Federal Court  Cour fédérale

Date: 20190405

Docket: IMM-4735-18

Citation: 2019 FC 416

Ottawa, Ontario, April 5, 2019

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

XHEVDET SHALA
AJSHE SHALA
ARBRESHA SHALA
JETON SHALA
ARJANITA SHALA
ERJON SHALA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Overview

[1] This is an application for judicial review of the decision of an immigration officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] denying the Applicants' application for Temporary Resident Permits, as Victims of Human Trafficking [TRP-VTIP], brought pursuant to s 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, I have determined that this application for judicial review must be allowed.

Background

[3] The principal applicant is Xhevdet Shala [Principal Applicant], the other applicants are his wife and their four children [together, the Applicants]. They are all citizens of Kosovo. They claim that they came to Canada with the assistance of an acquaintance, Bashkim Azemaj, who told them that if they paid a fee of €30,000, entry into Canada for the family and work here for the Principal Applicant could be arranged. The Principal Applicant took out two loans from individual money lenders in Kosovo and paid €20,000, the remaining €10,000 still being owed. The family entered Canada on September 17, 2013, at which time the Principal Applicant held a closed work permit alleged to have been obtained by Selman Azemaj [Selman] of S.A. Concrete and Drain Ltd. [S.A.Concrete]. Selman Azemaj is the brother of Bashkim Azemaj. The Principal Applicant claims that, at that time, he understood he would have to work for Selman and S.A. Concrete for one year, after which he could work wherever he wanted, and the family could stay in Canada. He claims that Selman demanded long work hours and paid irregularly. The local union became involved and S.A. Concrete was fined $47,662.65 by the union for breaching the collective agreement in failing to pay all amounts owing for each hour worked by its employees. The Principal Applicant claims that S.A. Concrete then tried to reduce the wages paid to him and asked him, and two other men in the same circumstance, to each pay $7000, so the employer could pay the union. The Principal Applicant refused and was dismissed by his employer.

[4] The family lost their status in Canada when the Principal Applicant's work permit expired in January 2016. They subsequently made unsuccessful refugee claims, which were also

dismissed on appeal by the Refugee Appeal Division. They made an application for permanent residence based on humanitarian and compassionate grounds, which was denied, and they received a negative pre-removal risk assessment. Upon retaining new counsel, they applied for a TRP-VTIP, which decision is the subject of this judicial review. On October 9, 2018, this Court ordered the stay of the Applicants' removal from Canada until the final determination of this application for judicial review.

Decision Under Review

[5] By decision dated September 19, 2018, the Officer refused the Applicants' TRP-VTIP application. The Officer stated that the criteria to be considered during a preliminary assessment to determine whether an individual was a victim of human trafficking are directed by Ministerial Instructions and that the following factors were assessed at the interview of the Principal Applicant and in his submissions:

a) Recruitment and documentation – the Principal Applicant entered Canada on his own and held his own passport for the duration of the stay;

b) Employment coercion – he worked willingly without pay and at times without authorisation as he was promised permanent residence;

c) Working conditions – he was given half an hour break for lunch, however, he was not paid the correct wages for his work;

d) Restrictions on liberty and use of force – he said he was never restricted on his liberty and could have left his employment if he wished;

e) Use of force or threats of force – he stated he was never forced to work, however, he was threatened with being reported to immigration officials concerning his unauthorized employment;

f) Living conditions – he temporarily resided with his employer's friend and moved out without restrictions or force;

g) Physical coercion – he stated there was no physical coercion;

h) Psychological coercion – his employer threatened to report the Principal Applicant to immigration officials if he did not continue to keep working without wages;

i) Victim's ethnicity and social group – there was some workplace harassment in regard to his ethnicity by calling him names;

j) Risk assessment – the Principal Applicant alleges that he believes his employers sent someone to his father's home to ask about him. His father provided an affidavit concerning the incident, however, there was no further corroborating evidence;

k) Medical condition – a psychological report was on file, during his interview the Principal Applicant stated that he had been undiagnosed with depression and anxiety.

[6] The Officer described what the Principal Applicant reported during the interview. The Officer stated that this included that while the Principal Applicant recounted long hours (more than 12-hour shifts, 6 to 7, days each week) and working for more than 25 weeks without appropriate pay, he never became ill because of these working conditions but felt he had no choice other than to continue working for his employer because he had to support his family. The Officer noted that the Principal Applicant has a cousin in Burlington, Ontario, but provided no reasons why he did not confide in his cousin and seek assistance when he was being taken advantage of by his employer. Nor was any reason given why he made no complaint to any authorities. The Officer stated she had "some concerns" in regard to the Principal Applicant's credibility as he stated he only brought €500 with him to Canada, which she found to be low given that he was traveling with his family to an unknown country, as well as "some credibility issues" in regard to his relationship with Baskin Azmej whom the Principal Applicant stated he was merely acquaintances with in Kosovo even though they had known each other for 30 years and attended the same school.

[7] The Officer stated that there appeared to be employment standard violations by the employer as to compensation of its employees, as seen from the union report, and that the

employer's verbal abuse may reflect a workplace harassment situation. However, she was not satisfied that the Principal Applicant met the definition of the Trafficking Protocol. It defines trafficking as "the recruitment, transportation, transfer, harbouring or receipt of persons, by improper means, such as force, abduction, fraud or coercion, for an improper purpose, such as forced or coerced labour, servitude, slavery or sexual exploitation".

[8] The Officer found that the Principal Applicant did not meet the forced or coerced labour portion of the protocol as he had the means to leave the situation by contacting his cousin, friends or the authorities. Further, he and his family still had possession of their passports and were not confined or restricted from seeking assistance, fleeing the situation, or returning to their home country. Nor was the Principal Applicant afraid of, or threatened by, his employer.

[9] The Officer concluded that there were insufficient indicators to clearly establish that the Principal Applicant is a victim of human trafficking and refused the application for a TRP-VTIP. As such, the permits for his dependents were also denied.

Issues and Standard of Review

[10] In my view, this application raises the following issues:

i. Did the Officer fetter her discretion?

ii. Was there a breach of the duty of procedural fairness?

iii. Was the decision to refuse to issue a TRP-VTIP reasonable?

[11] The jurisprudence as to the standard of review that applies to a determination of whether a decision-maker fettered their discretion has been described as unsettled. However, for the purposes of this matter, it is sufficient to conclude that if the Officer fettered her discretion, then

this will constitute a reviewable error under either standard of review (*Barco v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 421 at paras 17 – 20). Issues of procedural fairness are reviewable on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43) and an officer's decision on a TRP application is reviewable on a standard of reasonableness (*Wu v Canada (Citizenship and Immigration)*, 2016 FC 621 at para 23).

Positions of the Parties

Applicants' Position

[12] The Applicants submit that the Officer breached procedural fairness in three ways. The first of these is that the Officer fettered her discretion by categorically excluding counsel from the interview on the basis of an office policy not to have anyone other than the interpreter in the interview room. The Officer failed to give adequate consideration to the factual circumstances, including a request for counsel to attend, and treated the office policy as binding (*Ha v Canada (Citizenship and Immigration)*, 2004 FCA 49 [*Ha*]. The Applicants also submit that the duty of procedural fairness was breached as they were deprived of their right to counsel by their counsel's exclusion from the interview and, because the Officer failed to put her credibility concerns to the Principal Applicant.

[13] The Applicants also submit that there are four basis upon which the Officer's findings are unreasonable:

a) The Officer made an unjustified plausibility finding that the Principal Applicant's description of his relationship with Bashkim, as that of an "acquaintance", is inconsistent with his statement that he had known Bashkim for 30 years and that they went to the same school;

b) The Officer's decision was made without a demonstrated awareness of the potential for "debt bondage" as a mechanism of coercion used by human traffickers;

c) The Officer made findings that were unsupported by the evidence before her, specifically there was evidence before the Officer that the Principal Applicant was deceived and exploited by his employer, but the Officer applied the test factors disjunctively and did not explain why this evidence did not indicate that fraudulence and exploitation occurred; and finally,

d) The Officer noted that the Principal Applicant never complained to the police, however, the TRP-VTIP guidelines specifically state that "victims are not required to collaborate with enforcement agencies or testify against their traffickers in order to receive a permit".

Respondent's Position

[14] In its written submissions, the Respondent does not address the Applicants' fettering of discretion argument, but submits that there was no breach of procedural fairness because there is no right to counsel in TRP interviews. The Respondent submits that *Ha*, which is relied upon by the Applicants, is distinguishable (*Najafi Asl v Canada (Citizenship and Immigration)*, 2009 FC 505 at para 7 [*Asl*]; *Helal v Canada (Minster of Citizenship and Immigration)*, 2019 FC 37 at para 17) and that the Court should be cautious in extending a mandatory right to counsel in TRP interviews in light of the low procedural fairness requirement and Parliament's intent to establish TRPs as an exceptional regime within the IRPA.

Analysis

Fettering of Discretion

[15] In order to assess the Applicants' submission that the Officer fettered her discretion in refusing to permit counsel to attend the TRP interview, it is first necessary to consider the factual

backdrop to the refusal and the affidavit evidence that has been filed with respect to this allegation.

[16] By email dated September 11, 2018, Ms. Cheryl Robinson [former counsel], advised the IRCC that she had been in contact with an Intelligence Officer, Enforcement and Intelligence Operations Division, Canada Border Service Agency [CBSA], to inform them that she was counsel for the family, who she believed had been trafficked into Canada. CBSA had advised that she should contact the IRCC about the possibility of the issuance of TRP-VTIPs. Former counsel then explained in her email to IRCC what she believed to be the family's circumstances. By email dated September 15, 2018, former counsel provided information to IRCC, confirming that the family would attend an interview on September 17, 2018, and stated that counsel would be there with them. At the interview, former counsel advised that she would like to stay in the interview with her client, asked the Principal Applicant if he would like her to stay, and confirmed that he would. The interview notes of the Officer then record:

> IO: I understand you want to observe, however as this is a sensitive interview in the best interest of the client it is our office policy not to have anyone other than the interpreter remain in the interview room. If you would like to make submissions after the interview please advise and I will gladly accept and assess them.

[17] On September 26, 2018, former counsel sent an email to Christine Charbonneau, Director, Domestic Network, IRCC [Director], outlining her concerns and her belief that the interview process led to a procedurally unfair interview. In response, by email of the same date, the Director stated that "there is discretion in this, and rights can be given on a case by case basis depending on the circumstances", the Officer in this case had advised of IRCC's standard practice not to have counsel present, which the Director then restated. In turn, former counsel

responded by email and pointed out that she was not asked if she wished to make submissions before a decision was made.

[18] In support of this application, former counsel filed an affidavit sworn on October 25, 2018. Amongst other things, it states that when she asked the Officer why counsel had to leave the interview, she was advised this was so that the Principal Applicant could freely testify, and that many applicants do not want to testify in front of their representatives. The Officer stated that she could call counsel back in at the end of the interview to make submissions. Former counsel asked if she would have access to the interview notes so that she could address matters that arose during the interview and was told by the Officer that she would have to file an Access to Information Request to obtain the notes, that this was IRCC's protocol and that there was nothing the Officer could do as this was what was always done. While former counsel submitted that she needed to be present during the interview to make informed submissions, the Officer told her she would have to leave. The Principal Applicant also asked that former counsel be permitted to stay. The request was denied for the same reasons. Former counsel states that she left the interview because her understanding was that it would not proceed if she remained in the room.

[19] In her affidavit, former counsel also states that at about 11:45 a.m. the interpreter and the Principal Applicant came out of the interview room and advised that the Officer had ended the interview, and that the Principal Applicant was to return at 1:30 p.m. at which time the Officer hoped to make her decision. The interpreter advised that the Officer had told him that he need not return. When the Principal Applicant and former counsel entered the interview room at 1:30 p.m., the Officer asked the Principal Applicant's daughter to act as an interpreter. The Officer

asked two more questions and then said that she had enough information to make her decision, which was that the Principal Applicant did not meet the trafficking protocol of definition, and explained her reasons for this. Former counsel states in her affidavit that she was never invited into the interview room before the interview ended. When it resumed at 1:30 p.m., the Officer asked two questions and then immediately began to give her reasons for her decision. At no time was former counsel advised that she could make further submissions and, contrary to what the interview notes suggest, she was not asked whether there was anything that she or the Principal Applicant wanted to add or make submissions on.

[20] The Officer also filed an affidavit in this matter, sworn on February 19, 2019. Amongst other things, she states that when former counsel asked to stay in the room during the interview, the Officer explained why the office protocol is not to have counsel remain, being that such matters are considered to be extremely sensitive, that there is an office policy not to have anyone in the room other than the interpreter, and that the Officer reassured counsel that if she needed to submit anything after the interview, she could do so and the request would have been granted. The Officer states that:

> After conducting the interview, I allowed Applicant's counsel to return to the interview room and I asked two more questions prior to issue my decision [sic], in the presence of counsel. After providing my decision, I asked:
>
> IQ: Is there anything you or your counsel would like to add or does counsel wanted to make any more submissions for me to consider?
>
> [Emphasis added.]

[21] In her affidavit, the Officer states that they both answered no. Subsequently, former counsel sent an email confirming that the Principal Applicant would not like to withdraw his

application and did not request to make any additional submissions. The Officer's affidavit goes on to say that:

> The standard office practice for VTIP interviews is not to have counsel present in order to protect the best interests of the client and because these are sensitive interviews. I have found, in my experience that there are vulnerable applicants who may attend with counsel but that they find it difficult to answer questions in the presence of other people, whether it be their counsel or even their family members. Some of these clients relate extremely sensitive, intimate or private events and we cannot know before they are interviewed, from whom they are seeking protection. As they are vulnerable persons, even if they say they want counsel, we simply cannot be certain and for this reasons and to protect the integrity of the program, as a general policy, we do not allow counsel to be present during the interview. However, it is our general practice post questioning of the client, to call counsel back in to address whether or not there is anything else they would like to add or any further submissions.
>
> As an immigration officer it is our duty to adhere to the procedures set out in the operational instructions and guidelines when interviewing vulnerable clients for the issuance of TRPs for victim so human trafficking…

[22] In my view, the critical point here is how the Officer applied the office policy or protocol which, apparently, as a general practice precluded the attendance of counsel during TRP-VTIO interviews.

[23] In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], the Supreme Court of Canada [Supreme Court] addressed the role of Ministerial Guidelines in the context of s 25(1) of the IRPA, pursuant to which the Minister has discretion to exempt foreign nationals from the requirements of the IRPA if the exemption is justified by humanitarian and compassionate considerations. The Supreme Court stated:

> [32] There is no doubt, as this Court has recognized that the Guidelines are useful in indicating what constitutes a reasonable interpretation of a given provision of the *Immigration and Refugee Protection Act*: *Agraira*, at para. 85. But as the Guidelines themselves acknowledge, they are "not legally binding" and are "not intended to be either exhaustive or restrictive": Inland Processing, s. 5. Officers can, in other words, consider the Guidelines in the exercise of their s. 25(1) discretion, but should turn "[their] mind[s] to the specific circumstances of the case": Donald J. M. Brown and The Honourable John M. Evans with the assistance of Christine E. Deacon, Judicial Review of Administrative Action in Canada (loose-leaf), at p. 12-45. They should not fetter their discretion by treating these informal Guidelines as if they were mandatory requirements that limit the equitable humanitarian and compassionate discretion granted by s. 25(1) : see *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2, at p. 5; *Ha v. Canada (Minister of Citizenship and Immigration)*, [2004] 3 F.C.R. 195 (C.A.), at para. 71.

[24] The principle has often been restated by this Court, including in *Gordon v Canada (Attorney General)*, 2016 FC 643:

> [29] While decision-makers are permitted to consider, and indeed, base their decisions on administrative guidelines, a decision-maker will fetter their discretion if they treat a guideline as binding: *Waycobah First Nation v. Canada (Attorney General)*, 2011 FCA 191, [2011] G.S.T.C. 95 (F.C.A.) at para. 28, (2011), 421 N.R. 193 (F.C.A.). Administrative guidelines do not have the force of law. They therefore cannot be relied on in a way that limits the discretion conferred on a decision-maker by statute: *Stemijon Investments*, above, at para. 60.

[25] In this matter, the "office practice" or "protocol" cited by the Officer has not been provided by the Respondent. And, when appearing before me, counsel for the Respondent confirmed that this is simply an office procedure; there is no written policy or guideline. I note that while IRCC does publish "Temporary Resident Permits (TRPs): Considerations specific to victims of human trafficking", which describes itself as policy, procedures and guidance to be

used by IRCC staff, it is silent as to the attendance of counsel as observers to TPR interviews of their clients.

[26] What is apparent from the above background information and the affidavit evidence is that the Officer treated the unwritten office practice or protocol as non-discretionary and as mandatory and binding on her. She took the view that because TRP-VTIP applicants are vulnerable persons and may find it difficult to disclose what happened to them in front of counsel, that this was sufficient to preclude attendance by all counsel, in all cases. On that basis, the Officer categorically refused to allow counsel to attend the interview (see *Asl* at para 8).

[27] In my view, the general rationale behind the office practice is valid. Persons who have been trafficked are amongst the most vulnerable and they have very often been highly traumatized. For someone who, for example, was forced into sexual slavery, recounting what happened to him or her and the circumstances by which they were trafficked would be highly emotional and likely very difficult to recount. There may also be circumstances in which an officer will not know exactly what the factual basis or parameters for the TRP-VTIP application are, or who is involved with the trafficking, until the interview is conducted. It may even be that the person accompanying the applicant in the guise of supporting them is there, in fact, as an enforcer with the intent of intimidating the applicant so as to impair the intended claim.

[28] However, there was nothing before the Officer to suggest that this was such a circumstance. Rather, it was former counsel who raised the possibility of the human trafficking of the Principal Applicant with CBSA and requested that the Applicants be permitted to apply for TRP-VTIPs. Former counsel also provided the supporting documentation. Further, prior to

the interview, the circumstances of the alleged trafficking had previously been described to the Officer by former counsel and those circumstances were not of a particularly sensitive nature. Although the Officer was aware of all of this, she gave it no consideration as she apparently deemed herself to be bound by office practice to the categorical exclusion of all counsel at TRP-VTIP interviews.

[29] Moreover, the email from the Director to former counsel appears to recognise that the decision of an officer as to the attendance of counsel is an exercise of discretion to be addressed on a case by case basis. However, the affidavit of the Officer is clear that she was following standard practice and does not suggest that she considered the particular circumstances of the Principal Applicant.

[30] The Applicants place great weight on the Federal Court of Appeal's decision in *Ha*. In that case, the Minister had published an operations memorandum setting out the policy on counsel attendance at an interview by a visa officer of Convention refugees seeking resettlement. There, when considering if the motions Judge had erred in finding that the operations memorandum did not operate as a fetter on the visa officer's discretion to permit counsel to attend interviews, the Federal Court of Appeal stated that:

> [70] Since there is no provision in the Act expressly providing a right to counsel in the circumstances of this case, whether or not counsel is permitted to attend a particular interview is within the discretion of the visa officer. However, both the previous analysis as well as the Supreme Court of Canada's decision in *Prassad v. Canada (Minister of Citizenship and Immigration)*, [1989] 1 S.C.R. 560, indicate that this discretion must be exercised in a manner that is consistent with the duty of fairness. Visa officers must consider the particular facts of each case to determine the content of the duty of fairness.

> [71] While administrative decision-makers may validly adopt guidelines to assist them in exercising their discretion, they are not free to adopt mandatory policies that leave no room for the exercise of discretion. In each case, the visa officer must consider the particular facts.

[31] While in this case there is no written policy or guideline, I can see no reason why the same principle - that officers cannot fetter their discretion by treating policies or guidelines as mandatory - would not also apply to this circumstance (see, for example *Almrei v Canada (Attorney General)*, 2003 CarswellOnt 5129 at para 44), and perhaps even in a heightened way. If in fact officers may rely on unwritten office practices to preclude the attendance of counsel as observers at TRP-VTIP interviews, then surely they cannot fetter their discretion in the application of such practices.

[32] In this instance, the evidence in the record before me indicates that the Officer considered the informal office practice to dictate a mandatory exclusion of counsel and failed to consider the specific circumstances of the Principal Applicant. Accordingly, in my view, the Officer fettered her discretion and the decision must be returned for reconsideration by another officer.

[33] The Applicants also submitted, when appearing before me, that the “policy” itself should be struck out as it serves as a fetter on the discretion of officers. This is largely based on *Ha*, in which the Federal Court of Appeal found the policy contained in the subject operations memorandum, which stated that counsel should not attend interviews, to be invalid as it fettered the visa officer’s discretion and their duty to consider the particular facts of each case when deciding whether counsel should be permitted to attend interview. Here, however, there is no written policy or guideline. And, while the Officer’s articulation of the office practice does indicate that it is mandatory, this was her interpretation of the office practice, which does not

appear to have been shared by the Director. In my view, this is not a circumstance where it is appropriate to declare that that office practice is invalid.

[34] Given my finding that the Officer fettered her discretion, it is not necessary to consider the Applicants' further allegations of breaches of procedural fairness or allegations that the refusal was unreasonable. I would observe, however, that in a circumstance where an officer indicates to counsel that they will be permitted to make submissions after the interview, and then makes a decision prior to offering counsel that opportunity, it is very likely that a breach of the duty of procedural fairness will be found to have occurred.

Certified Question

[35] Pursuant to s 74(d) of the IRPA and Rule 18 of the *Federal Courts Citizenship, Immigration and Refugee Rules*, SOR/93-22, the Applicants submitted the following question for certification:

> Does the office policy of VTIP TRP interviews, which prohibits the presence of counsel during interviews, improperly fetter the officer's discretion?

[36] The Respondent submits that the proposed question has potential as a serious question of general importance. Further, that if the answer to that question is determinative of this matter, then it would appear to meet the test for certification. However, the Respondent proposes the following alternative wording:

> Does the IRCC office policy for VTIP TRP interviews, which prohibits the presence of counsel during interviews, for the stated reasons of program integrity and due to the sensitive nature of the matters inquired into at the interviews, improperly fetter an

> officer's discretion, contrary to the decision in *Ha v Canada (MCI)* 2004 FCA 49?

[37] I note that in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, the Federal Court of Appeal revisited the criteria that must be met for certification of a proposed question:

> This Court recently reiterated in *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 (FCA) at para 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question *(Lai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 (F.C.A.) at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified *(Mudrak v. Canada (Minister of Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 (F.C.A.) at paras. 15, 35).Here, the interpretation of s 104(1)(d) of the IRPA is an issue that need not be decided and therefore cannot ground a properly certified question.

[38] In my view, it would not be appropriate to certify the questions posed in these circumstances. This is because, while the Applicants submit that the proposed question pertains to the fact that the office practice or policy is itself mandatory, as was the circumstance in *Ha*, I have not determined this application on that ground. As I have set out above, in this matter, we do not know what the actual office practice or protocol may be as, unlike *Ha*, it is not reduced to writing, nor is it a guideline or formal policy. Rather, we only know how the Officer interpreted and applied the office practice. And while the Officer considered the policy to be mandatory, this appears to differ from the Director's view that the policy is discretionary and counsel's

attendance can be determined on a case by case basis, depending on the circumstances. In my view, without evidence as to what the policy actually is, as opposed to how the Officer applied the policy, it is not appropriate to certify the questions proposed.

[39] Further, in *Kanthasamy*, the Supreme Court has already determined that guidelines are not legally binding, that officers can consider them in the exercise of their discretion, but must turn their minds to the specific circumstances of the case and, that they must not fetter their discretion by treating informal guidelines as if they were mandatory requirements. To the extent that IRCC officers are entitled to rely on unwritten office practices to preclude the attendance of counsel at TRP interviews – and I make no finding in that regard – the same principles are applicable and have already been determined.

JUDGMENT in IMM-4735-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. There shall be no order as to costs.

3. The questions proposed for certification are not certified.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Luke McRae	FOR THE APPLICANTS
Lorne McClenaghan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bondy Immigration Law Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT