Federal Court  Cour fédérale

Date: 20211109

Docket: IMM-3253-21

Citation: 2021 FC 1212

Toronto, Ontario, November 9, 2021

PRESENT: Madam Justice Go

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ABDULMOULLA S ABDULMOULLA ALGAZAL

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the April 29, 2021 decision [Decision] of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, finding that the Respondent is not excluded from refugee protection under Article 1F(c) of the *Convention*

Relating to the Status of Refugees [*Convention*] of the United Nations [UN]. The RAD further found that the Respondent is not a Convention refugee nor a person in need of protection.

[2] The Applicant argues that this Court ought to grant judicial review as the RAD erred in finding that the Respondent is not excluded from seeking refugee status due to his history of committing domestic violence against women in Canada. I find the RAD decision reasonable and dismiss this application.

II. Background

A. *Factual Context*

[3] The Respondent is a 35-year-old citizen of Libya. He came to Canada in 2009 to attend flight training school. The Respondent's family was perceived to be pro-Gaddafi and was targeted by militias due to the Respondent's father's management position in a national oil company in Libya for 40 years. The Respondent's family members left for Canada and received refugee status in March 2015.

[4] Between 2011 and 2013, the Respondent faced serious allegations of domestic violence with respect to two former girlfriends while living in Canada. These allegations include physical assault, which resulted in injuries, unlawful confinement, control and other forms of abuse. The police laid a number of criminal charges against the Respondent, but the charges were all stayed due to the lack of co-operation from the alleged victims.

Prior Decisions

[5] This matter has traversed through multiple proceedings since the Respondent made a claim for refugee protection in Canada in September 2015. To start, the Respondent's claim was referred to the Immigration Division [ID] for an admissibility hearing under section 34(1)(e) of the *Immigration and Refugee Protection Act* [*IRPA*] for alleged incidents of domestic violence the Respondent had committed. The ID found that the Respondent was not inadmissible under this section, and the case was referred to the Refugee Protection Division [RPD].

[6] At the RPD hearing, the Applicant argued that the incidents of domestic violence committed by the Respondent excluded him from protection under section 98 of *IRPA* and Article 1F(c). That argument was accepted by the RPD in a decision dated May 7, 2018. In addition, as the Respondent's allegations of persecution are based on those faced by his family members and not based on his own personal past persecution, the RPD found it unnecessary to consider the inclusion claim under sections 96 and 97 of *IRPA*.

[7] In a decision dated February 18, 2019, the RAD allowed the Respondent's appeal [first RAD decision]. Applying *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, 1998 CanLII 778 (SCC) [*Pushpanathan*], the RAD concluded Article 1F(c) did not exclude the Respondent from refugee protection. The RAD also found that the Respondent was a Convention refugee because he presented similar evidence in support of his claim as his family members had presented in their successful claims.

[8] On a judicial review application brought by the Applicant, Justice Ahmed set aside the first RAD decision in *Canada (Citizenship and Immigration) v Algazal*, 2020 FC 336. Justice Ahmed found the RAD erred in concluding that the Respondent was a Convention refugee, and did not consider the issue of whether the Respondent was excluded from refugee protection due to his history of violence against women.

B. *Decision under Review*

[9] The RAD re-determined the Respondent's refugee claim and found the Respondent was not excluded from refugee protection. The RAD also found the Respondent was not a Convention refugee nor a person in need of protection.

[10] In its analysis under Article 1F(c), the RAD considered whether: (1) there are serious reasons for considering that the Respondent committed acts of domestic violence against two women; and (2) such acts are contrary to the principles and purposes of the UN.

[11] Notwithstanding that charges against the Respondent were stayed, the RAD found there were serious reasons for considering the Respondent committed acts of domestic violence against his two former girlfriends, because the legal test and evidentiary framework for Article 1F(c) is lower than the criminal standard of proof beyond a reasonable doubt.

[12] In deciding whether the acts committed by the Respondent are contrary to the principles and purposes of the UN, the RAD considered the framework set out in *Pushpanathan* as to whether there is a consensus in international law that the particular acts are: (1) explicitly

recognized by international consensus as being contrary to the purposes and principles of the UN; or (2) sufficiently "serious, sustained and systemic" violations of fundamental human rights constituting persecution.

[13] The RAD found that there is no explicit declaration in the UN documents that such conduct is contrary to the purposes and principles of the UN. The RAD adopted the RDP's finding that domestic violence is contrary to the international community's expressly declared concern for gender violence and discrimination and is thus a violation of key human rights, that there is a gender-based nexus to a *Convention* ground for victims of domestic violence, and that acts of domestic violence fall within the internationally accepted definition of persecutory acts which are violations of human rights. In the end, while noting that the Respondent's behaviour against his girlfriends over a two-year period were "sustained" and "serious" violations of human rights, the RAD found the Respondent was not excluded from refugee protection because his acts were not "systemic."

III. Issues

[14] The only issue before me is whether the RAD reasonably found that the Respondent is not excluded from refugee protection under Article 1F(c).

IV. Standard of Review

[15] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of

review of the merits of an administrative decision: *Vavilov*, at para 25. The Applicant submits the circumstances in this case do not warrant a departure from the standard of reasonableness. The Respondent takes no position on the standard of review. I will apply the reasonableness standard in my review of the Decision.

V. Analysis

[16] The Applicant argues that the RAD erred in the following two findings:

(a) that there is no explicit declaration in the UN documents that domestic violence is contrary to the purposes and principles of the UN; and

(b) that the Respondent's actions were not sufficiently "serious, sustained and systemic" violations of fundamental human rights for the purposes of exclusion under Article 1F(c).

[17] It is worth noting that the parties do not dispute the RAD's finding that there were serious reasons for considering the Respondent committed acts of domestic violence against his two former girlfriends. The violent acts allegedly committed by the Respondent against these two women, as set out in numerous police reports, are reprehensible. At the RPD hearing, the Respondent tried to rationalize his behaviours, albeit unsuccessfully, by attributing them to a benign brain tumour that was removed two years after the alleged incidents took place. The Respondent also claimed he could not remember what he might have done. These explanations were rejected by the RDP, and its conclusion in this respect was justifiably upheld by the RAD.

[18] As noted above, the leading case for analysing Article 1F(c) is *Pushpanathan*. As binding authority, *Pushpanathan* constitutes a "legal constraint" on the RAD's decision in accordance with *Vavilov*, at para 112.

[19] Since the Supreme Court issued its decision in *Pushpanathan*, the bulk of the decisions by this Court and the Federal Court of Appeal dealing with this exclusion clause stem from the claimant's involvement in politically motivated violence or terrorism: e.g. *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867, *Islam v Canada (Minister of Citizenship and Immigration)*, 2010 FC 71, *El Hayek v Canada (Citizenship and Immigration)*, 2005 FC 835. The Applicant has not referred to, nor was I able to locate any case in which the Minister seeks to exclude a claimant under Article 1F(c) based on allegations of domestic violence. It is therefore necessary for me to situate my analysis by taking a deep dive into the framework as outlined by the Supreme Court in *Pushpanathan*, in order to determine whether the RAD was reasonable in finding that the Respondent in this case should not be excluded on that basis.

Supreme Court of Canada's Decision in Pushpanathan

[20] In *Pushpanathan*, Justice Bastarache began his analysis by noting that the practical implications of an automatic exclusion under Article 1F of the *Convention* are "profound" because the individuals "are automatically excluded from the protections of [the immigration legislation]" and may be "returned to the country from which they have sought refuge," and it is "against this background that the interpretation of the exclusion contained in Article 1F(c) of the Convention must be considered": *Pushpanathan*, at paras 13-14.

[21] Noting that the wording of the *Convention* and the rules of treaty interpretation would be applied to determine the meaning of Article 1F(c) (*Pushpanathan*, at para 51), Justice Bastarache embarked on a review of the human rights object and purpose of the *Convention* against which interpretation of individual provisions must take place. Using this human rights framework, he concluded the general purpose of Article 1F "is not the protection of the society of refuge from dangerous refugees, whether because of acts committed before or after the presentation of a refugee claim; that purpose is served by Article 33 of the Convention. Rather, it is to exclude *ab initio* those who are not *bona fide* refugees at the time of their claim for refugee status": *Pushpanathan*, at para 58.

[22] Considering the drafting history of the exclusion clause, and taking into account the United Nations High Commissioner for Refugees [UNHCR] Handbook, Justice Bastarache described Article 1F(c) as a "residual clause which… due to its very general character, should be applied with caution." For that reason, the words "purposes and principles" of the UN should be given a "narrower and more focused meaning than that which would naturally be inferred by reading the UN Charter": *Pushpanathan*, at para 62.

[23] It is within this context that the Supreme Court came to find that "where there is consensus in international law that particular acts constitute sufficiently serious and sustained violations of fundamental human rights as to amount to persecution, or are explicitly recognized as contrary to the purposes and principles of the United Nations, then Article 1F(c) will be applicable": *Pushpanathan*, at para 65.

[24] At paragraph 68, Justice Bastarache noted that an important aspect of exclusion under Article 1F(c) is "the inference that violators of the principles and purposes of the UN must be persons in positions of power," while noting the possibility for a non-state actor to perpetrate human rights violations on a scale amounting to persecution should not be excluded *a priori*.

[25] Adopting that framework, the Supreme Court in *Pushpanathan* concluded that while drug trafficking is a serious crime, there is no indication in international law that this type of crime on any scale is to be considered contrary to the purposes and principles of the UN. As Justice Bastarache elaborated at paragraph 69:

> [69] …The respondent submitted evidence that the international community had developed a co-ordinated effort to stop trafficking in illicit substances through numerous UN treaties, declarations, and institutions. It has not, however, been able to point to any explicit declaration that drug trafficking is contrary to the purposes and principles of the United Nations, nor that such acts should be taken into consideration in deciding whether to grant a refugee claimant asylum. Such an explicit declaration would be an expression of the international community's judgment that such acts should qualify as tantamount to serious, sustained and systemic violations of fundamental human rights constituting persecution.

[26] With that, I will now consider the two objections to the Decision raised by the Applicant.

Question 1: Was it reasonable for the RAD to find that there is no explicit declaration in the UN documents that domestic violence is contrary to the purposes and principles of the UN?

[27] As the RAD first noted at para 36 of its decision, according to the majority decision in *Pushpanathan*, one of the indications that an act is contrary to the purposes and principles of the UN and falls within Article 1F(c) is if there is "a widely-accepted UN resolution which explicitly

declares that the conduct is contrary to the UN purposes and principles." The RAD then concluded:

> I find that is not the case here. While Minister's Counsel, in submissions to the RPD, rightly pointed to several UN Declarations and Conventions and to UN Resolutions which have as their motive the elimination of all forms of violence against women and girls, there is no explicit declaration in these documents that such conduct is contrary to the purposes and principles of the UN. The RAD has also not located any declarations of organizations, such as the International Court of Justice, indicating that violence of this nature, carried out by an individual against two persons, that would support this finding.

[28] In their submission to this Court, and before the RAD, the Applicant relies on the UN *Declaration on the Elimination of Violence Against Women*, 20 December 1993, A/RED/40/34 [*DEVAW*] which, in Article 1, defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." The Applicant emphasizes the *DEVAW*'s recognition in its preamble that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men" and that it is "one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." The Applicant argues that the *DEVAW* identifies systemic violence against women as a "constellation of individual acts of violence against women by men."

[29] The Applicant also refers to the *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979 [*CEDAW*]. which was ratified by Canada, and the *Beijing Declaration and Platform for Action* [*Beijing Declaration*], a resolution adopted

by the UN at the Fourth World Conference on Women, September 4 to 15, 1995, in addition to a report released by the Canadian Government, in submitting that the Canadian Government has recognized that violence against women is a violation of human rights and a UN purpose and principle.

[30] The Applicant submits since the RAD identified acts that may fall within Article 1F(c) are acts that "the UN has explicitly declared as contrary to the purposes and principles of the UN," the RAD thus made a perverse finding that that violence against women is not contrary to the purposes and principles of the UN.

[31] With respect, I disagree.

[32] These UN documents support the Applicant's position that gender-based violence in general, and domestic violence in particular, is recognized by Canada and the UN as a serious issue. Specifically, the *DEVAW* urges all state parties, including Canada, to "condemn violence against women" and to "pursue by all appropriate means and without delay a policy of eliminating violence against women": *DEVAW*, Art.4. The *DEVAW* also calls on State parties including Canada to adopt a number of measures including, among others, budgeting adequate resources for activities relating to the elimination of violence against women, ensuring law enforcement officers and public officials investigating and punishing violence against women receive sensitivity training, promoting research and collecting data on domestic violence and other forms of violence against women, and adopting targeted measures for women who are especially vulnerable to violence, etc.

[33] I note, however, that these measures, like those pronounced by other UN Conventions and Declarations, as well as the *Beijing Declaration*, are primarily directed at state parties, and not individuals within the states.

[34] More to the point, the question before me is not whether the issue of domestic violence is an issue that has been recognized by the UN, but whether, despite various UN Declarations and Resolutions on this topic, the RAD's finding that there is no explicit declaration that domestic violence runs contrary to the purposes and principles of the UN is reasonable.

[35] I accept the Applicant's submissions that international and domestic documents, most notably the *DEVAW*, condemn and seek to eliminate domestic violence against women. I agree that domestic violence, like drug trafficking, is a serious and reprehensible offence. I reject, however, the Applicant's argument that these various international agreements or UN resolutions amount to an explicit declaration of domestic violence being contrary to the "purposes and principles" of the UN in the Article 1F(c) analysis. That position, with respect, is not consistent with the Supreme Court's decision in *Pushpanathan* which opts for a "narrower and more focused meaning" of the term than "would naturally be inferred" into these UN documents, at para 62.

[36] These various UN documents including the *DEVAW, CEDAW* and the *Beijing Declaration* all point to the urgency of actions needed to address gender inequality and gender-based violence. But as the RAD has concluded, and I agree, there is no explicit declaration in any

of these documents that gender-based violence is contrary to the purposes and principles of the UN. Just because the Applicant has said it is, does not make it so.

[37] I note that the RAD has also considered, as required by the Supreme Court in *Pushpanathan*, whether organizations such as the International Court of Justice have indicated that violence of this nature, carried out by an individual against two persons, would be contrary to the purposes and principles of the UN, but was unable to locate any such declaration. The Applicant has not pointed to any evidence suggesting otherwise.

[38] I therefore find that the RAD's analysis on this point was consistent with the *Pushpanathan* framework and its conclusion reasonable.

Question 2: Was it reasonable for the RAD to find that the Respondent's actions were not sufficiently "serious, sustained and systemic" violations of fundamental human rights?

[39] The RAD considered the meaning of "systemic" in accordance with "its ordinary meaning in the context of the Convention, and in the light of its object and purpose," at para 44. It found the term to be an "adjective" with the ordinary meaning that qualifies "a noun to denote a system, rather than part of a system," at para 47. The RAD found that the Respondent did not participate in "an organized system that persecutes or seriously harms many people" or commit acts akin to those prosecuted by the International Criminal Court. Rather, the Respondent was "an individual committing domestic violence against two women." While the RAD recognized that unlike in *Pushpanathan*, there is a nexus to a *Convention* ground in this case, it found the Respondent was "not complicit with a larger organization which persecutes persons across

international boundaries, or on a mass scale within a country's borders" and did not commit "human trafficking." The RAD did find the Respondent's actions "reprehensible," but found them too limited in scope to be "systemic," at para 51.

[40] In contesting the RAD's finding, the Applicant relied on *Pushpanathan* for its argument that if the violation goes to the core of the most valued principles of human rights, then even an isolated violation could lead to exclusion under Article 1F(c). The Applicant further submits that the Respondent's "escalating and predatory and violently abusive and controlling manner against two women over a two-year period was egregious and goes to the core of fundamental purposes and values that the international community strives to protect and uphold."

[41] At the hearing, the Applicant further submitted that the RAD erred in failing to consider the Respondent's behaviours in the context of the larger systemic nature of gender-based violence, an issue that has been recognized by the UN and by Canada as perpetuating gender inequality while reinforcing women's unequal power.

[42] While sympathetic to the Applicant's position that gender-based violence is a systemic issue, the task before me is to review the reasonableness of the RAD's finding that the Respondent's acts in this particular case did not amount to "systemic" violations of fundamental human rights constituting persecution. I find the jurisprudence supports the RAD decision.

[43] Once again, I take guidance from the Supreme Court in *Pushpanathan*. After considering that an isolated act may lead to an exclusion under Article 1F(c) if the rule being violated is

"very near the core of the most valued principles of human rights and is recognized as immediately subject to international condemnation and punishment," at para 70, and that "a serious and sustained violation of human rights amounting to persecution may also arise from a particularly egregious factual situation, including the extent of the complicity of the applicant," at para 71, Justice Bastarache elaborated at para 73 on the possible overlap of Article 1F(c) and 1F(b), which deals with exclusion based on serious non-political crime:

> [73] …It is quite clear that Article 1F(b) is generally meant to prevent ordinary criminals extraditable by treaty from seeking refugee status, but that this exclusion is limited to serious crimes committed before entry in the state of asylum. Goodwin-Gill, *supra* at p.107, says:
>
> > With a view to promoting consistent decisions, UNHRC proposed that, in the absence of any political factors, a presumption of serious crime might be considered as raised by evidence of commission of any of the following offences: homicide, rape, child molesting, wounding, arson, drugs trafficking, and armed robbery.
>
> The parties sought to ensure that common criminals should not be able to avoid extradition and prosecution by claiming refugee status. Given the precisely drawn scope of Article 1F(b), limited as it is to "serious" "non-political crimes" committed outside the country of refuge, the unavoidable inference is that serious non-political crimes are not included in the general, unqualified language of Article 1F(c) [emphasis added].

[44] In other words, even crimes as serious as rape (another example of gender-based violence) would not exclude a claimant under Article 1F(c), although they could be excluded under Article 1F(b) if the act occurs outside of Canada.

[45] In addition, I find other passages in *Pushpanathan* also shed light on the interpretation of the word "systemic." At paragraph 70, when the Court addresses the possibility that isolated incidents could fall within Article 1F(c), it notes that it is in the context of offences that are

subject to universal jurisdiction (which implies crimes against the international order) and/or the jurisdiction of the International Criminal Court:

> [70] Where the rule which has been violated is very near the core of the most valued principles of human rights and is recognized as immediately subject to international condemnation and punishment, then even an isolated violation could lead to an exclusion under Article 1F(c). The status of a violated rule as a universal jurisdiction offence would be a compelling indication that even an isolated violation constitutes persecution. To that end, if the international community were ever to adopt the *Draft Statute of the International Criminal Court*, UN Doc. A/CN.4/L.491/Rev.2, which currently includes trafficking in narcotics within its jurisdiction, along with war crimes, torture and genocide, then there would be a much greater likelihood of a court being able to find a serious violation of human rights by virtue of those activities [emphasis added].

[46] Applying this reasoning, however hard the Applicant may try to elevate the Respondent's heinous acts to acts of violations against international human rights, the Respondent, borrowing the Supreme Court's terminology, is but a "common criminal." His actions, while egregious, do not rise to a level that will be subject to "international condemnation and punishment."

[47] I note, further, that this Court has found that domestic violence committed outside of Canada was a serious non-political crime that excluded the claimant under Article 1F(b): *Unachukwu v Canada (Citizenship and Immigration)*, 2014 FC 199.

[48] I also do not find persuasive, as the Applicant has urged, that the systemic nature of gender-based violence means that the individual acts of violence the Respondent has perpetrated towards his two former girlfriends must therefore be characterized as "systemic."

[49] While the Supreme Court did not go into detail on what it meant by "systemic" in the context of Article 1F(c), I find the examples it relied on to be illustrative of acts that fall within Article 1F(c) (e.g. apartheid), versus those that do not (e.g. serious non-political crimes covered by Article 1F(b)). I note also the Court's emphasis on state actors (as opposed to non-state actors) in its analysis.

[50] In *X (Re)*, 2019 CanLII 90371 (CA IRB) VB8-02867, the RAD considered the application of Article 1F(c) and cited the *Oxford [Online] Dictionary* to define systemic as "relating to a system as opposed to a particular part," at para 22. The RAD's consideration of the word systemic was in turn cited in *Words and Phrases: Judicially Defined in Canadian Courts and Tribunals*: June 2021, Vol. 7.

[51] *Stroud's Judicial Dictionary of Words and Phrases*, 10th ed, Vol. 3, states the following: "[t]he adjective 'systemic' may mean 'systematic'; that is to say something which is 'arranged or conducted according to a system, plan, or organized method' (*Shorter Oxford English Dictionary* sub nom 'systemic' and 'systematic')."

[52] Based on the above, and for the purpose of determining this case, I find the word "systemic" as required by the Supreme Court to trigger the exclusion under Article 1F(c) refers to those acts which, by virtue of their impact on a system or which are done through an organized method according to a system, and not only by virtue of their being reflective of a broader social context of systemic or structural inequality, would come very near to violating "the core of the most valued principles of human rights."

[53] While gender-based violence as an issue is systemic because it is emblematic of a broader social issue of gender inequality, the act of an individual perpetrator in any given case is not necessarily so.

[54] However, serious the impact of the Respondent's actions might have been on his two alleged victims, it would be hard pressed to suggest that the Respondent, a civilian and a non-status individual no less, has, through his acts, fortified the systemic issue of gender-based violence as a whole in Canada or elsewhere. That the Respondent may have gotten away with heinous acts of domestic violence is arguably also part of a systemic issue, but it did not make his action systemic, *per se*.

[55] As such, although I disagree with the Decision that the word "systemic" is limited to situations where the claimant is involved in a larger organization or activities such as human trafficking, in light of the jurisprudence, I find it reasonable for the RAD to conclude that while the Respondent's conduct in this particular case can be characterized as "serious and sustained," his actions are not "systemic" and "not the type of actions that the drafters of the Convention intended to merit exclusion under Article 1F(c)," at para 55.

[56] My decision is not meant to foreclose the possibility that, in appropriate cases, agents who play a critical role in maintaining, if not fuelling, the state of gender inequality in a systemic way may well be excluded from making a refugee claim under Article 1F(c) for their role in perpetuating gender-based violence. My decision would also change if the international

community one day decides to make explicit declaration that domestic violence runs contrary to the purposes and principles of the UN. Today is not that day.

[57] Given the conclusions above, I do not have to address the argument advanced by the Respondent that the Applicant is attempting an end run around the *Canadian Charter of Rights and Freedoms*, as the ID has found, by attempting to elevate his acts on a similar scale as those committing systemic human rights abuses against entire populations.

[58] In conclusion, adopting the approach set out in *Pushpanathan* which takes into account Canada's international human rights obligations to narrowly interpret the exclusion clause under Article 1F of the *Convention*, it was reasonable for the RAD to find that the Respondent is not excluded from refugee protection under Article 1F(c).

VI. Conclusion

[59] The application for judicial review is dismissed.

VII. Certification

[60] The Applicant has proposed a primary question and an alternative question for certification. The Respondent opposes the certification of the Applicant's proposed questions.

[61] The Applicant's primary proposed question is the following:

> Is the existence of UN declarations, Conventions and Resolutions on the issue of violence against women and efforts to eliminate all forms of

> violence against women, sufficient to be found contrary to the purposes and the principles of the UN, within Article 1F(c)?

[62] In the alternative, the Applicant proposed a second question:

> In order to be excluded under Article 1F(c), are the actions of an individual who commits serious, sustained violence against women required to be "systemic" in that the person must have a leading role in the large-scale perpetration of violence against women or [be] complicit in such activities?

[63] The Applicant submits that these questions "raise serious questions of general importance and are dispositive of an appeal." Acknowledging "the large impact of the application of Article 1F(c) in cases of domestic/gender violence which goes beyond the particular facts or circumstances of this case," the Applicant submits these proposed questions "[transcend] the interests of the parties and [raise] issues of broad significance or general application." The Applicant also submits these questions were brought up at the Federal Court hearing and will be dispositive of any appeal to the Federal Court of Appeal.

[64] For the reasons set out below, I decline to certify the questions proposed by the Applicant.

1. *Should the first proposed question be certified?*

[65] As the Applicant has correctly identified, the elements of a properly certified question are set out in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46:

> [46] …The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that

> the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question.... Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified....

[66] The Federal Court of Appeal has found that a question is *not* of general importance if the law on that issue is settled: *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at para 36; see also *AB v Canada (Citizenship and Immigration)*, 2020 FC 203 at para 60.

[67] The Respondent argues that the Applicant's first question is settled in law, citing extensive passages from *Pushpanathan* which he argues establish that the "scope of Article 1F(c) does not include individual criminal acts of violence by a claimant against an individual." These passages refer to the *travaux préparatoires* and the UNHCR's comments on Article 1F(c), which suggest that its scope should be limited.

[68] While the passages cited by the Respondent do not directly address the issue of "UN declarations, Conventions and Resolutions" raised in the first proposed question, I agree with his position that the question proposed is settled in law, as I have noted in paragraphs 36-37 above. In addition, there are other passages from *Pushpanathan*, at para 69, that speak to this issue. Given that the first proposed question has already been answered by the Supreme Court, it therefore fails to meet the requirement that a certified question must be of general importance.

2. *Should the second question be certified?*

[69] Like the first question, the Respondent argues that the Applicant's alternative question has also been answered in *Pushpanathan*. He submits that paras 59-62 in *Pushpanathan* establish that for actions to qualify as systemic, they must be on a mass scale, or part of an organized systemic activity that transcends the actions of one individual, while noting that the drafters of the Convention "intended to give the words 'purposes and principles of the United Nations' a narrower and more focused meaning than that which would naturally be inferred by reading the UN Charter," at para 62.

[70] As I have concluded above in paragraph 49, the Supreme Court in *Pushpanathan* does not explicitly define "systemic" nor, for that matter, does the Court explicitly state that only large-scale violence is included in Article 1F(c), as urged by the Respondent.

[71] However, when *Pushpanathan* is read as a whole, the decision has already addressed the second proposed question.

[72] Although evidently domestic violence is a serious crime, the Applicant has given no indication that international instruments condemning violence against women intended that domestic violence be addressed by *international* condemnation and punishment or by resort to the International Criminal Court.

[73] These passages from *Pushpanathan*, in addition to those cited earlier in my decision, allow me to draw a conclusion about the meaning of "systemic," as envisioned by the Supreme

Court in the context of Article 1F(c) and apply such an understanding to assess the reasonableness of the RAD decision, based on the specific circumstances of this case.

[74] As such, not only does the second alternative question proposed by the Applicant fail to meet the requirements for certification because it does not raise an issue of general importance, it is also not a question that is dispositive of the appeal. The Applicant's application fails not because the Respondent does not have a leading role in the large-scale perpetration of violence against women or because he is not complicit in such activities. Rather, the Respondent is not excluded by Article 1F(c) because his particular actions are not "systemic" and, as the RAD reasonably found at paragraph 55, are "not the type of actions that the drafters of the Convention intended to merit exclusion under Article 1F(c)," in light of *Pushpanathan*.

JUDGMENT in IMM-3253-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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