

Federal Court



Cour fédérale

Date: 20200421

Docket: IMM-6123-18

Citation: 2020 FC 538

Ottawa, Ontario, April 21, 2020

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

HALIMA HABIB

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] An applicant for refugee protection must establish their identity. If this cannot be done with acceptable documentation, the applicant's explanation for why those documents are lacking is of critical importance, which necessarily invokes their credibility. Ms. Halima Habib did not have acceptable documentation. The reasons the Refugee Protection Division (RPD) gave for finding her explanation, and her refugee claim, not credible are at the heart of this application.

[2] Factual and credibility findings of an administrative decision maker are rarely to be disturbed, a general principle that applies to the RPD's determinations on identity. Language such as "clearly specious" reasoning or "glaring inconsistency" with the record describe the circumstances in which such a credibility finding is to be overturned. I find that this language is applicable to enough of the RPD's reasoning in this matter to warrant quashing its decision and sending the matter back for redetermination, notwithstanding the reasonableness of some of the conclusions and the valid concerns about the paucity of Ms. Habib's evidentiary record. In particular, four of the RPD's significant grounds for finding Ms. Habib not credible were unreasonable, as they were speculative or inconsistent with the record. These significant flaws in the decision were sufficient to make the decision as a whole unreasonable.

[3] The application for judicial review is therefore allowed.

II. Issues and Standard of Review

[4] While not phrased in precisely this manner by the parties, I conclude that this application for judicial review raises the following issues:

- (1) Was the RPD's treatment of a letter that confirmed Ms. Habib's nationality reasonable?
- (2) Were the RPD's credibility findings regarding Ms. Habib's evidence unreasonable?
- (3) If so, is this sufficient to render unreasonable the RPD's refusal of Ms. Habib's claim on the basis that her identity had not been established?

[5] The parties agree that the RPD's findings on questions of identity and assessments of credibility are to be reviewed on the reasonableness standard: *Ozomba v Canada (Citizenship and Immigration)*, 2016 FC 1418 at para 6. Although the Supreme Court of Canada's decision in *Vavilov* was decided after this matter was argued, that case simply confirms that reasonableness is the applicable standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[6] In *Rahal*, Justice Gleason, then of this Court, thoroughly summarized the law regarding judicial review of factual and credibility findings in the context of an identity determination: *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 22–49. She noted the “perverse or capricious” standard for findings of fact set out in paragraph 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7 and the deference generally due to credibility findings, and concluded that determinations on identity should be upheld unless the reasons are “clearly specious” or show a “glaring inconsistency” with the weight of the evidence in the record: *Rahal* at paras 26, 42, 48; *Barry v Canada (Citizenship and Immigration)*, 2014 FC 8 at para 19.

[7] Without accepting the conclusion in *Rahal* that there is a material difference between the “perverse or capricious” standard on judicial review and the “palpable and overriding error” standard of appellate review, it is clear from the foregoing language that credibility findings should only be interfered with where they are contrary to the evidence, or are inadequately or irrationally justified: *Rahal* at paras 34, 42–46; *Canada (Attorney General) v Norman*, 2002 FCA 423 at para 3. Again, *Vavilov* does not change these principles, but reaffirms them: *Vavilov* at paras 125–126.

III. The Refugee Protection Division's Credibility Findings

A. *The Context for the Credibility Findings: A Refugee Claim with no Identity Documents*

[8] The RPD's credibility findings were made against the backdrop of Ms. Habib's claim for refugee protection. Ms. Habib claims that her husband and son were killed in fighting between American and British forces and the Taliban. She moved to the Dehbori area of Kabul with her daughter to live in a home that her husband had owned. Her late husband's brother proposed that her daughter marry his son. When that proposal was refused, the brother-in-law threatened to kidnap the daughter and caused Ms. Habib to fear for her and her daughter's safety. The daughter was kidnapped in 2012, and Ms. Habib believes it was done by the brother-in-law's family. Her efforts to find her daughter were unsuccessful and resulted in death threats from the brother-in-law. He also put increasing pressure on her to give him the house that had belonged to his brother. When she was convinced that there was no hope to find her daughter, and feared that the brother-in-law would kill her to get the property, she fled Afghanistan, turning over the papers to the property to a friend named Haji in exchange for Haji paying an agent to arrange her travel to a safe country.

[9] The onus rests on a refugee applicant to establish her identity on a balance of probabilities: *Hadi v Canada (Citizenship and Immigration)*, 2018 FC 590 at para 15. Ms. Habib attended her refugee hearing with only two documents speaking to her identity. The first was a letter she had obtained from the Afghan Women's Organization (AWO), a counseling and integration support organization in the Toronto area, which confirmed their view that she was an Afghan national, but did not confirm her personal identity. The second was a document she

claimed was her marriage certificate, but it was rejected by the RPD as it was not translated, a determination that Ms. Habib does not challenge. The result is that Ms. Habib had no documentation demonstrating her identity beyond that of being Afghan.

[10] In these circumstances, the RPD quite rightly referred to section 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules]. The former requires the RPD to take into account a claimant's documentation of their identity and/or their explanation for lacking such documents, as a matter of credibility:

Credibility

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

Crédibilité

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[11] Implementing the above principle on a practical level, Rule 11 of the *RPD Rules* requires a claimant to provide acceptable documents establishing their identity and other elements of the claim, or to explain why they have not:

Documents

11 The claimant must provide acceptable documents

Documents

11 Le demandeur d'asile transmet des documents

<p>establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.</p>	<p>acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.</p>
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[12] The RPD also correctly observed that if a claimant fails to adequately establish their identity, it is unnecessary for the RPD to assess the remainder of the claim—the failure to establish identity is fatal to the claim: *Husein v Canada (Citizenship and Immigration)*, 1998 CanLII 18842 (FC) at para 13; *Barry* at paras 21–22.

B. *Reasonableness of the RPD's Decision*

(1) Was the Treatment of the Afghan Women's Organization Letter Reasonable?

[13] The only document speaking to Ms. Habib's identity that was accepted by the RPD was the letter from the AWO. That letter only purported to confirm her nationality, which it did based on an interview in which Ms. Habib showed her knowledge of Afghanistan's history, culture and geography, and on her fluency in Dari, one of the two main languages of Afghanistan. The RPD made two comments relevant to the letter in its reasons, in addition to fairly noting that the letter was limited to nationality and not personal identity. First, it stated that Ms. Habib "may know the history of Afghanistan; however, she has not provided acceptable documentation to establish her identity." Second, in a similar vein, the RPD later stated that the fact that Ms. Habib speaks Dari "which is one of many languages spoken in Afghanistan... does not, in itself, establish her identity as an Afghan national."

[14] Ms. Habib criticizes the RPD for not making a clear finding as to whether it accepted that she was Afghan and, if it did not, to explain why it rejected this fact and the AWO letter. I agree that the RPD did not make a clear finding regarding Ms. Habib's nationality, although I infer from the above comments that it was not satisfied that her nationality was established. More importantly, though, the RPD did not explain why it was not satisfied that her knowledge of Afghan history, culture and geography, and her speaking Dari, to an extent sufficient to allow the AWO to confirm her nationality, was insufficient to establish her national identity.

[15] The only reasons given by the RPD were that "she has not provided acceptable documentation of her identity" and that Dari is "one of many languages spoken in Afghanistan," combined with the conclusory statement that speaking it "does not, in itself, establish her identity as an Afghan national." However, the fact that Ms. Habib speaks Dari was not put forward as establishing her national identity "in itself." It was put forward in combination with her knowledge of Afghan history, culture and geography and in the context of the AWO letter. In any event, the RPD's indication that Dari is "one of many languages spoken in Afghanistan" (itself a dismissive oversimplification, given that Dari is described by the AWO as "one of the two main languages of Afghanistan") provides no basis for dismissing the language as demonstrative of nationality. If there were evidence that Dari was also widely spoken elsewhere, this might be more relevant, but no such evidence was cited by the RPD or can be found in the record.

[16] To support her criticism of the RPD's analysis on this issue, Ms. Habib relies on the decision in *Tran v Canada (Citizenship and Immigration)*, 2013 FC 1080. There, the Court found

the RPD's conclusion on identity to be unreasonable, because it failed to adequately consider that Ms. Tran was a native Vietnamese speaker in resolving her nationality. As Justice Campbell put it, "[a]n open mind could easily conclude that the Applicant's native language is strong evidence that she is who she says she is: Vietnamese": *Tran* at para 8; see also *Kebedom v Canada (Citizenship and Immigration)*, 2016 FC 781 at para 31.

[17] The Minister seeks to distinguish *Tran* on the basis that Ms. Tran had filed a variety of other documents as to identity, unlike Ms. Habib. While true, this does not affect Justice Campbell's reasoning, namely that language proficiency can be an indicator of nationality that ought to be considered where nationality is in question. The RPD's apparent dismissal of this information on the basis that other languages are also spoken in Afghanistan and that language does not, in itself, establish national identity, without further analysis provides insufficient transparent justification to be reasonable.

[18] That said, as the Minister points out, establishing national identity does not establish personal identity, and national identity alone is not enough to establish a refugee claim: *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at paras 40–41. Ms. Habib counters that the RPD's finding regarding her personal identity might well have been different if it had accepted she was an Afghan national. This appears to have been the reasoning in *Tran*. In my view, however, read as a whole, the RPD appears to have been focused primarily on Ms. Habib's personal identity, rather than her national identity, noting that the AWO letter spoke to the latter but not the former. In the circumstances, I am not satisfied that the unreasonable consideration of

the language/nationality issue would, alone, render the overall determination on identity unreasonable. I will therefore proceed to consider the RPD's credibility findings.

(2) Were the RPD's Credibility Findings Reasonable?

[19] Without documentation to establish her personal identity or other aspects of her refugee claim, Ms. Habib's claim relied on her own testimony both as to who she was, and as to the factual basis for her claim. The RPD provided a number of reasons for finding that Ms. Habib was not credible and had therefore not established her identity. I summarize these as follows:

- (a) The RPD found Ms. Habib's claim that her Tazkira (Afghan identity document) and education documents were taken by the smuggler to obtain her passport and were not returned was not credible, as it was unlikely that "her specific documents [would] be of any use to the smuggler."
- (b) The RPD noted that despite the passage of time, Ms. Habib had not done anything else to establish her identity, such as by way of a witness. It rejected counsel's submission that Ms. Habib had difficulty doing so given that she lived outside the metropolitan area where many Afghans live, on the basis that it was not corroborated by evidence, and was contradicted by the submission that there are only four people who speak Dari in her municipality.
- (c) The RPD noted that Ms. Habib claimed to have been with the smuggler for thirteen days and yet did not know what name appeared on the passport she was travelling under, and had not asked. The RPD found this implausible for someone of her education.

- (d) With respect to the house that Ms. Habib sold to Haji, the RPD found it implausible that Ms. Habib did not know the address of the house or “where it was situated.” Further, the RPD stated that when asked why she did not know the address, Ms. Habib stated that the house had been bombed; the RPD considered it “implausible that she was able to sell a house that had been bombed.”
- (e) The RPD found that Ms. Habib, “instead of looking for her alleged daughter,” was able to sell her house and leave Afghanistan, and that since she left, she had not inquired about her daughter at all, which the RPD considered indicated that her claim is not genuine.
- (f) The RPD found an apparent inconsistency in Ms. Habib’s statement that she does not know where Haji is, when she testified that she sold her house to him and that he lives in her old house.

[20] Ms. Habib challenges a number of these findings as being illogical or contrary to the evidence. She notes that the *Maldonado* principle calls for her evidence to be presumed true unless there are reasons to doubt its truthfulness: *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA) at p 305; *Tran* at paras 3–5. *Maldonado* creates a presumption of truthfulness in an applicant’s sworn testimony, which exists alongside section 106 of the *IRPA*. However, it does not override section 106 of the *IRPA*, which requires the RPD to consider whether a claimant has acceptable documentation or has provided a reasonable explanation in assessing credibility. The believability of a claimant’s explanations for their lack of documentation is necessarily a central question in this exercise, and an unbelievable or unreasonable explanation may rebut the *Maldonado* presumption. Nor do I believe that it was

incumbent on the RPD to expressly cite *Maldonado* or recite the presumption, provided that it reasonably assessed Ms. Habib's credibility in the circumstances. In other words, I believe the reasonableness of the RPD's decision in this matter stands or falls on the grounds it gave for its credibility findings, rather than any failure to adopt the proper analytical framework.

[21] For the reasons below, I find that several of the RPD's grounds for its adverse credibility finding, namely those I have summarized as (a), (d), (e) and (f) above, are unreasonable. I note that in undertaking this analysis, I do not intend to engage in a "line-by-line treasure hunt for error": *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Vavilov* at para 102. However, the Court cannot assess the reasonableness of credibility findings, and thus of a decision that depends on them, without reviewing and assessing the grounds given for those findings and the evidence that underpins them.

[22] As to point (a) with respect to the Tazkira, I agree with Ms. Habib that the RPD fell into the error criticized in *Venegas Beltran v Canada (Citizenship and Immigration)*, 2011 FC 1475. There, the RPD found that the claimant's story that he had been extorted was implausible, since a reasonable extortionist would have specified a sum of money on their first phone call. Justice Rennie, then of this Court, concluded that this amounted to unreasonable speculation "as to the *modus operandi* of the extortionist": *Venegas Beltran* at para 8. In the present case, the evidence was that the agent/smuggler had taken Ms. Habib's documents so they could prepare a passport, but that they were not returned. I agree that without further explanation, the conclusion that Ms. Habib's specific documents would not be of any use to the smuggler amounts to

speculation as to the conduct of a “reasonable smuggler.” This is not to say that all evidence involving those engaged in illicit activity must be accepted. But there must be a basis to reject it, either in the evidence or in identified relevant experience or expertise, rather than it simply not according with the RPD’s assessment of how such a person would operate: see, *e.g.*, *Dinartes v Canada (Citizenship and Immigration)*, 2018 FC 986 at para 24.

[23] With respect to (b), the RPD’s observation that Ms. Habib had failed to produce any witnesses who could attest to her identity is one that can reasonably speak both to whether she had established her identity and to her credibility. Ms. Habib addressed this concern in post-hearing submissions. Her then counsel submitted that Ms. Habib “testified that she could not locate anyone in the city who could help establish her identity,” and described efforts to locate former students or residents. Counsel filed census data for Newmarket, where Ms. Habib lived, and noted that there are “four people who speak Dari.” Similar statements were made by former counsel in an affidavit filed in this application.

[24] Counsel on this application (who was not counsel before the RPD) correctly and fairly indicated at the outset of the hearing that these submissions and statements by former counsel were not borne out by the record: Ms. Habib did not in fact give any evidence regarding her efforts and inability to locate anyone who could help establish her identity. In this regard, I note that on this judicial review, the Court has access to the transcript of Ms. Habib’s evidence, which is a luxury that neither the RPD nor counsel had at the time of preparing, respectively, their decision and affidavit. I appreciate that it can be difficult on the basis of notes and recollections to accurately recite evidence, despite the importance of doing so. On this application, however, I

am able to and must rely on the transcript as the accurate record of the evidence. With reference to that record, I conclude the RPD's reliance on Ms. Habib's failure to produce witnesses as to her identity, and its conclusion that there was no evidence to corroborate the explanation for not doing so, were reasonable and in accordance with section 106 of the *IRPA* and Rule 11 of the *RPD Rules: Taha v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1675 at paras 8–9.

[25] The RPD's other finding on this issue—that the fact that there are only four people who speak Dari in Ms. Habib's municipality “contradicts” the submission regarding the difficulties in finding a witness—is less comprehensible. It is unclear why the RPD believed that the very limited number of Dari speakers in Newmarket (asserted to be 4 out of a population of over 84,000 based on 2016 census data) would contradict, rather than support, a submission that it was difficult to find witnesses in that municipality. However, the census evidence itself was also unclear. It did not identify Dari as a language at all, and all figures were rounded to the nearest 5, making it necessary to make assumptions about what the data showed. Such data are also of limited assistance in the absence of any testimony from Ms. Habib regarding her own efforts to obtain evidence. I therefore find that the RPD's questionable assertion about a contradiction does not undermine the overall reasonableness of its conclusion on this point.

[26] Similarly, with respect to point (c), I consider the finding that it was implausible that Ms. Habib did not know or ask what name appeared on her passport to be reasonable. Ms. Habib, who had never travelled outside Afghanistan, testified that she did not know whether the passport was in her name because the agent had the passport and always dealt with the

authorities. She points to the recognition in *Takhar* that “it is not uncommon for those who are fleeing from persecution not to have regular travel documents and, as a result of their fears and vulnerability, simply to act in accordance with the instructions of the agent who organized their escape”: *Takhar v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 7544 (FC) at para 14. I agree that in Ms. Habib’s circumstances, another decision maker might well have accepted her evidence on this point. However, the RPD’s conclusion was open to them on the record, and applying the deferential reasonableness standard, I am unable to say that the RPD’s conclusion is unreasonable.

[27] The same is not true with respect to (d), the RPD’s findings regarding the address of Ms. Habib’s former house, and whether it was sold when bombed, which were contrary to the evidence. The RPD’s findings on this point were as follows:

The claimant was asked whether she knows what happened to her house and she stated that she sold it to [Haji]. She was asked whether she knows where her daughter is and she stated that she does not know. She was asked whether she could ask Haji, to whom she sold her house, and she stated that she does not know how because she does not know the address of the house he purchased from her.

The claimant was asked how long she lived in the house that she had sold to Haji and she stated that she lived there ever since she was married. When asked why she does know the address, she stated the house had been bombed. ... The panel finds it implausible that she was able to sell a house that had been bombed. The panel finds that the claimant was changing her story and it does not find her explanation satisfactory. The claimant contradicted her own oral testimony. The panel finds it implausible that a person who alleges to have lived in a house for years and who claims to be teacher, would not know where her house was situated. This further negates her credibility.

[Emphasis added.]

[28] While on its face, the responses described might well impugn a witness's credibility, I conclude, again with the luxury of the transcript, that the RPD's description does not fairly recount the evidence. With respect to the address, the RPD appears to be referring to the following exchange:

MEMBER: Now, have you spoken to [Haji] recently?

CLAIMANT: No, since I have left Afghanistan, I have no contact with anybody. I don't know where everyone is.

MEMBER: So, why is that?

CLAIMANT: Because I had nobody and I didn't have the address for anybody. How could I contact them?

MEMBER: You say that [Haji] would enquire about you and he has your house, right?

CLAIMANT: Yes.

MEMBER: Okay, so you know the address of your house.

CLAIMANT: The address of my house is in [Dehbori], I don't know the numbers or anything.

[Emphasis added.]

[29] Even assuming that Ms. Habib was referring to house numbers, there was no evidence on the record that houses in Dehbori have street addresses akin to those with which we are familiar in Canada, such that Ms. Habib's evidence would suggest she "does not know the address." As counsel pointed out, even Ms. Habib's personal information form (PIF), filed six years earlier, listed her address during this time as simply "Dehbori, Kabul," while setting out her address in Newmarket with full street numbers. Without further clarification or evidence, this seems to be an instance of a finding of implausibility that relies on assumptions "judged from Canadian standards," as warned against in *Valtchev v Canada (Minister of Citizenship and Immigration)*,

2001 FCT 776 at para 7. I find it unreasonable to rely on this exchange as evidence that Ms. Habib does not “know where her house was situated.”

[30] Nor did Ms. Habib suggest that the house was bombed at the time she sold it. After the above response, the RPD and Ms. Habib had the following exchange:

MEMBER: How long did you live there?

CLAIMANT: I lived there for a long time. Since I got married... from the time I got married to the time I went to Marjah and from that I returned from there, I lived there.

MEMBER: So, if you were living there long time, wouldn't you know where it is?

CLAIMANT: It was in Deh Bori. Everywhere is destroyed now. Everywhere was bombarded.

MEMBER: So how does [Haji] have your house then?

CLAIMANT: When I left, he gave me money, I gave him a document which is like a power of attorney.

MEMBER: Okay, so...

CLAIMANT: I don't know if he has the house or it's destroyed or what happened to it.

[Emphasis added.]

[31] From the record, it is clear that Ms. Habib is referring to the fact that places in Dehbori were destroyed “now,” and that she does not know what happened to her former home. The record does not support a conclusion that Ms. Habib was claiming that she sold Haji a bombed house, or that she was referring to the bombing as a reason that she did not know where her house was (she simply repeated that it was in Dehbori). I find the RPD's implausibility finding

based on the conclusion that Ms. Habib was claiming to have sold a house that had been bombed to be unreasonable and inconsistent with the record.

[32] With respect to point (e), the RPD's finding that Ms. Habib was able to sell her house and leave Afghanistan "instead of looking for her alleged daughter" is also contrary to the evidence. Ms. Habib's testimony was that she searched for her daughter for three months, including going to the police and the governor's office, that she "searched everywhere," asked the neighbours, went outside the city and looked for her, and confronted her brother-in-law about her disappearance only to receive death threats. Her personal statement in her PIF noted that she returned after Haji told her that "there was no hope," and that her daughter would never be allowed to return. To conclude from this evidence that Ms. Habib simply sold her home "instead of looking for her alleged daughter" and to draw an adverse credibility finding from it is unreasonable. Further, Ms. Habib's evidence was that the house was conveyed merely by giving Haji paperwork a couple of days before her departure. The RPD gave no explanation why, in the face of this evidence, the fact that "she was able to sell property, even though her brother-in-law allegedly had threatened her [...] does not establish a well-founded fear."

[33] Finally, the RPD's finding summarized in point (f) above—that there was an inconsistency between Ms. Habib's evidence that she does not know where Haji is and the fact that she sold her house to him and that "he lives in her old house"—is also not borne out by the transcript. Ms. Habib did not testify that Haji currently lives in her old house. To the contrary, as set out above, she said that while she conveyed the house to him when she left in 2012, she does not know if he has it or even if it still exists. She also testified that she did not know what

happened to Haji after she left. I conclude that the RPD's adverse credibility finding on this issue again had no evidentiary basis.

(3) Was the Decision Reasonable as a Whole?

[34] As noted above, I agree with the Minister that the onus to establish identity rests with a refugee applicant, and that the absence of documentary or other evidence meant that Ms. Habib had to explain that absence. Credibility is central to the assessment of whether those explanations "made sense" (to use the Minister's language). In this case, some of the RPD's findings on credibility were reasonable, while others were unreasonable. The question becomes whether the reasonable findings can stand independently to support the ultimate finding that Ms. Habib was not credible and that she had therefore not established her identity.

[35] In my view, they cannot. The grounds that were unreasonable were significant and formed a material part of the RPD's reasoning with respect to credibility. The importance of the grounds that I have found to be unreasonable is such that I am unable to conclude that they might not have affected the RPD's analysis or outcome, or that the decision as a whole remains reasonable. This is particularly so when these issues are combined with the RPD's unreasonable treatment of the AWO letter.

[36] The RPD found the identity question to be determinative. While the RPD also addressed elements of Ms. Habib's claim under sections 96 and 97 of the *IRPA*, it is clear that the question of identity and the issue of credibility were material to both Ms. Habib's claim as a Convention refugee under section 96 and, more particularly, her claim as a person in need of protection from

her brother-in-law under section 97. I therefore need not address the parties' arguments with respect to the section 96 and 97 claims, in light of my findings with respect to the RPD's conclusions on credibility and identity.

IV. Conclusion

[37] The application for judicial review is granted. Ms. Habib's application for refugee protection will be remitted to the RPD for determination by a different officer.

[38] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT IN IMM-6123-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. Ms. Habib's application for refugee protection is remitted to the Refugee Protection Division for redetermination by a different officer.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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