Date: 20071213

Docket: IMM-770-07

Citation: 2007 FC 1310

Ottawa, Ontario, December 13, 2007

Present: The Honourable Mr. Justice Simon Noël

BETWEEN:

AZITA ABDOLLAHZADEH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) against a decision of a pre-removal risk assessment officer (PRRA officer), Olivier Perreault, dated January 15, 2007, refusing the PRRA application of Azita Abdollahzadeh (applicant).

I. Issues

[2] The following issues are raised by this application for judicial review:

(1) Did the PRRA officer err in his assessment of the documents filed by the applicant?

(2) Constitutional question: Do sections 113 of the IRPA and 167, 168 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR) infringe section 7 of the *Charter of Rights and Freedoms, Constitution Act, 1982*, being Schedule B of the *Canada Act* (U.K.), 1982, c. 11 (the Charter) or the *Canadian Bill of Rights*, S.C. 1960, c. 44, reprinted in R.S.C. 1985, App. III?

As required by the legislation, the notice of constitutional question was served on the Attorney General of Canada, the attorneys general of the provinces and the Minister of Citizenship and Immigration.

[3] Given the multitude of questions that the applicant proposed for certification, I am including them under this heading:

(1) For the application of paragraph 113(*a*) of the IRPA, does the "evidence that arose after the rejection" include only evidence that postdates the evidence before the RPD and that substantially differs from this evidence?

(2) Does the standard governing the filing of new evidence pursuant to paragraph 113(*a*) of the IRPA require the PRRA officer to accept all evidence arising after the RPD decision, even the evidence normally accessible by the applicant or the evidence that she probably could have presented at the hearing on the refugee claim?

(3) To determine whether the evidence arose after the refugee claim was dismissed by the Board and therefore whether it is "new", is the PRRA officer bound to limit his assessment to the new facts or new risks or can he also consider other factors, like the nature of the information, its importance in the matter and the credibility of its source?

(4) In light of paragraphs 3(3)(*d*) and (*f*) of the IRPA, is the PRRA officer prohibited from examining the applicant's personal evidence, essential to his refugee claim and establishing that she would be at risk if she were removed, when this evidence could have, in all likelihood, been filed before the Board?

(5) Does paragraph 113(*a*) of the IRPA breach the principles of natural justice contemplated under section 7 of the *Canadian Charter of Rights and Freedoms* by limiting the evidence admissible to the PRRA?

(6) Does the overall effect of the provisions of paragraph 113(*b*) of the IRPA in relation to sections 167-168 of the IRPR breach the principles of fundamental natural justice enshrined by section 7 of the *Canadian Charter of Rights and Freedoms* by limiting a PPRA applicant's right to be heard *viva voce* on questions of fact and credibility?

(7) Does the overall effect of paragraphs 113(*a*) and (*b*) of the IRPA in relation to sections 167-168 of the IRPR breach the principles of fundamental justice enshrined by section 7 of the *Canadian Charter of Rights and Freedoms* by limiting a PRRA applicant's right to be heard in a full hearing before an impartial and independent tribunal?

[4] For the reasons that follow, the application for judicial review is dismissed and no question is certified.

II. Factual basis

[5] The applicant is a citizen of Iran.

[6] On March 2, 2004, the applicant was arrested and detained by the Iranian authorities for having had an [TRANSLATION] "illegitimate affair" with a married man whom she believed was divorced.

[7] On March 6, 2004, the applicant was released and the matter suspended because of the intervention of her cousin, Jamshid Abdollahzadeh, a Colonel of Sepah, an intelligence agency in Iran. In exchange for his help, he had required that the applicant become his second wife.

[8] The applicant used many ploys to put off this forced marriage, while looking for ways to leave Iran. In the summer of 2004, she filed a temporary resident visa application to visit her sister in Canada but this application was refused on June 20, 2004 (she had also applied once before in 2001, which was refused). On May 26, 2005, the applicant left Iran to join her brother, a refugee whose claim had been accepted in Austria. The applicant filed for protection two weeks after she arrived in that country.

[9] The applicant alleged that after she left Iran, her cousin threatened and harassed her father. Moreover, on June 28, 2005, her sister received an unfriendly telephone call from the cousin, who wanted to know the whereabouts of the applicant. Her brother in Austria for his part received a phone call from a person from the Iranian Embassy looking for the applicant.

[10] This is the reason the applicant gave for leaving Austria for Canada. She arrived in Canada on August 20, 2005, with a false passport and applied for refugee status in Montréal six days later.

[11] On April 12, 2006, the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada determined that the applicant was not a refugee or a person in need of protection within the meaning of the IRPA. The RPD, doubting that there was a cousin in Iran or an arrest warrant dated March 2, 2004, noted the delay in leaving Iran and in seeking protection during her stay in Austria, the absence of documents corroborating her refugee claim in Austria and the fact that she had not availed herself of the laws in Austria to ensure her protection from the threats of her

cousin. For the RPD, all of these observations supported its finding that the applicant suffered from a "serious" lack of credibility and accordingly refused the claim.

[12] On July 19, 2006, the Federal Court dismissed the application for leave and for judicial review of the RPD's decision.

[13] In December 2006, the applicant telephoned her mother in Iran, and her mother told her that she had received a summons to appear before the Iranian court to answer to the charge involving her illegitimate affair.

[14] On December 22, 2006, the applicant filed a PRRA application. This application was refused on January 15, 2007. This decision is the subject of this judicial review.

III. The decision under judicial review

[15] The PRRA officer determined that there was insufficient evidence to establish that the applicant would be at risk of torture, cruel and unusual treatment or punishment or death if she were removed to Iran or if she was a member of a group that could be subject to this kind of abuse and/or treatment. Accordingly, the PRRA application was refused.

[16] In making this determination, the PRRA officer reviewed the 36 documents filed by the applicant, based on which he made several determinations:

[1] Documents 12 to 36 do not amount to new evidence for the following reasons:

a. Documents 15 to 36 predate the RPD's decision refusing the claim and the applicant did not establish that these documents were not reasonably available or, if they were, that the applicant could not reasonably have been expected to have filed them at the time of the refusal;

b. While it was not dated, document 14 refers to facts predating the applicant's refugee claim. In fact, this document deals with granting refugee status to the applicant's brother in Austria. This information is not new because it was considered by the RPD, which did not challenge it (see PIF, question 5). Further, according to the PRRA officer, the applicant did not explain why this document could not be filed before the RPD before the decision was made. In any case, this information was not challenged by the RPD;

c. Document 13, the affidavit of Afshin Abdollahzadeh, brother of the applicant, dated February 3, 2006, predating the decision, had been submitted to the RPD and therefore contained information which had already been filed with it. The PRRA officer did not accept the applicant's argument since any challenge involving the weight that the RPD assigned to these facts is within the jurisdiction of the Federal Court through a judicial review and not the PRRA officer; and

d. Document 12, the affidavit of Afshin Abdollahzadeh, dated December 15, 2006, is dated after the RPD decision. However, the PRRA officer determined that this

document contained only information that predated the refugee claim and it was reasonable to expect that the applicant would have presented it to the RPD before the decision was made.

[2] The PRRA officer did not comment on document 11, entitled "Excerpt of *Handbook on Procedures and Criteria for Determining Refugee Status* [page 21] (September 1979). As the title states, this document involves the procedure for deciding the refugee claim, not the PRRA;

[3] Documents 1 to 10 date from before the decision but the PRRA officer did not accept them for the following reasons:

a. Documents 1 and 2 have minimal probative value since they were filed by the applicant with the Federal Court for her application for judicial review of the RPD decision. Both of these documents contained complementary information that adds very little to the written submissions;

b. Document 3, a copy of the [TRANSLATION] "summons to appear" (June 10, 2006) is a document from the Court of Iran in the name of the applicant, calling her to a hearing on June 17, 2006, to respond to charges of having an illegitimate affair. The PRRA officer did not assign very much probative value to this document since it was a photocopy, the authenticity of which could not be verified. Moreover, the applicant did not provide evidence that this document came from Iran. Also, its probative value was limited since it refers to the allegation of an illegitimate affair

that the RPD stated lacked credibility. Finally, the PRRA officer was not satisfied with the explanation that her cousin's intervention was the cause of the two-year lapse of time between her arrest in March 2004, and the filing of the summons to appear on June 10, 2006;

c. Document 4 is an affidavit of Afrooz Abdollahzadeh (December 17, 2006), the applicant's sister. The PRRA officer determined that most of the information in this affidavit had preceded the RPD decision and could have been presented well before the moment of the decision. Accordingly, the PRRA officer did not accept it. He also found implausible the applicant's explanation that she had not known that her sister could testify before the RPD, since the applicant was represented by counsel experienced in refugee matters. According to the officer, the only new evidence in the sister's affidavit reads as follows:

> . . . [a]t the beginning of December 2006, my sister Azita called our mother and our mother told Azita that she had received notice to appear in court for accusations of illegitimate relationship.[paragraph 15]

The PRRA officer assigned mitigated probative value to this new information given that it came from the applicant's close relative, in this case her sister. Just like document 3 referred to above, the PRRA officer considered that this new information had insufficient probative value to establish, on a balance of probabilities, that there actually was a summons to appear pending against the applicant alleging that she had an illegitimate affair;

d. Documents 5 to 10 deal with objective documentary evidence bearing on human rights conditions and more specifically the status of women in Iran, we must recognize that according to the PRRA officer, none of these documents corroborate the personal facts of the applicant's allegations. Moreover, these documents do not establish that the applicant is at risk as she claims. Finally, the PRRA officer determined that, even though this objective documentary evidence is from after the RPD decision, it describes an identical situation and does not bring anything new to the status of women in Iran at the time of the RPD decision; and

e. In the context of the analysis of document 8 entitled "Letter from the Association des femmes iraniennes de Montréal ("AFIM") (undated)", the PRRA officer noted that this document did not confirm that the AFIM is perceived as an opposition group by the Iranian authorities. Even though document 8 confirms the applicant's membership in this group, there are no details regarding the nature of the applicant's activities within this group. The PRRA officer pointed out that according to a document published by the Fédération des femmes du Québec (FFQ), the AFIM is an [TRANSLATION] "independent organization for educating, promoting and integrating Iranian women into Quebec society."

[17] Accordingly, the PRRA officer, while having observed that facts as presented were similar to those presented to the RPD with the exception of the summons to appear dated June 10, 2006,

and the applicant's membership in the Association des femmes iraniennes de Montréal, determined that the applicant had not established the basic facts to justify her PRRA application. Referring to certain judgments of this Court, officer Perreault stated this at page 9 of his decision:

> . . . The IRB previously found that the applicant did not have a well-founded fear of persecution on the basis of her gender, and the Federal Court upheld the Board's conclusions. The words of the honourable Justice Barnes in *Yousef v. Canada (Minister of Citizenship and Immigration)*, [2006] FC 864 are applicable to the present case:
>
> > It is not the role of the PRRA officer to re-examine evidence assessed by the Board, and it is not open to the officer to revisit the Board's factual and credibility conclusions. It is also not the duty of the PRRA officer to consider evidence that could have been put to the Board, but was not. [Emphasis added in the original]
>
> The words of the honourable Justice Kelen, in *Kaybaki v. Canada (Solicitor General)*, [2004] FC 32, also apply to the present case:
>
> > The PRRA application cannot be allowed to become a second refugee hearing. The PRRA process is to assess new risk developments between the hearing and the removal date.

IV. Relevant legislation

[18] The procedure for the assessment of a PRRA application is provided at section 113 of the IRPA. The relevant passages are the following:

Consideration of application	**Examen de la demande**
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit:
(a) an applicant whose claim to refugee protection has been	a) le demandeur d'asile débouté ne peut présenter que des

rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

[19] Section 167 of the IRPR sets out the factors to be considered for the application of paragraph 113(*b*).

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:	167. Pour l'application de l'alinéa 113(b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise:
(*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(*b*) whether the evidence is central to the decision with respect to the application for protection; and	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(*c*) whether the evidence, if accepted, would justify allowing the application for protection.	c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[20] Section 168 states the following:

168. A hearing is subject to the following provisions:	168. Si une audience est requise, les règles suivantes s'appliquent:
(*a*) notice shall be provided to the applicant of the time and place of the hearing and the issues of fact that will be raised at the hearing;	a) un avis qui indique les date, heure et lieu de l'audience et mentionne les questions de fait qui y seront soulevées est envoyé au demandeur;
(*b*) the hearing is restricted to matters relating to the issues of fact stated in the notice, unless the officer conducting the hearing considers that other issues of fact have been raised by statements made by the applicant during the hearing;	b) l'audience ne porte que sur les points relatifs aux questions de fait mentionnées dans l'avis, à moins que l'agent qui tient l'audience n'estime que les déclarations du demandeur faites à l'audience soulèvent d'autres questions de fait;
(*c*) the applicant must respond to the questions posed by the officer and may be assisted for that purpose, at their own expense, by a barrister or solicitor or other counsel; and	c) le demandeur doit répondre aux questions posées par l'agent et peut, à cette fin, être assisté, à ses frais, par un avocat ou un autre conseil;
(*d*) any evidence of a person other than the applicant must be in writing and the officer may question the person for the purpose of verifying the evidence provided.	d) la déposition d'un tiers doit être produite par écrit et l'agent peut interroger ce dernier pour vérifier l'information fournie.

V. Analysis

Standard of review

[21] As it was pointed out in the recent decision in *Colindres v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 959, 2007 FC 717, at paragraph 13, Madam Justice Eleanor Dawson, in *Kandiah v. Canada (Solicitor General)*, 2005 FC 1057, examines the appropriate standard of review for the decisions of PRRA officers and at paragraph 6, she determines as follows:

> As to the appropriate standard of review to be applied to a decision of a PRRA officer, in *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 540, Mr. Justice Mosley, after conducting a pragmatic and functional analysis, concluded "the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness". Mr. Justice Mosley also endorsed the finding of Mr. Justice Martineau in *Figurado v. Canada (Solicitor General)*, [2005] F.C.J. No. 458, that the appropriate standard of review for the decision of a PRRA officer is reasonableness *simpliciter* when the decision is considered "globally and as a whole". This jurisprudence was followed by Madam Justice Layden-Stevenson in *Nadarajah v. Canada (Solicitor General)*, [2005] F.C.J. No. 895 at paragraph 13. For the reasons given by my colleagues, I accept this to be an accurate statement of the applicable standard of review.

[22] In the context of this matter, the applicant alleged that the PRRA officer erred in determining the probative value of the documents filed by the applicant. This issue requires an analysis of the decision as a whole and therefore the reasonableness standard applies.

[23] With regard to the constitutional question, it will be answered by referring to the usual rules of interpretation of law while taking into account the objectives of the relevant provisions, the vocabulary used by Parliament to convey the objectives and the scope of the vocabulary in the context of the legislation under review. The constitutional question goes to the very heart of the

PRRA officer's jurisdiction, his role, while taking into account the principles of natural justice applicable in such a situation.

(1) Did the PRRA officer err in his assessment of the new documents filed?

[24] The applicant filed 36 documents in support of her PRRA application. She alleged that the PRRA officer erred in assessing the probative value to be assigned to each of the 36 documents. The applicant also argued that her PRRA application was also based on new evidence establishing the truthfulness of the facts presented before the IRB as well as on new facts that established risks that date from after the IRB decision. I do not agree with this position.

[25] In a judgment (*Raza et al v. MCI et al*, 2006 FC 1385, at paragraph 22) where the facts are in part similar to this situation, Mr. Justice Mosley described the new information in the following manner:

> It must be recalled that the role of the PRRA officer is not to revisit the Board's factual and credibility conclusions but to consider the present situation. In assessing "new information" it is not just the date of the document that is important, but whether the information is significant or significantly different than the information previously provided: *Selliah*, above at para. 38. Where "recent" information (i.e. information that post-dates the original decision) merely echoes information previously submitted, it is unlikely to result in a finding that country conditions have changed. The question is whether there is anything of "substance" that is new: *Yousef*, above at para.27.

[26] Very recently, the Court of Appeal rendered a judgment following the certification of two questions by Mosley J. in regard to section 113 of the IRPA (see *Raza et al. v. MCI*, 2007

FCA 385). Madam Justice Sharlow, on behalf of the Court, dismissed the appeal, adopted the reasoning of Mosley J. (see paragraph 16) and commented on the content of section 113 of the IRPA (see paragraph 13). She took the time to state once again that PRRA procedure is not an appeal or an application for review of the RPD decision given that Parliament clearly intended to limit the evidence presentable in the context of such a procedure (see paragraph 12).

[27] What Parliament does not want is to have the PRRA application become a disguised second refugee claim. By limiting the evidence to new information for a refused refugee claimant's PRRA application, it is clearly indicated that the intended objective is to analyze the application for protection taking into consideration the situation after the RPD decision, all subject to certain adaptations regarding some earlier evidence according to the wording of section 113 of the IRPA and the interpretation given by Sharlow J. and Mosley J.

[28] Bearing in mind what is stated above regarding paragraph 113(*a*) of the IRPA and the *Raza* judgment (*supra*) of the Court of Appeal, I note that the PRRA officer took the time to analyze the documentation submitted in support of the PRRA application and that he explained in detail his findings in regard to its probative value (the credibility of the evidence, while considering the source and the circumstances surrounding the existence of the information, its trustworthiness, its element of novelty and its high degree of importance). He did so by taking into consideration not only the date of the information but also the aspect of novelty or lack thereof with reference to the evidence before the RPD, the RPD's findings and whether or not the information was available at the time of the RPD hearing as well as whether or not it was reasonable to expect that she present this

information to the RPD. An analysis such as this satisfies the standards contained under paragraph 113(*a*) of the IRPA and the Court has no reason to intervene because the PRRA officer's decision was reasonable. Officer Perreault considered the relevant information and he made the appropriate determinations considering the circumstances of the matter.

[29] I would add, as it had been mentioned in *Colindres, supra*, in circumstances similar to this case, that the fact that the applicant disagrees with the findings of the PRRA officer does not render the PRRA officer's decision unreasonable. In my opinion, the applicant in her submissions is in reality asking the Court to substitute its assessment of the evidence for the assessment made by the officer. This is not the Court's role at this stage of the applicant's file (*Gonzalez v. Canada (Minister of Citizenship and Immigration*), [2006] F.C.J. No. 1592, 2006 FC 1274 at paragraph 17; *Maruthapillai v. Canada (Minister of Citizenship and Immigration*), [2000] F.C.J. No. 761 at paragraph 13).

(2) *Constitutional question: do sections 113 of the IRPA and 167 of the IRPR infringe section 7 of the Charter* or the *Canadian Bill of Rights?*

[30] The applicant raises three points which, in her opinion, challenge the constitutional validity of section 113 of the IRPA and of section 167 of the IRPR:

- The restrictions regarding the admissibility of the new information provided at paragraph 113(*a*) of the IRPA violate the rules of fundamental justice and fairness of section 7 of the Charter;

- The limits justifying a *viva voce* hearing provided at paragraph 113(*b*) of the IRPA and at section 167 of the IRPR are contrary to the principles of fundamental justice protected by section 7 of the Charter;

- Section 113 of the IRPA and sections 167 and 168 of the IRPR are unconstitutional because they prevent the applicant from being heard before an independent and impartial tribunal for her refugee claim;

[31] The Court has no judicial obligation to respond to constitutional questions when the matter does not justify it (see *Moysa v. Alberta* [1989] 1 S.C.R. 1572, where the Supreme Court states that it is not bound by such questions when they are formulated in the context of an appeal). As worded, the questions do not appear to raise a situation requiring a complex solution. Second, they have been answered in large part in the case law as we will see. Thirdly, the rules of interpretation of laws and the administrative law are the appropriate tools for answering these questions and not necessarily the Charter. Fourth, the texts of law under review are clear. Fifth, the facts of this matter and the PRRA decision are not confusing. For all of these reasons, the Court has the justification necessary to not answer the questions. However, for the simple purpose of clarification, the Court shall answer those questions succinctly.

[32] According to the applicant, paragraph 113(*a*) of the IRPA breaches the principles of fundamental justice and fairness protected by section 7 of the Charter and the *Canadian Bill of Rights* given that it limits the evidence admissible for the purposes of a PRRA application to information that is new after the refusal of the refugee claim by the RPD or rather to information that was not reasonably available or, if it was, that she could not reasonably have been expected, under the circumstances, to have presented it to the RPD. The applicant claims that the limits on the evidence have an impact on the right to life, liberty and security of asylum seekers and that they do not respect the principles of fundamental justice protected by section 7 of the Charter.

[33] A review of paragraph 113(*a*) of the IRPA suggests that the PRRA application is offered to claimants who have been refused refugee status i.e. claimants whose refugee claims were analyzed, reviewed and decided by the RPD after a hearing where witnesses were heard and/or evidence was submitted by the applicant who had the burden of establishing that he or she met the requirements established by sections 96 and 97 of the IRPA.

[34] As mentioned earlier, the PRRA application stage must not be a forum where the procedure before the RPD is repeated once again. This is not what Parliament intended. The purpose of an application for protection is to assess the claim after the RPD has refused the claimant's refugee claim. From there, the purpose is to limit the evidence submitted to new information in accordance with paragraph 113(*a)* of the IRPA except for the evidence that was not reasonably available at the

time of the RPD hearing or again, if it was, that it could not reasonably have been expected in the circumstances to have been submitted to the RPD; the new information must come from new developments in regard to, for example, the situation in the country for removal, a change in the applicant's personal situation, etc…

[35] It is evident that the application for protection contemplates life, liberty and security of the applicant. Overall, the procedure provided by the IRPA according to the steps (the refugee claim and the RPD decision, the application for protection, the ultimate application to the removal officer) is indicative of concern for the principles of natural justice and fairness. Considering all of the IRPA procedure and the application for protection step, limiting the PPRA applications to new information under paragraph 113(*a*) of the IRPA does not breach the principles of justice and fairness guaranteed by the Charter.

[36] As for the second point of the question, the applicant submits that paragraph 113(*b*) of the IRPA and section 167 of the IRPR limiting the right to be heard *viva voce* under certain very limited circumstances, breaches the right to be heard *viva voce* by the PRRA officer when the life, liberty and security of the person are in play, thereby breaching the rights protected under section 7 of the Charter.

[37] Paragraph 113(*b*) of the IRPA states clearly and precisely that the PRRA officer has no obligation to call a hearing, subject to what is provided in the regulations. This, at section 167 of the IRPR, opens the door to holding a hearing when the evidence relating to sections 96 and 97 of

the IRPA raise an important question regarding the applicant's credibility. This evidence must be significant for the PRRA decision to the point that if this evidence is admitted it will have a determinative impact on the decision.

[38] With that said, it is important to note that the right to a hearing is not an absolute right. Parliament decides whether a procedure will include a hearing. It did so when the IRPA was enacted.

[39] It is also important to note that the PRRA procedure enables an interested party to make all the appropriate submissions in writing. This matter is proof of that. The PRRA officer reviews the application while taking into consideration the information as presented.

[40] Indeed, the Supreme Court in *Suresh v. Canada (MCI)*, [2002] 1 S.C.R. 3, stated that a hearing was not automatic when the case of a person facing removal to a country where the person was at risk of being tortured was under review and that the provisions of the IRPA satisfied the principles of natural justice guaranteed by section 7 of the Charter. Our Court, applying this approach to PRRA procedure, decided that section 113 of the IRPA and section 167 of the IRPR, while not conferring a hearing in every case, are consistent with the principles of fundamental justice and that they do not breach the fundamental rights provided under section 7 of the Charter (see *Sylla v. Canada (MCI)*, 2004 FC 475, at paragraph 6 and *Iboude v. Canada (MCI)*, 2005 FC 1316, at paragraphs 12 and 13).

[41] I make the same finding. For these reasons, section 113 of the IRPA and section 167 of the IRPR are consistent with the principles of natural justice protected by section 7 of the Charter.

[42] The third part of the question is to the effect that sections 113 of the IRPA and 167 and 168 of the IRPR are unconstitutional because they provide that the contemplated party will not be heard by an independent and impartial tribunal. All that the applicant states in support of this point is that the rights of this person are defined by an officer of Citizenship and Immigration Canada and that this breaches the rules of independence and impartiality.

[43] In response, I will repeat what was said in *Colindres, supra,* and note that the Federal Court of Appeal already settled this question in *Say v. Solicitor General of Canada*, [2005] F.C.J. No. 2079, 2005 FCA 422. In this decision, the Federal Court of Appeal confirmed the decision of Mr. Justice Gibson, finding that PRRA officers are independent and impartial. It is important to note that the Supreme Court refused the application for leave in that matter (see *Say v. Canada (Solicitor General)*, [2006] S.C.C.A. No.49). Consequently, I make the same finding.

[44] Given the negative finding on each of the three points raised by the constitutional question, I therefore determine in response to this question that sections 113 of the IRPA and 167 of the IRPR do not breach the principles of natural justice guaranteed by section 7 of the Charter.

The questions proposed for certification purposes

[45] With questions 1, 2 and 3 aside, the respondent objects to the certification of questions 4, 5, 6 and 7.

[46] Given the reasons of this decision and the recent decision of the Federal Court of Appeal in *Raza, supra*, where the Court addressed two questions certified by Mr. Justice Mosley in the same matter, proposed questions 1 and 2 need not be certified.

[47] As for question 3, the Court notes that it was already answered in the judgment of the Court of Appeal in *Raza, supra*.

[48] Question 4 will not be certified. The reference to paragraphs 3(3)(*d*) and (*f*) of the IRPA is noted on simple review of the proposed question. In her submissions, her constitutional question and her arguments, the applicant did not rely on these paragraphs. Therefore, the respondent did not have the opportunity to make his arguments on this subject.

[49] With regard to questions 5, 6 and 7, they will not be certified. The fact that one part raises a Charter issue does not make it so important that the questions must be certified. The facts of the matter under review, the decision of officer Perreault, the case law, including that of the Supreme Court, respond adequately to the judicial review before us. There is nothing sufficiently important therein to justify the certification of these questions.

[50] Sections 113 of the IRPA and 167 and 168 of the IRPR are not ambiguous texts and normally would not require an extensive overview to explain their contents. Further, the procedure and the steps provided in the IRPA show concern and preoccupation for ensuring that the applicant is heard before different levels, but not to the point of doubling the respective tasks of each of them. Overall, as well as when taking into account each of these levels, the IRPA procedure is consistent with the principles of natural justice and the rights conferred by section 7 of the Charter.

[51] More specifically, question 5 will not be certified given the reasons contained herein. In short, the question of the interpretation of paragraph 113(*a*) of the IRPA is not ambiguous. The case law (including the even more recent case law of the Federal Court of Appeal in *Raza*, *supra*) already gives ample guidelines regarding the interpretation to be made as well as the objective contemplated by the PRRA process. The rules of interpretation of laws and of administrative law are the tools for understanding paragraph 113(*a*) of the IRPA as the reasons of this decision establish.

[52] With respect to question 6, once against this question cannot be certified for the reasons given in this judgment. Succinctly, the right to a hearing is not an absolute right. The Supreme Court has already ruled on this subject while addressing different situations (involving PRRA procedure) created by the IRPA (see *Suresh*, *supra*, and *Baker v. Canada (MCI)* 2 S.C.R. 817, at paragraph 11). These are situations that in general are similar to a refugee claim. Further, our Court has applied these principles to PRRA procedure.

[53] Question 7 cannot be certified. The applicant's submissions and arguments (except the additional submissions) are limited to the issue without unnecessary elaboration. Further, the case law has already decided the issue of impartiality and independence in favour of maintaining the PRRA procedure (see *Say*, *supra*, and *Satiacum v. MCI* [1985] 2 FC 430).

[54] Considering the foregoing reasons, the application for judicial review is dismissed and no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT ORDERS AS FOLLOWS:

- The application for judicial is dismissed.
- No question will be certified.

"Simon Noël"

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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