



**RAD File No. / N° de dossier de la SAR : MB3-04040**

*Private Proceeding / Huis clos*

## Reasons and Decision - Motifs et décision

<b>Appellant(s)</b>	<b>XXXX XXXX XXXX</b>	<b>Appelant(e)(s)</b>
<b>Appeal considered/heard at</b>	Montréal, Quebec	<b>Appel instruit à</b>
<b>Date of Decision</b>	January 20, 2014	<b>Date de la décision</b>
<b>Panel</b>	Normand Leduc	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	M <sup>e</sup> Marie-Josée Blain	<b>Conseil(s) du (de la/des) appelant(e)(s)</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

## REASONS AND DECISION

### INTRODUCTION

[1] **XXXX XXXX XXXX**, a citizen of India, is appealing against the decision of the Refugee Protection Division (RPD) rejecting her claim for refugee protection.

### DETERMINATION OF THE APPEAL

[2] Pursuant to subsection 111(1) of the *Immigration and Refugee Protection Act* (IRPA), the Refugee Appeal Division (RAD) confirms the determination of the RPD, namely, that **XXXX XXXX XXXX** is neither a “Convention refugee” pursuant to section 96 of the IRPA nor a “person in need of protection” pursuant to section 97 of the IRPA.

### BACKGROUND

[3] The appellant is a 26-year-old woman from the village of **XXXX XXXX** in the state of Punjab, India, who arrived in Canada as a student in **XXXX** 2007. She alleged that she was married in Canada on **XXXX XXXX**, 2010, to a **XXXX XXXX XXXX**, who was from the same village as she was.

[4] The appellant alleged that her spouse abused her in Canada and had demanded that she ask her mother in India to sell their land so that he may obtain \$100,000. The appellant alleged that she was thrown out of her family home on **XXXX XXXX XXXX** 2011. Her spouse allegedly threatened to kill her and her family members in India were she to lodge a complaint against him in Canada or to ask for monetary compensation when they got divorced. Her mother in India was also allegedly directly threatened by strangers.

[5] The appellant alleged that, in XXXX 2013, her mother in India was again visited by strangers, who threatened to kill the appellant if she returned to India. The appellant claimed refugee protection in Canada in July 2013.

[6] The RPD rejected the refugee protection claim on the ground that the appellant was not credible and that alternatively, if she had been found to be credible, there would be an internal flight alternative (IFA) for her in India, in the city of New Delhi.

[7] Before the RAD, the appellant submits that the RPD erred in assessing her credibility by not taking into consideration all the evidence filed, by not taking into account her explanation with regard to what the RPD considered to be a contradiction and by lingering on details that are peripheral to the claim in order to reject the credibility of her allegations.

[8] The appellant also submits before the RAD that the RPD erred in assessing the IFA issue by not taking into account all the evidence filed, by not referring to the arguments of her counsel on that matter and by not providing sufficient reasons to find that a viable IFA exists.

[9] For these reasons, the appellant is requesting that the RAD set aside the determination of the RPD and grant her refugee protection.

### **STANDARD OF REVIEW**

[10] The IRPA does not expressly set out the standard of review that the RAD should apply when reviewing RPD decisions, nor is that standard of review set out explicitly in the case law.

[11] In this case, the appellant submits in her memorandum that the RAD has jurisdiction to hear the case *de novo*, that it must make its own conclusions after analyzing the evidence filed with the RPD and that the RAD owes no deference to the RPD.

[12] In *Dunsmuir*,<sup>1</sup> rendered in 2008, the Supreme Court of Canada revisited the foundations of judicial review and the standards of review applicable in various situations. In order to simplify the analysis, the Supreme Court determined that there should now be only two standards of review: correctness and reasonableness.

[13] Although the RAD does not conduct judicial reviews of RPD decisions, but rather acts as an appellate body within the same administrative tribunal, the Immigration and Refugee Board, I am of the opinion that without more direct guidance from the higher courts, the principles developed in *Dunsmuir* may be applied to the RAD.

[14] Paragraph 51 of the Supreme Court's decision in *Dunsmuir* states that: "...questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness...."

[15] In this case, the issue of whether the RPD erred in its assessment of the appellant's credibility is a question of fact. Accordingly, I will apply the reasonableness standard.

[16] The issue of whether the facts of this case give rise to the conclusion that an IFA exists for the appellant is a question of mixed fact and law. Accordingly, I will also apply the reasonableness standard.

[17] Contrary to the submissions in the appellant's memorandum, I am of the opinion that nothing in the IRPA indicates that the RAD may hold a hearing *de novo* and thus apply the correctness standard to all questions. Under subsection 110(6) of the IRPA, the RAD may hold a hearing if, in its opinion, the new evidence presented on appeal is admissible and meets the following three criteria: (1) it raises a serious issue with respect to the credibility of the person; (2) it is central to the decision with respect to the refugee protection claim; and (3) if accepted, it would justify allowing or rejecting the refugee protection claim.

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<sup>1</sup> *Dunsmuir v. New Brunswick*, 2008 SCC 9, (2008) 1 SCR 190.

[18] Since the provision that is a prerequisite to this provision was not satisfied in this case as no new evidence was presented in this appeal, I conclude that a hearing may not be held in this case, much less a hearing *de novo*. In addition, I am of the opinion that the restrictions imposed by subsection 110(4) of the IRPA regarding the possibility for an appellant to present new evidence to the RAD also show that Parliament did not intend that the RAD hold hearings *de novo*.

[19] At paragraph 47 of *Dunsmuir*, the Court states that reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Judicial deference is therefore required, and deference must be given to the RPD decision.

## ANALYSIS

[20] The issue in this case is whether the RPD erred in concluding that there is an IFA for the appellant in New Delhi. The RPD's conclusion was made on the assumption that the appellant's allegations were credible.

[21] In its reasons regarding the IFA, the RPD found, first, that "...if in fact, there were treats to her life or her family's, she could move elsewhere such as in Delhi" (see paragraph 19 of the RPD's reasons). The RPD rejected the appellant's explanations that the family of her spouse, who is from the same village as she is, could use its political ties to locate her anywhere in India, because this is pure speculation on the part of the appellant and because there is no evidence that her spouse's family would have the means or the interest to locate her (see paragraph 20 of the RPD's reasons).

[22] Second, the RPD concluded that, because the appellant is a young woman with an above-average education for a woman in India, the difficulties she might encounter in relocating

to New Delhi would not make it unreasonable for her to settle there (see paragraph 21 of the RPD's reasons).

[23] In her memorandum, the appellant first submits that the RPD failed to take all the evidence into account in its analysis and its conclusion regarding the IFA. However, the appellant does not indicate what evidence the RPD failed to consider. Accordingly, it is not possible for me to accept the appellant's argument, because it is not specific enough.

[24] The appellant then submits in her memorandum that the RPD did not refer to the arguments of the appellant's counsel that had been submitted to it regarding the IFA; however, the appellant does not specify in her memorandum what these arguments, which her counsel made before the RPD, were. I listened to the recording of the RPD hearing. The appellant's counsel refers in his submissions to the document found under Tab 5.1 of the national documentation package, entitled *India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh; government support services available to female-headed households in these cities; violence against women in these cities (2008-2011)*, dated May 16, 2013.

[25] I have read this document. In my opinion, the information contained in it regarding women living alone in India is rather ambivalent. On the one hand, it is indicated that tradition makes it difficult for a woman to live alone there because she would be "rejected by society." On the other hand, it is also indicated that because of the growth in the Indian economy, more and more single women are working in big cities, and they have more freedom than in the past. The document also discusses violence against single women.

[26] However, I consider that the RPD made no reviewable error in not referring to the arguments presented by counsel for the appellant, as submitted in her memorandum. In my opinion, the RPD assessed whether it was objectively reasonable to expect that the appellant would settle in New Delhi, considering the answers she gave when questioned on the subject. The RPD concluded that she could. In my opinion, since the documentary evidence cited above

was not unanimous on the subject of women living alone, it is not sufficient to show that the appellant's settling in New Delhi would be unreasonable in her case, also taking into account that the burden to show that the IFA was unreasonable was on the appellant.

[27] Finally, the appellant submits in her memorandum that the RPD did not provide sufficient reasons with regard to its internal flight conclusion. Once again, the appellant did not specify what the insufficiencies in the RPD's reasons were.

[28] Although they are rather short, I consider that the appellant did not show that the RPD's reasons were insufficient. The RPD applied the two-pronged test established by the case law to assess the IFA, namely, first to determine whether the appellant would face a serious possibility of persecution or a probability of being subjected to a risk to her life, to a risk of cruel and unusual treatment or punishment, or to torture in the selected place, namely, New Delhi, and, second, to determine whether it is objectively reasonable to expect the appellant to seek protection in New Delhi.

[29] For all of these reasons, I conclude that the RPD's decision regarding the IFA is reasonable because it is transparent and intelligible and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[30] Given that conclusion, it will not be necessary for me to further assess the other error raised by the appellant regarding the analysis of her credibility by the RPD.

## **REMEDIES**

[31] For these reasons, I confirm the determination of the RPD, namely, that **XXXX XXXX XXXX** is neither a "Convention refugee" nor a "person in need of protection."

[32] The appeal is dismissed.

*Normand Leduc*

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**Normand Leduc**

January 20, 2014

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**Date**

IRB translation

Original language: French