

Federal Court



Cour fédérale

**Date: 20240702**

**Docket: IMM-3474-23**

**Citation: 2024 FC 1036**

**Toronto, Ontario, July 2, 2024**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**YUSUF TOLGA ALVAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board [RPD], dated March 3, 2023, refusing the Applicant's request that his claim for refugee protection be reopened.

[2] The sole issue for determination on this application is whether the RPD's decision was reasonable. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[3] Applications to reopen refugee claims are governed by Rule 62 of the *Refugee Protection Division Rules*, SOR/2012-256, the relevant provisions of which provide as follows:

**Factor**

(6) The Division must not allow the application unless it is established that there was a failure to observe a principle of natural justice.

**Factors**

(7) In deciding the application, the Division must consider any relevant factors, including

(a) whether the application was made in a timely manner and the justification for any

**Élément à considérer**

(6) La Section ne peut accueillir la demande que si un manquement à un principe de justice naturelle est établi.

**Éléments à considérer**

(7) Pour statuer sur la demande, la Section prend en considération tout élément pertinent, notamment :

a) la question de savoir si la demande a été faite en temps opportun et, le cas échéant, la justification du

delay; and

**(b)** the reasons why

**(i)** a party who had the right of appeal to the Refugee Appeal Division did not appeal, or

**(ii)** a party did not make an application for leave to apply for judicial review or an application for judicial review.

retard;

**b)** les raisons pour lesquelles :

**(i)** soit une partie qui en avait le droit n'a pas interjeté appel auprès de la Section d'appel des réfugiés,

**(ii)** soit une partie n'a pas présenté une demande d'autorisation de présenter une demande de contrôle judiciaire ou une demande de contrôle judiciaire.

[4] According to Rule 62, the RPD's power to reopen a refugee claim is very limited. A finding that there has been a failure to observe a principle of natural justice (which this Court has interpreted to also include a breach of procedural fairness) is a necessary condition for allowing such an application. However, depending on other relevant factors (e.g., an unexplained delay in bringing the application to reopen), a failure to observe a principle of nature justice or breach of procedural fairness may not be sufficient [see *Huseen v Canada (Citizenship and Immigration)*, 2015 FC 845 at paras 14-16, 20; *Attalla v Canada (Citizenship and Immigration)*, 2019 FC 771 at paras 11-12; *Hegedus v Canada (Citizenship and Immigration)*, 2019 FC 428 at paras 21-25].

[5] While the RPD did consider the grounds the Applicant raised in support of his application, nowhere in the RPD's decision does the RPD set out the test that it applied in denying the Applicant's application to reopen. There is no reference to Rule 62, nor is there any consideration of whether there has been a failure to observe a principle of natural justice or

breach of procedural fairness, which was the central question before the RPD for determination. Surprisingly, those words appear nowhere in the RPD's decision. Accordingly, I cannot find that the decision exhibits the necessary degree of transparency and intelligibility required of a reasonable decision. As such, the application for judicial review shall be granted, the decision of the RPD set aside and the matter remitted for redetermination by a different decision-maker.

[6] The parties propose no question for certification and I agree that none arises.

**JUDGMENT in IMM-3474-23**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated March 3, 2023, is set aside and the matter is remitted for redetermination by a different decision-maker.
3. The parties proposed no question for certification and none arises.

“Mandy Aylen”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3474-23

**STYLE OF CAUSE:** YUSUF TOLGA ALVAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** ST. JOHN'S, NEWFOUNDLAND

**DATE OF HEARING:** MARCH 6, 2024

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** JULY 2, 2024

**APPEARANCES:**

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