Docket: IMM-4299-05

Citation: 2006 FC 351

Ottawa, Ontario, the 20th day of March 2006

Present: The Honourable Mr. Justice Simon Noël

BETWEEN:

ARASH ASLANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA), of a decision by the Refugee Protection Division (the RPD) dated June 9, 2005. By that decision, the RPD denied the refugee protection claim of Arash Aslani (the applicant). In the opinion of the RPD, the applicant is not a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

I. Issue

[2] Did the RPD err in fact or in law in dismissing the applicant's claim for refugee protection?

II. Conclusion

[3] The application for judicial review is dismissed and no question is certified.

III. Facts alleged

A. *Applicant's first narrative*

[4] The applicant, who is of Iranian origin, gave the following version of the facts in his first Personal Information Form (PIF), dated December 15, 2004.

[5] He claimed he was opposed to the government of the Mullahs in Iran and said he took part in secret meetings and a demonstration in 1999. He said he was arrested, imprisoned and tortured before being released. In 2001, he became a partner in a data processing company and in 2003, the company signed a contract to establish an Internet service business with the Dorna company. Fraudulent activities are said to have occurred in the Dorna company. On account of its connection with Dorna, the applicant's company allegedly received a visit from government agents in July 2004. The manager of the applicant's company, Reza Kashani, was arrested a few days after that visit. He telephoned the applicant, begging him to pay his bail.

[6] As the applicant was about to pay the bail, he was arrested in turn. Both men were tortured, since they were suspected of sending out information on internal affairs in Iran. They were released on condition that they remained silent and assisted the government agents in their investigation.

[7] A new meeting was arranged by the government agents. Instead of going there, the applicant sought refuge with a friend. Then, in October 2004, he left the country and went to Turkey and then Germany, where he took a boat for Canada. The applicant arrived in Canada on November 16, 2004 and applied for refugee protection on the same day.

B. *Applicant's second narrative*

[8] The applicant was released on December 21, 2004 after his detention was reviewed. Soon afterwards, the Canadian authorities discovered that the applicant had spent a considerable time in Europe before coming to Canada. On December 29, 2004, the applicant filed a new PIF, which told a story that was very different from the first one. In this second PIF the applicant explained that he had concealed the truth in his first narrative because in the Netherlands the events he had recited were not believed. He added that in the United Kingdom he was detained and sent back to the Netherlands, where he said there are secret Iranian agents.

[9] The applicant added to his narrative the fact that he did his military service from November 1995 to February 1998. He said that in the course of his work he discovered certain inconsistencies in the army information. When his employment ended he was denied a military service card and was instead given a military service certificate, advising him to return five years later to collect his card. When he returned to get it, the applicant, in order to explain his delay in obtaining the card, had to explain the inconsistencies he found in the army information during his military service. He claims to have been imprisoned in March 2003 for this reason. In May 2003, his house was searched and the hard disk on his computer stolen. The applicant said he tried to obtain police protection without success. After that he continued to

work in the data processing field. He said General Iran Nejad (General Nejad) confirmed that he would be protected and could disclose the information he had.

[10] In June 2003, the applicant was again arrested, imprisoned and sentenced to death by a military tribunal. He was able to escape by paying a bribe and with the help of a judge. On July 19, 2003, the applicant left Iran, travelling through Georgia and then the Netherlands. After being intercepted and detained at various places in Europe, and after two unsuccessful attempts, the applicant managed to get to Canada on November 16, 2004, where he filed a refugee claim upon his arrival.

IV. Analysis

[11] The applicant raised the following five main issues, that I will examine one by one:

- the RPD made errors of fact;
- the RPD made a procedural error when it said that in order to be heard before the RPD the applicant's last-minute witnesses should first have gone to the Canadian Embassy;
- the RPD made an error in expressing reservations about the photographs submitted by the applicant (RPD decision, at page 4), because at the hearing the applicant's evidence was accepted (panel's record, at page 246);
- the RPD ignored part of the evidence since it did not mention important evidence;
- the RPD violated the applicant's right to be heard.

[12] The applicable standard of review with respect to alleged errors of fact is that of patent unreasonableness (*Thavarathinam v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1469, [2003] F.C.J. No. 1866 (F.C.A.), at paragraph 10; *Aguebor v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.), at paragraph 4). As the other issues are solely issues of law, the applicable standard is that of correctness.

A. ***Errors of fact***

[13] In the applicant's submission, the RPD erred in saying that the applicant was not credible when he related the meetings he allegedly had with General Nejad. In his PIF the applicant described the events in chronological order and nearly all the paragraphs began with some indication as to time (e.g. [TRANSLATION] "from 09/11/1995 to 07/02/1998", "in May 2003" and so on). The paragraph in which he referred to General Nejad for the first time began with the words [TRANSLATION] "in June 2003", though it is not expressly stated that the applicant's meetings with him took place during that month. At the hearing the applicant said he returned to collect his military service card in March 2003, and it was then that General Nejad asked him for his assistance to elucidate the fraud matters (panel's record, at pages 269 *et seq.*). The General and the applicant allegedly met several times in the same week, from March 1 to 8 (panel's record, at page 308). This important point in the applicant's story was not recited in his second PIF. In this context, and in view of the applicant's very weak explanations (panel's record, at page 309), I consider that the RPD's conclusion in this regard is not patently unreasonable.

[14] The RPD noted that the applicant had not filed any evidence, such as an incident report or copy of a written complaint, to establish the theft of his hard disk which allegedly occurred in May 2003. The RPD further noted that the applicant at one point said he had first learned of the origin of the theft from the police and at another time from neighbours. The applicant maintained he had always said that it was first his neighbours who told him that SEPAH (the acronym for the organization of guardians of the revolution) were responsible for the theft, and then that it was confirmed by the police. However, it was clear from the evidence that he contradicted himself in this regard (panel's record, at pages 304 and 305).

[15] The applicant maintained that he had not contradicted himself on the question of whether his father was detained or not. He said that at all times he maintained that his father had been detained. In this regard, I think the RPD did not err in its description of the facts. It quite properly noted that the applicant's explanations were complicated and his testimony confused (panel's record, at pages 76 to 79), whereas the questions were straightforward. There was no error of fact.

[16] The applicant maintained he did not contradict himself regarding the dates of his military service. The record shows the contrary (see in particular panel's record, at pages 14, 26, 31, 259 and 260).

[17] In short, in my view the RPD did not make any errors of fact, still less any patently unreasonable errors of fact. After having examined the evidence in the record, I find that the RPD had ample reasons to note that the applicant's credibility was very seriously compromised by the numerous contradictions between the various versions of his narrative and his inability to explain them.

B. ***Procedural error***

[18] At the hearing before the RPD the Division member had an exchange with the applicant. The latter wanted to call to testify two individuals, one in Iran and the other in the United Kingdom, without having first sent the other party and the RPD

the information provided for in section 38 of the *Refugee Protection Division Rules* (the Rules).

[19] Under subsection 38(4) of the Rules, it is possible for the RPD to allow an individual to testify even if the necessary information was not provided at the proper time:

38 (4) If a party does not provide the witness information as required under this rule, the witness may not testify at the hearing unless the Division allows the witness to testify.	38 (4) La partie qui ne transmet pas les renseignements concernant les témoins selon la présente règle ne peut faire comparaître son témoin à l'audience, sauf autorisation de la Section.

[20] At the close of the hearing, the presiding member addressed the applicant and his counsel, explaining the procedure to be used in calling remote witnesses (panel's record, at page 376). She explained that equipment had to be installed so that the witnesses could be heard from out of the jurisdiction, and those witnesses would have to report to the Canadian embassy in the countries where they resided to be identified. As the applicant was being detained at the time of the hearing, the presiding member also pointed out that the arrangements for hearing the witnesses by telephone would take some time. The applicant maintained that a non-existent procedural rule was imposed upon him and that this infringed his right to be heard. In my opinion, this argument must be rejected since (1) the RPD has complete control of its own procedure; and (2) because there are practical considerations leading me to this finding.

(1) <u>The RPD is the master of its own procedure</u>

[21] First, as an administrative body, the RPD is the master of its own procedure and this makes the Court reluctant to intervene with respect to the requirement of identification made by the RPD in the case at bar.

[22] This fundamental rule of administrative law derives from the decisions of the Supreme Court of Canada and of the Federal Courts (see, *inter alia*, *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560; *Komo Construction v. Quebec (Commission des relations de travail)*, [1968] S.C.R. 172; *Siloch v. Canada (Minister of Employment and Immigration)* [1993] F.C.J. No. 10; *Gorodiskiy v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 997, at paragraph 12).

[23] In *Prassad v. Canada (Minister of Employment and Immigration)*, *supra*, at paragraph 16, Mr. Justice Sopinka wrote:

> We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they

> exercise judicial or quasi-judicial functions, the rules of natural justice.

[24] In *Siloch v. Canada (Minister of Employment and Immigration), supra*, at paragraph 3, Décary J.A. recalled the same general rule:

> It is well settled that in the absence of specific rules laid down by statute or regulation, administrative tribunals control their own proceedings and that adjournment of their proceedings is very much in their discretion, subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.

[25] Guideline No. 6 of the Chairperson of the Canada Immigration and Refugee Board, *Scheduling and Changing the Date or Time of a Proceeding in the Refugee Protection Division*, is consistent with this rule. It states, in fact, that "[t]he RPD has the authority to set its own procedures, as long as the principles of natural justice and fairness are followed".

[26] Finally, paragraph 170(a) of the IRPA appears to give the RPD considerable latitude in matters of procedure:

170. The Refugee Protection Division, in any proceeding before it,	170. Dans toute affaire dont elle est saisie, la Section de la protection des réfugiés :
(*a*) may inquire into any matter that it considers relevant to establishing whether a claim is well-founded . . .	*a*) procède à tous les actes qu'elle juge utiles à la manifestation du bien-fondé de la demande…

[27] Based on all this, I think it must be said that, in the absence of written rules, the RPD is free to make procedural requirements so long as they are consistent with the Act and Regulations, existing rules of procedure and the principles of natural justice.

(2) Inevitable practical considerations when witnesses are heard by telephone

[28] At the hearing, I asked the parties to submit their comments on two cases which appeared to me to be relevant to the question of whether the RPD erred in requiring the applicant to have the witnesses he wished to testify by telephone first report to the Canadian embassy for identification. Those cases are *Farzam v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1453, [2005] F.C.J. No. 1776, and *Al-Khaliq v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 625, [2005] F.C.J. No. 843. Only the applicant chose to submit his arguments to the Court.

[29] In *Farzam v. Canada (Minister of Citizenship and Immigration), supra*, Mr. Justice Martineau analysed the rules applicable to the exercise by a court of law of its power to authorize a party to have witnesses heard by telephone. The judge's approach was based on judgments by provincial courts, on a decision of the Tax Court of Canada, the *Rules of Civil Procedure*, R.R.O. 1990, Rule 194 (Ontario), on the *Federal Courts Act*, R.S.C. 1985, c. F-7 and on the *Federal Court Rules (1998)*, SOR/98-106.

[30] In his comments, the applicant maintained that *Farzam v. Canada (Minister of Citizenship and Immigration), supra*, is not relevant because:

- that case was decided in a judicial context, whereas the RPD is an administrative tribunal;

- a proceeding before an administrative tribunal is not adversarial in nature;

- it is not the general rule that witnesses are to be present at a hearing before the RPD, as it is in the Federal Court.

[31] It is true, as the applicant pointed out, that the cases cited by Mr. Justice Martineau in *Farzam* are not directly applicable to the case at bar, since they deal with telephone testimony in a court of law, and not before an administrative tribunal. Nevertheless, in my opinion the comments by Mr. Justice Martineau do clearly explain the risks created by applying an unduly flexible procedure with regard to telephone testimony. In my view, these comments, which I set out in part below, are to some extent valid even in an administrative context. Further, the presence of witnesses at the hearing appears to me to be the general rule before the RPD, as in courts of law. Indeed, this appears from sections 38 to 40 of the Rules. The Rules provide that the notice sent to the other party must indicate whether the first party wants the witness to testify by video conference or telephone (38(1)(*f*)), and set out a detailed procedure for an appearance at the hearing, whereas nothing is said specifically about a telephone testimony. In my opinion, this indicates the special nature of telephone testimony.

[32] Further, the Rules provide that witnesses must be identified, and in principle the RPD cannot authorize a person to testify who has not submitted the necessary identification information unless that person appears "at the hearing" (subs. 38(4) of the Rules). In other words, the RPD may disregard the requirement that witnesses be identified in advance and the information forwarded to the opposing party if the witness is present at the hearing. Accordingly, the applicant was given special leave by the RPD, namely to have a witness appear by telephone without the information required in subsection 38(1) being submitted in advance. However, the rule that witnesses must be identified still stands: in the opinion of this Court, it is essential. This general rule is set out in subsections 38(1), (2) and (3) of the RPD:

38. (1) If a party wants to call a witness, the party must provide in writing to any other party and the Division the following witness information:	38. (1) Pour faire comparaître un témoin, la partie transmet par écrit à l'autre partie, le cas échéant, et à la Section les renseignements suivants :

(*a*) the witness's contact information;	*a*) les coordonnées du témoin;
(*b*) the purpose and substance of the witness's testimony or, in the case of an expert witness, the expert witness's signed summary of the testimony to be given;	*b*) l'objet du témoignage ou, dans le cas du témoin expert, un résumé, signé par lui, de son témoignage;
(*c*) the time needed for the witness's testimony;	*c*) la durée du témoignage;
(*d*) the party's relationship to the witness;	*d*) le lien entre le témoin et la partie;
(*e*) in the case of an expert witness, a description of the expert witness's qualifications; and	*e*) dans le cas du témoin expert, ses compétences;
(*f*) whether the party wants the witness to testify by videoconference or telephone.	*f*) le fait qu'elle veut faire comparaître le témoin par vidéoconférence ou par téléphone, le cas échéant.
(2) The witness information must be provided to the Division together with a written statement of how and when it was provided to any other party.	(2) En même temps que la partie transmet à la Section les renseignements visés au paragraphe (1), elle lui transmet une déclaration écrite indiquant à quel moment et de quelle façon elle a transmis ces renseignements à l'autre partie, le cas échéant.
(3) A document provided under this rule must be received by its recipient no later than 20 days before the hearing.	(3) Les documents transmis selon la présente règle doivent être reçus par leurs destinataires au plus tard vingt jours avant l'audience.

[33] In the case at bar, the requirement imposed by the RPD seems to the Court to be entirely reasonable and necessary. At paragraph 38 of *Farzam*, *supra*, Mr. Justice Martineau cited a passage from *Ramnarine v. Canada*, 2001 DTC 991, [2001] T.C.J. No. 736:

> In *Ramnarine*, Miller T.C.J. summarized in the following way the factors justifying the granting of an order for evidence by teleconferencing in that case:
>
> > There are instances where the interests of justice can best be served in the Tax Court by a practical approach to the implementation of rules. This is one of those instances. This granting of an Order for evidence by teleconferencing is not intended to open any floodgates. It is limited to the circumstances of this particular appeal and specifically the following factors:
> >
> > (1) The appeal is in regard to what has been described as the blunt instrument of a net worth assessment;

(2) The cost is substantial in connection with the tax in issue;

(3) The Appellant's financial resources are *prima facia* limited;

(4) The witness is outside North America;

(5) The witness is not an expert;

(6) The witness will not rely on any documentary evidence;

(7) The testimony is limited in scope and is anticipated to be brief in duration; and

(8) The witness must testify in the presence of a judge or lawyer of the foreign jurisdiction under oath in that jurisdiction.

[34] Mr. Justice Martineau went on to give further explanations. At paragraphs 42 to 50, he asked important questions about the practical aspects of holding a teleconference in the Federal Court:

> ¶42 In the case at bar, the credibility of the evidence of the Iranian witnesses is critical. In my opinion, the "just" determination of the contentious issues in the trial, here the cause or causes of the alleged divorce, necessarily implies that the Defendant be given the opportunity to cross-examine the Iranian witnesses. However, it is obvious from the facts of the case that, through teleconferencing, I will not be able to observe the Iranian witnesses' demeanour.
>
> ¶43 In *B. (K.G.)* [1993] 1 S.C.R. 740 at 792, 79 C.C.C. (3d) 257, Lamer C.J. emphasized the handicap of the trier of fact in assessing the credibility of the declarant in such circumstances:
>
> When the witness is on the stand, the trier can observe the witness's reaction to questions, hesitation, degree of commitment to the statement being made, etc. Most importantly, and subsuming all of these factors, the trier can assess the relationship between the interviewer and the witness to observe the extent to which the testimony of the witness is the product of the investigator's questioning.

. . .

¶45 In her request for directions dated October 19, 2005, Plaintiff's counsel proposes, as a first alternative, that the evidence of the Iranian witnesses be taken by telephone.

. . .

¶46 Keeping in mind that the Plaintiff has raised this alternative, it was up to him to bring satisfactory evidence to the Court that teleconferencing is both feasible from a legal and technical point of view within the time frame of a trial of 12 days starting in Ottawa on October 24, 2005. In this regard, important questions remain unanswered. For instance, who will be the company who will provide the teleconferencing services, at what costs and conditions? At what time of the day in Canada and Iran will this teleconference simultaneously take place? Where will the Iranian witnesses be located? How will the taking of their oral testimonies through telephone be coordinated in view of the fact that counsel have already indicated that the examinations in chief and cross-examinations involve simultaneous translation and may require two days of hearing? Will there be a Court's representative present? How will the room be organized and how will the decorum of the Court be maintained? How will any exclusion order of the witnesses be enforced at trial in the telephone conference facilities in Iran? Since the Iranian witnesses will testify in Farsi, how will the Court deal with the taking of evidence in Iran? Should a stenographer be also present in Iran to ensure that the questions and answers are properly recorded? Are there special arrangements that need to be taken with the provider of the teleconference services, the Canadian Embassy or the Defendant to assure the presence of the Iranian witnesses and any representatives of the Defendant in Tehran?

¶49 My final concern with the Iranian witnesses' testimony by telephone or video conference is that of their reliability. In the present case, no evidence was tendered regarding Iranian laws as to administration of an oath and possible ensuing enforcement procedures. It is imperative that a witness who provides evidence in a jurisdiction other than Canada do so under oath in accordance with our laws, as well as in accordance with the local laws. While Plaintiff's counsel asserts that the Iranian witnesses have nothing to gain in this case, I

> note that the Plaintiff claims damages from the Defendant in the area of $2,000,000. It must be made clear to the Iranian witnesses that they cannot escape responsibility for their actions should they have any thought that helping another member of their family, the Plaintiff in this case, requires some shading of the truth. In these circumstances, assuming that teleconferencing or video conferencing are possible means to take the evidence of the Iranian witnesses, I believe that there should be a member of the Iran legal system, either judge or lawyer present at the local facility to administer the oath and explaining the consequences of perjury to the Iranian witnesses prior to administering the oath. Unfortunately, there is no indication in Plaintiff's affidavit and material that this could be done at this late date since the trial will actually start after the issuance of the present reasons for order and order.
>
> ¶50 For these reasons, having balanced all relevant factors, the evidence before me fails to satisfy me that the issuance of an order that the evidence of the Iranian witnesses be taken by telephone is in the interest of justice and would secure at this late date and in the absence of a detailed plan, the just, most expeditious and least expensive determination of the contested issues in this action.

[35] Although, as the applicant pointed out, the decision by Mr. Justice Martineau was rendered in a judicial context, the concerns expressed by him still hold with respect to the RPD. In my opinion, all the procedural rules set forth by Mr. Justice Martineau should not necessarily apply to the RPD. However, it seems to the Court that the requirement that a person must prove his or her identity by reporting to the Canadian Embassy, or in some other way if permitted by the RPD, is necessary to prevent refugee protection claimants from being able to call to testify individuals who are not who they say they are. This is reasonable based on Rule 38 and consistent with the flexibility that must characterize the adducing of evidence before an administrative tribunal like the RPD.

[36] The applicant relied on paragraph 170(*h*) of the IRPA, emphasizing the procedural flexibility applicable before administrative tribunals:

170. The Refugee Protection Division, in any proceeding before it,	170. Dans toute affaire dont elle est saisie, la Section de la protection des réfugiés :
. . .	[…]
(*h*) may receive and base a decision on	*h*) peut recevoir les éléments qu'elle juge

evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances; and . . .	crédibles ou dignes de foi en l'occurrence et fonder sur eux sa décision . . .

In my opinion, the effect of procedural flexibility should not be such as to undermine the RPD's ability to render informed decisions. In my view, *Al-Khaliq v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 625, [2005] F.C.J. No. 843, may serve to illustrate why it is important for the tribunal to first establish the identity of witnesses who are to be heard by telephone. In that case, the RPD had allowed the witness to be heard without further formalities. However, the RPD refused to attach any evidentiary value whatsoever to the testimony since it was not certain of the witness' identity. This indicates that at least some formality is necessary, even before an administrative tribunal, for a telephone testimony to be authorized. Otherwise, the credibility of witnesses will be compromised even before the witness has been heard. This creates the danger of sterile debates on the identity of witnesses, when it is possible to avoid such debates by ascertaining the identity of the witnesses beforehand. Imposing this minimal formal requirement as the RPD did is in the best interest of refugee protection claimants, the RPD and the Minister.

[37] In the case at bar, the choice of procedure was made in accordance with the spirit of the applicable rules, no procedural rule was infringed and the applicant suffered no prejudice. When the RPD does not have any rule governing its conduct, it must of necessity develop practices. The applicable procedure was explained quite clearly to the applicant and it seems to the Court to have been appropriate in the circumstances. That procedure necessarily involved delays. The RPD did not take the applicant by surprise, since it was prepared to grant him a postponement so as to enable him to meet the procedural requirement of witness identification. When he learned of the possible delays in presenting his remote witnesses, the applicant preferred to waive the privilege extended to him by the RPD. Accordingly, this Court does not have to intervene.

C. *Photographs*

[38] The applicant maintained that, as the RPD had accepted all the applicant's evidence (see panel's record, at page 246), it could not express reservations regarding parts of the evidence it contained (panel's decision, at page 4).

[39] On this point, I am of the view that counsel for the applicant is confusing the preliminary acceptance of evidentiary material and the evidentiary value of that evidence. The fact that the RPD accepted the photographs in evidence does not mean that, in view of the circumstances, it cannot subsequently place a limited value on them. Accordingly, the RPD made no error of law.

D. *Evidence not expressly referred to in the RPD decision*

[40] The applicant argued that some evidence was ignored by the RPD, in particular the affidavit of Mr. Kashani (panel's record, at page 55) and the documents regarding the latter's claim for refugee protection in the United Kingdom (panel's record, at pages 43 *et seq.*).

[41] This argument cannot be accepted. Unless the contrary is shown, the RPD is presumed to have taken all the evidence before it into account (see, *inter alia*, *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.); *Lewis v. Canada*, 2004 FC 1195, [2004] F.C.J. No. 1436, at paragraph 19 (F.C.)). The applicants did not offer evidence that could convince the Court that all relevant material was not considered. It seems more likely that all the evidence was considered, since Mr. Kashani's situation and his connection to the applicant was the subject of discussions at the hearing (panel's record, at pages 361 *et seq.*).

E. *Right to be heard*

[42] Finally, the applicant argued that his right to be heard was infringed as the description of his escape from the Kerman prison was not given all due consideration.

[43] I have reviewed the transcript of the hearing (panel's record, at pages 291 *et seq.*) and I am of the view that the applicant had a sufficient opportunity to explain the circumstances of his escape.

[44] In addition, the panel found that this explanation was not credible and that finding, based on the facts of this case, is subject to the patently unreasonable decision standard. I do not think it was patently unreasonable for the RPD to have found that the applicant lost credibility due to the description he gave of his escape.

V. Questions for certification

[45] The parties were invited to submit questions for certification. The applicant asked that the following questions be certified:

- Is there a breach of natural justice when a written decision by the panel concerning the presentation of evidence on procedure is contrary to what was given orally?

- When the Court finds that there was a breach of natural justice, can we apply a standard other than that set forth by the Supreme Court, namely that any infringement of natural justice has the effect of rendering the decision null and void unless the outcome of the case would have inevitably been the same? - in particular, does the Court legally have the discretion to refuse to order a new hearing because the result would likely have been the same?

[46] In order to determine whether a question must be certified, we must refer to the criteria set out in *Canada (Department of Citizenship and Immigration) v. Liyanagamage*, [1994] F.C.J. No. 1637, at paragraph 4. The question must transcend the interests of the parties to litigation, contemplate issues of broad significance and

be determinative of the appeal. These two questions are certainly not determinative of the appeal, in view of the applicant's lack of credibility as indicated by the evidence and the reasons mentioned in this judgment. Further, for purposes of clarification, they are not relevant since the rules of natural justice were observed by the RPD at all times.

[47] For these reasons, the application for judicial review is dismissed and no question will be certified.

JUDGMENT

THE COURT ORDERS THAT:

- the application for judicial review is dismissed and no question will be certified.

"Simon Noël"

Judge