Federal Court  Cour fédérale

Date: 20191120

Docket: IMM-1407-19

Citation: 2019 FC 1472

Ottawa, Ontario, November 20, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

ANDRE VALENTINO SMITH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review brought by a Bahamian national of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, which dismissed the Applicant's appeal and confirmed a decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection

pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant initially applied for refugee protection with his mother as the Principal Applicant and two other relatives. Their application was dismissed by the RPD. The four together appealed the RPD decision to the RAD and together filed this application for judicial review of the RAD's decision. However, the other three applicants discontinued their application before leave was granted, for reasons unknown.

II. Facts

[3] The Applicant is a young man from the Bahamas. The Applicant and his family initially filed for refugee protection on the basis they feared they were at risk in the Bahamas because of the Applicant's mother's previous relationship with a gang member [the Ex-Boyfriend]. The Applicant also claimed to be a victim of gang violence at his school.

[4] The Applicant's mother had been in an on-and-off relationship with the Ex-Boyfriend for several years. The Applicant alleges that threats to the Ex-Boyfriend and his family began in or around July, 2017 while the Ex-Boyfriend was serving a two-year prison sentence for firearm related offences. He claims many of the Ex-Boyfriend's friends and the Ex-Boyfriend's brother were murdered following the threats; indeed four friends were murdered as was the brother. The Applicant's mother heard about the threats and confirmed them with the Ex-Boyfriend who called her using a cell-phone from prison.

[5] The Applicant alleges that shortly after hearing about the threats, the Applicant's mother noticed she was being followed. The mother also observed her apartment door had been tampered with. She was told by a knowledgeable friend not to make a formal complaint about the attempted break-ins, and to move away from her apartment and the Bahamas.

[6] The Applicant also alleges he was mugged in December, 2016 by members of another gang at his school when he refused to hand over lunch money. His friend was stabbed in the same incident. This occurred before he left for Canada and formed part of his claim for refugee protection. The month following the attack, the Applicant came to Canada as a visitor, and his mother came later that same year.

[7] The RPD heard the matter in December, 2017. In a written decision dated in January, 2018, the RPD rejected the claims for protection. The RPD found that the Applicant did not have a nexus to a Convention ground of complaint, and lacked a forward facing personalized risk. The Applicant and his family appealed the RPD's decision to the RAD in April, 2018.

[8] The Applicant and his family submitted new evidence for the RAD's consideration, namely, threatening text messages from an unknown number and text messages from the Ex-Boyfriend to the mother. Both sets of text messages were sent to the mother's phone. The text messages are dated shortly after the RPD's decision was delivered to the Applicant and his family. The Applicant and his family requested an oral hearing before the RAD in accordance with subsection 110(6) of the *IRPA*.

III. Decision Under Review

[9] The RAD upheld the RPD's decision that the Applicant and his family were not Convention refugees or persons in need of protection in a decision dated February 12, 2019 [Decision].

[10] The RAD admitted the text messages as new evidence, but declined the request for an oral hearing saying:

> [9] The Appellants have requested an oral hearing based on this new evidence.
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> [10] The RAD may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection 110(3) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee protection claim, and, if accepted, would justify allowing or rejecting the refugee protection claim.
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> [11] The RAD is able to consider such evidence and assess its probative value without holding an oral hearing. Moreover, as discussed below, the new evidence is assigned little weight and therefore is not capable of warranting an oral hearing. Therefore, the RAD chooses not to hold a hearing under subsection 110(6).

[11] In dismissing the appeal on the merits, the RAD concluded:

> **Summary**
>
> [43] The RAD has reviewed the earlier noted findings and finds that the Appellants have not established that they face a clear and present risk of death in the Bahamas, or that they face a personalized risk of harm in the Bahamas, as argued in their appeal.
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> [44] The RAD notes that the Appellants have not provided submissions with respect to the RPD findings specific to the associate Appellants.
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> …

> [46] The RPD found the principal Appellant's son (associate Appellant) did not have a forward facing risk relating to family membership with the principal Appellant given the findings regarding the principal Appellant. The RPD further found that that he did not face a personalized risk from gang members at his former school in the Bahamas as he was not sought out by any gang members outside of school; his friend who was stabbed at the school when the associate Appellant was asked for his lunch money by gang members has continued attending the same school and has not been directly targeted again; and the associate Appellant did not provide a direct response when asked how he knows the gang members are mad at him specifically, only noting that his friends have told him that the situation has gotten worse and that there is more than one gang at the school. The RPD found that the risk to the associate Appellant is a generalized risk of gang violence in the Bahamas faced by the population of the country. The RAD has reviewed the record and agrees with the RPD's assessment and findings.

IV. Issues

[12] The Applicant raises the following issues:

a. Did the RAD breach procedural fairness by failing to put its concerns and credibility findings to the Applicant?

b. Did the RAD make unreasonable findings when conducting an analysis of whether the Applicant faced a forward-facing, personalized risk?

c. Did the RAD err by not convening an oral hearing?

V. Standard of Review

[13] In *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 57, 62, the Supreme Court of Canada holds that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question."

[14] I agree with the Applicant that the first issue, whether the RAD failed to put its concerns and credibility findings to the Applicant, is one of procedural fairness. Case law establishes that the duty of procedural fairness requires the RAD, when considering an issue not raised by an appellant or by the RPD, to provide the appellant with an opportunity to make submissions on the issue. See *Ehondor v. Canada (Citizenship and Immigration)*, 2016 FC 1253, per Boswell J at para 13.

[15] Correctness is the appropriate standard of review when approaching issues of procedural fairness and natural justice: *Poggio Guerrero v Canada (Citizenship and Immigration)*, 2010 FC 384 per Russell J at para 19. In *Dunsmuir* at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[16] The RAD's decision whether the Applicant faced a forward-facing, personalized risk was a finding of mixed fact and law and must be reviewed for reasonableness: *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955, per Walker J at para 16.

[17] Likewise, the RAD's decision in accordance with subsection 110(6) of the *IRPA* was based on its assessment of whether the criteria for this provision were established and if so, whether to exercise its discretion to hold an oral hearing, and is therefore reviewed on the

standard of reasonableness: *Sanmugalingam v Canada (Citizenship and Immigration)*, 2016 FC 200, per Kane J at para 36.

[18] In *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, per Gascon J at para 55, the Supreme Court of Canada explains what is required of a court reviewing on the reasonableness standard of review:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.

[19] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

VI. Parties' Positions and Analyses

A. *Did the RAD breach procedural fairness?*

[20] The Applicant submits the RAD breached its duty of procedural fairness by failing to put its concerns, including credibility concerns, to the Applicant, and that as a result, the Applicant was deprived a right to meaningfully respond to the RAD's concerns.

[21] The RAD has a duty to allow parties to address pivotal new matters not raised by the RPD. As stated by Justice Diner in *Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074, at para 14.

[22] The Applicant submits he did not address credibility issues in submissions before the RAD because these issues were not identified by the RPD. The Applicant notes the RPD only dealt with the following issues: "(1) Have the claimants established their identity? (2) Is there a nexus to one of the Convention grounds in the definition of a Convention refugee? (3) Is there a forward-facing personalized risk to these claimants in the Bahamas?"

[23] I should add the Applicant's memorandum filed with the RAD asserted the RPD has not made any credibility findings against the mother, and submitted that "we are then to presume that [the mother] was credible and her testimony was true." The Applicant had also written that "'Credibility' is an issue in every refugee claim, and it was stated to be so herein, both at the beginning and at the conclusion of the oral testimony phase of this claim."

[24] While I note the RPD in fact made no reference to credibility, nor use the term itself, the Applicant alleges the RAD made four ‘disguised’ adverse credibility findings against the mother, and submits the RAD erred by making these findings without providing prior notice to the Applicant.

[25] First, the RAD went beyond the conclusion of the RPD that the Applicant would not be considered a member of the Ex-boyfriend’s family, and questioned the nature of the relationship between the two. Second, the RAD had concerns about the Applicant’s mother’s testimony regarding the Ex-boyfriend’s brother (who was murdered). Third, the RAD had concerns about the threatening incidents and the documentary evidence provided to support the occurrence of these incidents. The Applicant submits the RAD clearly made credibility findings that went beyond the RPD’s finding that on a balance of probabilities it was not established the incidents that occurred were related to the threats made to the Ex-Boyfriend. The Applicant notes the RPD did not question whether the incidents occurred, but rather their connection to the threats against the Ex-Boyfriend. Fourth, the Applicant submits the RAD made a negative credibility finding when it noted the Applicant’s mother stated in her refugee intake interview that she did not fear persecution in the Bahamas but that she had to stay with her daughter.

[26] In summary, the Applicant submits the RAD breached procedural fairness by raising these concerns with the Decision without providing the Applicant notice and an opportunity to respond.

[27] The Respondent disagrees with the Applicant’s submissions.

[28] In the first place, the Respondent says that the matters discussed by the RAD and objected to by the Applicant are not credibility findings at all and therefore no such duty arises. Instead, and I agree, in my respectful view the RAD was simply assessing the evidence in this case as part of its overall role to intervene when the RPD is wrong in fact or in law, as required by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 per Gauthier, Webb, Near JJA at paras 78 and 103 [*Huruglica*]:

> [78] At this stage of my analysis, I find that the role of the RAD is to intervene when the RPD is wrong in law, in fact or in fact and law. This translates into an application of the correctness standard of review. If there is an error, the RAD can still confirm the decision of the RPD on another basis. It can also set it aside, substituting its own determination of the claim, unless it is satisfied that it cannot do either without hearing the evidence presented to the RPD: paragraph 111(2)(b) of the *IRPA*.
>
> …
>
> [103] I conclude from my statutory analysis that with respect to findings of fact (and mixed fact and law) such as the one involved here, which raised no issue of credibility of oral evidence, the RAD is to review RPD decisions applying the correctness standard. Thus, after carefully considering the RPD decision, the RAD carries out its own analysis of the record to determine whether, as submitted by the appellant, the RPD erred. Having done this, the RAD is to provide a final determination, either by confirming the RPD decision or setting it aside and substituting its own determination of the merits of the refugee claim. It is only when the RAD is of the opinion that it cannot provide such a final determination without hearing the oral evidence presented to the RPD that the matter can be referred back to the RPD for redetermination. No other interpretation of the relevant statutory provisions is reasonable.

[29] I agree with the Respondent that the Applicant confuses and to an extent conflates the RAD's weighing of evidence with raising new issues related to credibility for which notice might be needed. The four issues raised by the Applicant are findings related to whether the Applicant

provided sufficient evidence to establish a nexus to a Convention ground and/or his alleged personalized risk. In my view, the RAD did not doubt the credibility of the Applicant's mother's belief that her family was a target of threats or that her Ex-Boyfriend's brother was not a gang member. Instead, the RAD doubted whether those beliefs reflected reality. In this connection, the RAD was looking at and assessing issues of corroboration (points 1, 2 and 3) and consistency (point 4), which functions, with respect, form a normal, expected and at times a major if not the major part of the RAD's responsibility.

[30] I am not persuaded the comments and assessments referred to above constitute attacks on credibility findings of the RPD. I am satisfied there was no duty to disclose these issues to the Applicant for input.

[31] In addition, as noted in *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093, per Walker J at paras 47-48, the RAD would in any event have been entitled to make independent findings of credibility against an appellant where credibility was at issue before the RPD, the RPD's findings are contested on appeal and the RAD's additional findings arise from the evidentiary record:

> [47] The RAD's role on appeal is to consider the record before the RPD and to review the RPD's decision against the issues raised by the appellant, respecting the basic principle of procedural fairness that a party must have an opportunity to respond to new issues that will have a bearing on a decision affecting them (*Tan* at para 32). <u>While the RAD cannot raise a new issue without notice to the parties, it is entitled to make independent findings of credibility against an appellant where credibility was at issue before the RPD, the RPD's findings are contested on appeal and the RAD's additional findings arise from the evidentiary record</u> (*Adeoye* at paras 12-13, citing *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at paras 27-32). This principle was

> recognized in *Kwakwa*, cited by the Applicants, where Justice Gascon stated that a new question or issue is one which "constitutes a new ground or reasoning on which a decision-maker relies, other than the grounds of appeal raised by the applicant, to support the valid or erroneous nature of the decision appealed from" (*Kwakwa* at para 24).
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> [48] I agree with the Applicants that the issue of credibility is very broad and that the RAD cannot have *carte blanche* to identify any new credibility issue. However, the Applicants raised the issue of Ms. Nurridinova's testimony broadly, stating that it was "consistent, uncontradicted, plausible and corroborated". The RAD directly addressed this ground of appeal, highlighting inconsistencies between her BOC and testimony, and Mr. Nurridinov's testimony, that arose from questions posed by the RPD. As a result, I find that the RAD did not raise a new question in support of its decision and did not breach the Applicants' right to procedural fairness.
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> [Emphasis added]

[32] In this connection it is noteworthy that the Applicant raised the matter of credibility in his submissions to the RAD, in which he also submitted that the RAD should agree that "we are then to presume that [the mother] was credible and her testimony was true."

B. *Did the RAD make unreasonable findings when conducting an analysis of whether the Applicants faced a forward-facing personalized risk?*

(1) Applicant's submissions

[33] The Applicant submits the RAD's finding that the Applicant does not face a personalized, forward-facing risk in the Bahamas was unreasonable because the RAD acted unreasonably in its assessment of the evidence, and when addressing the plausibility of the Applicant and his family's testimony. The Applicant relies on the principle that it is unreasonable to conclude that a document contradicts an applicant's evidence on the basis of what the evidence did not say,

rather than what it did say. As stated in *Argueta v Canada (Citizenship and Immigration)*, 2011 FC 1146, per Rennie J at paragraphs 31-32:

> [31] It was unreasonable for the Board to discount the medical report because it did not mention cuts to the female applicant's hands. The applicant testified that the cuts were small and did not require stitches. This was a reasonable explanation. It is also unreasonable for the Board to discount the medical report with respect to the male applicant because it describes an injury from a sharp cutting object, while the applicant testified he suffered multiple cuts. The report does not exclude the conclusion that there was more than one cut and there was no evidence that it was not a genuine document.
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> [32] With respect to the medical reports, the applicants rely on *Mahmud v Canada (MCI)*, [1999] FCJ No 729, for the proposition that it was unreasonable to conclude that a document contradicted an applicant's evidence on the basis of what it did not say, rather than what it did say. The Court noted that when an applicant swears the truth of certain allegations this creates a presumption that the allegations are true and, that on the face, the documents support the claimant's allegations in the absence of evidence to contradict the allegations.
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> [Emphasis added]

[34] The Applicant submits the RAD unreasonably discounted evidence provided to substantiate the Applicant's and his family's allegations. For instance, the RAD placed little weight on a photograph as corroboration of the Applicant's mother's testimony that someone tried to enter her residence illegally because "it is not possible to tell from this photograph that the state of the door was as a result of somebody trying to enter the residence, or when and where this occurred." In the Applicant's view, the RAD unreasonably expected the evidence to show details that would be impractical and nearly impossible to gather.

[35] The Applicant submits the RAD assessed a letter from his mother's friend in a similar manner: there, the RAD assigned little weight to the letter because of details not included in it, namely no reference to the mother being followed or to what might have been an attempt to break into the mother's home.

[36] The Applicant criticizes the RAD's finding that the gang members did not act on their threats in the timeframe they had threatened to act. The RAD noted the Ex-Boyfriend's brother was killed before the Ex-Boyfriend was released from prison, and there was no evidence of an attack on the Ex-Boyfriend or his family since his release from prison. The Applicant submits this is speculative reasoning which this Court has warned against: *Martinez Giron v. Canada (Citizenship and Immigration)*, 2013 FC 7, per Kane J at paras 28-31.

[37] The Applicant also notes that implausibility findings should be made "only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant" as stated by Justice Muldoon in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7.

(2) Respondent's submissions

[38] The Respondent submits that the RAD reasonably concluded the evidence provided by the Applicant did not on a balance of probabilities establish that he had been targeted on the basis of his relation to his mother and her relation to the Ex-Boyfriend or in relation to gang members at his school.

(3) Analysis

[39] In my view, the RAD was not acting unreasonably in its analysis of forward-facing personalized risk. The RAD did not conclude that the photograph of the door broken into contradicted the Applicant's mother's testimony. Rather, the RAD and reasonably in my view, found "it is not possible to tell from this photograph that the state of the door was a result of somebody trying to enter the residence, or when and where this occurred." That finding and observation was certainly open to it on the evidence, which I emphasize, the RAD was reviewing as part of its normal and expected appellate function.

[40] In addition, in my respectful view, the RAD did not make an implausibility finding, but placed "little weight" on the photograph as corroboration for the allegation that someone tried to enter the Applicant's mother's residence illegally. Similarly, the letter from the Applicant's mother's friend was given "little weight" to corroborate the Applicant's mother's claims because "there is no information in the letter regarding being followed or the attempted break-ins and the inconsistent sequence of events" in relation to when the Applicant's mother became aware of the death threats. It was certainly open to the RAD to make these findings on the record and as part of its review of expected and normal review of the record as an appellate tribunal.

[41] Further, I disagree with the Applicant that the RAD engaged in speculative reasoning. The RAD found it did not have enough evidence to conclude the Ex-Boyfriend's brother was killed as a result of the threats to the Ex-Boyfriend, i.e., as a family member. I am not asked to agree or disagree, but must say this finding was also reasonably open to the RAD on the facts

and law in this case. Here again, the RAD in discussing these matters was carrying out its responsibility as an appeal tribunal to conduct an independent review of the record to decide if the RPD decision was correct.

C. Did the RAD err by not convening an Oral hearing?

[42] As noted at paragraph 10 above, the RAD accepted the new text message evidence submitted by the Applicant and his family. However, the RAD refused the Applicant's request for an oral hearing because it was able to consider the evidence and assess its probative value without holding an oral hearing.

[43] The Applicant submits the RAD failed to conduct a proper analysis of the criteria for holding an oral hearing set out in subsection 110(6) of the *IRPA*.

[44] Subsection 110(6) of the *IRPA* provides:

Hearing	**Audience**
110(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	**(6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	**a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[45] In my respectful view, the Applicant does not succeed on this point. First, as emphasized above, the RAD is an appeal tribunal whose role is to review the evidence and decide whether the decision of the RPD is correct: *Huruglica* at para 78. To do that, the RAD is required to carry out its own, i.e., independent, review of the record: *Huruglica* at para 103. Further, even when all the conditions of subsection 110(6) are met, the decision whether to hold a hearing is a discretionary decision for the RAD to make, as concluded by Justice Zinn in *Oluwakemi v. Canada (Citizenship and Immigration),* 2016 FC 973 at paras 6-7 [*Oluwakemi*]:

> [6] I agree with the Applicants that it would have been helpful had the RAD explained in more detail why the test in subsection 110(6) was not met; however, it is clear from a full reading of the decision that the RAD concurred with the view of the RPD as to the credibility of the applicants. It also assigned very little weight to the "new" evidence and found that it was insufficient to overcome the previous negative credibility finding. As such, the new evidence which was accepted could not justify allowing the claim and the conditions in the subsection had not been met.
>
> [7] In any event, as was pointed out by the Minister, <u>even when all the conditions of the subsection are met, the decision as to whether to hold a hearing still remains within the discretion of the RAD</u> as the subsection provides that it "may" hold a hearing in those circumstances. I do not find that it exercised its discretion in an unreasonable manner.
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> [Emphasis added]

[46] The parties canvassed various decisions in this respect, from which I have concluded that the determination of whether to hold an oral hearing is a question of fact and law to be

determined on a case by case basis by and in the RAD's discretion. In my respectful view, the exercise of that discretion may reasonably turn one way or the other, not only on the basis of the new evidence, but on the basis of the record as a whole, such that in some cases that discretion may suggest an oral hearing (*Tchangoue v Canada (Citizenship and Immigration)*, 2016 FC 334, per Roussel J) and in other cases it may be there will be no oral hearing (*Oluwakemi* at para 6, above, per Zinn J). The point is there is no right to an oral hearing. And, there is likewise no obligation on the RAD to deny an oral hearing; instead, the RAD is empowered to assess the evidence and record in each case as it arises and exercise its discretion on the evidence in deciding whether to hold an oral hearing.

[47] In this case, on judicial review, I have concluded the anonymous text messages do not pertain to the credibility of the Applicant and his family *per se*, but dealt with whether there was sufficient evidence to support the Applicant's proposition that he would be identified as a targeted family member in the context of threats allegedly made against the Ex-Boyfriend and family. While the RAD was skeptical of the text messages given they were dated and may be said to have answered some of the concerns expressed by the RPD, that was an alternative finding.

[48] In addition I am not persuaded the RAD's treatment of this evidence was central or pivotal with respect to either that issue, or to the additional issue of violence at his school. Here, the RAD was of the opinion the new evidence was not so central, and in addition, that the new evidence would not justify allowing or rejecting the refugee protection claim. I am unable to find unreasonability in either finding because both are defensible on the facts and law.

VII. Conclusion

[49] I found no procedural unfairness. Stepping back and looking at the Decision as an organic whole and reviewed on the reasonableness standard, I have also concluded it falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and law per *Dunsmuir*. Since the Decision is both procedurally fair and reasonable, in my view, the application for judicial review must be dismissed.

VIII. Certified Question

[50] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-1407-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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