

Federal Court



Cour fédérale

**Date: 20180731**

**Docket: IMM-4968-17**

**Citation: 2018 FC 801**

**Ottawa, Ontario, July 31, 2018**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**SHEEZA TABASSUM**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Ms. Tabassum, brings this application for judicial review of a decision of the Refugee Appeal Division [RAD] confirming the Refugee Protection Division's [RPD] holding that she is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. She argues the RAD

ignored her submissions, ignored evidence, and assessed credibility in a manner inconsistent with the jurisprudence.

[2] Having reviewed the record, and considered the oral and written submissions of the parties, I am of the opinion that this Court's intervention is warranted. The RAD decision incorrectly states there is an absence of submissions from Ms. Tabassum in respect of a number of the RPD's findings in issue before the RAD. The RAD's mischaracterization of the submissions before it, and in turn its failure to address those submissions, undermines the transparency and intelligibility of the RAD's decision. For these reasons, set out in greater detail below, the application is granted.

## II. Background

[3] Ms. Tabassum is a citizen of Pakistan. She was employed by Pakistan International Airlines as an air hostess and arrived in Canada in that capacity in September 2016. She made a refugee claim based on her fear of a customs official [Official] in Pakistan. She alleged the Official had sought to have her agree to become his wife or mistress. As a result of her refusing him she alleges he has systematically persecuted her over a number of years. She further alleged that she suffered an attempted abduction, repeated threats to throw acid on her, and harassment.

[4] Ms. Tabassum has stated that in 2016, while in Toronto, a friend and work colleague advised her that individuals representing the Official sought access to her accommodations in Pakistan and again threatened her with dire consequences. Upon being advised of this incident she decided not to return to Pakistan and sought protection in Canada.

[5] The Minister intervened at the RPD hearing on credibility grounds.

[6] The RPD found the applicant was not credible, highlighting discrepancies between the contents of her basis of claim form [BOC], affidavit evidence, and testimony before the RPD. The RPD also highlighted various other concerns, drew a negative inference from her failure to seek protection in other countries in the course of her travel for work purposes, and found documents supporting the claim to not be reliable.

### III. Issue and Standard of Review

[7] The sole matter I need consider is whether the RAD ignored submissions, and if so does this render the decision unreasonable?

[8] A decision of the RAD is to be reviewed against a standard of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at 35). On a reasonableness review the RAD is owed deference. The Court is concerned with “the existence of justification, transparency and intelligibility within the decision making process” and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [*Dunsmuir*]).

IV. Analysis

A. *Did the RAD ignore submissions, and if so does this render the decision unreasonable?*

[9] In considering the appeal the RAD acknowledged that Ms. Tabassum alleged: (1) a breach of procedural fairness; (2) that the RPD had erred in failing to adhere to the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution*; and (3) that the credibility findings were insufficient to undermine the plausibility of her narrative.

[10] After rejecting an application to admit new evidence, the RAD turned to issues of credibility. The RAD considered the RPD's findings in relation to: (1) inconsistencies and omissions in the evidence; (2) the credibility of witnesses; (3) the reliability of the documentary evidence; and (4) Ms. Tabassum's reavailment and failure to make an earlier claim for protection.

[11] In conducting its credibility analysis on an issue by issue basis, the RAD repeatedly states that the "[a]ppellant made no submissions on this issue". A review of Ms. Tabassum's written submissions to the RAD demonstrates this was simply not the case. Her written submissions did address many of the findings in issue.

[12] The respondent argues the submissions made were no more than general statements and assertions that a particular finding was peripheral to the claim. In effect, the respondent argues that Ms. Tabassum failed to adequately pinpoint and particularise issues in her submissions to the RAD and that the RAD did not err when concluding no submissions had been made.

[13] Misstating the nature of an appellant's submission may not, in itself, amount to a reviewable error. However, a reviewable error may result where, as here, the facts disclose that submissions relevant to the issues being examined were made and the substance of those submissions was not addressed by the RAD.

[14] The respondent's description of Ms. Tabassum's submissions to the RAD as "general statements and an assertion that the finding was peripheral to the claim" raises two concerns. First the submissions in issue were not all limited to general statements. For example on the issue of Ms. Tabassum's failure to make an earlier claim for protection the submissions point to evidence that it is alleged the RPD ignored. Secondly, and perhaps more importantly, Ms. Tabassum did make submissions, and those submissions were not addressed by the RAD. In urging the Court to view those submissions as mere general assertions, despite the clear misstatements of the RAD that submissions about various issues did not exist, the respondent is asking this Court to assess the merits of the overlooked submissions.

[15] A reviewing court may "look to the record for the purpose of assessing the reasonableness of the outcome" but a decision must, to meet the *Dunsmuir* reasonableness requirement, still "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" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15 and 16).

[16] This is not a situation where the RAD might benefit from a presumption that it was aware of the contents of the record as the RAD finds there was an absence of submissions. It can be seen that the contents of the submissions made by Ms. Tabassum pertained to the issues on which the RAD said no submissions were made. The RAD's decision lacks the *Dunsmuir* elements of transparency, justification, and intelligibility and is unreasonable.

B. *Costs*

[17] In written submissions Ms. Tabassum argued this was an appropriate case to find special reasons warranting an award of costs. In the course of oral submissions, counsel for Ms. Tabassum advised the costs arguments would not be pursued and I have not addressed costs.

V. Conclusion

[18] The application is granted. The parties have not identified a serious question of general importance for certification and none arises.

**JUDGMENT IN IMM-4968-17**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted;
2. The matter is returned for redetermination by a different decision-maker;
3. No costs are awarded; and
4. No question is certified.

"Patrick Gleeson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4968-17

**STYLE OF CAUSE:** SHEEZA TABASSUM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 25, 2018

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JULY 31, 2018

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