Federal Court  Cour fédérale

Date: 20120217

Docket: IMM-2327-11

Citation: 2012 FC 224

Ottawa, Ontario, February 17, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PARMINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 23 March 2011 (Decision) in which the RPD declared the Applicant's claim for protection abandoned under section 168 of the Act.

BACKGROUND

[2] The Applicant is a citizen of India. He arrived in Canada on 1 January 2009 and claimed protection on 2 April 2009. He based his claim on his fear of persecution by the police in India because of his membership in the Congress Party. He says that the police falsely accused him of participating in terrorist activities, arrested him, and beat him while he was in detention.

[3] The RPD scheduled a hearing for 26 January 2011 (January Hearing). On 3 December 2010, the RPD sent the Applicant a Notice to Appear which informed him of the date of the hearing.

[4] On 20 January 2011, the Applicant's physician, Dr. Sunerh, wrote a letter to the RPD saying that the Applicant had been under his care. This letter said that the Applicant would be unable to attend his scheduled hearing date because he was experiencing depression. The RPD received this letter on 24 January 2011.

[5] The Applicant did not appear for the January Hearing. At that hearing, the RPD panel member and a Tribunal Officer (Officer) were present. The RPD noted the Applicant's absence and that it and the Officer had checked with the reception desk and determined that the Applicant was not in the building. The RPD also reviewed the letter from Dr. Sunerh and noted that there was no indication in the letter that Dr. Sunerh is either a psychiatrist or psychologist, though the letter said that the Applicant would be unable to attend the hearing because of his depression.

[6] The RPD said that it would set a new date for a hearing, at which the Applicant would be expected to produce a mere detailed medical note explaining why he did not attend the January Hearing. The RPD indicated that it would prefer a note from a psychologist or psychiatrist. The

RPD scheduled a second hearing at which the Applicant would have the opportunity to explain why his claim should not be declared abandoned (Abandonment Hearing). The RPD scheduled the Abandonment Hearing for 23 March 2011.

[7] Before the Abandonment Hearing, the RPD sent the Applicant a Notice to Appear for the Abandonment Hearing on 8 February 2011 (February Notice). That notice informed him that he had failed to attend on 26 January 2011, but would be given the opportunity to explain why he had not appeared. In the "Important Instructions" portion of the letter, the RPD informed the Applicant that, if he failed to appear at the Abandonment Hearing, the RPD might declare his claim abandoned. The notice also informed him that

> If the RPD is satisfied with your explanation and your claim is not determined abandoned, you should be prepared to proceed with the hearing of your claim.

[8] The February Notice also informed the Applicant of his right to counsel, his obligation to disclose documents prior to the hearing, and his obligation to establish his identity and any other elements of his claim.

[9] On 28 February 2011, the Applicant wrote to the RPD to inform it that he had changed his counsel. The RPD received this letter on 2 March 2011. Also on 2 March 2011, the Applicant served the RPD with a Multi-Purpose Document Request Form, in which he requested a copy of his Personal Information Form (PIF). The Applicant received his PIF from the RPD on 15 March 2011, approximately two weeks before the Abandonment Hearing.

[10] The RPD conducted the Abandonment Hearing on 23 March 2011. At that hearing, the Applicant, his counsel, the RPD panel member, the Officer, and an interpreter were present. The

hearing began approximately thirty minutes after it was scheduled to begin because the Applicant's counsel was late. In his affidavit in support of his application for judicial review, the Applicant says that the RPD member screamed at counsel and demanded to know why he was late and had not called. This exchange does not appear in the transcript of the Abandonment Hearing.

[11] Before the Applicant was questioned or made submissions, the RPD said it was not satisfied with the explanation the Applicant had given. The Officer then asked the Applicant to explain why he did not attend the January Hearing. The Applicant said that he felt sick ten to fifteen days before the hearing and went to his doctor in the first week he felt sick. The following exchange then occurred:

RPD:	Sir, give us a date. We do not know first week… ten days before, ten days after. Give us a date if you know.
Applicant:	I went on 8
RPD:	Eighth of what?
Applicant:	January 8
RPD:	Are you sure you went on January 8?
Applicant:	Yes.

[12] The Officer then questioned the Applicant on the discrepancy between his oral testimony and the letter his doctor had sent to the RPD:

Officer:	I am sorry. The note stated from the doctor that you were under his care from December 8, 2011.
Applicant:	Yes.
Officer:	Is that correct?
Applicant:	Yes.

Officer:	But that is not what you just said. You spoke about January and you said that was the only time.
Applicant:	Yes.
Officer:	So now you are telling me yes. So what is it, when did you go to the doctor with respect to your illness that prevented you from coming to this hearing?
Applicant:	I have already stated that I went on 8.
Officer:	So we got [sic] two sets of eighth. So eight what?
Applicant:	December 8 I was there.
RPD:	Sir you said January 8. It is on record. The statement is being recorded on tape. So now you are changing your statement?
Applicant:	Sorry sir, I did not know about it whether I would be asked questions about these dates.
RPD:	Sir, you are the only person who can tell us why you were not present for your hearing. And also this document was produced at your request by your doctor. Can you explain why there is this inconsistency between your oral testimony and the content of the letter?
Applicant:	I can only say that I was under depression and I went there and the doctor did my checkup.

[13] The RPD also asked the Applicant about the medication Dr. Sunerh had prescribed him. Near the end of the hearing, the Applicant's counsel made submissions, in part based on the fact that he had only recently obtained the file and the Applicant had not been informed of his obligation to appear by previous counsel. He also noted that he had not received the Applicant's PIF until 15 March 2011 and requested a postponement.

[14] The RPD asked counsel if he was prepared to proceed that day; counsel agreed that neither he nor the Applicant was able to proceed with the hearing that day. Counsel had received the Applicant's supporting documents on 18 March 2011, the Friday before the hearing, and they still needed to be translated. The Officer said that he was unsure what documents could be required that would take nearly two years to obtain, given that the Applicant had filed his claim on 2 April 2009. The Officer also observed that this was relevant to the Applicant's diligence in obtaining documents which would support his claim.

[15] When the RPD asked counsel if it were he or the Applicant who was not ready to proceed, counsel said he was not prepared because he was under the impression that the hearing was only a pre-abandonment hearing. He asked for a fair chance for another hearing. Counsel also said that the Applicant was not ready to proceed with the claim on that day. When asked directly, the Applicant agreed that he was not ready to proceed.

[16] At the conclusion of the Abandonment Hearing, the RPD denied counsel's request for a postponement. The RPD also noted that the Applicant did not attend the January Hearing and had provided a letter from Dr. Sunerh. The RPD highlighted the discrepancy between the Applicant's testimony and the letter, and said that the Applicant had not provided a satisfactory explanation for the inconsistency. Because of the unexplained inconsistency, the RPD gave no weight to the letter from Dr. Sunerh. The RPD then declared the Applicant's claim abandoned because it gave no weight to the letter and the Applicant was not ready to proceed with his claim on that day. Finally, the RPD noted that counsel had said he had carriage of the file on 2 March 2011, a full three weeks prior to the hearing.

DECISION UNDER REVIEW

[17] The Decision in this case consists of the Notice of Abandonment, sent to the Applicant on 23 March 2011 and two endorsements on the RPD's file.

[18] The RPD noted that the Applicant's claim was referred for a hearing on 2 April 2009, it had notified him on 3 December 2010 of a hearing scheduled for 26 January 2011, and neither he nor his counsel had appeared that day. The RPD also noted that it gave the Applicant notice on 8 February 2011 that it would hold a hearing on 23 March 2011 to determine if his claim should be declared abandoned. In the endorsement, the RPD found that the Applicant's testimony contradicted the letter from Dr. Sunerh. The RPD gave this letter no weight. The RPD further found that the Applicant was not prepared to proceed at the time of the Abandonment Hearing because his documents were not ready.

[19] The RPD decided that, though the Applicant and his counsel appeared at the Abandonment Hearing, he had not shown why the RPD should not determine that he had abandoned his claim. The RPD therefore declared the Applicant's claim abandoned.

ISSUES

[20] The Applicant raises the following issues in this application:

a. Whether the RPD's decision to declare his claim abandoned was reasonable;

b. Whether the RPD's reasons were adequate;

c. Whether the RPD breached his right to procedural fairness by denying him the opportunity to fully present his case;

d. Whether the RPD gave him inadequate notice of the purpose of the abandonment hearing.

STANDARD OF REVIEW

[21] The Supreme Court of Canada in *Dunsmuir v New Brunswick,* 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[22] In *Gonzalez v Canada (Minister of Citizenship and Immigration)* 2009 FC 1248, Justice Robert Mainville held at paragraph 15 that the standard of review applicable to the RPD's decision to declare a refugee claim abandoned is was reasonableness. Justice Mainville relied on pre-*Dunsmuir* cases which held that the standard of review on this question was reasonableness *simpliciter* (see *Pineda v Canada (Minister of Citizenship and Immigration)* 2006 FC 328 at paragraph 15 and *Markandu v Canada (Minister of Citizenship and Immigration)* 2004 FC 1596 at paragraph 9). The standard of review on the first issue is reasonableness.

[23] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62, the Supreme Court of Canada held at paragraph 14 that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of

possible outcomes." The adequacy of reasons, therefore, is to be analysed along with the reasonableness of the Decision as a whole.

[24] The opportunity to present evidence and have it considered is an aspect of the right to procedural fairness (see *Baker v Canada (Minister of Citizenship and Immigration)* [1999], 2 SCR 817 at paragraph 32). In *Canadian Union of Public Employees (C.U.P.E.) v Ontario* 2003 SCC 29, the Supreme Court of Canada held that the standard of review with respect to questions of procedural fairness is correctness (see paragraphs 99 and 100). Further, the Federal Court of Appeal held in *Sketchley v Canada (Attorney General)* 2005 FCA 404 at paragraph 53 that the "procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty." The standard of review on the third issue is correctness.

[25] In *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172, the Federal Court of Appeal held at paragraph 10 that "A refugee claimant enjoys the benefit of the principles of natural justice in hearings before the Refugee Division. A basic and well-established component of the right to be heard includes notice of the case to be met." The right to notice is an issue of procedural fairness, so the standard of review on the fourth issue is correctness.

STATUORY PROVISIONS

[26] The following provisions of the Act are applicable in this proceeding:

168. (1) A Division may determine that a proceeding before it has been abandoned if the Division is of the opinion that the applicant is in default in the proceedings, including by failing to appear for a hearing, to provide information required by the Division or to communicate with the Division on being requested to do so.	**168.** (1) Chacune des sections peut prononcer le désistement dans l'affaire dont elle est saisie si elle estime que l'intéressé omet de poursuivre l'affaire, notamment par défaut de comparution, de fournir les renseignements qu'elle peut requérir ou de donner suite à ses demandes de communication.
169. In the case of a decision of a Division, other than an interlocutory decision:	**169.** Les dispositions qui suivent s'appliquent aux décisions, autres qu'interlocutoires, des sections:
(*a*) the decision takes effect in accordance with the rules;	*a*) elles prennent effet conformément aux règles;
(*b*) reasons for the decision must be given;	*b*) elles sont motivées;
(*c*) the decision may be rendered orally or in writing, except a decision of the Refugee Appeal Division, which must be rendered in writing;	*c*) elles sont rendues oralement ou par écrit, celles de la Section d'appel des réfugiés devant toutefois être rendues par écrit;
(*d*) if the Refugee Protection Division rejects a claim, written reasons must be provided to the claimant and the Minister;	*d*) le rejet de la demande d'asile par la Section de la protection des réfugiés est motivé par écrit et les motifs sont transmis au demandeur et au ministre;
(*e*) if the person who is the subject of proceedings before the Board or the Minister requests reasons for a decision within 10 days of notification of	*e*) les motifs écrits sont transmis à la personne en cause et au ministre sur demande faite dans les dix jours suivant la notification ou dans les cas

the decision, or in circumstances set out in the rules of the Board, the Division must provide written reasons;	prévus par les règles de la Commission;

[27] The following provisions of the *Refugee Protection Division Rules* SOR/2002-228 (Rules) are also applicable in this proceeding:

58. […] (2) In every other case, the Division must give the claimant an opportunity to explain why the claim should not be declared abandoned. The Division must give this opportunity	**58.** […] (2) Dans tout autre cas, la Section donne au demandeur d'asile la possibilité d'expliquer pourquoi le désistement ne devrait pas être prononcé. Elle lui donne cette possibilité:
(*a*) immediately, if the claimant is present at the hearing and the Division considers that it is fair to do so; or	*a*) sur-le-champ, dans le cas où il est présent à l'audience et où la Section juge qu'il est équitable de le faire;
(*b*) in any other case, by way of a special hearing after notifying the claimant in writing.	*b*) dans le cas contraire, au cours d'une audience spéciale dont la Section l'a avisé par écrit.
(3) The Division must consider, in deciding if the claim should be declared abandoned, the explanations given by the claimant at the hearing and any other relevant information, including the fact that the claimant is ready to start or continue the proceedings.	(3) Pour décider si elle prononce le désistement, la Section prend en considération les explications données par le demandeur d'asile à l'audience et tout autre élément pertinent, notamment le fait que le demandeur d'asile est prêt à commencer ou à poursuivre l'affaire.
(4) If the Division decides not to declare the claim abandoned, it must start or continue the proceedings without delay.	(4) Si la Section décide de ne pas prononcer le désistement, elle commence ou poursuit l'affaire sans délai.

ARGUMENTS

The Applicant

The RPD Prevented the Applicant from Fully Presenting his Case

[28] The Applicant argues that the RPD breached his right to procedural fairness by denying him the opportunity to fully present his case. He says that the RPD refused to consider his explanation for the discrepancy between his oral testimony and the letter from Dr. Sunerh. The evidence which showed he suffered from depression would have helped to explain the contradiction, so it was an error for the RPD not to consider it.

The RPD Gave Insufficient Notice

[29] In the February Notice, the following passage appears:

> The hearing of your claim for refugee protection was scheduled for January 26, 2011, but you failed to attend.
>
> A hearing to allow you to explain why you did not appear will take place at:
>
> IMMIGRATION AND REFUGEE BOARD […] on March 23, 2011.

[30] The Applicant says that he was not given any notice that he would have to be prepared to proceed with his claim at the Abandonment Hearing. He also says his counsel was under the impression that the sole purpose of the Abandonment Hearing was to explain the Applicant's failure to attend the January Hearing. Because the RPD did not give him adequate notice of its intent to examine the merits of his claim at the Abandonment Hearing, the Applicant was unable to adequately present his case. This was a breach of his right to procedural fairness.

The Decision was Unreasonable

[31] The Applicant says that the RPD mistakenly held that the only reason he was not in a position to proceed was that his documents were not ready. The Applicant also had concerns about proceeding without his counsel, who he had just recently retained and who was not familiar with his case. This was evidence before the RPD which it failed to take into account; its failure to take this evidence into account renders the Decision unreasonable.

The RPD Provided Inadequate Reasons

[32] The Applicant also says that *Rusconi v Canada (Minister of Citizenship and Immigration)* 2003 FC 1476 teaches that the declaration that a refugee claim has been abandoned is one that should be taken with great attention and care which must be reflected on the face of the reasons provided in support of the Decision. Here, the reasons the RPD gave do not show that it took adequate care in reaching the Decision to declare his claim abandoned. The Decision does not show how the RPD analysed the evidence before it, including the Applicant's recent retention of new counsel and the late receipt by counsel of the Applicant's PIF.

[33] The Applicant says that the RPD only provided boilerplate reasons, which are inadequate. Although the Act, Rules, and *Immigration and Refugee Protection Regulations* SOR/2002-223 do not require written reasons, the abandonment declaration means that his claim will not be assessed on its merits and this, in turn, means the Applicant was entitled to more than boilerplate reasons. Adjudicating the Applicant's claim on the merits would cause no harm to the Respondent.

The Respondent

No Breach of Procedural Fairness

The RPD was not Biased

[34] The Respondent says that the Applicant has alleged in his affidavit supporting this application that the RPD was biased. The Respondent notes that the test for bias is whether or not an informed person, viewing the matter realistically and practically and having thought the matter through would think it more likely than not that the decision-maker would unconsciously or consciously decide an issue unfairly. See *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369. He says that this test was not met and that bias was not raised as an issue at the hearing.

[35] Because the Applicant did not raise bias at the hearing, he is precluded from raising it as an issue on judicial review. The Respondent notes that a party cannot fail to raise the issue of bias with the hope of obtaining a favourable result at the RPD hearing and then seek to overturn the result on judicial review if the Decision is unfavourable. Though the Applicant may disagree with the Decision, this is not enough to show that the RPD was biased. In this case, the Applicant has not met the high threshold for establishing bias.

The Right to be Heard was not Compromised

[36] The Applicant was represented by counsel through all stages of his refugee claim. He was give the opportunity to explain his circumstances and nothing on the record shows that the RPD did not consider his depression or the note from Dr. Sunerh. The RPD reasonably found that the Applicant’s explanation for his failure to attend the hearing was not credible.

[37] The Applicant was given notice that he was expected to be able to proceed with his claim at the Abandonment Hearing. The February Notice says that

> If the RPD is satisfied with your explanation and your claim is not determined abandoned, you should be prepared to proceed with the hearing of your claim.

[38] The Respondent also notes subsection 58(4) of the Rules requires the RPD to "start or continue proceedings without delay" when it decides not to declare a claim abandoned. Further, the Federal Court of Appeal held in *Taylor v Canada (Minister of Citizenship and Immigration)* 2007 FCA 349 at paragraph 93 that "it is a well established principle that ignorance of the law is no excuse. A person is presumed to know the law and is bound by the law." The Applicant's counsel could have informed him of his obligation to be ready to proceed with his claim at the Abandonment Hearing. The onus was on the Applicant to retain counsel who was competent, available, and prepared to represent him adequately. This Court has rejected applications for judicial review where applicants were asked to proceed without counsel and when counsel was not prepared (see *Mutti v Canada (Minister of Citizenship and Immigration)* 2006 FC 97, *Gapchenko v Canada (Minister of Citizenship and Immigration)* 2004 FC 427, and *Linartez v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 498).

The Reasons were Adequate

[39] In this case, the RPD gave the Applicant notice of the Decision and provided him with the endorsements on the file. These set out the reasons for the Decision and allow the Applicant to understand why his claim was declared abandoned, so the Decision should stand.

The Decision was Reasonable

[40] The Applicant failed to meet the onus on him to explain why his claim should not be declared abandoned. The RPD reasonably found that his explanation for why his claim should not be declared abandoned was not credible. It considered his explanation that his depression prevented him from attending the hearing, the documentary evidence he submitted, and the discrepancy between his testimony and the documentary evidence and came to a reasonable conclusion. Because the RPD drew reasonable conclusions from the evidence before it, which must be given deference, the Court should not interfere.

[41] In addition to the evidence the Applicant submitted, the RPD considered the Applicant's readiness to proceed, as it was required to do under subsection 58(3) of the Rules. At the hearing, the Applicant and his counsel both admitted that they were not ready to proceed, so the RPD reasonably declared the claim abandoned. It was reasonable for the RPD to conclude that the Applicant had not shown that his conduct amounted to an expression of a lack of willingness to pursue his claim with diligence. The RPD's reasonable conclusion should not be disturbed by the Court.

ANALYSIS

[42] In the record before me, there is a great deal that is just not explained and for which I have no evidence.

[43] First, the Applicant and his counsel knew at the time they received the February Notice requiring the Applicant to attend the Abandonment Hearing that if the RPD was satisfied with the

Applicant's explanation for not attending the January Hearing that "he should be prepared to proceed with the hearing." The original hearing had been set for 26 January 2011, so the Applicant had to have all of his documents ready for that date. Dr. Sunerh's letter of 20 January 2011 said that the Applicant could not attend the 26 January 2011 meeting; it did not request an adjournment for medical reasons and the Applicant and his counsel never asked that the 26 January 2011 meeting be adjourned. So when the Applicant and his new counsel attended the 23 March 2011 abandonment hearing, documentation that should have been prepared for 26 January 2011 should have been available. The absence of such documentation is not adequately explained.

[44] Second, having been told on 8 February 2011 to show up for the Abandonment Hearing on 23 March 2011 ready to proceed, the Applicant says he engaged new counsel on 2 March 2011. His new counsel, knowing of the necessity to be ready to proceed on 23 March 2011, had three weeks to prepare. There is not sufficient explanation as to why:

a. The Applicant and new counsel did not understand that they should be ready to proceed on 23 March 2011; and

b. They did not have the necessary documentation to proceed.

[45] Third, the Applicant's affidavit for this application noticeably lacks an explanation of what efforts were made (and when they were made) to obtain documents from former counsel or why new counsel had to go to the RPD for a copy of the PIF.

[46] Fourth, besides the PIF, the Court is not told what other documents existed or their relevance to the Applicant's claim. Without more, I am unable to gauge whether the Applicant was disadvantaged in any way by not having documents.

[47] Fifth, there is no explanation for the Applicant's assertion that his new counsel told him that documents would not be needed for the Abandonment Hearing, when the February Notice makes it abundantly clear that the Applicant should be ready to proceed.

[48] Sixth, the Applicant says that when he met with his new counsel he gave him the documents, but not the translations. No explanation is given as to why he had originals, but not the translations, when he says that the documents were in the possession of former counsel.

[49] Finally, there is insufficient evidence before me, as there was before the RPD, to demonstrate why the Applicant's depression prevented him from attending the January Hearing. Dr. Sunerh's letter merely said the Applicant could not attend because of his depression. The Applicant never asked for an adjournment and he did not provide any evidence to show why he needed an adjournment because his depression prevented him from undergoing a hearing.

[50] On the facts of this case, it is clear that the RPD set the Abandonment Hearing in accordance with the Act. The Applicant failed to appear at January Hearing and did not ask for an adjournment.

[51] The RPD then gave the Applicant an opportunity to explain why his claim should not be declared abandoned under paragraph 58(2)(*b*) of the Act. It gave him the requisite notice on 8 February 2011, told him to attend on 23 March 2011 to explain why his claim should not be declared abandoned, and required him to be ready to proceed on that day if he was able to convince the RPD that he had not abandoned his claim.

[52] Subsection 58(3) of the Rules sets out the factors which the RPD must consider at an abandonment hearing. These factors are:

a. The explanations given by the claimant at that hearing;

b. Any other relevant information, including the claimant's readiness to start or continue the proceedings.

[53] Under subsection 58(4), if the RPD decides not to declare the claim abandoned, "it must start or continue the proceedings without delay." [Emphasis Added]

[54] At the Abandonment Hearing, the Applicant explained that he had "felt sick" and had his doctor write a letter. Given the sparcity of evidence, the RPD was naturally concerned to test the truth of this explanation, including the genuineness of the doctor's letter.

[55] The Applicant now says that the RPD did not consider his depression as a possible explanation for the contradiction in his explanation and failed to give him an opportunity to provide evidence on point. A careful reading of the CTR reveals that the Applicant never connected the contradiction to his depression. It is also clear that he was represented by counsel who could have asked him any questions on point but did not. Also, there was no medical evidence to suggest he was susceptible to memory problems, and the RPD was careful to question him about his medication and cognitive abilities to see if there was a problem. There is nothing to support the Applicant's allegations on this point. In view of the submissions and evidence on this point that were before the RPD, the reasons adequately explain the basis of the Decision.

[56] The Applicant provided no further medical evidence that he was unable, for medical reasons, to proceed with the January Hearing, or that he could not proceed with the hearing on the merits of his claim at the Abandonment Hearing.

[57] In relation to subsection 58(3), the Applicant also said that he was not ready to start the proceedings, even though the RPD gave him clear notice that he should be ready to proceed.

[58] The Applicant has given me some explanation why he was not ready to proceed. He says that he changed counsel and that he could not obtain relevant documents, but there is insufficient evidence before me to show whether the Applicant and his counsel were reasonably diligent in preparing for the Abandonment Hearing. I conclude they were not because the Applicant says in his affidavit for this application, at paragraph 21, that his new counsel advised him that documents were not needed for the Abandonment Hearing. Counsel also told him that "the letter I received only asked me to appear to give an explanation why I had not appeared for the previous hearing on January 26, 2011." If the Applicant and his counsel had decided they did not need to be ready to proceed on 23 March 2011, it is unlikely that they would have prepared to proceed on that date with reasonable diligence.

[59] The February Notice clearly says:

> If the RPD is satisfied with your explanation and your claim is not determined abandoned, you should be prepared to proceed with the hearing of your claim.

[60] Given this unequivocal notice that he should be ready to proceed, the Applicant offered no plausible explanation to the RPD or to me as to why he would think that he did not need documents to proceed at the Abandonment Hearing. He says his new counsel told him otherwise, but I have no evidence or explanation from counsel involved that this was the case.

[61] As the RPD notes in its reasons, the Applicant informed the RPD that he was not prepared to proceed on 23 March 2011 because his supporting documents were not ready. Those supporting

documents were supposed to be ready for the January Hearing, and I have insufficient evidence before me to determine whether they could not have been available for 23 March 2011 (and nor did the RPD), so I cannot say that the RPD unreasonably dealt with this factor.

[62] There was no other relevant consideration before the RPD except the Applicant's request for a postponement.

[63] At the oral hearing of this matter on 11 January 2012 before me, counsel for the Applicant raised a new point not contained in written submissions. She said that the RPD did not appropriately deal with his postponement request at the Abandonment Hearing.

[64] The Applicant requested a postponement at the Abandonment Hearing but, as the CTR shows, there was very little provided to justify it. Applicant's counsel indicated that he did not have the documents he needed, but, as noted earlier, did not explain why the documents were not available and what efforts he or the Applicant made to obtain them. He attempted to explain as follows:

> Counsel for claimant: Sir I would say in this, the only thing I have to say yes I can say that as a counsel I am not prepared just because we were under the impression that it was a pre-abandonment hearing and will request your office to give us a fair chance for another hearing.

[65] Bearing in mind what the Applicant and counsel were told in the February Notice, this is really no explanation at all as to why the Applicant and his counsel were not ready to proceed on 23 March 2011.

[66] The RPD's reasons for refusing the postponement request are found in the CTR:

> Presiding member: I will not accept your request. The reasons which you gave me was [*sic*] that supporting documents are not ready and the claimant cannot proceed today. I would like to indicate that as the Tribunal Officer indicated that the claimant filed his refugee application, especially the personal information form, in April 2009. The claimant had more than ample time to… to get all the documents which he needs for… to support his allegation and to substantiate his refugee claim. And also I see from this record that the claimant has been in Canada since November 2006.
>
> And also I see from the claimant's personal information form that he was represented by a counsel, Khan Khokhar, who was well-known to the Immigration and Refugee Board, who is familiar with the refugee application system and I see that the personal information form, was prepared with his assistance and the claimant had not presented any evidence, the reason why he was not able to prepare all the documents that you might think support his claim.
>
> Counsel also indicated that one of your concerns was the 20-day limit for disclosure of documents but that I do not find convincing because even on the day of the hearing today, still you are not able to produce any document which the board might have… if the documents were important and if the reasons for their delay were valid, could have been allowed.
>
> So I come to the conclusion that your explanation and your request is not accepted by the panel.

[67] The RPD clearly considered the postponement request. In doing so, it was obliged to consider the factors set out in subsection 48(4) of the Rules. In the present case, the Applicant provided very little to support his request and there is nothing to suggest that the RPD did not turn its mind to the section 48 factors. The answers to all of them are self-evident on the record and counsel only chose to emphasize his own (unexplained) impression that he was not expected to proceed at the Abandonment Hearing. Given the whole context and the history of the proceedings, I cannot say that the RPD unreasonably refused the request for a postponement or that, when looked

at in the context of the evidence, the parties' submissions, and the process followed in this case, that the reasons were inadequate.

[68] My assessment in this regard is based upon recent guidance from the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union*, above:

> 14. Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses -- one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at s. 12:5330 and 12:5510). It is a more organic exercise -- the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
>
> 15. In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> 16. Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.
>
> 17. The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably

> lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful.
>
> 18. Evans J.A. in *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221, explained in reasons upheld by this Court (2011 SCC 57) that *Dunsmuir* seeks to "avoid an unduly formalistic approach to judicial review" (para. 164). He notes that "perfection is not the standard" and suggests that reviewing courts should ask whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision" (para. 163). I found the description by the Respondents in their Factum particularly helpful in explaining the nature of the exercise:
>
> > When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum - the result is to be looked at in the context of the evidence, the parties' submissions and the process. Reasons do not have to be perfect. They do not have to be comprehensive. [para. 44]

[69] Taking all these matters into account, I cannot say that a breach of procedural fairness occurred in this case.

[70] There were no breaches of the Applicant's right to procedural fairness, so I must consider whether the Decision was reasonable. After reviewing the record, I cannot say that the RPD ignored any evidence or that it reached conclusions which were not open to it on the evidence before it. As I read the record, the RPD based its Decision on the following factors:

1. Neither the Applicant nor his counsel were prepared to proceed;

2. The Applicant had not established that he actually was being treated for depression and that this had prevented him from attending the January hearing;
3. The Applicant did not adequately explain the inconsistency between when he said he went to Dr. Sunerh and the letter he submitted said he had done so;
4. The letter he provided was a faxed copy;
5. The Applicant had had ample time to prepare for the hearing but did not.

[71] I do not think that any of these gives rise to a reviewable error. With respect to the Applicant's lack of readiness to proceed, subsection 58(3) of the Rules establishes that

58(3) The Division must consider, in deciding if the claim should be declared abandoned, the explanations given by the claimant at the hearing and any other relevant information, including the fact that the claimant is ready to start or continue the proceedings [emphasis added]	58(3) Pour décider si elle prononce le désistement, la Section prend en considération les explications données par le demandeur d'asile à l'audience et tout autre élément pertinent, notamment le fait que le demandeur d'asile est prêt à commencer ou à poursuivre l'affaire.

[72] Not only was the RPD permitted to consider the Applicant's lack of readiness to proceed, but it was required to under this subsection. The Applicant has not argued that the Rules are *per se* unfair. He has also not given the Court any reason, in fact or in law, why this rule should not apply to him. The RPD did not act unreasonably in considering his lack of readiness to proceed when it declared his claim abandoned.

[73] I also cannot find that the RPD's treatment of the evidence surrounding the Applicant's depression was unreasonable. The Applicant's argument at the Abandonment Hearing was that he

had not attended the January Hearing because his depression prevented him from doing so. As such, the evidence supporting this argument was highly material to the RPD's decision to declare his claim abandoned, and it was open to the RPD to assess the credibility of that evidence.

[74] The only evidence that the Applicant tendered to support this argument was his oral testimony and the letter from Dr. Sunerh. At the hearing, the Applicant's testimony was inconsistent with the letter. This was not an inappropriate basis for the RPD to find either his testimony or the letter not credible. While it may be possible to disagree with the RPD's conclusion, it is not the role of the Court on judicial review to substitute its own opinion for that of a decision-maker, particularly where the RPD had the opportunity to assess the Applicant's demeanour and assess his credibility. The RPD's rejection of the Applicant's argument that he could not attend his hearing because of his depression was reasonable.

[75] The Court notes that the consequences of a declaration that a claim has been abandoned may be severe, even fatal to a claimant. This does not, however, absolve claimants of the onus on them to establish why their claims should not be abandoned. It also does not mean that the RPD is always bound to accept claimants' arguments as to why their claims should not be abandoned. The severity of consequences means only that the RPD must ensure that claimants have a full opportunity to present their case and that it fully considers the case presented to it. In this case, both of these things occurred, and I see no reason to interfere with the Decision.

[76] Counsel agree there is no issue for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2327-11
STYLE OF CAUSE:	PARMINDER SINGH Applicant - and - MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 11, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	February 17, 2012

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