Federal Court  Cour fédérale

Date: 20111109

Docket: IMM-2603-11

Citation: 2011 FC 1287

Ottawa, Ontario, November 9, 2011

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

ANGELICA MARIA ALVARADO DE ALVAREZ
GLADYS YULIETH ALVAREZ ALVARADO
ADOLFO GIOVANY ALVAREZ ALVARADO
YANELY MELISSA ALVAREZ ALVARADO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Angelica Maria Alvarado de Alvarez applies for judicial review of the February 24, 2011decision of a Member of the Refugee Protection Division of the Immigration and Refugee Board. The Member refused the Applicants' claims for refugee protection made pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Ms. Alvarado de Alvarez is from Guatemala. Her husband became involved in politics in 2002, advocating Mayan rights. Although she had separated from him, she received telephone calls seeking his whereabouts and threatening her. Her house was also broken into. She fled to Canada after receiving a telephone call telling her that she and the children would be killed if she did not admit where her husband's whereabouts.

[3] I conclude that the Member's reasons were not reasonable and that judicial review ought to be granted.

Background

[4] Ms. Alvarado de Alvarez, the principal Applicant (the Applicant) and her three children are all citizens of Guatemala.

[5] The Applicant's ex-husband became involved in politics in Guatemala in 2002. She was not supportive of her ex-husband's involvement in politics and endeavoured to convince him to give it up. The Applicant's concerns centered on the unsavoury characters her ex-husband was associating with. The Applicant continued to plead with her ex-husband to give up politics and eventually left him. They were allegedly divorced on September 13, 2006 with the children remaining in the home of the ex-husband and his parents.

[6] The Applicant stated that she began receiving phone calls asking for her husband in 2006. These initial calls were non-threatening. In November 2008, during a phone conversation with her

eldest daughter, the Applicant was informed that her ex-husband had disappeared. She was worried and collected the children and brought them to live with her. In the process of collecting the children's things, the Applicant unknowingly collected several documents belonging to her ex-husband.

[7] The Applicant then started receiving phone calls from callers who thought that she and her ex-husband were still together. The callers would ask for her husband and would threaten and insult her before hanging up. The Applicant also claimed that strange men approached her children after school to question them about her ex-husband.

[8] On January 8, 2009, her house was broken into while she was out. The Applicant did not report the incident immediately. However, shortly thereafter, she claimed to have received a threatening note addressed to her and her children that was left under her door. The Applicant reported the note along with the break-in on January 30, 2009. She requested that the authorities launch an investigation. The Applicant returned to the police 3 days later to check on their progress, but was told to wait and be patient.

[9] In late June of 2009, the Applicant's house was broken into a second time. She later received a phone call in which she was told that if she did not admit where her husband was, she and her children would be killed. The caller also said they were angry that she had complained to the police in January.

[10] After this phone call, the Applicants fled. The Applicants travelled through the United States before arriving in Canada. They sought refugee protection at the Canadian border.

Decision Under Review

[11] The Member found that the Applicants did not have a well-founded fear of persecution for a convention reason and their removal to Guatemala would not subject them personally to a risk to life, or a risk of cruel and unusual treatment or punishment, or a danger of torture.

[12] The Member found that the Applicants' identities had been established through certified copies of their passports. The Member's decision focused on its analysis of the Applicants credibility and subjective fear as well as state protection.

Credibility & Subjective Fear

[13] The Member began his analysis by stating that testimony given under oath is presumed to be true, unless there is a valid reason to doubt its truthfulness, and that in testing the truth of a story of a witness, the Member cannot be satisfied that the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so. The Member then went on to make a number of blanket statements with regards to the evidence he assessed. For example, the Member stated that he:

- made an assessment of all the evidence, both oral and documentary
- assessed the evidence as a whole so it could be treated in a consistent manner
- would not refer to every piece of evidence, only those relevant to his decision, and

- even if the evidence is not referred to, that he carefully considered it as part of the evidence

The Member also stated that he was entitled to make reasonable findings based on implausibility, common sense and rationality, and may reject evidence if it was not consistent with the probabilities affecting the case as a whole.

[14] The Member believed that the Applicant had wanted to move to Canada for a long time but had not qualified. The Member cited a failed refugee claim in 1994 as well as the fact that the Applicant has relatives living in Canada as evidence. The Member found this is the reason for the Applicant's allegations of a well-founded fear.

[15] The Member also did not believe that the Applicant's ex-husband was missing or in hiding and that he was being sought for by dangerous individuals who wanted to harm him, and had threatened to harm the Applicant and her children if she did not tell them the whereabouts of her ex-husband. The Member believed that she fabricated the story to bolster her claim for refugee status. The Member rejected the story and found that it undermined the Applicant's credibility.

[16] The Member stated that in arriving at his decision, he examined inconsistencies and omissions in and between the Applicant's written and oral testimony.

[17] First, the Member discussed how the Applicant came into possession of some of her ex-husband's documents. The Member stated that the Applicant had testified that the documents were found buried among the children's clothing. The Member found that this was inconsistent with

common sense and rationality which also undermined her credibility. The Member used this finding as the base to further find that the Applicant's ex-husband was not missing and that she had fabricated the story that he was missing to support her claim for refugee status.

[18] Second, the Member focused on the Applicant's statement in her Personal Information Form (PIF) narrative where she wrote that her house was broken into on January 8, 2009 and a few days later she found a threatening note placed under her door. The Member noted the police denunciation stated she found the note on January 28, 2009. The Applicant was questioned as to what she considered "a few days". The Applicant stated a few days meant 8-10 days. The Member stated the Applicant was confronted with the fact that she was referring to as many as 20 days as "a few days" and stated that she dismissed the contradiction as simply some days, but not months. The Member found her explanation to be unreasonable, rejected it, and found that it undermined her credibility. The Member found that the Applicant did not find a note under her door for if she had, the Applicant would have not had the difficulty she had in explaining what she meant by a few days.

[19] The Member also noted that the Applicant testified she gave the note to the police. The Member stated he carefully reviewed the denunciation and that the wording of the denunciation did not mention anything about a note being handed over to the police. The Member found that if the Applicant had presented a note to the police, they would, on a balance of probability, have quoted the note instead of quoting what the Applicant told the police was in the note, which is how the Member read the denunciation.

[20] Third, the Member noted a contradiction between the denunciation and the Applicant's testimony. In the denunciation, the Applicant claimed to have first received phone calls asking her for the whereabouts of her ex-husband in May of 2006. However, the Member found that when the Applicant was asked when she received the first telephone calls, she replied it was after she went to get her children from their grandparents' house at the end of November 2008.

[21] Next, the Member found a discrepancy between the denunciation and the Applicant's PIF. The denunciation states that when the Applicant's house was broken into on January 8, 2008, nothing was taken. However, in the Applicant's PIF, she wrote that they took some personal documents. When asked to explain the discrepancy, the Applicant replied that she did not realize the personal documents were missing until after she had reported the incident to the police; she had not required the documents until sometime after she had visited the police and therefore did not know they were missing. The Member found it was unreasonable that the Applicant did not return to the police after she had discovered the missing documents. The Member noted that the she had returned to the police three days after making the initial report, but had not returned to inform the police of further developments such as the discovery that documents had be taken and that the threatening phone calls had persisted. The Member found her explanation to be confusing and inconsistent with common sense and rationality and found that it also undermined the Applicant's credibility.

[22] The Member noted that the Applicant claimed to have left her husband because of his association with unsavoury characters that he was bringing to their home. The Applicant claimed to have moved out as a result, but did not bring her children with her. The Member did not believe that if the Applicant's husband was living so dangerously and bringing dangerous people to their home

to the extent that she felt the need to leave the home, her husband, and marriage that she would not have taken the children with her. The Member found this undermined her credibility.

[23] Finally, the Member noted the vague and confusing answers the Applicant provided to the straightforward questions of where the Applicant had moved once she had left her ex-husband. The Member found that if indeed the Applicant had changed her address, she would have remembered the address, especially as she testified that she lived there for 4 months.

[24] In conclusion, the Member found that based on an examination of the evidence before him, the Member could find no persuasive evidence of a subjective fear to base the refugee claim. Given the problems with respect to major issues, the Member found the Applicant was generally lacking in credibility. The Member did not believe that any of the significant events the Applicant claimed happened to her actually happened and stated that the Applicant's claim pursuant to s. 96 of the Act failed.

State Protection

[25] While the Member found that the Applicant did not have a subjective fear and was able to base his decision on that finding, the Member nevertheless also considered state protection.

[26] The Member started out by stating that he considered whether or not there is adequate state protection in Guatemala, whether the Applicant took all reasonable steps to avail herself of that

protection, and whether she has provided clear and convincing evidence of the state's inability to protect.

[27] The Member set out a number of established principles relating to state protection including the burden of proof. The Member then went on to find that the Applicant had not provided clear and convincing evidence, that on a balance of probabilities, state protection Guatemala was inadequate. In particular, the Member found that the Applicant had not taken adequate efforts to seek protection and set out examples from her testimony.

[28] The Member also found that the Applicant did not seek to report any of the examples of threats to any other authorities. The Member found the Applicant's responses regarding the effectiveness of state protection to be not objectively well-founded, since they were largely unsubstantiated and contradicted the documentary evidence. The Member then referred to the National Documentation Package finding Guatemala is a representative democracy and a member of the Central America Free Trade Agreement. The Member referred to its governance structure and stated that Guatemala was one of the countries that led the wave of criminal procedure reforms that emerged in the mid-1980s in Latin America.

[29] The Member went on to note Guatemala's measures to fight corruption among the police and cited the number of administrative disciplinary measures in the national civil police and the numbers of police arrests in 2005 and 2006. The Member then listed a number of agencies that address criminality, corruption and kidnapping to assist citizens access state protection.

[30] The Member concluded by stating that in view of the principles relating to state protection, and when considering the documentary evidence weighted against the Applicant's evidence, the Member found that the Applicant had failed to rebut the presumption of state protection with clear and convincing evidence and that the Applicant did not take all reasonable steps to avail herself of that protection before making a claim for refugee protections.

Relevant Legislation

[31] The *Immigration and Refugee Protection Act*, SC 2001, c 27 provides:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
…	…

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Issues

[32] The issues for this application are:

1. Did the Member make a reviewable error in coming to his conclusion that the Applicant is not credible?

2. Did the Member make a reviewable error in finding that the Applicant failed to avail herself of the adequate state protection that was available?

Standard of Review

[33] The Supreme Court of Canada has held that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 50 and 53.

[34] Findings of credibility are based on factual determinations and therefore attract a reasonableness standard. Determinations of state protection are matters of mixed fact and law and should also be reviewed on a reasonableness standard: *Flores v Canada (Minister of Citizenship & Immigration)*, 2010 FC 503 at para 21.

Analysis

[35] The Applicants submit that the Member erred in his finding based on a "balance of probabilities" that the Applicant's husband is not missing. The Applicants cite the Federal Court of Appeal in *Peng v Canada (Minister of Employment and Immigration)*, (1993), 19 Imm LR (2d) 220 (FCA) and this Court in *Sivamoorthy v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 408 to the effect that where a critical aspect of a claimant's testimony is disbelieved, but the Member can be shown to have erred on that point, the entire decision must be set aside, regardless of whether the Member made further findings on credibility.

[36] The Applicants submit that the Member erred in law by failing to address or even acknowledge the December 1, 2008 police report filed by the Applicant's father-in-law and the father-in-law's letter. The Applicants argue that it is an error of law for the Member to fail to address an official document corroborating the Member's testimony and that this is a reviewable error. The Applicants then challenge some of the implausibility findings made by the Member.

[37] The Respondent submits that this case deals with findings of fact and, therefore, a great deal of deference is owed. The Respondent submits that this Court should not interfere where the Member's decision is rationally supported. The Respondent does note that where there are issues concerning the fairness of the hearing, no deference is owed to the decision-maker in this regard, and it is up to this Court to form its own opinion as to the fairness of the hearing.

[38] The Respondent submits that the Member refused the Applicants' claims because the Applicant was not a credible witness. The Respondent argues that the Applicant's lack of credibility extended to key and central elements of the claims. As a result, there was insufficient credible evidence upon which the Member could conclude the claims were well founded. The Respondent submits that the Member's reasons are clear, cogent, and comprehensive, and the Applicants have failed to provide persuasive arguments to suggest that the Member could not have concluded as it did.

[39] The Respondent submits that reasons are not to be read microscopically and that courts ought to be mindful against faulting a tribunal for not referring to evidence that could have led it to decide differently. The Respondent submits that reasons need not refer to every piece of evidence, but must simply provide an adequate explanation of the basis upon which the decision was reached.

[40] The Respondent argues the Member specifically acknowledged its obligation to consider the entirety of the evidence, and confirmed that it did so even if every piece of evidence is not referred to. The Respondent points out that the Member stated that those pieces of evidence that the Member finds relevant to its decision will be referred to and that the presumption that the Member has considered all of the evidence clearly applies in this case.

[41] The Respondent submits the Member did not believe the Applicant's ex-husband was missing and the Member provided examples of how it came to this determination. This, the Respondent submits, satisfied its obligation to explain the basis upon which the determination was based. The Respondent specifically submits that the Member was not required to refer to the father-

in-law's letter or police denunciation. The Respondent submits the letter was self-serving and that the denunciation raised additional credibility concerns. The Respondent argues that these documents were thus not material or probative of the Member's ultimate determination and the Member was not obliged to confront the Applicant with this evidence.

[42] The Respondent submits that it is well established that the tribunal, as the primary finder of fact, is entitled to draw its own reasonable inferences from the evidence and to reject uncontradicted evidence if it is not consistent with the probabilities affecting the case as a whole. The Respondent submits the Member was entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the whole case.

[43] In response to the Applicants' challenges to the Member's individual credibility findings, and having regard to the deferential standard of review of reasonableness that allows for a range of possible reasonable outcomes, the Respondent submits that it is not sufficient for the Applicants to present an alternative line of reasoning. What is required is that the Applicants point to a conclusion of the Member that is not supportable in any way on the evidence. This, the Respondent submits, the Applicants have failed to do.

Did the Member make a reviewable error in coming to its conclusion that the Applicant is not credible?

[44] To begin, I find it useful to quote a portion of the Member's decision at paragraph 12:

> The panel believes that for a long time [the Applicants] had wanted to move to Canada but had not qualified; for example, they had applied to the Canadian authorities in El Salvador for refugee status in 1994 which was denied. She has relatives living in Canada and the panel believes that the claimant would like to live here too, hence her allegations of a well-founded fear. The panel does not believe that her husband is missing or is in hiding and that he is being sought for by dangerous individuals who want to harm him, and have threatened to harm the claimant and her children if she does not tell them his whereabouts. The panel believes that she has fabricated the story about her husband being missing/in hiding and is being pursued by dangerous individuals who threatened to harm her and her children if she does not tell them where her ex-husband is, to bolster her claim for refugee status and the panel rejects it and finds that it undermines her credibility.

[45] Essentially, the passage above makes two findings:

> 1. the Applicant has wanted to move to Canada for some time and this is the reason for her claim, and
>
> 2. the Applicant's ex-husband is not missing and she has simply fabricated the whole story to bolster her claim for refugee status.

[46] First, I am unable to find any evidence that between 1994 and the Applicants' claim in 2009, fifteen years later, that the Applicants had made any attempt to move to Canada that would justify the Member's finding that the Applicant have wanted to move to Canada "for a long time" and that this was therefore the reason for her allegations of a well-founded fear. The fact the Applicant has relatives in Canada does not constitute evidence one way or the other.

[47] Second, the Member made no reference to the letter and denunciation by the Applicant's father-in-law about his son's disappearance. As the Member considered the question of whether the Applicant's ex-husband had in fact not disappeared and was not missing, the father-in-law's letter

and denunciation ought to have been specifically addressed. Blanket statements stating that the evidence, though not mentioned, was carefully considered, is not enough: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998), 157 FTR 35, [1998] FCJ no 1425 (FCTD) at paras 15-17. The letter and denunciation were evidence that the ex-husband had disappeared and corroborated the Applicant's story.

[48] In *Melo Sanchez v Canada (Minister of Citizenship & Immigration)*, 2011 FC 68 at paragraph 22, a letter provided by the applicant's father corroborating the applicant's story was also not mentioned in the board's decision. Justice Mosley found that the board erred in determining that there was no persuasive evidence in that case without assigning any weight to the letter. Justice Mosley stated that while the letter was self-serving, it had some corroborative value and ought to have been considered.

[49] I do not consider the father-in-law's denunciation to be self-serving. He was reporting the disappearance of his son to the police, not merely buttressing the Applicant's claim for refugee status. The Member was obligated to address that evidence.

[50] In addition, I consider the Member's picking at discrepancies in the Applicant's story to find her not credible to be fatally flawed.

[51] The Member makes errors in his findings of fact and relies on those findings. The Member states the Applicant found her ex-husband's documents "buried among her children's clothing" while the transcript discloses the Applicant never made any such statement.

[52] Moreover the Member invites the Applicant to speculate why her husband's documents were among her children's "stuffs":

> PRESIDING MEMBER: Do you have any idea why these documents that pertain to your husband would be in amongst your children's stuff?
>
> PRINCIPAL CLAIMANT: I have no idea because I was not there. I do not know when did he put them there. Maybe he forgot them there, maybe they were misplaced and he was looking for them later on.

The Member then finds:

> While the panel believes that items including documents can be misplaced, it does not believe that it is probable that her husband's membership card would be misplaced among his children's personal stuff; this is an item which would more likely be among adults' stuffs, especially it is not something he would be hiding.

[53] Questions along the lines of why do you think someone else knew or did something are fraught with danger as they invite speculation. Justice Harrington stated in *Ukleina* it has long been established that findings of fact based on speculation are inherently unreasonable: *Ukleina v The Minister of Citizenship and Immigration*, 2009 FC 1292 at para 8.

[54] In this case, the Member invited the Applicant to make a speculation, which she did; the Applicant speculated that the documents were perhaps misplaced. The Member then relied on the Applicant's speculation to make further findings of improbability that affected the Applicant's credibility in the eyes of the Member.

[55] The Member found a contradiction between the date the Applicant claimed to have received the first call asking for her ex-husband in the denunciation (2006) and the date she provided in her PIF narrative and oral testimony (December, 2008). The Member relies on this contradiction to further impugn the Member's credibility. The Member's decision states:

> The panel also notes that the denunciation stated that in May 2006 the claimant received a call on her cell phone asking her for the whereabouts of her ex-husband. At first, she thought the calls were normal but when the calls continued she moved to Quetzaltenango and changed her address and telephone number. However, when the claimant was asked when she received the first telephone call; she replied after she went to get her children from their grandfather's home at the end of December 2008.

[56] What is troubling with the Member's finding of a contradiction, besides not providing the Applicant with an opportunity to explain the alleged contradiction, is that when the transcript is consulted, no contradiction is to be found. The Member is correct that the denunciation states that in May 2006 the Applicant was called on her cell asking her for the whereabouts of her ex-husband and that she thought the calls were normal. However, it must be noted that the Applicant was not asked in the hearing when she received the first telephone call, but rather when she had received the first telephone <u>threat</u> as the following exchange clearly shows:

> PRESIDING MEMBER: Before he went missing were you receiving telephone <u>threats</u>?
>
> PRINCIPAL APPLICANT: No.
>
> PRESIDING MEMBER: When did you receive the first telephone threat?

> PRINCIPAL APPLICANT: After I went to get my children, by the end of December.
>
> PRESIDING MEMBER: December what year?
>
> PRINCIPAL APPLICANT: 2008.
>
> [Emphasis added]

[57] In my opinion, the Member's decision on credibility is based on erroneous findings of fact that it made in a perverse of capricious manner without regard to the material before it.

Did the Member make a reviewable error in finding that the Applicant failed to avail herself of the adequate state protection that was available?

[58] The Member referred to the National Documentation Package to discuss and highlight steps, measures and options available for state protection in Guatemala. The Member relies on this information to find that adequate state protection was available in Guatemala and that the Applicant had not availed herself to that protection.

[59] The contradictory documentary evidence is strikingly different from the Member's recitation. For example:

> <u>Guatemala Human Rights Watch – 2009</u>
>
> Guatemala's weak and corrupt law enforcement institutions have proved incapable of containing the powerful organized crime groups and criminal gangs that contribute to Guatemala having one of the highest criminal violence rates in the Americas.

> Amnesty International - 2009
>
> Officials involved in opening Guatemala's police archives and members of their families have been threatened and attacked in recent days.... The police archives contain information on atrocities committed by the security forces during Guatemala's internal armed conflict.... Guatemala's internal armed conflict cost the lives of approximately 200,000, most of them members of Mayan Indigenous groups, who were killed or subjected to enforced disappearance. The conflict began in 1960 and ended in 1996...

[60] In *Toriz Gilvaja v Canada (Minister of Citizenship and Immigration)*, 2009 FC 598 at paragraph 38, the Court stated the RPD must address contradictory evidence that state protection is not adequate.

[61] I came to the same conclusion in *Flores Alcazar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 173, notwithstanding the RPD in that case acknowledged there was contradictory evidence but did not explain why it chose to discount that evidence. Here the Member does not even acknowledge the contradictory documentary evidence.

[62] Given the failure of the Member to address contradictory documentary evidence, I conclude the Member's finding on state protection was unreasonable.

Conclusion

[63] The application for judicial review is granted. The matter is to be remitted back to a differently constituted panel for redetermination.

[64] No question of general importance is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The matter is to be remitted back to a differently constituted panel for redetermination.

2. No question of general importance is certified.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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