Federal Court Cour fédérale

Date: 20151105

Docket: IMM-3221-14

Citation: 2015 FC 1252

Ottawa, Ontario, November 5, 2015

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

AMANDA KAMARA BELLINGY

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] for judicial review of a decision dated April 11, 2014 of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [the Board], wherein the Board confirmed the Refugee Protection Division’s decision that the applicant is neither a Convention refugee nor a person in need of protection.

[2] The applicant seeks an order setting aside the negative decision and returning the matter to a different member of the Board for redetermination.

I. Background

[3] The applicant is a citizen of Saint Vincent. She claims she was persecuted by her aunt's abusive former boyfriend, Gregory Harris.

[4] The applicant witnessed Mr. Harris assault her aunt and intervened to assist. On one occasion, he attacked the applicant with a knife, inflicting a wound on her neck. When the applicant's aunt left Saint Vincent to go to Barbados due to the abuse, Mr. Harris turned his anger on the applicant accusing her of being responsible for her aunt leaving him.

[5] Towards the end of 2011, Mr. Harris attacked the applicant with a cutlass while she was washing her cloths.

[6] The applicant reported some of Mr. Harris' abuse to the police; however, she reported none involving physical confrontations with weapons and causing bodily harm. The police did nothing to protect the applicant.

[7] In December 2011, the applicant came to Canada.

[8] In December 2012, Mr. Harris again threatened the applicant's life.

[9] In June 2013, the applicant made a refugee claim.

II. The Refugee Protection Division Decision

[10] In a decision dated October 10, 2013, the Refugee Protection Division [RPD] denied the applicant's claim on the basis of state protection. It found the claim was not based on domestic violence, given the lack of a direct relationship between the applicant and Mr. Harris. The RPD observed the applicant only reported Mr. Harris' verbal threats to the police, but never reported the assaults. It determined the country condition evidence showed the police would have assisted the applicant if she had reported the assaults. The applicant's failure to seek protection undermined her claim.

[11] In an alternative ground, the RPD determined if the allegations were considered to be domestic violence in Saint Vincent, the applicant would also have access to protection. The applicant's failure to seek protection failed to rebut the presumption that state protection was available to her.

III. The Board Decision

[12] The applicant appealed to the Board. No additional evidence was submitted. In a decision dated April 11, 2014, the Board affirmed the RPD's decision and rejected the applicant's refugee claim on the basis of state protection.

[13] The applicant submitted the following issues to the Board:

1. The RPD erred in its determination that the applicant's fear of persecution was not well-founded, as it was not a domestic abuse matter.
2. The RPD erred in its determination that adequate state protection is available to the applicant should she be returned to Saint Vincent.
3. The RPD erred in failing to provide sufficient reasons for rejecting the applicant's claim under section 97 of the Act; and
4. The RPD misapprehended and misconstrued both the law and the facts in this case.

[14] The Board focused on whether the RPD's conclusion that the applicant has not rebutted the presumption of state protection discloses an error that merits a remedy from the Board. It noted the RPD's findings in relation to the adequacy of state protection are issues of mixed fact and law and the appropriate standard of review is reasonableness.

[15] The Board found the RPD was unreasonable to find the applicant's claim was not a domestic violence claim. It noted regardless of the fact that the applicant was not a primary victim of domestic violence, she was a victim of domestic violence by virtue of her efforts to protect her aunt. However, it found this error did not render the overall decision unreasonable.

[16] The Board considered the following factors in analyzing the adequacy of state protection: a) the nature of the human rights violation, b) the profile of the alleged human rights abuser, c) the efforts that the victim took to seek protection from authorities, d) the response of the authorities to requests for their assistance, and e) the available documentary evidence.

[17] First, the Board determined the RPD was sensitive to the gender nature of the violence and applied the Guidelines on domestic violence claims appropriately.

[18] Second, the Board observed there were no indications Mr. Harris had a position of power to prevent the authorities from providing state protection.

[19] Third, the Board found the RPD was reasonable to conclude the applicant had not taken necessary steps to access state protection. It noted although the applicant reported some of Mr. Harris' abuse to the police, she reported none of the incidents involving physical confrontations. It acknowledged, based on documentary evidence, violence against women remained a serious and pervasive problem and there is some indirect evidence that women victims of sexually motivated crime are not afforded adequate protection. However, it found there is no persuasive evidence that suggests protection would be denied simply by virtue of gender. It observed the police in Saint Vincent responded both to criminal complaints made by female victims and to domestic violence complaints. It further observed the socio-cultural norms often lead to the unwillingness of victims of domestic violence to report the abuse and to follow through on charges. It found the RPD was reasonable to hold the applicant's failure to report serious incidents of persecution against her.

[20] The Board was not persuaded that a person the applicant knew who reported domestic abuse to the police and did not get assistance is clear evidence that the state failed to provide protection to a similarly-situated person. It found local failures to provide effective policing do

not amount to a lack of state protection unless there is a broader pattern of the state's inability or refusal to provide protection.

[21] Therefore, the Board concluded the RPD's finding of state protection was justified and determinative of the applicant's claim under both sections 96 and 97. It dismissed the appeal.

IV. Issues

[22] The applicant raises the following issues:

1. Did the Board err in its determination that adequate state protection is available to the applicant should she be returned to St. Vincent?

2. Did the Board err in failing to provide sufficient reasons for rejecting the applicant's claim under section 97 of the Act?

[23] The respondent raises one issue: the applicant has failed to demonstrate an arguable issue of law upon which the proposed application for judicial review might succeed.

[24] I would rephrase the issues as follows:

A. What is the standard of review?

B. Did the Board apply the correct standard of review?

C. Was the Board's determination on state protection reasonable?

D. Was the Board's assessment under section 97 reasonable?

V. Applicant's Written Submissions

[25] First, the applicant submits she has done what is required of her in seeking state protection. She went to the police two times to report the abuses and threats from Mr. Harris and the police only issued a warning to him and did not stop the abuses and threats to her life. She argues it is unreasonable to expect her to risk her life and keep seeking ineffective state protection as the Board expected her to do.

[26] Also, the applicant submits the Board was selective in its analysis and did not do a fair and adequate analysis of all the evidence. It is a reviewable error to fail to mention contradictory evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35). She argues the Board failed to mention and consider some evidence on record that showed state protection is ineffective. She cites the 2010 US Country Reports and a February 2010 document published by the Immigration and Refugee Board of Canada. Further, the RPD mentioned the Chairperson's Gender Guidelines in its analysis of the evidence, but failed to analyze its application to her case. The Board did not address this error. Also, she argues the similarly-situated person evidence is credible and the Board did not find otherwise. The applicant submits that she has provided clear and convincing evidence to rebut the presumption of state protection.

[27] Second, the applicant submits the Board committed a reviewable error by failing to provide reasons for rejecting her claim under section 97 of the Act. The test for protection under section 97 is whether there is objective verifiable evidence that demonstrates the applicant's life

will be exposed to danger or risk of harm should she be sent back to Saint Vincent. Here, Mr. Harris, the applicant's persecutor, still lives in Saint Vincent and has continued threatening to kill her. He has sent threats through the applicant's daughter as well as through her friend. This evidence was before the Board, yet the Board failed to comment on it for the purpose of the section 97 analysis.

VI. Respondent's Written Submissions and Further Memorandum

[28] The respondent submits the applicable standard of review on the Board's findings of fact and mixed fact and law is the standard of reasonableness.

[29] The respondent submits there is no error in the Board's findings.

[30] First, the respondent submits the applicant failed to report all the incidents to the police. She only reported the first two incidents of verbal threats from Mr. Harris and failed to report the more serious incidents to the police. For example, she failed to report the assault where Mr. Harris wounded her with a knife and the incident where he threatened her with a cutlass. The respondent argues the applicant's actions demonstrate that she failed to seek protection that could have been effective.

[31] Second, the respondent submits the documentary evidence cited by the applicant concerns people being assaulted by the police or improperly treated by the police. The present case is not about police misconduct.

[32] Third, the respondent submits the applicant did not raise the issue of the misapplication of the Gender Guidelines by the RPD in her Board submissions. The applicant should not benefit from raising this issue for the first time on judicial review and faulting the Board for not addressing it. Further, the RPD considered the social and cultural norms of Saint Vincent in its assessment of state protection and this is a demonstration of consideration of the Gender Guidelines in making its findings. The Board reviewed the record and determined the RPD findings were defensible.

[33] Fourth, the respondent submits unlike what the applicant submitted, the Board directly addressed the issue related to the applicant's submitted evidence of similarly situated individuals at paragraphs 40 and 41 of its reasons. The Board's determination was reasonable because the preponderance of documentary evidence did not suggest that this was a systemic issue of police inaction.

[34] Fifth, the respondent submits the Board reasonably concluded no separate section 97 analysis was needed. With respect to the applicant's argument on the lack of reasons for the Board's rejection of the section 97 claim, the Board specifically noted that a state protection finding is determinative of both a section 96 and section 97 claim. The RPD is not required to conduct a separate section 97 analysis where it has made a determinative finding of state protection (*Racz v Canada (Minister of Citizenship and Immigration)*, 2012 FC 436 at paragraph 7, [2012] FCJ No 497 [*Racz*]).

[35] With respect to the standard of review applied by the Board to the RPD's findings, the respondent, in its further memorandum, submits the Board's choice of reasonableness standard should stand; if not, the Board's findings demonstrate that the Board properly conducted an independent analysis of the claim pursuant to this Court's jurisprudence. It argues if the Board's selection of its standard of review is reviewed on the reasonableness standard, the deferential standard selected by the Board is reasonable. If a correctness standard applies, the Board made no error in confirming the decision of the RPD because it rendered its decision having examined the record.

VII. Analysis and Decision

A. *Issue 1 - What is the standard of review?*

[36] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 60, [2008] 1 SCR 190, the Supreme Court stated questions of law are to be reviewed on a correctness standard, that courts must "substitute their own view of the correct answer where the question at issue is one of general law "that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise"". The question on what standard of review the Board should apply in reviewing the RPD's decision is "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise." (*Dunsmuir* at paragraph 60).

[37] While the recent jurisprudence from this Court is divided on the appropriate analysis that the Board should apply in reviewing RPD decisions, there is agreement that this Court should

apply the standard of correctness when reviewing the Board's choice of what standard of review to apply to the RPD's decision (*Huruglica v Canada (Minister of Citizenship and Immigration)*, 2014 FC 799, [2014] FCJ No 845 [*Huruglica*]).

[38] Therefore, based on the existing jurisprudence, the standard of correctness is applicable to review the Board's choice of the standard of review in examining the RPD's analysis.

[39] Second, the Board's assessment of state protection involves questions of mixed fact and law. The Board's assessment of the applicant's claim under section 97 also involves questions of mixed fact and law. Under *Dunsmuir*, the standard of reasonableness applies to the review of questions of mixed fact and law. Therefore, the standard of reasonableness should apply to this Court's review of these two issues.

[40] The standard of reasonableness means that I should not intervene if the Board's decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (*Dunsmuir* at paragraph 47). Here, I will set aside the Board's decision only if I cannot understand why it reached its conclusions or how the facts and applicable law support the outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708). As the Supreme Court held in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraphs 59 and 61, [2009] 1 SCR 339, a court reviewing for reasonableness cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

B. *Issue 2 - Did the Board apply the correct standard of review?*

[41] I am of the view that the Board made an error in finding that it should apply the standard of reasonableness in reviewing the RPD's decision. However, for the reasons that follow, that error is not fatal to its decision.

[42] Mr. Justice Keith Boswell in *Siliya v Canada (Minister of Citizenship and Immigration)*, 2015 FC 120, 249 ACWS (3d) 415, outlined the two approaches currently taken by this Court in determining the standard of review the Board ought to take in reviewing the RPD's findings at paragraph 21:

> [...] As noted by Mr. Justice Martineau in *Alyafi v Canada (Citizenship and Immigration)*, 2014 FC 952 at paras 10-38 [*Alyafi*], two approaches have been taken by this Court. One line of cases concludes that the RAD should review the RPD's findings of fact for palpable and overriding errors (see e.g.: *Eng v Canada (Citizenship and Immigration)*, 2014 FC 711 at paras 26-34; *Spasoja v Canada (Citizenship and Immigration)*, 2014 FC 913 at paras 14-46 [*Spasoja*]; and *Triastcin v Canada (Citizenship and Immigration)*, 2014 FC 975 at paras 27-28). Another line of cases concludes that the RAD must independently come to a decision and is not limited to intervening on the standard of palpable and overriding error, although it can "recognize and respect the conclusion of the RPD on such issues as credibility and/or where the RPD enjoys a particular advantage in reaching such a conclusion" (*Huruglica v Canada (Citizenship and Immigration)* 2014 FC 799 at para 55 [*Huruglica*]; *Yetna v Canada (Citizenship and Immigration)*, 2014 FC 858 at paras 16-20; and *Njeukam v Canada (Citizenship and Immigration)*, 2014 FC 859 at para 14 [*Njeukam*]). Questions on this issue have been certified in several of these cases, so this division in the case law will soon be considered by the Federal Court of Appeal. In the meantime, a pragmatic approach as suggested in *Alyafi* (at paras 46-52) means that the decisions of the RAD should be upheld so long as either of these two approaches is applied.

[43] At paragraph 40 of *Huruglica*, Mr. Justice Michael Phelan included the following quotation from the Honourable Jason Kenney, Minister of Citizenship and Immigration:

> I reiterate that the bill would also create the new refugee appeal division. The vast majority of claimants who are coming from countries that do normally produce refugees would for the first time, if rejected at the refugee protection division, have access to a full fact-based appeal at the refugee appeal division of the IRB. This is the first government to have created a full fact-based appeal.
>
> [My emphasis added]

[44] In *Bahta v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1245 at paragraph 11, 248 ACWS (3d) 419, Madam Justice Sandra Simpson, in agreement with many of this Court's judges, found the Board's choice of reasonableness as the standard of review is incorrect and the Board should make its own independent assessment:

> I have decided that the RAD's choice of reasonableness as the standard of review is not correct because it makes no sense to conclude that Parliament would mandate identical judicial review proceedings in both the RAD and the Federal Court. Many of my colleagues have reached similar conclusions, see: *Iyamuremye v Canada (Citizenship and Immigration)*, 2014 FC 494; *Yetna v Canada (Citizenship and Immigration)*, 2014 FC 858; *Spasoja v Canada (Citizenship and Immigration)*, 2014 FC 913; *Alyafi v Canada (Citizenship and Immigration)*, 2014 FC 952; *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1022.

[45] In the present case, although the Board stated in its decision that a reasonableness standard should be applied for reviewing findings of the RPD, it went on to conduct, as it must, an independent review of the evidence. Therefore, I am satisfied that despite the wrong standard being mentioned, the Board made no error because it rendered its decision having examined the record.

C. *Issue 3 - Was the Board's determination on state protection reasonable?*

[46] In my opinion, the Board made an independent assessment of state protection and reasonably found the applicant did not rebut the presumption of state protection.

[47] The applicant is of the view that her submitted evidence sufficiently rebutted the presumption of state protection. The respondent submits the Board's negative finding was independent and reasonable.

[48] Here, the applicant's argument hinges on the weight of the evidence, which is not the role of this Court to determine. Her disagreement with the Board's determination on the matter of state protection does not indicate the Board's assessment was unreasonable.

[49] First, I agree with the respondent's argument that the documentary evidence on police misconduct, although it reflects negatively on police abilities, is not directly relevant in rebutting the presumption of state protection in the applicant's case. Here, the Board acknowledged both negative and positive evidence in its independent analysis of the adequacy of state protection, such as at paragraph 33 of its decision.

[50] Second, although the Board did not address the issue that the RPD did not analyze the application of the Chairperson's Gender Guidelines to the present case, the applicant did not bring up this issue in front of the Board. Here, the Board independently reviewed the record and determined the RPD was sensitive to the gendered nature of the violence. The Board

independently found, despite the Chairperson's Gender Guidelines, it is reasonable to hold the applicant's failure to report the incidents to police against her in the assessment of state protection. Although the Board found the RPD was unreasonable to find the applicant's claim was not a domestic violence claim, it determined this did not make the RPD's overall decision unreasonable.

[51] Third, unlike what the applicant argues, the Board did not ignore the applicant's submitted evidence of similarly situated individuals because it addressed this at paragraphs 40 and 41 of its reasons.

[52] Therefore, the above demonstrates the Board reasonably conducted an independent state protection analysis, which in my view was reasonable.

D. *Issue 4 - Was the Board's assessment under section 97 reasonable?*

[53] In my view, the Board was reasonable to conclude that no separate section 97 analysis was needed. It noted that a state protection finding is determinative of both a section 96 and section 97 claim. This reason was sufficient because a separate section 97 analysis is not required where a determinative finding of state protection has been made (*Racz* at paragraph 7):

> Irrespective of the applicable standard of review, the Board's Decision must stand as, in light of the foregoing authorities, it was not necessary for the Board to conduct a separate section 97 analysis on the facts of this case. This case is analogous to the situations in *Balakumar*, *Brovina*, and *Kaleja* because the findings on state protection applied equally under sections 96 and 97 of IRPA. Accordingly, there was no need for the Board to engage in a separate analysis of whether, but for the availability of state

> protection, the Applicants would otherwise have qualified as persons in need of protection under section 97 of IRPA.

[54] Therefore, the Board's finding under section 97 was reasonable.

[55] For the reasons above, I would deny this application for judicial review.

[56] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
…	…
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	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait

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

personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

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

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

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

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

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

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

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

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

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

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

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

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

…

…

110. (1) Subject to subsections (1.1) and (2), a person or the Minister may appeal, in

110. (1) Sous réserve des paragraphes (1.1) et (2), la personne en cause et le

accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person’s claim for refugee protection.

ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d’appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d’asile.

(1.1) The Minister may satisfy any requirement respecting the manner in which an appeal is filed and perfected by submitting a notice of appeal and any supporting documents.

(1.1) Le ministre peut satisfaire à toute exigence relative à la façon d’interjeter l’appel et de le mettre en état en produisant un avis d’appel et tout document au soutien de celui-ci.

(2) No appeal may be made in respect of any of the following:

(2) Ne sont pas susceptibles d’appel :

(a) a decision of the Refugee Protection Division allowing or rejecting the claim for refugee protection of a designated foreign national;

a) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d’asile d’un étranger désigné;

(b) a determination that a refugee protection claim has been withdrawn or abandoned;

b) le prononcé de désistement ou de retrait de la demande d’asile;

(c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;

c) la décision de la Section de la protection des réfugiés rejetant la demande d’asile en faisant état de l’absence de minimum de fondement de la demande d’asile ou du fait que celle-ci est manifestement infondée;

(d) subject to the regulations, a decision of the Refugee Protection Division in respect of a claim for refugee protection if

d) sous réserve des règlements, la décision de la Section de la protection des réfugiés ayant trait à la demande d’asile qui, à la fois :

(i) the foreign national who makes the claim came directly or indirectly to Canada from a country that is, on the day on which their claim is made, designated by regulations made under subsection 102(1) and that is a party to an agreement referred to in paragraph 102(2)(d), and

(i) est faite par un étranger arrivé, directement ou indirectement, d'un pays qui est — au moment de la demande — désigné par règlement pris en vertu du paragraphe 102(1) et partie à un accord visé à l'alinéa 102(2)d),

(ii) the claim — by virtue of regulations made under paragraph 102(1)(c) — is not ineligible under paragraph 101(1)(e) to be referred to the Refugee Protection Division;

(ii) n'est pas irrecevable au titre de l'alinéa 101(1)e) par application des règlements pris au titre de l'alinéa 102(1)c);

(d.1) a decision of the Refugee Protection Division allowing or rejecting a claim for refugee protection made by a foreign national who is a national of a country that was, on the day on which the decision was made, a country designated under subsection 109.1(1);

d.1) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile du ressortissant d'un pays qui faisait l'objet de la désignation visée au paragraphe 109.1(1) à la date de la décision;

(e) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister for a determination that refugee protection has ceased;

e) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant la perte de l'asile;

(f) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister to vacate a decision to allow a claim for refugee protection.

f) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant l'annulation d'une décision ayant accueilli la demande d'asile.

(2.1) The appeal must be filed and perfected within the time limits set out in the

(2.1) L'appel doit être interjeté et mis en état dans les délais prévus par les règlements.

regulations.

(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.

(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.

(3.1) Unless a hearing is held under subsection (6), the Refugee Appeal Division must make a decision within the time limits set out in the regulations.

(3.1) Sauf si elle tient une audience au titre du paragraphe (6), la section rend sa décision dans les délais prévus par les règlements.

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

(5) Subsection (4) does not apply in respect of evidence that is presented in response to evidence presented by the

(5) Le paragraphe (4) ne s'applique pas aux éléments de preuve présentés par la personne en cause en réponse à ceux qui ont été présentés par

Minister.

le ministre.

(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(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) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;

a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

(b) that is central to the decision with respect to the refugee protection claim; and

b) sont essentiels pour la prise de la décision relative à la demande d'asile;

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

111. (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

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.

(a) confirm the determination of the Refugee Protection Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it

considers appropriate.

…

…

(2) The Refugee Appeal Division may make the referral described in paragraph (1)(c) only if it is of the opinion that

(2) Elle ne peut procéder au renvoi que si elle estime, à la fois :

(a) the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and

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) it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.

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.

…

…

162. (1) Each Division of the Board has, in respect of proceedings brought before it under this Act, sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction.

162. (1) Chacune des sections a compétence exclusive pour connaître des questions de droit et de fait — y compris en matière de compétence — dans le cadre des affaires dont elle est saisie.

(2) Each Division shall deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

(2) Chacune des sections fonctionne, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et avec célérité.

…

…

171. In the case of a proceeding of the Refugee

171. S'agissant de la Section d'appel des réfugiés :

Appeal Division,

(a) the Division must give notice of any hearing to the Minister and to the person who is the subject of the appeal;

a) la section avise la personne en cause et le ministre de la tenue de toute audience;

(a.1) subject to subsection 110(4), if a hearing is held, the Division must give the person who is the subject of the appeal and the Minister the opportunity to present evidence, question witnesses and make submissions;

a.1) sous réserve du paragraphe 110(4), elle donne à la personne en cause et au ministre la possibilité, dans le cadre de toute audience, de produire des éléments de preuve, d'interroger des témoins et de présenter des observations;

(a.2) the Division is not bound by any legal or technical rules of evidence;

a.2) elle n'est pas liée par les règles légales ou techniques de présentation de la preuve;

(a.3) the Division may receive and base a decision on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances;

a.3) elle peut recevoir les éléments de preuve qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sur eux sa décision;

(a.4) the Minister may, at any time before the Division makes a decision, after giving notice to the Division and to the person who is the subject of the appeal, intervene in the appeal;

a.4) le ministre peut, en tout temps avant que la section ne rende sa décision, sur avis donné à celle-ci et à la personne en cause, intervenir dans l'appel;

(a.5) the Minister may, at any time before the Division makes a decision, submit documentary evidence and make written submissions in support of the Minister's appeal or intervention in the appeal;

a.5) il peut, en tout temps avant que la section ne rende sa décision, produire des éléments de preuve documentaire et présenter des observations écrites à l'appui de son appel ou de son intervention dans l'appel;

(b) the Division may take notice of any facts that may be

b) la section peut admettre d'office les faits admissibles en

judicially noticed and of any other generally recognized facts and any information or opinion that is within its specialized knowledge; and

(c) a decision of a panel of three members of the Refugee Appeal Division has, for the Refugee Protection Division and for a panel of one member of the Refugee Appeal Division, the same precedential value as a decision of an appeal court has for a trial court.

justice et les faits généralement reconnus et les renseignements ou opinions qui sont du ressort de sa spécialisation;

c) la décision du tribunal constitué de trois commissaires a la même valeur de précédent pour le tribunal constitué d'un commissaire unique et la Section de la protection des réfugiés que celle qu'une cour d'appel a pour une cour de première instance.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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