. Unlike other cases where an applicant's age at the time of the past conduct is relevant to the issue at hand, here, the determinative issue is one of forward-facing risk. The RPD reasonably found that Mr. Rodriguez had not demonstrated a forward-facing risk. In sum, whether Mr. Rodriguez is considered to be a young adult or an old adolescent, he no longer has the profile of youths targeted for forced recruitment in Colombia.

[25] Moreover, the RPD did not rely solely on Mr. Rodriguez' age in coming to its conclusion. Indeed, the RPD noted additional circumstances and evidence indicating that the FARC would not continue to be interested in him. First, the RPD noted the FARC no longer exists as it did in 2016. Second, the RPD observed that, according to Mr. Rodriguez' own

statement, he did not have any further direct encounters with the FARC after the initial event he described. Finally, the RPD found insufficient evidence that the FARC had continued to approach Mr. Rodriguez' mother about her son's whereabouts after he had left the country. Given these circumstances, and the passage of time, it was reasonable for the RPD to conclude that the evidence did not suggest that the FARC would continue to have any interest in Mr. Rodriguez to the extent that he would face a forward-facing risk of returning to Colombia.

[26] Consequently, I am satisfied that Mr. Rodriguez' forward-facing risk was properly assessed by the RPD. The RPD consulted the evidence and information before it—including information on the current country conditions in Colombia, as well as Mr. Rodriguez' submissions—and concluded that no such forward-facing risk exists. Such a conclusion "bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99).

B. *It was reasonable for the RAD to find it lacked jurisdiction*

[27] Turning to the RAD Decision, Mr. Rodriguez submits that the RAD erred by declining jurisdiction to hear his appeal and by failing to consider his circumstances at the time of his refugee claim—notably, that he was an unaccompanied minor. Again, such an argument cannot stand.

[28] As the Minister correctly notes, the RAD did not err in dismissing Mr. Rodriguez' appeal of his negative RPD Decision for lack of jurisdiction. The language of paragraph 110(2)(d) of the IRPA is crystal clear and leaves little room for interpretation. Pursuant to that provision, Mr. Rodriguez is not entitled to an appeal before the RAD, even though he was allowed to make a

refugee claim as a minor pursuant to the STCA. This exception does not provide for a right of appeal of a negative RPD decision. The RAD is bound by its enabling statute and no other determination was possible (*Canada (Wheat Board) v Canada (Attorney General)*, 2009 FCA 214 at para 59 [*Wheat Board*]). Indeed, the RAD is a creature of statute, "and as such, it has no powers, rights and duties save those bestowed on it by the Act" (*Wheat Board* at para 59). Even if the RAD had wanted to conduct a *de novo* review of Mr. Rodriguez' RPD Decision, its governing statute prohibits it from doing so. The RAD's hands were metaphorically tied in such an instance.

[29] In sum, the RAD Decision was not only reasonable, but it was the only one the RAD could have made.

C. *There is no violation of the* Charter

[30] Finally, Mr. Rodriguez submits that paragraph 110(2)(d) of the IRPA infringes his rights under sections 7 and 15 of the *Charter*.

[31] With respect, Mr. Rodriguez' *Charter* arguments must fail for two reasons.

[32] First, as pointed out by counsel for the Minister at the hearing, Mr. Rodriguez has failed to send the notice of constitutional question required pursuant to section 57 of the *Federal Courts Act*, RSC 1985, c F-7. Section 57 provides that such notice must be served on the Attorney General of Canada and the Attorney General of each province, at least ten days before the constitutional question is to be argued, when a party seeks to have an Act of Parliament or regulations made under such an Act "judged to be invalid, inapplicable, or inoperable" on constitutional grounds (including the *Charter*). Conversely, it is axiomatic that there is no need

for a section 57 notice of constitutional question in a case where the judicial remedy sought is something other than a judgment that a statute or regulation is invalid, inapplicable, or inoperable on constitutional grounds (*Canada (Canadian Heritage) v Mikisew Cree First Nation*, 2004 FCA 66 at paras 76-79, rev'd on other grounds 2005 SCC 69).

[33] The distinction between whether a constitutional question can be entertained without a notice of constitutional question under section 57 therefore boils down to what form of reparation is sought. Constitutional remedies relating to the validity, applicability, or operability of an Act cannot be granted if there was no notice of constitutional question. However, other constitutional questions do not necessarily require a notice when, for example, a constitutional provision is raised to ensure the presumption of compliance with constitutional law generally (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at paras 94–96). In the present matter, there is no doubt that a notice of constitutional question was required as Mr. Rodriguez is calling into question the constitutional validity of paragraph 110(2)(d) of the IRPA in light of sections 7 and 15 of the *Charter*. In *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*], the Federal Court of Appeal noted that "[e]xcept under exceptional circumstances, the courts only have the authority to declare invalid legislation that is unconstitutional, and only if the issue is explicitly raised and the Attorney General has been notified. It is up to Parliament to amend legislation that has been declared unconstitutional so as to ensure compliance with the fundamental law of the land" [emphasis added] (*Singh* at para 62). In this respect, parties must provide notice when they intend to raise a constitutional question with the objective of declaring legislation contrary to the *Charter* and unconstitutional.

[34] This would suffice to reject Mr. Rodriguez' *Charter* arguments.

[35] I pause to add that, as counsel for the Minister highlighted in her submissions, courts have also repeatedly expressed the expectation of careful presentation of the basis for an argument of a *Charter* breach. Challenging the validity of legislation enacted by Parliament is a serious matter. As stated by the Federal Court of Appeal in *Kinsel v Canada (Citizenship and Immigration)*, 2014 FCA 126 [*Kinsel*], "[t]he important Canadian rights and freedoms enshrined in the *Charter* should not be devalued by ill-considered challenges devoid of a proper evidentiary foundation" (*Kinsel* at paras 86–88). Here, Mr. Rodriguez' submissions are far from sufficient—particularly when one considers the heavy evidentiary foundation that is necessary to support a *Charter* challenge. There is simply no evidentiary basis underlying the constitutional challenge brought forward by Mr. Rodriguez.

[36] Second, even if the Court were to consider Mr. Rodriguez' *Charter* arguments, they would fail on the merits based on this Court and the Federal Court of Appeal's recent jurisprudence upholding paragraph 110(2)(d) of the IRPA against *Charter* scrutiny. In his submissions, Mr. Rodriguez has not addressed or discussed this jurisprudence.

[37] This is not the first time that this IRPA provision has been the subject of a constitutional challenge. In *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 [*Kreishan*], the Federal Court of Appeal had to determine whether paragraph 110(2)(d) of the IRPA violated section 7 of the *Charter*. The court held that paragraph 110(2)(d) of the IRPA does not implicate section 7 of the *Charter* (*Kreishan* at para 127). Given that paragraph 110(2)(d) has been upheld by the Federal Court of Appeal and that the Supreme Court denied leave to appeal the decision, there is no merit to Mr. Rodriguez' constitutional arguments based on section 7. Absent Mr. Rodriguez raising a new legal issue or showing a change in circumstances or evidence that

fundamentally shifts the parameters of debate—something he has not done—, this Court may not ignore this binding precedent.

[38] Moreover, this Court has been called on in numerous instances to conduct the same exercise with respect to various *Charter* rights. Indeed, in *Dor*, Justice Roussel, now of the Federal Court of Appeal, reaffirmed the Federal Court of Appeal's section 7 conclusions with respect to paragraph 110(2)(d) of the IRPA in *Kreishan* (*Dor* at para 2). Additionally, in *Dor*, Justice Roussel was tasked with assessing the constitutionality of paragraph 110(2)(d) in relation to section 15 of the *Charter*, in the context of Colombian refugee claimants. Ultimately, Justice Roussel determined that paragraph 110(2)(d) does not have a "disproportionate" impact such that section 15 of the *Charter* would be engaged (*Dor* at para 82).

[39] I further note that Mr. Rodriguez has not properly grappled with the test for establishing a violation of section 15 of the *Charter*. This test was recently set out by the Supreme Court in *Fraser v Canada (Attorney General)*, 2020 SCC 28 [*Fraser*]. It requires that a claimant demonstrate that the impugned law, on its face or in its impact, creates a distinction based on enumerated or analogous grounds; and that it imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating a disadvantage (*Fraser* at para 27). Mr. Rodriguez has provided no submissions whatsoever addressing this test. More specifically, Mr. Rodriguez has not demonstrated how a refugee claimant's choices with respect to his or her travel into Canada is a personal characteristic that is immutable or the basis of historical prejudices or stereotypes within the meaning of section 15 (*Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para 13). In other words, Mr. Rodriguez' situation and treatment under paragraph 110(2)(d) of the IRPA is not based on an

enumerated or analogous ground of discrimination and does not fit within section 15 of the *Charter*.

[40] In sum, Mr. Rodriguez' barren *Charter* submissions rely on virtually no case law, ignore the enunciated jurisprudential tests established in *Kreishan* and *Dor*, and fail to offer the evidentiary requirements for mounting and substantiating a *Charter* challenge. In those circumstances, the Court need not conduct a fulsome *Charter* analysis in the matter at hand. Instead, the Court may rely on its binding precedent, which has determined that paragraph 110(2)(d) of the IRPA does not violate either section 7 or section 15 of the *Charter* (*Kreishan* at para 127; *Dor* at para 82). Consequently, Mr. Rodriguez' challenge as to the constitutionality of paragraph 110(2)(d) must fail.

D. *The proposed certified questions*

[41] On the morning of the judicial review hearing before the Court, counsel for Mr. Rodriguez proposed five questions for certification, two in Court file no. IMM-5085-22 and three in Court file no. IMM-6165-22.

[42] With respect to the RPD Decision, they read as follows: 1) should the standard of proof for unaccompanied minors be adjusted for the age they were when the events they were testifying about happened and likewise for forward looking risk to the risk as they understand it to be while they were a minor and that the decisions made by adults who guided them and brought them to safety be respected and accepted unless there is a reason proven not to?; and 2) should the evidence acquired and learned as a minor be treated as evidence of a minor after the minor reaches the age of majority?

[43] With respect to the RAD Decision, they state: 1) does the implementation of the Canada-US Safe Third Country agreement to the RAD comply with international human rights instruments to which Canada is signatory (IRPA 3(3))?; 2) do the provisions of section 110(2)(d) of the IRPA contravene the human rights instruments with respect of unaccompanied minor children, close family or other exception; and 3) does the adoption of the Canada-US Safe Third Party agreement by provisions of the IRPA bring with it all the exceptions to the Safe Third Party agreement, which would otherwise punish those excepted?

[44] As I indicated at the hearing, Mr. Rodriguez did not comply with the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* dated June 29, 2023 [*Guidelines*]. Paragraph 36 of the *Guidelines* provides that when a party intends to propose a certified question, opposing counsel must be notified at least five days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question(s). These *Guidelines* are there to be followed, and submitting a certified question at the last minute is not helpful to the Court nor fair for the opposing party. Moreover, a certified question is supposed to be a question of general importance. Arguably, these are not issues that should arise on the eve of judicial review or as an afterthought. In this case, counsel for Mr. Rodriguez has not provided any reason to explain the late submission of no less than five certified questions. Such a practice is strongly discouraged by the Court, and may be the basis for a refusal to consider the merits of a proposed certified question as it prejudices the other party as well as the Court and does not serve the interests of justice.

[45] Despite Mr. Rodriguez' failure to comply with the *Guidelines*, I have nonetheless decided to consider the proposed questions. For the reasons that follow, I decline to certify Mr.

Rodriguez' proposed questions as I find that they do not meet the requirements for certification developed by the Federal Court of Appeal.

[46] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved." To be certified, a question must be a serious one that: (i) is dispositive of the appeal; (ii) transcends the interests of the immediate parties to the litigation; and (iii) contemplates issues of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15–16 [*Mudrak*]; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [*Zhang*]). Furthermore, the question must not have already been determined and settled in another appeal (*Rrotaj v Canada (Citizenship and Immigration)*, 2016 FCA 292 at para 6; *Mudrak* at para 36; *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203 at para 98; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37). As a corollary, the question must have been dealt with by the Court in its judgment and it must arise from the case (*Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 29).

[47] In the case of Mr. Rodriguez, I find that the proposed questions are overly broad, are highly fact-dependent, and would not be dispositive of the appeal. For example, while the proposed certified questions relating to the constitutionality of the provisions of the IRPA codifying the STCA requirements could pass some of the criteria, they relate to issues that have already been decided by the courts. Indeed, in both *Canadian Council for Refugees v Canada*

(Citizenship and Immigration), 2023 SCC 17 and *Kreishan*, the Supreme Court and the Federal Court of Appeal, respectively, have treated the issue of the constitutionality of the STCA and paragraph 110(2)(d) of the IRPA.

IV. Conclusion

[48] For the above reasons, Mr. Rodriguez' applications for judicial review are dismissed. Mr. Rodriguez has failed to demonstrate how the RPD Decision is unreasonable or how the RAD could have come to any conclusion other than declining jurisdiction to hear his appeal based on paragraph 110(2)(d) of the IRPA. Moreover, Mr. Rodriguez' *Charter* arguments fail on procedural and substantive grounds.

[49] The Minister has indicated that the style of cause in the present matter needs to be amended to reflect the fact that the Minister of Citizenship and Immigration is the only respondent in these matters—not both the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness. The style of cause is hereby corrected accordingly.

[50] There are no questions of general importance to be certified.

JUDGMENT in IMM-5085-22 & IMM-6165-22

THIS COURT'S JUDGMENT is that:

1. The Minister of Public Safety and Emergency Preparedness is removed as a respondent in Court file no. IMM-5085-22.

2. The applications for judicial review are dismissed, without costs.

3. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-5085-22 IMM-6165-22
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APPEARANCES:

Arlene Rimer	FOR THE APPLICANT
Amy King	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Arlene Rimer Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS