Federal Court  Cour fédérale

Date: 20211025

Docket: IMM-5999-20

Citation: 2021 FC 1138

Toronto, Ontario, October 25, 2021

PRESENT: Madam Justice Go

BETWEEN:

CHUKWUEBUKA KIKACHUKWU ONYEKWELI-UGEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Chukwuebuka Kikachukwu Onyekweli-Ugeh [the Applicant] applied for a Pre-Removal Risk Assessment [PRRA] under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] on the basis that he fears returning to Nigeria due to his sexual orientation. The Application was denied by a Senior Immigration Officer in a decision dated July 27, 2020.

[2] The Applicant has applied for judicial review of this decision. For the reasons set out below, the Application is granted and the PRRA decision is set aside.

II. Background

A. *Factual Context*

[3] The Applicant is a citizen of Nigeria. The Applicant states that he began exploring same-sex relationships in his home country in 2013. In 2014, he met Mr. Confidence Bienose, with whom the Applicant claims to have had a same-sex relationship. The Applicant came to Canada in March 2015 to attend Thompson Rivers University in Kamloops, British Columbia, and Mr. Bienose joined him there several months later. Their relationship was allegedly reported to the Applicant's parents by a fellow student from Nigeria. The Applicant claims that he was disowned by his family as a result.

[4] The Applicant and Mr. Bienose moved to Toronto where they registered their marriage on February 13, 2016.

[5] The Applicant submitted a refugee claim in March 2016 jointly with Mr. Bienose, based on sexual orientation. Their claim was heard on May 5, 2016. While accepting that the Applicant and his now former spouse had gone through a legal marriage in Ontario, the Refugee Protection Division [RPD] rendered an oral decision the same day, followed by a written decision on May 30, 2016, finding that their claims had no credible basis and that they were not Convention Refugees nor persons in need of protection. The decision was appealed to and dismissed by the

Refugee Appeal Division [RAD] in July 2016 for lack of jurisdiction pursuant to paragraph 110(2)(c) of the *IRPA*.

[6] After he failed to leave Canada on the designated removal date in March 2017, an arrest warrant was issued for the Applicant. In December 2019, the arrest warrant was executed and the Applicant was detained and released in the same month. The Applicant was given an opportunity to apply for a PRRA.

[7] In support of his PRRA application, the Applicant submitted new evidence, including a handwritten letter from the Applicant's mother dated April 18, 2017, a copy of an invitation letter from the Edo State Police Command in Nigeria dated September 12, 2016, and an affidavit from a friend of the Applicant dated January 5, 2020. The Applicant also submitted country condition documents with respect to the criminalization of lesbian, gay, bisexual, transgender and queer [LGBTQ+] persons under Nigerian laws.

B. *Decision under Review*

[8] In their reasons the PRRA Officer noted that the Applicant's PRRA submissions are "consistent with" the claims he made before the RPD: he fears returning to Nigeria because he faces persecution in his village due to his sexual orientation.

[9] After assessing each piece of new evidence submitted by the Applicant in support of his PRRA application, the Officer concluded that the Applicant would not be at risk if returned to Nigeria. The Officer considered the letter provided by the Applicant's mother but assigned it

little weight because the Officer found it lacking in detail. The Officer further noted the fact that the letter was not a sworn affidavit diminished its probative value.

[10] Despite noting the official letterhead, signature, and stamp, the Officer also assigned little weight to the letter requesting that the Applicant report to the police department, due to the prevalence and availability of fraudulent police documents in Nigeria.

[11] With respect to the affidavit from the Applicant's friend, the Officer found that it simply recognizes the Applicant's legal marriage rather than confirming the genuineness of the relationship or the Applicant's sexual orientation. In the Officer's view, the affidavit was not objective but rather reiterated information shared by the Applicant, and as such it provided little new evidence to overcome the RPD's finding of no credible basis.

[12] While accepting that conditions in Nigeria are difficult for LGBTQ+ people, the Officer accorded little weight to the country conditions evidence because it did not speak to the Applicant's personal experiences.

[13] Finally, the Officer stated that while not binding, the RPD's factual findings regarding the Applicant's claims merited significant weight. The Officer concluded that the Applicant had not provided sufficient new and objective evidence to overcome the RPD's negative credibility findings. As a result, the Officer found that the Applicant had not established he met the criteria of either section 96 or 97 of the *IRPA*.

III. Issues

[14] The Applicant raises one issue in the herein application, namely, that the Officer has erred by failing to consider an oral hearing while raising serious issues of credibility in their decision.

[15] In response to the Applicant's application, the Respondent asked this Court not to hear the Application because the Applicant has come to the Court seeking equitable relief while having "unclean hands".

IV. Standard of Review

[16] Both the Applicant and Respondent submit that, with respect to the PRRA decision, the standard of review is reasonableness.

[17] The jurisprudence regarding the standard of review applicable to a PRRA officer's decision not to hold a hearing is divided. In some decisions, the issue is characterized as a matter of procedural fairness, to be reviewed on the correctness standard: see, for instance, *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132, at paras 10–13; *Nadarajan v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 403, at paras 12–17; *Nur v Canada (Citizenship and Immigration)*, 2019 FC 951, at para 8. Other decisions have applied the standard of reasonableness, characterizing the issue as a question of mixed fact and law: see, for instance, *Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913, at para 5; *Kioko v Canada (Citizenship and Immigration)*, 2014 FC 717 [*Kioko*] at paras 17–19; *Huang v Canada*

(Citizenship and Immigration), 2018 FC 940, at paras 12–17; *Hare v Canada (Citizenship and Immigration)*, 2020 FC 763, at paras 11–12.

[18] The argument for reasonableness, as summarized in *Kioko*, at paras 17-19, is that the officer's decision whether to hold a hearing is governed not by each officer's abstract determination of what procedural fairness requires, but rather by the specific regulatory scheme laid out in paragraph 113(b) of the *IRPA* and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The officer therefore applies the factors prescribed in section 167 to the facts of each case, which is effectively an interpretation of their enabling statute—an exercise in which they have expertise and therefore merit deference.

[19] In this case, as the parties have both proposed the reasonableness standard, I will adopt the parties' submission and leave the debate on the appropriate standard for another day.

[20] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85. The onus is on the Applicant to demonstrate that the PRRA decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov*, at para 100.

V. Analysis

A. *Should this Application be dismissed because the Applicant has come to the Court seeking equitable relief while having "unclean hands"?*

[21] The Respondent submits that the Court should decline to hear this Application on the basis of the "unclean hands" doctrine: *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, at para 65; *Mwesigwa v Canada (Citizenship and Immigration)*, 2011 FC 1367 [*Mwesigwa*] at paras 15–18; *Samaroo v Canada (Citizenship and Immigration)*, 2011 FC 1460 [*Samaroo*] at paras 13–16.

[22] The Respondent also relies on *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 [*Thanabalasingham*], in which the Federal Court of Appeal [FCA] set out the factors to be considered in determining whether the application should be dismissed under the unclean hands doctrine.

[23] The Respondent argues that the Applicant failed to report for removal, "submitted a fraudulent refugee [claim]" and "entered into a fake marriage" to ground his refugee claim. The Respondent maintains that given this serious misconduct, the Court should exercise its discretion not to hear the merits of the application: *Ngo Sen v Canada (Citizenship and Immigration)*, 2020 FC 331 [*Ngo Sen*] at paras 25–28; *Wu v Canada (Citizenship and Immigration)*, 2018 FC 779, at paras 3 [*Wu*] 13–15; *Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332 [*Debnath*] at paras 25–26; *Wong v Canada (Citizenship and Immigration)*, 2010 FC 569 [*Wong*]

at paras 7–14; *Bradshaw v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 632 [*Bradshaw*] at paras 40–51.

[24] The Applicant does not dispute that he comes before the Court with unclean hands. He emphasizes, however, that the decision to refuse to hear or grant an application is a discretionary one: *Thanabalasingham*, at para 10; *Debnath*, at paras 21–22. The Applicant stresses that the strength of his case and the gravity of the impact upon him if the decision is allowed to stand are factors that should weigh heavily in favour of hearing the application.

[25] The authorities cited by the Respondent, although not all dealing with the PRRA context, support the position that an unsuccessful refugee claimant who fails to report for removal has committed serious misconduct that merits a message deterring others from attempting the same. The serious misconduct which has allegedly been committed by the applicants in the case law often goes beyond evading removal to include, in addition, failing to appear for cross-examination: *Ngo Sen*, remaining in hiding at the time of the hearing: *Wong*; *Bradshaw*; *Samaroo*, or admitting to having provided false information in earlier applications: *Bradshaw*; *Mwesigwa*; *Samaroo*.

[26] While the Applicant in this case has evaded removal and does not dispute he comes before the Court with unclean hands, I disagree with the Respondent's statement at the hearing that the Applicant has never once suggested that the RPD decision was incorrect. On the contrary, the Applicant has sought to set aside the RPD decision by appealing to the RAD, which did not have jurisdiction to hear his appeal due to the finding of no credible basis made by the

RPD. The fact that the Applicant continues to rely on the claim of persecution based on sexual orientation in his PRRA application is another indication that he disagrees with the RPD decision.

[27] By the same token, I am reluctant to label the finding of no credible basis by the RPD as a fraudulent refugee claim in the context of analyzing the Applicant's alleged misconduct under the unclean hands doctrine, when the Applicant is statute-barred from appealing the RPD decision to the RAD, and when he continues to adopt the same basis of claim for his PRRA application. I note further that under s.107.1 of *IRPA*, if the RPD is of the opinion that a claim for refugee protection is clearly fraudulent, it must state in its reasons for the decision that the claim is "manifestly unfounded". The RPD did not do so in the Applicant's case.

[28] Nevertheless, I accept, as the Applicant has conceded, that he has come to the Court with unclean hands because he has not complied with the removal order. As such, I must first decide whether I should even hear his application or grant the equitable relief he is seeking.

[29] The FCA in *Thanabalasingham* rejected the assertion that if it was established that an applicant had come to court with unclean hands, then the Court must refuse to hear or grant the application on its merits. Rather, as noted in *Debnath*, at para 21, "the Federal Court of Appeal found that the case law suggested, if satisfied that an applicant had lied or was otherwise guilty of misconduct, then the reviewing court may dismiss the motion without proceeding to determine the merits or, even though having found reviewable error, decline to grant relief" [emphasis added].

[30] As the FCA in *Thanabalasingham* explains:

> [10] In exercising its discretion, the Court should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights. The factors to be taken into account in this exercise include: the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.

[31] Yet notwithstanding the above position of the FCA, this Court has held, as Justice Strickland noted in *Debnath*, at para 23, that when an applicant seeking judicial review in the immigration context has unclean hands, this in and of itself warrants dismissal of the application: *Wong*, at paras 10–13. With respect, such an approach runs counter to the balancing approach that the FCA has carefully crafted in *Thanabalasingham*, and effectively denies applicants access to this Court regardless of the merits of their case, due solely to their misconduct.

[32] In contrast, I note that this Court on occasion has cautioned decision makers against unduly focusing on the past immigration history of an applicant, while ignoring their present circumstances: *Dowers v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 593; *Zhou v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 633; *Vilme v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1203.

[33] I also note that in *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 23, and in *Walia v Canada (Minister of Public Safety and Emergency)*, 2012 FC 1203, this Court

decided not to dismiss the application based on unclean hands, notwithstanding the applicant's misconduct. Similarly in *Alexander v Canada (Minister of Citizenship and Immigration)*, 2021 FC 762, Justice Norris found that while misconduct should be deterred, "it is incumbent on the reviewing Court to assess the fairness and legal soundness of a decision that, if allowed to stand" could lead the removal of the claimant to a country where their fundamental human rights are at stake.

[34] I need to consider, on the one hand, the undermining of the integrity of the administrative process when the Court rewards individuals with misconduct, on the other hand, the erosion of public trust in the legal system if the Court automatically denies access to equitable relief every time an individual has committed a transgression of the law, regardless of the circumstances of the case.

[35] In the matter before me, I find the Applicant's failure to attend his removal constitutes serious misconduct. I would also note, however, that when found by the Canada Border Services Agency [CBSA], the Applicant did not try to make excuses for his behaviour. As noted in the Notice of Arrest prepared by the CBSA, dated December 7, 2019, when asked about the reason for his failure to comply with the removal order, the Applicant "had no response and asked for mercy and not to be returned to his country of citizenship". As to why he did not inquire about the status of his immigration proceedings, the Applicant replied that "since he didn't want to go he did not acknowledge any correspondence but his lawyer was aware of it". In short, the Applicant admitted to his misconduct and accepted the consequences.

[36] Applying the factors set out in *Thanabalasingham* to the herein matter, while the misconduct in question is serious, I find the strength of the Applicant's case weighs in his favour. In several of the cases cited by the Respondent, the applicant's case was found to be weak: *Ngo Sen*; *Wu*; *Debnath*; *Bradshaw*. In contrast, for reasons outlined later in the decision, I find the Applicant's case here has merit.

[37] Further, the impact on the Applicant of letting the decision stand may be severe given the serious issues at stake if the Applicant is removed to Nigeria—a country known for criminalizing LGBTQ+ individuals.

[38] In conclusion, taking all the circumstances of this case into account, including the seriousness of the misconduct, the strength of the Applicant's case and the potential impact on the Applicant, I find that this is an appropriate case to allow the application to proceed, notwithstanding that the Applicant has come to the Court with unclean hands.

B. *Did the Officer Err by Failing to Consider an Oral Hearing while Raising Serious Issues of Credibility in Their Decision?*

[39] Paragraph 113(b) of the *IRPA* provides for the discretion to hold a hearing in relation to a PRRA application:

113 Consideration of an application for protection shall be as follows:	**113** Il est dispose de la demande comme il suit :
[…]	[…]
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the	**b)** une audience peut être tenue si le ministre l'estime

opinion that a hearing is required[.]	requis compte tenu des facteurs réglementaires[.]

[40] The factors to be considered in the exercise of this discretion are laid out in section 167 of the Regulations:

167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[41] Citing *Latifi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388 [*Latifi*], the Applicant argues that where serious issues of credibility were raised by the PRRA officer, they are required to at least consider an oral hearing. The Applicant submits that the Court must look beyond the express wording of the decision to determine whether the Applicant's credibility was in fact at issue: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*] at para 16.

[42] The Applicant submits that the Officer raised serious issues of credibility in assessing the evidence, notably with respect to the letter from the Applicant's mother and the document from the police department. The Applicant points to the Officer's remark that the letter from his mother is less probative because it is not a sworn statement. The Applicant also argues that the underlying reason for the Officer's decision to assign little weight to the police document, in the absence of actual evidence that the document in question was fraudulent, was a negative credibility finding. Relying on *Shafi v Canada (Citizenship and Immigration)*, 2005 FC 714 [*Shafi*], the Applicant submits that the Officer was required to at least consider an oral hearing, and the failure to do so constitutes a reviewable error.

[43] Relying on paragraph 113(b) of the *IRPA*, the Respondent notes that an officer considering a PRRA has no duty to hold an oral hearing when credibility is not central to the PRRA. The Respondent contends that the factors enumerated in section 167 of the Regulations are cumulative, and a hearing is not required where one or more of the factors is not met: *Cosgun v Canada (Citizenship and Immigration)*, 2010 FC 400, at para 32.

[44] The Respondent submits that the Officer's decision was based on the insufficiency of the evidence and not on credibility findings; the Respondent argues the Applicant effectively takes issue with the weight assigned to his evidence. The Respondent notes that it was open to the Officer to find the evidence unpersuasive without requiring a credibility finding, relying on *Herman v Canada (Citizenship and Immigration)*, 2010 FC 629, *Nnabuike Ozomma v Canada (Citizenship and Immigration)*, 2012 FC 1167, *Gandhi v Canada (Citizenship and Immigration)*, 2020 FC 1132, and *Ferguson*. Finally, the Respondent submits that the Officer considered each

piece of evidence individually and provided clear reasons why the whole of the evidence was insufficient to overcome the RPD's findings.

[45] As this Court has often acknowledged, "it is very difficult to separate 'sufficiency' from 'credibility' in the context of a PRRA decision that supersedes a negative refugee determination that was based upon credibility": *Latifi,* at para 60. In this regard, I find Justice Norris' analysis in *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1207 [*Ahmed*] to be instructive.

[46] While acknowledging that decision makers are often required to make findings of fact by weighing the evidence presented and that they can find evidence to be insufficient without any need to assess its credibility, Justice Norris in *Ahmed* offered useful guidance for the reviewing court in distinguishing between "sufficiency" and credibility, namely:

> [31] …whether the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application for protection. If they would not, then the PRRA application failed, not because of any sort of credibility finding, but simply because of the insufficiency of the evidence. On the other hand, if the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application and, despite this, the application was rejected, this suggests that the decision maker had doubts about the veracity of the evidence.

[47] However, the application of this framework of analysis is not straightforward, as Justice Norris explains further in *Ahmed*:

> [32] Of course, doubts about the veracity of evidence do not necessarily amount to concerns about an applicant's credibility that engage section 167 of the Regulations and trigger the right to a hearing (even if the other aspects of section 167 are satisfied). A

> decision maker may simply not be satisfied on the basis of an item of evidence that the proposition it is tendered to establish is true because there is no way to assess the reliability of the evidence (e.g. the source of a third-party's knowledge of a certain fact is unknown). Even doubts about the truthfulness of an item of evidence do not necessarily lead to concerns about an applicant's credibility. The doubts could relate to the authenticity of a document, for example, or to the credibility of a third-party. Still, it can be difficult to draw a bright line. If there were a basis to think that an applicant knew that a document he or she had tendered was a forgery, or that a third-party whose evidence was relied on was not telling the truth, this could well put the applicant's credibility in issue in a way that would trigger the need for a hearing under section 113(b) of the *IRPA*. So too would attributing "little weight" to documents containing material information that are exhibits to an affidavit sworn by an applicant (*Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 19). Less direct connections between an item of evidence and an applicant may also suffice to raise a serious issue as to the applicant's credibility (see, for example, *Ruszo v Canada (Citizenship and Immigration)*, 2017 FC 788 at para 18, and *El Morr v Canada (Citizenship and Immigration)*, 2010 FC 3 at para 24).
>
> [emphasis added]

[48] Applying the above framework, I find the Officer has made a credibility finding under section 167 with respect to two pieces of new evidence presented by the Applicant.

[49] The letter from the Applicant’s mother referred to her disappointment and embarrassment with the Applicant for displaying “unsavoury sexual preference” which he knew to be against the laws of their country and their family tradition. The mother’s letter also chastised the Applicant for having “practice[d] homosexuality” with a friend “in the guise of playing football”. The friend, according to the mother’s letter, was arrested on July 12, 2016, by the police and after much torture, mentioned the Applicant as having engaged in same-sex relationships. If accepted

by the Officer, the mother's letter would support the Applicant's claim that he engages in same-sex relationships and would help overcome the RPD's no credible basis finding.

[50] The Officer noted that the letter from the mother "lacks details and does not reference any specific event or activity that is alleged by the applicant", and that it "speaks more about the mother's disappointment and emotions rather than any factual aspects that could corroborate [the Applicant's] claims". It is not clear to me what further details the Officer expected the Applicant's mother to provide about the Applicant's "activity", when the mother's letter referred specifically to the Applicant's "practice [of] homosexuality". It is clear, however, from the letter that the mother's disappointment with the Applicant stemmed from her disapproval of the latter's engagement in same sex relationship, as such, it provides circumstantial corroboration for his claimed sexual orientation.

[51] More critically, the Officer decided to give the mother's letter little weight because it is a simple letter rather than a sworn affidavit. In so characterizing the evidence, the Officer was effectively casting doubt on whether the Applicant's mother was telling the truth (by choosing not to offer her evidence in a sworn statement). This is akin to the situation in *Shafi*, where the Court found the Officer had no basis for drawing a negative inference from the fact that a witness filed a letter rather than an affidavit. Besides, as the Officer has pointed out, the mother's letter spoke about her disappointment about her son, it would have been more suspicious if she had communicated her disappointment by way of an affidavit rather than a personal letter. The Officer's rejection of the letter, both in terms of its content and the form it took, leads me to

conclude that the Officer has made a veiled credibility finding, as opposed to a finding based on sufficiency of the evidence.

[52] With respect to the police summons dated September 12, 2016, calling on the Applicant to respond to an investigation of "unnatural offences", this evidence, if accepted, could lend credibility to the Applicant's claim that he is wanted due to his sexual orientation. The Officer gave it little weight, noting that "there is a prevalence of fraudulent police documents that are easily available in Nigeria".

[53] The Respondent submits that the Officer can rely on evidence based on the National Document Package of the Immigration and Refugee Board for their conclusion about the fraudulent police document. This court, however, has found a decision maker's conclusion that a document is fraudulent solely on the basis of the prevalence of fraudulent documents in a given country to be unreasonable: *Liu v Canada (Minister of Citizenship and Immigration),* 2018 FC 933, at para 13.

[54] In this case, the Officer's decision to assign the police report little weight was based solely on his finding of a prevalence of fraudulent police documents in Nigeria, and not on any actual evidence specific to the Applicant's case. This finding is unreasonable. In addition, it is a credibility finding as the Officer's reasoning implied that the Applicant had chosen to tender a fraudulent document.

[55] Based on the above, I find that the Officer's decision to reject the new evidence amounts to a credibility finding under section 167 of IRPA. The Officer should have considered whether to hold an oral hearing. Their failure to do so renders the decision unreasonable.

VI. Conclusion

[56] While the Applicant has come to court with unclean hands, having weighed the Applicant's misconduct against the strength of the case and the impact of the outcome on the Applicant, I would allow the application to be heard. Having found that the PRRA Officer has raised serious credibility issues, I conclude that the Officer should have considered an oral hearing. The Officer's failure to do so renders their decision unreasonable.

[57] The application for judicial review is allowed.

[58] Neither party proposed a serious question of general importance for certification and I find that none arises in this case.

JUDGMENT in IMM-5999-20

THIS COURT'S JUDGMENT is that:

1. The decision under review is set aside and the matter referred back for redetermination by a different decision maker.

2. There is no question to certify.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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