Federal Court  Cour fédérale

Date: 20260413

Docket: IMM-22761-24

Citation: 2026 FC 484

Ottawa, Ontario, April 13, 2026

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

HECTOR MANUEL BASTIDAS RENTERIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Hector Manuel Bastidas Renteria [Applicant], is a citizen of Mexico who alleges a fear of persecution in his country of origin. He seeks judicial review of a decision dated November 8, 2024, where the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] rejected his refugee claim [Decision] on the grounds that he is not a refugee or

a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RAD found that there had been a breach of procedural fairness by the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD]. However, the RAD concluded that the breach of procedural fairness was not determinative and that it had been "cured by counsel's written submissions to the RAD" on appeal. The RAD confirmed the RPD's conclusion that the Applicant has a viable internal flight alternative [IFA].

[3] For the reasons set out below, the application for judicial review is granted.

II. Background and Decision Under Review

[4] The Applicant is a citizen of Mexico. The Applicant lived in Culiacan, Mexico, where he worked as an administrative manager for a scrap metal company. One of his responsibilities was to go to the bank to cash checks received by the company.

[5] In January 2023, the Applicant was attempting to cash a large check at a bank in Culiacan, when he was approached by a group of men he claimed are members of the Sinaloa Cartel. These men threatened him, telling him that they knew where he worked and asking him for all his money. They attempted to push him towards their vehicle but left after realizing that the Applicant did not have any money on him, warning him not to seek help from the police. After this incident, the Applicant reported seeing vans with tinted windows circling his place of work.

[6] The Applicant left Mexico on March 1, 2023, and arrived in Canada on the same day. He submitted an asylum claim on May 14, 2023.

A. *RPD Decision*

[7] On May 9, 2024, the Applicant attended an RPD hearing. He was not represented by counsel at the time. The Board Member raised this fact at the beginning of the hearing, and the Applicant did not express a desire to adjourn the hearing to be assisted by counsel. On May 24, 2024, the RPD rejected the Applicant's refugee claim, finding that he was not a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the IRPA, as he had a viable IFA in Merida, Mexico.

B. *RAD Decision*

[8] On July 25, 2024, now represented by counsel, the Applicant sought an appeal of the RPD's decision before the RAD. In his notice of appeal [NOA], he claimed that the RPD breached his right to procedural fairness during the hearing by (1) failing to adequately ensure he understood the consequences of proceeding without counsel; (2) not sufficiently explaining the hearing process; (3) not conducting a sufficiently thorough hearing, based on the duration of the hearing; and, (4) failing to provide him with an opportunity to fully present his case. The Applicant sought to quash the RPD's decision or to refer the matter back to the RPD. The Applicant did not request a hearing before the RAD under paragraph 110(6) of the IRPA or seek to submit new evidence under paragraph 110(4) of the IRPA.

[9] The RAD rejected most of the grounds related to procedural fairness. However, the RAD concluded that there had been a breach of procedural fairness in regard to the Applicant having the opportunity to fully present his case. Specifically, the RPD had described the hearing process to the Applicant and stated that he would have an opportunity to make any final submissions about his claim. However, the question asked by RPD at the end of the hearing limited the Applicant to only presenting information which had not already been discussed. Citing *Karqeli v Canada (Citizenship and Immigration)*, 2015 FC 475, the RAD found that the RPD deprived the Applicant of the opportunity to present his case through final arguments. The RAD concluded that this failure denied the Applicant the chance to fully present his case.

[10] The RAD stated that a breach of procedural fairness is normally fatal to a decision, but that it can be overlooked "only if it clearly had no material effect on the decision" (citing *Iqbal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1388 at para 18; *Nagulesan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1382 at para 17).

[11] The RAD considered the record before it, notably the NOA, and concluded that the Applicant's counsel "made extensive written submissions at the RAD, including on [the] IFA." Accordingly, the RAD found the submissions by counsel cured the breach of procedural fairness by giving the Applicant the opportunity to be fully heard. Considering the evidence submitted, the RAD then concluded that the Applicant had not shown that his agents of persecution would have the motivation to seek him out in the IFA, nor that he had the profile of someone who would be persecuted in a different part of Mexico. The RAD also found that the IFA was objectively reasonable given the Applicant's age, gender, bodily ability, language skills,

education, and work experience, and the economic conditions in the IFA. On these grounds, the RAD confirmed the RPD's decision.

[12] The RAD's Decision is the subject of this judicial review.

III. Issues and Standard of Review

[13] The issue on judicial review is whether the RAD's Decision is reasonable. The Applicant has also alleged that the RAD itself breached procedural fairness by not giving him an opportunity to submit complete observations regarding an IFA.

[14] The parties submit that the standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]). The Respondent submits that the standard of reasonableness also applies to the RAD's analysis regarding procedural fairness issues arising from the RPD hearing (citing *Singh v Canada (Citizenship and Immigration),* 2023 FC 1078 at para 12; *Fragoso Velazquez v Canada (Citizenship and Immigration),* 2022 FC 58 at paras 7–8). I agree.

[15] On judicial review, the Court must consider whether a decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (*Vavilov* at paras 125–126). The party

challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[16] The parties were asked to provide post-hearing submissions, to address Justice Gascon's decision in *Nwosu v Canada (Citizenship and Immigration*), 2025 FC 1835 [*Nwosu*] that was issued shortly before the hearing of this matter.

[17] As a general rule, breaches of procedural fairness before the RPD will render that decision invalid and require that a new hearing be ordered (*Nwosu* at para 34, citing *Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643 at para 23; *Girouard v Canada (Attorney General)*, 2020 FCA 129 at para 95).

[18] However, there are a number of exceptions to this principle, in which case, the decision is not sent back to the RPD (*Nwosu* at paras 34–37):

> (1) If the outcome was inevitable;
>
> (2) If the appellate process genuinely cured the defect, in consideration of the following factors:
>
> > (a) The gravity of the error committed at first instance;
> >
> > (b) The likelihood that the prejudicial effects of the error may also have permeated the rehearing;
> >
> > (c) The seriousness of the consequences for the individual;
> >
> > (d) The width of the powers of the appellate body; and,

> (e) Whether the appellate decision is reached only on the basis of the material before the original tribunal or by way of rehearing de novo.

[19] The Respondent submits that although *Nwosu* is good law, it is distinguishable and not binding. The Respondent notes in the Applicant's case, he had a "clean-slate opportunity" to present his case and new evidence to the RAD, as opposed to the applicant in *Nwosu*, who had to rely on her mother's record.

[20] The Respondent explained that the Applicant had the burden to challenge every element of the RPD's conclusion on appeal. Unlike in *Nwosu*, the breach in the Applicant's case was much narrower, and he had ample opportunity to complete it. The RAD, in remedying the narrow breach, reasonably found that the Applicant had had the opportunity to make additional submissions in support of his claim.

[21] However, and despite the able arguments of the Respondent's counsel, in applying the applicable legal principles summarized in *Nwosu* to the present case, I find that the RAD erred in its conclusion that its process cured the RPD's breach of procedural fairness.

[22] The breach before the RPD was not immaterial. In fact, the RAD stated that the RPD needed to clearly state that the Applicant could make submissions, explain the purpose of submissions in the hearing process, including the distinction between evidence gathering and argument portions of the hearing, identify the issue(s) that might be determinative of the claim, and let the Applicant know when the time for submissions had arrived. The RPD did not do so.

Rather, the RAD found that the manner in which the RPD proceeded at the end of the hearing reasonably precluded any comments by the Applicant about the determinative issue in the claim.

[23] The RAD then found that counsel had made "extensive written submissions" allowing the Applicant to be fully heard on the determinative issue of the IFA. Yet, having reviewed the record before the RAD, I agree with the Applicant that it is unclear how his written submissions cured the breach of procedural fairness. In fact, the Applicant's submissions before the RAD only briefly addressed the merits of the case and mostly focused on the issue of procedural fairness.

[24] While omitting to present complete submissions on appeal is not a prudent approach, it remains that the RAD arrived at its decision based on a flawed record. As the Court in *Nwosu* explains, the RAD can cure the breach by "admitting new evidence to fill the evidentiary gap" and giving the Applicant proper notice (at para 52). Here, the RAD did not do so. Accordingly, I cannot agree that the RAD had cured the breach of procedural fairness that occurred before the RPD.

[25] Similarly to Justice Gascon's analysis in *Nwosu* at paragraphs 54 to 55, the RAD in the Applicant's case had not cured the breach, as it erred in its analysis of whether the breach could be remedied without referring the matter back to the RPD or requesting further submissions from the Applicant. In this case, after the RAD had determined that a material breach had occurred, it had to ensure that its decisions was not based on a flawed record.

[26] The RAD's characterization of the Applicant's "extensive submissions" in the appeal is not consistent with the record that was before it. Therefore, the RAD relied on an incomplete record in continuing its analysis.

[27] A finding of inevitability is also a high threshold and only applies when "there is no doubt about the result and remitting the case would serve no useful purpose" (*Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 144 (SCC)). This is not the case here.

[28] The RAD's conclusion, that the outcome was "inevitable", was based on an incomplete record. As a result, "the Court does not know what evidence would have been presented, it is not possible to tell what the outcome would have been" (*Nwosu* at para 45).

[29] Based on the circumstances in this case, the Decision is not reasonable with respect to the RAD's conclusion that the breach of procedural fairness before the RPD was cured through counsel's written submissions on appeal. The conclusion was not supported by the record before the RAD. As such, the Decision does not bear the hallmarks of justification, intelligibility and transparency.

[30] The matter is remitted to the RAD for redetermination, where the RAD is in turn entailed to return the matter to the RPD for redetermination in light of the breach of procedural fairness that the RAD had previously identified (*Nwosu* at para 56).

V. Conclusion

[31] The application for judicial review is granted.

[32] The parties do not propose any question for certification, and I agree that in these circumstances, none arise.

JUDGMENT in IMM-22761-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The RAD decision is set aside. The matter is referred back to a new decision-maker for redetermination in accordance with the terms of this Judgment.
3. There is no question for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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