Federal Court  Cour fédérale

Date: 20220728

Docket: IMM-4953-20
IMM-6608-20

Citation: 2022 FC 1131

Ottawa, Ontario, July 28, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

JULIE KAREN MILLER
ISABELLA VON FREYA GROAT
TYRSON EDWARD JAMES MOSHER

Respondents

JUDGMENT AND REASONS

[1] The Refugee Appeal Division (RAD) granted the Respondents – who are citizens of the United States (US) – refugee status on the grounds that the US could not provide them with adequate state protection. The Applicant, the Minister of Citizenship and Immigration (Minister) seeks judicial review of two RAD decisions.

[2] The judicial review application filed in IMM-4953-20 concerns the RAD decision of September 18, 2020, where the RAD found that the Respondents were “Convention refugees and persons in need of protection”. The RAD reversed the decision of the Refugee Protection Division (RPD).

[3] The judicial review application filed in IMM-6608-20 concerns the RAD decision of December 8, 2020, denying the Minister’s application to reopen the case.

[4] The facts underlying the refugee claims are compelling and disturbing. However, the determinative issues on these judicial review applications is if the RAD process was procedurally fair to the Minister, and if the decisions of the RAD are reasonable.

[5] For the reasons that follow, I am granting both judicial review applications.

[6] In IMM-4953-20, I have determined that the RAD decision was reached as the result of a process that was unfair to the Minister. I have also concluded that the RAD erred in the application of the law with respect to its consideration of whether the US could provide adequate state protection to the Respondents.

[7] Further, having concluded that there was a breach of procedural fairness in the underlying decision, it follows that the RAD decision in IMM-6608-20, in refusing to reopen the appeal, is unreasonable.

I. Background

[8] The following is a brief review of the key background facts.

[9] In 2016, Ms. Miller along with her two minor children came to Canada and they made refugee claims. They claimed to be at risk of persecution from the ex-husband/father, Bryon Widner, his family, and his associates.

[10] Ms. Miller and her ex-husband met through their involvement in the white supremacy movement. Ms. Miller says her ex-husband was a co-founder and an enforcer of a white supremacy group. After they married in 2006, they decided to leave the white supremacy movement following which they began receiving death threats. They received temporary protection from the Federal Bureau of Investigation [FBI].

[11] In 2008, the Southern Poverty Law Center, a civil rights organization, offered to pay for the removal of Mr. Widner's face tattoos, which became the subject of a 2011 documentary film titled "Erasing Hate".

[12] In 2012, Mr. Widner was arrested for assaulting Ms. Miller, and spent four days in jail. Although the charges were dropped, the abuse continued. In 2014, Ms. Miller ended the relationship and in October 2014 she obtained a No Contact Court Order.

[13] Following their separation, Ms. Miller and her children relocated to several states including: Arizona, Tennessee, New Mexico, and Michigan, but Mr. Widner was always able to track them down. Their move to Michigan was funded by the Victim Witness Arizona program and Child Protective Services have also been involved. Ms. Miller and her children were part of the National Address Confidentiality Program. However in 2016, her son's school principal disclosed their address to Mr. Widner.

[14] The Respondents entered Canada in 2016 and made refugee claims. After entry into Canada, an arrest warrant was issued against Ms. Miller on the grounds that she had abducted her children from the US.

II. RPD Decision

[15] At the RPD hearing, a designated representative was appointed to represent the interests of the minor claimants.

[16] The RPD found Ms. Miller was excluded from refugee protection, pursuant to section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, for committing the crime of parental child abduction. As a result – and because the Minister did not seek to exclude Ms. Miller based on her longstanding membership in a white nationalist organization – the RPD did not consider whether she would also be excluded under Article 1F(a) or (b) of the *Convention Relating to the Status of Refugees* of the United Nations.

[17] The RPD found Ms. Miller was not forthcoming about whether she still held racist beliefs. Further, despite her claim that she was at risk of harm from other white supremacists, the RPD noted there was no evidence that they were being threatened by members of the white supremacy movement.

[18] On the issue of state protection in the US, the RPD found:

> …the American state has been willing and able to provide state protection to the claimants. As seen below, since 2012 [Ms. Miller] has engaged various police departments, the criminal courts, the family courts, and the child protection agencies in several states. The police provided assistance to the claimants in several states by issuing a trespass citation, attending the claimants' residence, and providing several reports that assisted the claimants' lawyers to litigate in court. The courts have issued protection orders, temporary custody orders, and assisted the claimants to move from one state to another. It is noted that [Ms. Miller] has engaged lawyers, social workers, police officers, and the judicial system in several states in her domestic dispute with her ex-husband as listed below (at para 73).

[19] The RPD noted the numerous incidents where state protection was provided and concluded that there was adequate state protection available to the Respondents in the US.

III. RAD Decision in IMM-4953-20

[20] On appeal to the RAD, the Respondents retained new legal counsel and submitted new evidence in response to a request from the RAD for additional submissions. However, contrary to Rule 16(2) of the *Refugee Appeal Division Rules*, SOR/2012-257 [*RAD Rules*], the Minister was not informed of the change in legal counsel, and, therefore, was not given an opportunity to intervene in the appeal.

[21] The RAD determined that an oral hearing was not necessary and it overturned the negative credibility findings made by the RPD.

[22] On the impact of the outstanding criminal charges against Ms. Miller for bringing her children to Canada, the RAD concluded:

> The outstanding family court order from State 2 and subsequent criminal charges against the Principal Appellant for bringing the child [sic] to Canada present a useful tool for the ex-husband to continue to exert control over the Appellants. There is a heavy irony in the USA failing to protect the Appellants, while also prosecuting the Principal Appellant for the very act of fleeing to safety for her children and herself (at para 80).

[23] The RAD concluded that Ms. Miller was not excluded from refugee protection for abducting her children; because if such charges were tried in Canada, she would have the defence of imminent harm.

[24] Contrary to the RPD, the RAD concluded that there was insufficient evidence that Ms. Miller had voluntarily made a significant and knowing contribution to the crime or criminal purpose of any white supremacist organization. The RAD stated:

> The Principal Appellant's attendance at meetings and social events where she met prominent racists, her fundraising for the families of imprisoned white supremacists, and her written contributions to a website, even over a period of several years, does not amount to serious reasons for considering that she was complicit in crime. The evidence is that the Principal Appellant was unaware of a crime or criminal purpose and became disgusted with the poor treatment of women within the movement, as well as the general atmosphere of violence (at para 32).

[25] The RAD relied upon the films dramatizing the Respondents lives as "new evidence" that increased their risk from white supremacists "everywhere in the USA." On the issue of state protection in the US, the RAD found as follows:

> …I acknowledge protection successes, including the early FBI protection for the Appellants, and the 2016 indictment. However, the Appellants' FBI protection has been discontinued since 2014; and the 2016 indictment—not directly related to the Appellants—started with an injudicious boast by the accused, which prompted a sting operation. While many mechanisms exist and were employed in the Appellants' case, I find that they were not adequate to keep this family safe in the USA. Protection orders were not effective because the ex-husband stayed outside their technical boundaries, still able to terrorize the Appellants. Police interventions were not effective because their responses were inconsistent. Some officers insisted that the Principal Appellant should call on them for assistance immediately so they could treat the matter as a criminal one. Others urged her to pursue her complaints through civil court. In any event, the police could not be present around the clock to protect the Appellants. One officer told the Principal Appellant "the order of protection is just a piece of paper." The school authorities broke the secrecy of their home address. The family court let them down by denying their request for a guardian ad litem for the child and by granting unsupervised visitation to the father, whom the child [sic] feared. Their changes of residence were not effective because he was always able to find them. A distinction must be drawn between the significant efforts of the state to provide services, and the inadequate protection that resulted nevertheless (at para 69).

[26] The RAD went on to find:

> …The Appellants have provided clear and convincing proof of the inadequacy of state protection. Requiring the Appellants to wait until the ex-husband actually and physically caught up with them again would be absurd (at para 72).

[27] On September 18, 2020 the RAD set aside the determination of the RPD, and found the Appellants were Convention refugees and persons in need of protection.

IV. RAD Refusal to Reopen in IMM-6608-20

[28] On September 28, 2020, the Minister applied to the RAD to reopen the appeal. The grounds in support of the reopening were that the Minister had not been informed of the Respondents' change in legal counsel as required by Rule 16(2). The Minister argued the failure to notify the Minister of the new issues raised and the new evidence was a breach of procedural fairness. The Minister asked the RAD to exercise its general authority under RAD Rule 52 or Rule 53 to reopen the appeal.

[29] In considering the Minister's application to reopen the appeal, the RAD accepted that the Respondents had failed to provide their new counsel's contact information to the Minister as required. The RAD held that "failure to follow a rule does not necessarily constitute a failure to observe a principle of natural justice".

[30] The RAD noted that Rule 49 only allows appellants to make an application to reopen an appeal, and as the Minister was not the appellant, this Rule did not apply. The RAD held Rule 52 was not applicable because it is intended to address gaps that arise "during the proceedings". The RAD held the presiding member was *functus* as the proceedings were complete.

[31] Further, the RAD determined that Rule 53(b) did not apply as the Minister had opted not to become a party to the RAD proceeding. Further, the RAD reasoned that even if the RAD waived the requirement that applications under Rule 49 be limited to appellants, the application

would fail as the Minister had not established that there was a failure to observe a principle of natural justice.

[32] The RAD stated:

> [27] …Despite this participation in the lower tribunal proceeding, the Minister elected not to particpate [sic] in the RAD appeal. The Minister elected, in other words, not to be a party to the RAD proceeding. Having made this election, the Minister tacitly accepted that his participatory rights in the RAD proceeding would be limited to those specifically enumerated in the Rules – they do not extend to the larger constellation of rights accruing to parties, pursuant to the principles of natural justice.
>
> [28] Coming back to the Respondents' failure to provide notice of their new counsel, I view this as a relatively narrow failure to comply with the Rules, rather than a failure to disclose information to a *party*, which is a prerequisite to the right to be heard and a basic principle of natural justice. The Minister argues that the lack of notice of new counsel deprived him of the right to decide whether to intervene in, and become a party to, the proceedings, which he is entitled to do as of right. However, the Minister did not set out *why* the mere fact of a new legal representative was so important to his interests that it would impact his decision as to whether to participate in the proceedings.
>
> [29] Rather than the issue of new counsel, it seems that the crux of the Minister's concern relates to the fact that he was not provided with updated submissions and new evidence that was adduced by the Respondent [sic], pursuant to Rule 29 of the RAD Rules. Once again, however, the lack of disclosure to the Minister was a result of his own decision not to participate in the RAD proceedings…. [Emphasis in original]

[33] The RAD declined the Minister's request to reopen the appeal.

V. Issues and Standard of Review

[34] The issues for determination on these judicial review applications are as follows:

(i) Was the process followed in IMM-4953-20 fair to the Minister?

(ii) Is the state protection finding of the RAD in IMM-4953-20 reasonable?

(iii) Was the RAD refusal to reopen the appeal in IMM-6608-20 reasonable?

[35] For issue (i), when considering the fairness of the process followed by the RAD, the Court is to conduct its own analysis of the process followed by the RAD, and determine for itself whether the process was fair having regard to all the relevant circumstances, including the factors identified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 28 [*Baker*]. This undertaking is akin to a standard of correctness review (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]).

[36] Issues (ii) and (iii) above are considered on the reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Brown v Canada (Citizenship and Immigration)*, 2018 FC 1103 at para 24).

[37] On a reasonableness review the Court asks "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision". The party challenging the decision bears the burden of showing that it is unreasonable (*Vavilov* at paras 99-100).

VI. Analysis

A. *Was the process followed in IMM-4953-20 fair to the Minister?*

[38] The Minister argues that the failure of the RAD to advise the Minister of the Respondents' new legal counsel and that new submissions had been made that changed the nature of the appeal was a breach of procedural fairness.

[39] Rule 2(2) and Rule 3(2) of the RAD Rules require the RAD to provide the Minister with a copy of the Notice of Appeal, and the appellant's record. Furthermore, Rule 3(3) says that the appellant's record must include the appellant's full and detailed submissions, and a statement on whether they will be relying on new evidence.

[40] It is not disputed that the Minister did not receive the Supplementary Memorandum of Law and Argument on appeal and the request to file new evidence that was filed on behalf of the Respondents on July 28, 2020.

[41] For context, the relevant timelines of the steps taken to advance the Respondents' appeal of the RPD decision is instructive:

- The RPD decision was issued on June 7, 2018.
- On June 19, 2018, the Respondents' legal counsel, Mr. Loebach, filed a Notice of Appeal with the RAD.
- On August 23, 2018, Mr. Loebach wrote to the RAD to request that he be removed as legal counsel of record for the Respondents on the appeal.

- On October 7, 2018, Ms. Miller, acting on her own behalf, made a written request to the RAD for an extension of time to perfect the appeal.

- On January 11, 2019, the FCJ Refugee Center advised the RAD they would be assisting the Respondents in filing the appeal and requested a further extension of time to file the Appeal record.

- On February 4, 2019, the filing of the appeal was perfected.

- In June 2020, the RAD contacted the Respondents' legal counsel, the FCJ Refugee Center, by telephone, and requested further submissions.

- On July 28, 2020, with new legal counsel, the Respondents filed a Supplementary Memorandum of Law and Argument on appeal and a request to file new evidence.

[42] When the RAD appeal was perfected in February 2019, and based upon the materials filed, the Minister elected not to intervene in the appeal. The Respondents were not seeking to file new evidence and their Appeal Memorandum raised two issues with the RPD decision: (i) that the RPD displayed a reasonable apprehension of bias; and (ii) that the RPD erred in making negative credibility inferences.

[43] However, in June 2020, some 16 months after the appeal was perfected, the RAD contacted the Respondents' legal counsel, the FCJ Refugee Center, by telephone, and requested further submissions. As the FCJ Refugee Center was not available to assist, the Respondents' retained their current legal counsel to make the additional submissions requested by the RAD.

[44] On July 28, 2020, the Respondents filed a Supplementary Memorandum of Law and Argument on appeal which included a request to file new evidence.

[45] As the Minister had elected not to intervene in the appeal in February 2019, after that date, the Minister was not informed that:

(i) in June 2020, the RAD itself requested further submissions;

(ii) the Respondents had retained new legal counsel; or,

(iii) on July 28, 2020, a Supplementary Memorandum of Law and Argument and new evidence was filed with the RAD on behalf of the Respondents.

[46] With respect to the new evidence, the RAD accepted the following as noted in paragraph 9 of the decision:

— Exhibit 1 Letter from the Principal Appellant's sister,

— Exhibit 2 Letter from an adult daughter of the Principal Appellant,

— Exhibit 3 Letters from the Principal Appellant's sister-in-law and bother,

— Exhibit 4 Letter from the Principal Appellant's mother,

— Exhibit 5 Life Story Rights Option/Purchase and Consulting Agreement,

— Exhibit 6 Email correspondence between the Principal Appellant and a film producer,

— Exhibit 8 Map of hate groups across the United States in 2019, and

— Exhibit 9 Film clips and interviews.

[47] Part of the rational of the RAD for admitting the new evidence is explained at paragraph 10 of as follows:

> I admit the letters from members of the Appellants' family, Exhibits 1 to 4. Each of these letters postdates the RPD rejection, as well as the perfection of the appeal. They provide current

> information from close family members about: harassment by the Principal Appellant's ex-husband, his family, and his former gang members; heightened risk caused by the release of films based on the Appellants' lives; and the Principal Appellant's attitude toward "race".

[48] Further at paragraph 13, the RAD states:

> Exhibits 1-6 and 8-9 are new, credible as to source and circumstances, and relevant to the risk faced by the Appellants. They meet the criteria in the statute and the jurisprudence for admission as new evidence.

[49] The new evidence included information on the film "Skin" which was based upon the life of Mr. Widner and Ms. Miller. Because of the release of this film, the Respondents argued that they were at risk of Neo-Nazi members and would not be safe anywhere in the US.

[50] The Minister argues that when new legal counsel was retained and when new evidence and submissions were filed, there was a duty on the RAD to give notice to the Minister. The Minister argues that this duty arises even if the Minister has not intervened, as Rule 4(1) of the RAD Rules allows the Minister to intervene in an appeal at any time before the RAD makes a decision.

[51] The procedural fairness rights of the Minister were confirmed in C*anada (Citizenship and Immigration) v Alazar*, 2021 FC 637 [*Alazar*] where the Court notes:

> [83] These provisions leave no room for doubt that the Minister has procedural fairness rights before the RAD even in cases where he has not (or has not yet) intervened. Central to these rights is the right to notice of material developments as they occur, from the commencement of an appeal through to its conclusion. Crucially, such notice allows the Minister to make informed and timely

> decisions about whether to intervene in a pending appeal and whether to pursue an application for leave and judicial review of a decision once it is made. Thus, I cannot agree with the respondents that, having opted not to intervene after receiving their Record, the Minister had no right to notice of a subsequent development affecting the determination of the appeal and the respondents' claims for protection.
>
> …
>
> [87] …when, as happened here, the case has materially shifted away from the RPD's decision and the appeal as it was framed by the respondents, the RAD breached the requirements of procedural fairness by deciding the appeal on the basis on which it did without first giving the Minister notice that a new issue was in play and an opportunity to be heard.

[52] The Respondents accept that the Minister did not receive notice of the change in legal counsel and, therefore, also did not receive the updated appeal submissions or the new evidence; however, they deny that there has been a breach of procedural fairness. They argue that unlike in *Alazar*, the new submissions and evidence filed here did not raise new issues beyond those considered by the RPD.

[53] With respect to the case advanced by the Respondents in their appeal of the RPD decision, it is instructive to compare the original appeal submissions filed in February 2019 as against the supplementary submissions filed in July 2020.

[54] In their February 2019 appeal submissions, the Respondents did not seek to have new evidence considered. With respect to their challenge to the RPD decision, they raised bias issues and challenged the credibility findings of the RPD. Before the RPD, the risk to the Respondents was directly related to Ms. Miller's ex-husband, his family, and his former gang associates.

[55] However, in the supplementary appeal submissions filed in July 2020, the Respondents claimed that Ms. Miller is at risk throughout the entire US because of the white supremacy movement. In addition to supplementary submissions, the Respondents also filed significant new evidence that was not before the RPD.

[56] A comparison of the original appeal submissions against the supplementary appeal submissions and the new evidence, demonstrates that the Respondents took a different approach to the risk claim before the RAD. In support of their risk claim, they were relying upon significant new evidence that was not considered by the RPD. This, in my view, represented a material change in the Respondents' case.

[57] Here, as in *Alazar*, where the case before the RAD materially shifted away from the case that was presented to the RPD, it is fair to say that the Minister was taken by surprise that the appeal was decided on the ground that it was (at para 85).

[58] The failure to give the Minister notice and the opportunity to participate in the appeal is a breach of procedural fairness.

[59] The Respondents argue that any breach of procedural fairness was minimal, and is less than the prejudice the Respondents would face if the matter is returned to the RAD. In my view, this position is without merit as it fails to recognize that the question of procedural fairness focuses on the process undertaken by the RAD and not the ultimate decision reached by the RAD.

[60] Here, the Minister was not notified that the RAD itself sought further submissions from the Respondents. Further the Minister was not notified of the change in the Respondents' legal counsel. These failures to give the Minister "notice" meant that the Minister was also not apprised of the new submissions and the new evidence filed on behalf of the Respondents. In sum, the Minister was not given an opportunity to make an informed decision as to whether to intervene in the appeal. This is not the process outlined in the RAD Rules, and is not a process that satisfies the *Baker* factors (*Vavilov* at para 77).

[61] I agree with the Minister that the process followed by the RAD was not in keeping with the procedural fairness rights of the Minister.

B. *Is the state protection finding of the RAD in IMM-4953-20 reasonable?*

[62] The Minister argues the RAD misapplied the law on state protection.

[63] The starting point of the analysis of state protection is the presumption that states are capable of protecting their own citizens. This was confirmed by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at page 725:

> …nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus, such as that recognized in Lebanon in *Zalzali*, it should be assumed that the state is capable of protecting a claimant.

[64] As noted in *Hinzman v Canada (Citizenship and Immigration),* 2007 FCA 171, there is a heavy burden on a party who is attempting to rebut the presumption that the US is capable of protecting them (at para 46).

[65] In addition, the protection offered by a state need only be adequate and does not have to be perfect, and, even with local police failures, this does not amount to a lack of state protection (*Morales Lozada v Canada (Citizenship and Immigration),* 2008 FC 397 at paras 27-28 [*Morales*].

[66] The Respondents' argue there is an abundance of evidence that their access to state protection in the US had not been effective. They rely on *Mendivil v Canada (Secretary of State),* 1994 CarswellNat102 (FCA) [*Mendivil*], where the Court recognized that Peru, while under a state of emergency, was unable to effectively act against a guerilla group. The *Mendivil* case is clearly factually distinct from this case as there is no state of emergency in effect in the US.

[67] Similarly, the cases relied upon by the RAD to support its finding of a lack of state protection in the US including *X(Re),* 2017 CanLII 147775, and *Banda v Canada (Citizenship and Immigration),* 2015 FC 474, are factually distinguishable. Furthermore, they are not cases that involve an assessment of the ability of the US to provide state protection to its citizens.

[68] I acknowledge that the Respondents have been the victims of domestic violence; however, I agree with the Minister that the RAD erred in its state protection analysis. What the

RAD characterizes as “failures” of the US to protect the Respondents are, in fact, demonstrative of the fact that the US can and did provide the Respondents with “adequate” state protection. The RPD noted 21 instances where state protection was afforded to the Respondents while they were in the US including: assistance from the FBI; assistance from police who issued a no trespassing order, and who arrested and jailed Mr. Widner; assistance from courts, who issued no contact orders; and assistance from domestic violence shelters.

[69] In their analysis, the RAD fell into error by equating “perfect state” protection with “adequate” state protection. That is not the applicable test. Accordingly, the finding by the RAD that the US cannot afford the Respondents adequate state protection when the evidence clearly demonstrated otherwise is unreasonable.

C. *Was the RAD refusal to reopen the appeal in IMM-6608-20 reasonable?*

[70] In refusing the request to reopen the RAD determined that a failure to comply with Rule 16(2) did not constitute a breach of natural justice. The RAD stated: “it seems that the crux of the Minister’s concern relates to the fact that he was not provided with updated submissions and new evidence that was adduced by the Respondent [sic], pursuant to Rule 29 of the RAD Rules. Once again, however, the lack of disclosure to the Minister was a result of his own decision not to participate in the RAD proceedings.”

[71] As noted above, the appeal record upon which the RAD made its decision, is not the appeal record that was served on the Minister. In considering the request to reopen, the RAD failed to assess the Minister’s argument that the new submissions and the new evidence

constituted new issues, and substantially changed the nature of the appeal. Accordingly, for the RAD to say that the Minister choose not to participate, fails to acknowledge that the appeal record changed substantially between February 2019 and July 2020.

[72] As noted above, the Minister was entitled to notice of the Respondents' new legal counsel. This notice would have alerted the Minister to the new submissions and new evidence. I have concluded that the failures to provide the Minister with this notice was a breach of procedural fairness and, therefore, the decision in IMM-4953-20 was reached in a procedurally unfair manner and must be re-determined.

[73] As I have found a breach of procedural fairness in the underlying judicial review, it follows that the decision of the RAD in IMM-6608-20 is unreasonable. However, I decline to remit the matter for redetermination as it would serve no useful purpose (*Vavilov* at para 142).

VII. Conclusion

[74] The Minister's application for judicial review in IMM-4953-20 is granted. The decision of the RAD is set aside and the matter is remitted for redetermination by a different decision-maker with the Minister given full rights to participate.

[75] Although I have found the RAD's decision in IMM-6608-20 to be unreasonable, it would serve no useful purpose to have the matter remitted for reconsideration given my finding in IMM-4953-20.

[76] There is no question for certification on either application.

JUDGMENT IN IMM-4953-20 AND IMM-6608-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review in IMM-4953-20 is granted and the decision is set aside and the matter remitted for redetermination;
2. The application for judicial review in IMM-6608-20 is granted and the decision is set aside; however, it would serve no useful purpose to remit the matter for redetermination; and,
3. There is no certified question.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4953-20 and IMM-6608-20
STYLE OF CAUSE:	*MCI v Miller et al*
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 9, 2022
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	JULY 28, 2022

APPEARANCES:

Ian Hicks	FOR THE APPLICANT
Karim Escalona	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, ON	FOR THE APPLICANT
Lewis & Associates Toronto, ON	FOR THE RESPONDENTS