Federal Court  Cour fédérale

Date: 20211130

Docket: IMM-7881-19

Citation: 2021 FC 1330

Ottawa, Ontario, November 30, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

WEIJUN HUANG
(A.K.A. WeiJUN Huang)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SO 1991, c 27 [*IRPA*]. The applicant, Weijun Huang, seeks an order setting aside a December 18, 2019 decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada that determined he is not a Convention refugee nor a person in need of protection under sections 96 and 97of the *IRPA*.

[2] Mr. Huang is a citizen of the People's Republic of China who alleges a fear of persecution as a Falun Gong practitioner. He states that the Chinese Public Security Bureau (PSB) raided a meeting of his Falun Gong practice group in June 2012, and he went into hiding. When he learned from his parents that the PSB had visited his parents' home looking for him and that co-practitioners from his group had been arrested, Mr. Huang hired a smuggler to help him enter the United States in August 2012, and then Canada, where he made a claim for refugee protection in November 2012.

[3] After he left China, Mr. Huang states that the PSB attended at his parents' home and showed them a warrant for his arrest. Mr. Huang alleges that the PSB have continued to look for him at his parents' home on an annual basis, and that the co-practitioners who were arrested in 2012 remain in detention. He also states that he has continued to practice Falun Gong since he entered Canada and raises a *sur place* claim that his activities in Canada would put him at risk upon return to China.

[4] A first RPD decision dated June 12, 2018 was set aside by Justice Gleeson on judicial review: *Huang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 358 [*Huang*]. As a "legacy" claim filed before certain changes to the *IRPA*, there was no right of appeal to the Refugee Appeal Division.

[5] On redetermination, the RPD rejected Mr. Huang's claim based on his credibility and his identity as a Falun Gong practitioner. The RPD found that Mr. Huang lacked credibility due to (i) inconsistent evidence about the number of times the PSB visited his parents' home, (ii) the

lack of a summons, which likely would have been issued before an arrest warrant, (iii) the fact that he was able to leave China using his own passport, and (iv) Mr. Huang's testimony that the co-practitioners were still in detention as of the RPD redetermination hearing in 2019, which the RPD considered to be an attempt to embellish his claim. The RPD found that Mr. Huang failed to establish his identity as a Falun Gong practitioner in China or in Canada because he did not demonstrate a level of fundamental knowledge commensurate with his experience in the practice. On the basis of this finding, as well as a finding that there was no evidence to demonstrate that Mr. Huang's activities in Canada have become known in China, the RPD was not satisfied of a *sur place* risk.

[6] Mr. Huang alleges the RPD made reviewable errors with respect to each of these findings, and as a result, the decision is unreasonable. He asserts that some of the errors are the same as the errors of the prior RPD panel that were identified in *Huang*, namely, the RPD speculated that the PSB is not pursuing him based on the lack of a summons and the fact that he was able to leave China using his own passport, and the RPD's *sur place* analysis was deficient.

[7] While I am not persuaded that the RPD committed all of the reviewable errors that are alleged, for the reasons below, I find Mr. Huang has established that the RPD's decision unreasonable.

II. **Issue and Standard of Review**

[8] The sole issue on this application for judicial review is whether the RPD's decision is unreasonable, based on the alleged errors noted above.

[9] Mr. Huang divides his argument into two parts, and I will divide my analysis in the same way:

1. Did the RPD repeat the same errors identified in *Huang*?
2. Did the RPD commit new errors by making additional, unreasonable findings to support a conclusion that Mr. Huang's claim is not credible?

[10] Whether the RPD's decision is reasonable is determined according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard of review is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, and consider whether the decision as a whole is transparent, intelligible, and justified: *Vavilov* at paras 15 and 83. A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). The Court must refrain from reweighing and reassessing the evidence that was before the decision maker (*Vavilov* at para 125).

[11] The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

A. *Did the RPD repeat the same errors identified in* Huang*?*

(1) Lack of Summons

[12] In *Huang*, Justice Gleeson held that although the RPD had framed the lack of a summons as a credibility issue, it was an implausibility finding: *Huang* at para 17. The RPD had relied on certain provisions in Chinese legislation and information found in a Response to Information Request, but that evidence did not support the implausibility finding as it was equivocal: *Huang* at paras 16, 18-22. The RPD found it likely that the PSB would have left a summons with Mr. Huang's parents because the PSB had visited their house multiple times and had arrested co-practitioners, but the RPD pointed to no evidence to support its view, relying instead on prior Federal Court jurisprudence: *Huang* at para 19.

[13] Mr. Huang submits the RPD repeated this error in the redetermination decision, by assuming that the PSB would have issued a summons based on multiple PSB visits and the co-practitioners' arrest. Mr. Huang contends that the RPD's finding is arbitrary and not supported by a rational chain of analysis. The Chinese legislation states the PSB may serve a summons, a point that was recognized in *Huang* and also noted in *Zhang v Canada (Minister of Citizenship and Immigration)*, 2018 FC 444 at paragraph 16 and in *Wang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1124 at paragraphs 39-43. Also, a coercive summons must be served on the suspect, and since he had fled, the PSB would not have been able to serve one.

[14] The jurisprudence of this Court recognizes that it may be reasonable for the RPD, in the overall context of an applicant's evidence, to make a negative credibility finding based on the

absence of an arrest warrant or summons—particularly when the tribunal acknowledges that the PSB's practices regarding the issuance of summonses and arrest warrants are variable, and the tribunal provides a reasoned basis for its conclusion: *Mai v Canada (Minister of Citizenship and Immigration)*, 2021 FC 61 at paras 38-41; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2019 FC 904 at paras 12-14; *Zhou v Canada (Minister of Citizenship and Immigration)*, 2015 FC 821 at paras 50, 56-58.

[15] However, I agree with Mr. Huang that the RPD's finding in this case is not supported by a rational chain of analysis. The RPD's full reasoning on this point is as follows (footnotes omitted):

> [16] The panel notes that country condition documents indicate that a summons is often left with or shown to family members when the police want someone to come to their headquarters. In addition, the summons is the documentary basis for the subsequent issuance of an arrest warrant, if the person in whom they are interested does not respond to the summons. Although this policy is not always implemented, it is reasonable that one would have been issued in respect of the claimant, given that he testified that the PSB had pursued him on a regular basis. This is particularly noteworthy when one considers that allegedly two co-practitioners were arrested.
>
> [17] Although the documentary evidence is mixed, it is reasonable to conclude that the authorities have concluded some investigation which gives rise to them stating that he was identified as an illegal [Falun Gong] practitioner. This is particularly noteworthy given the fact that the claimant has alleged that his co-practitioners remain in detention after more than seven years, that they allegedly provided the name of the claimant to the police, and the police in turn have allegedly informed the claimant's parents of this.
>
> [18] The claimant testified that the PSB had shown a detention notice to his parents, whereas the PIF and previous hearing indicate an arrest warrant. Counsel submits that in the claimant's mind, these documents are one of the same. The panel had raised this question with the claimant as he had never been detained, but his response was that this was a future detention. Even if the panel

> accepts that in the claimant's mind an arrest warrant and a detention notice mean the same thing, it still begs the question as to why there would not have been a subpoena prior to any other document being issued, as this is the basis for a coercive document.
>
> [19] The panel concludes that the evidence surrounding this issue is not credible and is, therefore, one of the factors to consider whether or not the PSB are in pursuit of the claimant. It simply does not make sense, given the claimant's allegations of the number of visits by the PSB as well as the arrest and alleged lengthy detention of his co-practitioners, that a summons has not been forthcoming.

[16] In my view, the RPD's reasoning that "it simply does not make sense" there was no summons was effectively a plausibility finding, without transparent and intelligible reasoning to support it. A key concern seems to be the fact that a summons was not issued first, in accordance with an expected sequence of steps. However, the RPD acknowledged that the country condition evidence is equivocal about whether the PSB would serve a summons, and the RPD did not explain or point to evidence correlating what it seemed to consider as indicators of high PSB interest—the number of PSB visits, the arrests of co-practitioners and their lengthy period of detention—with a higher likelihood that the PSB would issue a summons first. Mr. Huang does not assert that the PSB acted entirely without official documentation—he testified that the PSB had some type of coercive document akin to an arrest warrant, and showed the document to his parents on October 8, 2012. In view of the equivocal country condition evidence, it seems equally plausible that the PSB might skip the step of issuing a summons in a case of high interest.

[17] I also note that the RPD expressed no concern about the fact that PSB officials have never left a copy of the arrest warrant with Mr. Huang's parents during one of the repeated visits

over the last eight years, or that Mr. Huang has not otherwise obtained a copy. Unlike the prior RPD panel, the RPD member who reconsidered Mr. Huang's claim did not ask him about his efforts to obtain a copy of the arrest warrant.

[18] Possibly, the RPD's concern was related to the PSB's delay in issuing or presenting any official document, despite high interest—the first official document was allegedly shown to the parents in October 2012, months after the June 2012 raid. The PSB attended the parents' home two days after the raid, told the parents that they had arrested other "cult members" who had implicated Mr. Huang, searched the parents' house, and ordered that Mr. Huang must immediately surrender and cooperate with their investigation; the PSB attended at the house for a second time later in June and for a third time in August 2012. There was no evidence that the PSB presented, for example, a warrant to search the house or a document to compel Mr. Huang's surrender or cooperation at any time prior to October 2012.

[19] While a reviewing court may "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn", it must not speculate as to what the decision maker was thinking, supply the reasons that might have been given or make findings of fact that were not made: *Vavilov* at para 97. Reading the decision in light of the record, I am unable to connect the dots without speculating as to what the RPD was thinking, or supplying reasons that were not given. The RPD's rationale is unclear to me, particularly since one of the stated reasons for expecting a summons was the co-practitioners' "lengthy detention", and the co-practitioners had just been arrested a short time before the PSB's visits in June and August 2012. If the RPD was concerned that a summons "was not forthcoming" even in the years after an

arrest warrant had already issued, the decision provides no explanation to support that expectation.

[20] It is also relevant to note that the RPD's decision was a redetermination. When read in light of the history of the proceedings, the RPD erred, in my view, by essentially repeating the reasoning of the prior RPD panel that had been found to be unreasonable, without providing any significant points of distinction.

(2) Ability to Leave China Using his Own Passport

[21] As with the summons, Justice Gleeson held that the RPD had made a plausibility finding regarding Mr. Huang's ability to leave China using his own passport: *Huang* at para 23. The RPD found that passing through security checkpoints without constraint meant that Mr. Huang was not being sought by the PSB. Justice Gleeson held that the RPD's flawed analysis on the summons tainted its analysis on Mr. Huang's exit from China, as he testified that no summons had been issued, and the arrest warrant was only shown to his parents after he had already left China: *Huang* at para 23.

[22] On redetermination, the RPD similarly found it implausible that Mr. Huang was able to leave China when there was a warrant for his arrest. Like the first RPD panel, on redetermination the RPD misapprehended the evidence about the timing of the arrest warrant: there was no evidence that a summons or arrest warrant were issued against Mr. Huang before he left China. I agree with Mr. Huang that this was a significant error. The arrest warrant was a key factor supporting the RPD's finding that Mr. Huang's name would have been entered into

the Golden Shield database, and the RPD's mistake about its timing taints the analysis regarding Mr. Huang's ability to leave China using his own passport.

[23] Mr. Huang also alleges that, even if his name had been entered into the database, the RPD failed to address the fact that he flew to North America from Hong Kong, not mainland China, and there was no evidence that the Golden Shield system operated outside of the mainland in 2012. Also, he states the RPD's finding does not withstand scrutiny because the RPD failed to reconcile this finding with its own acknowledgement that the Golden Shield system "may not have been fully operational" when he left China in 2012. I agree with Mr. Huang on these points.

(3) *Sur Place* Claim

[24] The third issue that Justice Gleeson addressed relates to errors in the prior RPD panel's analysis of Mr. Huang's *sur place* claim: *Huang* at paras 24-29. Justice Gleeson found that the prior RPD panel erred by: (i) importing its flawed negative credibility conclusions into the *sur place* analysis; (ii) failing to consider whether Mr. Huang would be identified as a Falun Gong practitioner, even if his practice is not genuine; and (iii) failing to have regard to all of the evidence (the RPD had dismissed photographs on the basis that they were not dated and a "letter" from a fellow practitioner in Canada, which was in fact a sworn affidavit, on the basis that the author was unknown to the RPD and had not appeared as a witness). Mr. Huang alleges that on redetermination, the RPD repeated all three errors.

[25] I am not persuaded that the RPD repeated the first error noted in *Huang*. The prior RPD panel required Mr. Huang to satisfy a "heavier onus" in order to demonstrate that he is now a genuine practitioner in Canada, based on findings that Mr. Huang did not practice Falun Gong in China, was not being pursued by the PSB, and made a fraudulent claim for protection in Canada, all of which led to a general finding that Mr. Huang is not credible. In my view, the RPD did not repeat this error on redetermination. The RPD's *sur place* analysis on redetermination was based almost entirely on Mr. Huang's failure to demonstrate a level of knowledge that was commensurate with "having extensively practiced, read and attended practice groups in Canada over the course of approximately seven years", as Mr. Huang had testified. Mr. Huang did not "provide any insight whatsoever into what he practiced or his knowledge of [Falun Gong]". The RPD noted that the foundation of Falun Gong is a body of fundamental knowledge, essential for the task of undertaking proper cultivation, and relied on country condition evidence stating that knowledge is an important component of Falun Gong. The RPD also reasonably rejected the photographic evidence and evidence from fellow practitioners in determining whether Mr. Huang's practice is genuine, on the basis that it is not probative evidence on this issue.

[26] I disagree that the RPD repeated the second error of failing to consider whether Mr. Huang would be identified as a Falun Gong practitioner in China even if his practice is not genuine. The RPD did consider this issue. However, in my view the RPD's analysis of the issue is unreasonable.

[27] The RPD's analysis consists of the following paragraph:

> Furthermore, the panel has considered the argument that the claimant's [Falun Gong] practice in Canada will have become

> known in China. The panel rejects this argument in the absence of any evidence to indicate that this is the case. Counsel submits that the photographs signal to China that this claimant is involved in anti-government protests. There was no evidence adduced to persuade the panel that the claimant had any leadership roles, nor would he have been identifiable.

[28] It is not clear from the above analysis what the RPD meant when it referred to the absence of "any evidence" that Mr. Huang's Falun Gong practice has become known in China. I agree with Mr. Huang that the country condition documentation states that the Chinese government monitors the activities of Falun Gong practitioners in Canada, among other countries, and that one method of monitoring is by photographing practitioners who protest outside the consulates. The photographs submitted by Mr. Huang show him in a visible manner at Falun Gong protests outside of the Chinese consulate and Toronto City Hall. The RPD did not address the country condition evidence, and the RPD's statements that Mr. Huang has not demonstrated a leadership role and he would not be identifiable are unintelligible in the absence of any further explanation.

[29] My findings on this point should not be taken as support for a proposition that presenting evidence of participation in Falun Gong protests must or should be accepted as establishing a *sur place* claim based on a non-genuine practice. In my view, Associate Chief Justice Gagné's observations in *Li v Canada (Minister of Citizenship and Immigration)*, 2018 FC 877 may also apply to the act of attending protests:

> The documentary evidence that the Chinese government monitors the practice of Falun Gong does not contradict the RAD's finding that there is no evidence suggesting Mrs. Li's practice has come to the attention of the Chinese authorities. To find differently would be to confirm that the minute a refugee claimant attended a Falun

> Gong practice in Canada, his or her *sur place* claim would be made. I do not support such a result. [Emphasis added.]

[30] In my view, it would be open for the RPD to conclude that Mr. Huang has failed to meet his onus to establish that his activities in Canada would put him at risk upon return to China. However, such a conclusion must be justified, and in my view, the analysis in the RPD's redetermination decision fails to provide the necessary justification.

[31] Finally, I disagree that the RPD erred by disregarding evidence relevant to the *sur place* claim. Mr. Huang submits the RPD failed to even mention a letter from his mother, which states that the PSB continue to look for him, and unreasonably disregarded evidence from a fellow Falun Gong practitioner who stated that he and Mr. Huang have been practicing Falun Gong since 2015, because he did not appear as a witness to give evidence at the hearing. I do not see how the mother's letter is relevant to the *sur place* claim—it says nothing about the PSB's knowledge of Mr. Huang's activities in Canada. Regarding the fellow practitioner's evidence, the RPD's finding that the evidence lacks probative value is not unreasonable. The fellow practitioner provides brief, bare assertions that the two men have practiced Falun Gong together in Milliken Park once a week since February 2015 and have participated in Falun Gong activities together over the past few years. The RPD did not err by noting that the fellow practitioner might have offered more probative evidence as a witness, but he did not testify.

B. *Did the RPD commit new errors by making additional, unreasonable findings to support a conclusion that Mr. Huang's claim is not credible?*

(1) Falun Gong Knowledge

[32] Mr. Huang submits that the RPD made several errors in analyzing the level of his knowledge: the RPD made an inaccurate statement that Mr. Huang was unable to respond to questions, or the responses were wrong; and the RPD unreasonably faulted Mr. Huang and his counsel for being "left with no idea" of Mr. Huang's understanding or knowledge of Falun Gong, when the RPD member could have asked more questions.

[33] The RPD's statement that "the panel was left with no idea of [Mr. Huang's] understanding or knowledge of [Falun Gong]" was not meant in the literal sense that the RPD was clueless. The RPD was clearly concerned with Mr. Huang's lack of knowledge that would be commensurate with being a genuine practitioner for approximately seven years.

[34] The RPD asked nine questions about Mr. Huang's Falun Gong practices and knowledge, which provided ample opportunity for him to demonstrate his knowledge of Falun Gong. The RPD asked about three different talks. When asked about the first talk, Mr. Huang's answer was short and superficial, and when the RPD asked him to expand, he was unable to remember anything else. The RPD asked whether Mr. Huang knew anything about the second talk and he responded no, that he liked the seventh talk more. When the RPD member asked Mr. Huang what he liked about the seventh talk—a talk that he identified as being one that he liked—his answer was that the seventh talk mentioned that "Dafa's practitioner should not kill and…when you kill people it creates karma". The RPD did not mischaracterize Mr. Huang's testimony by

stating that he was “unable to respond” to any of the questions that the RPD posed with respect to the contents of three of the talks, or that he “did not provide correct responses to the panel’s questions”. The RPD was not wrong to note that Mr. Huang’s counsel did not question him on Falun Gong knowledge. Mr. Huang bears the onus of establishing the basis for his claim. He had ample opportunity to do so, and was unable to demonstrate knowledge commensurate with an active and lengthy practice, as Mr. Huang contends.

[35] Mr. Huang submits that the RPD should have consulted the transcript from the hearing before the previous RPD panel, where he answered the RPD’s questions on Falun Gong. Mr. Huang provides no jurisprudence in support, and he concedes that the redetermination is a *de novo* consideration of the claim. There is some support for the proposition that an RPD panel is not required to have regard to the transcript from a prior hearing on reconsideration: *Clermont v Canada (Minister of Citizenship and Immigration)*, 2019 FC 112; *Kabengele v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1866, 197 FTR 73 (FCTD). In any event, nothing turns on this point because I am not satisfied that Mr. Huang’s answers from the first RPD hearing demonstrate a level of knowledge that would call into question the RPD’s conclusions about his Falun Gong knowledge.

[36] Lastly, Mr. Huang contends that it was unreasonable for the RPD to focus on his lack of in-depth understanding of the Falun Gong text as “the sole barometer” of his Falun Gong knowledge and identity because it is the sincerity of a person’s beliefs that matters, and Mr. Huang’s knowledge level would be affected by his limited education, low academic performance, and trouble understanding textbooks.

[37] I disagree. The RPD assessed Mr. Huang's lack of knowledge in view of these factors, and also in view of the frequency and length of his practice that he described. This served as a reference point for the RPD to find that he did not demonstrate a level of fundamental knowledge commensurate with his experience.

[38] The RPD tested Mr. Huang's Falun Gong knowledge in a reasonable manner. The RPD noted that "knowledge is an important component of [Falun Gong]" and cited documentary evidence in support. Testimony that lacks the detail that would reasonably be expected from a genuine adherent in an applicant's position can be the basis for rejecting the applicant's claims as non-credible: *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 614 at para 20.

(2) Arrest of Co-practitioners

[39] Mr. Huang submits that the RPD was unreasonably "microscopic" when it found Mr. Huang was embellishing his claim because he stated that the co-practitioners remained in detention in December 2019, when the last information he received about their detention was in August 2019:

> The claimant testified that the instructor and his brother were arrested, and detained. When asked for how long they had been detained, initially he stated that he was not clear. However, he later stated that they remain in detention today. The claimant was then asked how he had gleaned this information, to which he responded that his mother had told him. When questioned further, he stated that she had learned this information from the police in August. This simply does not make sense given that this hearing was held in December. In the absence of corroborative evidence, the panel finds that this was an attempt on the part of the claimant to embellish the merits of his claim.

[40] The RPD's finding that it "simply does not make sense" the two co-practitioners remain in detention lacks intelligibility. If the RPD only meant that Mr. Huang could not know, based on information received from his mother in August 2019, that the co-practitioners remained in detention in December 2019, then I agree with Mr. Huang that this was an overly microscopic point. Mr. Huang was asked, "How long were they detained?" and responded, "I'm not clear they are still in there even now" [sic]. When asked how he knows that they are still in jail, Mr. Huang responded that the police had told his mother in July. Again, while there may be a reasonable basis for rejecting Mr. Huang's evidence that the co-practitioners remain in detention, the RPD did not provide one. The RPD's decision must be justified, not merely justifiable: *Vavilov* at para 86.

(3) Arrest Warrant and Number of PSB Visits

[41] Mr. Huang raises factual errors and flawed logic in the RPD's assessment of (i) whether the PSB left an arrest warrant or a detention notice; and (ii) whether the RPD erroneously believed that there were four, rather than three, PSB visits to Mr. Huang's parents' home before he left China. In my view, it is not necessary to address Mr. Huang's arguments regarding these alleged errors. To the extent that they may have impacted the RPD's analyses regarding the lack of a summons and Mr. Huang's ability to leave China using his own passport, I have already determined those analyses to be unreasonable. In my view, these alleged errors are not material to any other issue.

IV. **Conclusion**

[42] Whether Mr. Huang is wanted by the PSB for his Falun Gong activities is at the heart of his refugee claim, and the RPD supported its conclusion that he is not wanted with unreasonable credibility findings. In my view, the RPD's conclusion is not adequately supported by other findings, and the circumstances of this case are therefore distinguishable from cases where this Court has found that an unreasonable credibility finding did not render the tribunal's overall negative credibility finding unreasonable (see, for example, *Wei v Canada (Minister of Citizenship and Immigration)*, 2019 FC 230 at paragraphs 14-15, and *Guo v Canada (Minister of Citizenship and Immigration)*, 2019 FC 704 at paragraph 39).

[43] The RPD also committed an error by failing to justify its finding that Mr. Huang failed to establish that his practice in Canada has become known in China, which was part of the analysis of Mr. Huang's *sur place* claim.

[44] The RPD's errors are sufficiently central and significant so as to render the decision unreasonable: *Vavilov* at para 100. Consequently, the RPD's decision must be set aside. The matter will be remitted to another decision maker for redetermination.

[45] Neither party proposes a question of general importance for certification. In my view, no question for certification arises in this case.

JUDGMENT in IMM-7881-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed and the matter shall be referred to another decision maker for redetermination.

2. There is no question for certification.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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