Federal Court  Cour fédérale

Date: 20191018

Docket: IMM-268-19

Citation: 2019 FC 1265

Ottawa, Ontario, October 18, 2019

PRESENT: Mr. Justice Annis

BETWEEN:

NOORA ALDARWISH
RUAA AL-SOUDANI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Abd Al-Munaf Yousuf Aldarwish [the Applicant], and her minor daughter, Ruaa Ali Hilo Al-Soudani, together with the Applicant [the Applicants] are applying for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This application concerns a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated December 12, 2018. The RAD's

decision dismissed the appeal and confirmed the decision made by the Refugee Protection Division [RPD] that the Applicants are not Convention refugees or persons in need of protection.

[2] The RAD found that the RPD did not deny the Applicants adequate interpretation services and that the RPD did not err in its credibility assessment of the Applicants. For the reasons that follow, the application is dismissed.

II. Facts

[3] The Applicant left Iraq for Jordan in 1994 due to a family dispute centered on her parents' inter-sect marriage, which led to attacks and threats against them. In 2005, the Applicant also entered an inter-sect marriage when she married a Shia man.

[4] The same paternal uncles, Saadi and Karim, who had attacked the Applicant's parents for their inter-sect marriage, also threatened the Applicant. Saadi contacted the Applicant's father by telephone and threatened him because his daughter had married a Shia man. He also contacted the Applicant's sister in Sweden by telephone and threatened to kill the Applicant if she returned to Iraq.

[5] The Applicant's first child, Basil, was born in Canada in 2010 while the Applicant accompanied her husband on a business trip when eight months pregnant.

[6] In August 2016, the Applicant and her two children travelled to Canada from Jordan on a visitor's visa and then sought refugee protection.

[7] The Applicants fear persecution in Iraq on several grounds:

- On the basis of their moderate and non-sectarian Islamic beliefs;

- On the basis that the Applicant's paternal Sunni uncles have threatened to harm her for marrying a Shia man and because her father is married to a Shia woman;
- On the basis of membership in the particular social groups of women/girls who fear gender-related persecution in Iraq;
- On the basis that their political opinion may be imputed as pro-Western because of their time here and because the Applicant's son, Basil, is Canadian.

III. RPD's Decision

[8] The main issue raised by the RPD was the Applicants' credibility.

[9] The Applicants had alleged that they had never been back to Iraq since leaving in 1994. After being confronted during the RPD hearing with contrary evidence, the Applicant admitted she had lied on the basis of advice from her community and that she had been back to Iraq on that one occasion in 2013 to visit her sick brother-in-law. The RPD found that this misrepresentation "seriously undermines her credibility", but that the single return did not render "incredible" her stated fear of return.

[10] The RPD also concluded that the Applicant was untruthful regarding her intent to have her son in Canada in 2010, and that this raised "other general credibility concerns".

[11] The RPD further noted that the problems caused by the Applicant's paternal uncles were before the regime change in Iraq and that her uncles must be in their late 60s or 70s. The RPD concluded that the risk that may have been present in 1994 was unlikely to continue in the same manner and that there was no reliable evidence that some of her uncles' sons belonged to armed groups.

[12] The RPD also noted that the claimant's husband's family is in Baghdad and that they have had no contact from the Applicant's uncles. This suggested to the RPD that their interest in harming the Applicants was no longer significant.

[13] Finally, the RPD found that letters from the Applicant's sister regarding contact with a cousin in Iraq were insufficient in light of the Applicants' willingness to deceive the panel.

IV. RAD's Decision

A. *New evidence*

[14] The Applicants initially sought to admit the following new evidence before the RAD: (1) a letter from the Applicant's husband; (2) a letter from the Applicant's mother; (3) an annotated transcript of the RPD hearing; and (4) an interpreter's affidavit regarding the quality of the interpretation before the RPD. The RAD rejected all of the proposed new evidence, but made findings in the alternative on items 3 and 4.

[15] The Applicants also moved to submit additional new evidence after their appeal record was perfected (under Rule 29 of the *Refugee Appeal Division Rules,* SOR/2012-257). Specifically, they sought to adduce: (1) a letter from the Applicant's brother-in-law; (2) a letter from the Applicant's sister; and (3) the Applicant's parents' Swedish refugee documents. The RAD also found this evidence inadmissible. This finding is not disputed herein.

B. *Credibility*

[16] Because of credibility concerns, the RAD found that the Applicants did not face a serious possibility of persecution from the Applicant's father's family in Iraq. In particular:

a. The RAD agreed that the misrepresentation regarding the Applicants' return to Iraq in 2013 detracted from the credibility of her other allegations. The RAD also agreed that the RPD's finding regarding the birth of the Applicant's second child in Canada was also relevant and supported by evidence;

b. The RAD also agreed with the RPD's conclusions regarding the ability of the uncles to harm the Applicants. The RAD concluded that the Applicants had failed to establish that the uncles had a continuing interest in harming them;

c. The RAD further affirmed the RPD's treatment of the letters from the Applicant's sister, namely that they contained an internal inconsistency and that the Applicant's testimony regarding the letters was inconsistent and evolving; and

d. The RAD also gave no weight to the letters from the Applicant's husband. The first dealt primarily with the situation in Jordan; the second discussed the reasons for the return to Iraq in 2013 but did not explain why the Applicant was afraid. The RAD gave little weight to the letter from the Applicant's mother as it refers to events that occurred more than 13 years ago.

C. *Objective basis*

[17] The RAD agreed that it was an error for the RPD to fail to assess whether the Applicants faced an objective risk of harm upon return to Iraq because such risks would be present regardless of the veracity of the allegations concerning the Applicants' family's threats.

[18] However, the RAD concluded that there was no risk on the basis of gender. The RAD further found that concerns regarding the safety of children in Iraq are limited to ISIS controlled

areas. Moreover, the RAD noted that the Applicant's husband was a bread-winner and had demonstrated an ability to care for the family wherever they reside. Therefore he would likely accompany the family to Iraq with the result of significantly minimizing the risk of the Applicant and the children in returning there. The RAD also rejected the argument that the Applicants might face persecution because of mixed sect marriage, finding that the evidence shows that there is no significant risk for mixed sect couples and families in urban areas of Iraq.

V. Issues

[19] The Applicants submit that the application raises the following issues:

1. The RAD erred in applying the new evidence rule to the interpreter's evidence;

2. Deficient interpretation at the RPD breach the *Charter* and procedural fairness;

3. The RAD erred in law in its assessment of the new evidence;

4. The RAD erred in its assessment of the Applicants' credibility;

5. The RAD breached the Applicants' right to be heard in failing to give notice where required;

6. The RAD erred in its assessment of the objective basis of persecution.

[20] I would restate the issues as follows:

1) The standard of review pertaining to the various issues;

2) In respect of the inadmissibility of new evidence and the adequacy of the interpretation evidence before the RPD,

   a) whether the RAD erred in refusing to admit the new expert interpreter pursuant to sections 110(4) of the IRPA as evidence of a denial of a fair hearing by the RPD because the Applicants failed to raise the issue of interpretation at the earliest opportunity;

   b) whether based on the RAD's assumption that the interpretative evidence was admitted, the RAD erred in its statement of the required standard of interpretation of the Applicant being able to "adequately express herself and tell her story to the RPD";

   c) on the same assumption, whether the RAD ignored errors of interpretation described by the interpreter witness and failed to properly assess the adequacy of the interpretation; and

   d) whether the RAD erred in refusing to admit the new evidence of the Applicant's husband and mother, and pursuant to Rule 29 of the IRPA from the Applicant's brother-in-law, sister and her parents' Swedish refugee documents;

3) Whether the RAD erred in its assessment of the Applicant's credibility;

4) With respect to the objective country conditions evidence,

a) whether the RAD was procedurally unfair in failing to provide notice of its factual finding that, upon removal, the Applicant would likely be accompanied by her husband, or

b) whether the RAD made an unreasonable finding based on the objective evidence that the Applicant and her daughter would not be at risk if removed to Iraq.

VI. Standard of Review

A. *Distinguishing fact-finding weight and process errors*

[21] The following passage from *Kallab* v. *Canada (Citizenship and Immigration),* 2019 FC 706 at paragraphs 31-34 describes the difference between weight assessment and process fact-finding errors (described in this Court as "reviewable errors"):

> [31] The Board's fact-finding errors may generally arise in two different circumstances. The first arises out of the manner in which a tribunal conducts the fact-finding process. It is described as a fact-finding process error ["process error"]. Issues of relevance and materiality of evidence typify a process error, among others. The second form of fact-finding error occurs in the weighing or assessment of the probative value of evidence to form a fact. This is described as a fact-finding assessment error ["assessment error"].
>
> [32] Process errors are not to be treated with deference. They raise issues of fairness to be considered on a correctness standard. Process errors are well described in *Judicial Review of Administrative Action in Canada*, D. J. M. Brown & The Honourable J. M. Evans, 14:3520 [*Judicial Review of Administrative Action*], at 4:3420 under the heading "Other Fact-Finding Process Errors", as follows with my emphasis:
>
> > As well, the duty of fairness imposes certain limitations on the manner in which an agency can

> conduct the fact-finding process. For instance, the agency may not prevent a party from tendering evidence that is relevant to the issues in dispute, nor can it receive evidence ex parte without disclosing it to the other party for rebuttal. In addition, whether a tribunal has erred either by admitting and relying upon irrelevant evidence, by purporting to take judicial notice of facts that were not notorious, by failing to make necessary factual findings to support a constitutional challenge, by wrongly drawing adverse inferences, by excluding relevant evidence, by failing to consider relevant evidence, including expert evidence, by failing to make relevant inquiries, by failing to resolve conflicts in the evidence or by genuinely misunderstanding the evidence, will usually all be decided by the reviewing court without deference to the decision of the administrative agency. Similarly, questions as to the burden and standard of proof are matters on which a reviewing court will usually substitute its conclusion for that of the agency, as it will where evidence is weighed without apparent regard to statutory presumptions.

[33] To clear up any confusion that may be attributed to the term "wrongly drawing adverse inferences" referred to in the above passage, the following cases were cited in support of this reference. They indicate that this form of process error does not involve the weighing of evidence, but rather entails issues of fairness:

- *Audmax Inc. v Ontario Human Rights Tribunal*, 2011 ONSC 315 (CanLII) (Superior Court of Justice, Divisional Court) at para 43: (adverse inference drawn from the employer's failure to call a witness);

- *Bajwa v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 202 (CanLII) at para 70: (failure to provide a reasonable opportunity to disabuse the Visa Officer of her credibility concerns); and

- *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 (CanLII) at paras: 143-7 (failure to follow *Browne v Dunn* (1893) 6 R 67, H.L. in cross-examination seriously weakens the Alberta Securities Commission's inference as to credibility).

> [34] The excerpted passage above sets forth the most common process errors encountered in Board decisions. They include: admitting and relying on irrelevant evidence, failing to consider relevant evidence that a party specifically raises, including expert evidence (which, as a pre-condition, must be initially admissible, per *R v Mohan*, [1994] 2 SCR 9, 1994 CanLII 80), genuinely misunderstanding the evidence (i.e. clearly misapprehending the evidence as opposed to interpreting or arguing as to its meaning). When the Board makes a factual finding without any supporting evidence at all, this might be classified under either heading as a weight-based error or a process error depending on the circumstances. In either case, the error is plain to see.

B. *Jean Pierre v Canada (Immigration and Refugee Board), 2018 FCA 97 []*

(1) Jean Pierre is binding on the Federal Court

[22] The Federal Court of Appeal stipulated in *Jean Pierre v Canada (Immigration and Refugee Board),* 2018 FCA 97 at paragraph 53 [*Jean Pierre*] that an administrative tribunal is entitled to deference with respect to its findings of fact and inferences of fact: *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3 (CanLII) at paragraph 40, [2015] 1 S.C.R. 161; *Housen v. Nikolaisen,* 2002 SCC 33 (CanLII) at paragraph 25, [2002] 2 S.C.R. 235 [*Housen*] . The same considerations in *Housen* apply to the review of an administrative tribunal's role as a finder of fact and a maker of inferences of fact, as those discussed by the Federal Court of Appeal in *Jean Pierre*, as follows:

> [53] This Court's examination of the Board's decision is constrained by the standard of review… An administrative tribunal is also entitled to deference with respect to its findings of fact and inferences of fact: *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3 (CanLII) at para. 40, [2015] 1 S.C.R. 161; *Housen v. Nikolaisen,* 2002 SCC 33 (CanLII) at para. 25, [2002] 2 S.C.R. 235. In *Housen*, the discussion with respect to the standard of review of inferences of fact arose in the context of a decision of a judge after a trial, but the same considerations apply equally to the review of an administrative tribunal's role as a finder of fact and a maker of inferences of fact.
>
> [Emphasis added]

[23] Accordingly, *Housen* is also binding on the Federal Court in regard to its review of weight based factual conclusions of quasi-judicial tribunals such as the RPD and RAD. The RAD fits the description of an administrative tribunal whose factual determinations should be reviewed on a stricter standard, although it normally does not conduct a hearing unless credibility issues arise based on new evidence. Nevertheless, its members are required to conduct their own *de novo* factual analysis. Its members are also informed of the evidence before the RPD, notably by listening to its recorded proceedings upon which they rely to assist in rendering factual conclusions. More substantively, the same policy reasons discussed below, that support a stricter standard of review of its factual findings, should similarly apply to the decisions of the RAD.

(2) A stricter non-interventionist deference is owed findings of fact

[24] The overall message in *Housen* was that appellate courts should adopt a highly non-interventionist approach for the review of trial judges' finding of facts, inferences of fact and questions of mixed fact and law, in the latter case where the legal question is not extricable. The standard of review described to evaluate factual findings of trial courts is that of a "palpable and overriding error". The term "palpable" was defined as an error that is "plainly seen", *Housen*, paragraphs 4 and 5.

[25] It was similarly stated at paragraph 1 in *Housen* that the appellate court should not intervene in the trial judge's finding of fact when "there was <u>some evidence</u> [my emphasis] upon which he or she could have relied to reach that conclusion." This standard is similar to the admonishment not to reweigh the evidence: *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at paragraph 61, *Kallab* at paragraphs 63-64.

[26] The majority judges in *Housen* also provided great clarity in what is meant by an error that is plainly seen when it stipulated that the reviewing court should not apply a reasonability analysis to the inference-drawing step of an inferred fact. At paragraph 21, the majority specifically disagreed with the minority proposition on this question at paragraph 103 of the reasons that :

> In reviewing the making of an inference, the appeal court will verify whether it can reasonably be supported by the findings of fact that the trial judge reached and whether the judge proceeded on proper legal principles... While the standard of review is identical for both findings of fact and inferences of fact, it is nonetheless important to draw an analytical distinction between the two. If the reviewing court were to review only for errors of fact, then the decision of the trial judge would necessarily be upheld in every case where evidence existed to support his or her factual findings. In my view, this Court is entitled to conclude that inferences made by the trial judge were clearly wrong, just as it is entitled to reach this conclusion in respect to findings of fact.
>
> [Emphasis added]

[27] The Majority reasoning rejecting a reasonability analysis of the evidence supporting an inference was twofold. First, a standard required to review the reasonability of the inference was stated to be insufficiently strict:

> First, in our view, the standard of review is not to verify that the inference can be reasonably supported by the findings of fact of the trial judge, but whether the trial judge made a palpable and overriding error in coming to a factual conclusion based on accepted facts, which implies a stricter standard.
>
> [Emphasis added]

[28] Obviously, if the standard of review does not permit a review to determine whether an inference can reasonably be supported by the findings of fact, the same stricter test applies to the review of the evidence supporting an ordinary finding of fact. The standard is rather almost an

impressionistic “palpable” one that strikes the court as an error that is clear, obvious and plainly seen.

[29] Second, drawing an inference entails impermissible assessing and weighing the evidence of the foundational facts, as stated in *Housen* at paragraph 22:

> 22 Second, with respect, we find that by drawing an analytical distinction between factual findings and factual inferences, the above passage may lead appellate courts to involve themselves in an unjustified reweighing of the evidence. Although we agree that it is open to an appellate court to find that an inference of fact made by the trial judge is clearly wrong, we would add the caution that where evidence exists to support this inference, an appellate court will be hard pressed to find a palpable and overriding error.
>
> [Emphasis added]

[30] The bottom line is that the Court is not to engage in a reweighing of the evidence for any factual finding because it really amounts to a reasonability analysis to determine whether the finding, including the drawing of the inferred fact, is reasonable. The error must be palpable and overriding as one that is plainly seen. Examples would include those such as no supporting evidence of probative value, misapprehended evidence and similar errors that are plainly seen. Then they must be overriding in the sense that they foreclose on the necessity to otherwise consider the reasonableness of the decision.

(3) Questions of mixed fact and law should be reviewed on a similarly strict deferential standard

[31] The issue that remains unstated in *Jean Pierre* is whether the same deferential standard is owed to question of mixed fact and law made by the RPD. No mention was made of this category of factual finding in the decision, despite *Housen* clearly applying the same principles to the review of questions of mixed fact and law made by trial judges.

[32] The only exception to the stricter standard of questions of mixed fact and law admitted in *Housen* occurs when the legal question is extricable from the facts. An example of an extricable error of law in a question of mixed fact and law described in *Housen* occurs where the legal test requires the application of certain factors that are not considered by the decision-maker. This is in contradistinction to a situation where the trier of fact has considered all the evidence that the law requires and still comes to the wrong conclusion. The latter situation is an error of mixed law and fact and is subject to a more stringent standard of review, *Housen* at paragraphs 26 - 28.

[33] The issue takes on some significance when it is recognized that most of the conclusions mandated to be determined by the RPD are questions of mixed fact and law, or other factual and inferential findings of fact, i.e. “on evidence adduced in the proceedings and considered credible and trustworthy in the circumstances”, paragraph 170(h) of the IRPA. Determining whether the Applicant ~~is credible~~, has a well-founded fear, or is at risk of cruel and unusual treatment, are ~~all~~ questions of mixed fact and law. Apart from process fact-findings and errors of law in applying a legal standard, these are questions of mixed fact and law. If the tenets of *Housen* apply, they can be overturned only when the error is plainly seen, and without a reweighing of the evidence so long as they are supported by some evidence.

[34] Logic suggests that the same standard of review that applies to findings of facts and inferential facts should be equally applicable to questions of mixed fact and law. There is no apparent substantive argument to treat the review of questions of mixed fact and law from other factual findings differently when determined by administrative tribunals than when considered in trials.

[35] Logically, the fact that the standard of review of palpable error does not apply to questions of mixed fact and law when the legal principle is extricable means that it should apply when it cannot be separated. As indicated in *Housen* at paragraph 28 when discussing this distinction, "[h]owever, where the error does not amount to an error of law, a higher standard [emphasis added] is mandated."

[36] In other words, the test for reviewing facts (1) is more strict and (2) arrived at by a different process than that applied to questions of law, although both may fall under the "reasonability" standard of review. A reasonability analysis of the evidence does not apply to factual findings. If it did, it would be too interventionist as a standard contrary to fundamental policies that generally protect the repudiation of factual findings unless the error is plain to see.

[37] The court's policy relating to factual findings of trial judges and administrative tribunals are similarly highly non-interventionist. It is just the frequent disregard for this principle that set the direction of the majority reasons in *Housen*: "While the theory has acceptance, consistency in its application is missing", at paragraph 4, and "[w]hile this standard is often cited, the principles underlying this high degree of deference rarely receive mention", at paragraph 10. The majority judges in *Housen* provided extensive policy grounds to support the highly non-interventionist approach required of courts to reviewing factual findings, see paragraphs 10 to 18. They generally fell under three headings: limiting the number, length and cost of appeals, promoting the autonomy and integrity of trial proceedings and recognizing the expertise of the trial judge and his or her advantageous position. These policies logically apply to factual findings of the RPD and RAD, *Kallab* at paragraphs 90 to 101. They, thereby, support the application of a stricter standard of review to mixed questions of fact and law made by administrative tribunals.

(4) Credibility findings are reviewed on the same standard, but the overwhelming advantage of the decision-maker must be acknowledge who enjoys the opportunity to observe witnesses and to hear testimony first-hand

[38] There is a line of jurisprudence in the Federal Court that states that credibility findings can only be overturned "in the clearest case of error", thereby suggesting that a stricter standard should apply to ordinary findings of fact: *Revolorio v Canada (Minister of Citizenship and Immigration*), 2008 FC 1404, *Njeri v Canada (Minister of Citizenship and Immigration)*, 2009 FC 291 at paragraph 11, *Ramos Aguilar v Canada (Citizenship and Immigration)*, 2019 FC 431at paragraph 29, *Odia v Canada (Citizenship and Immigration)*, 2018 FC 363 at paragraph 6.

[39] This distinction of a stricter standard for credibility findings is mostly rejected by Court in *Housen* at paragraph 24 in commenting on support for appellate courts deferring to all factual conclusions made in *Toneguzzo-Norvell (Guardian ad litem of) v. Burnaby Hospital*, 1994 CanLII 106 (SCC), [1994] 1 S.C.R. 114, as follows:

25.

…

> I agree that the principle of non-intervention of a Court of Appeal in a trial judge's findings of facts does not apply with the same force to inferences drawn from conflicting testimony of expert witnesses where the credibility of these witnesses is not in issue. This does not however change the fact that the weight to be assigned to the various pieces of evidence is under our trial system essentially the province of the trier of fact, in this case the trial judge
>
> We take the above comments of McLachlin J. to mean that, although the same high standard of deference applies to the entire range of factual determinations made by the trial judge, where a factual finding is grounded in an assessment of credibility of a witness, the overwhelming advantage of the trial judge in this area must be acknowledged. This does not, however, imply that there is a lower standard of review where witness credibility is not in issue, or that there are not numerous policy reasons supporting deference

> to all factual conclusions of the trial judge. In our view, this is made clear by the underlined portion of the above passage. The essential point is that making a factual conclusion, of any kind, is inextricably linked with assigning weight to evidence, and thus attracts a deferential standard of review.
>
> [Emphasis added]

[40] Context therefore matters when the decision-maker enjoys the opportunity to observe witnesses and to hear testimony first-hand. This is what McLachlin J. was referring to when acknowledging the overwhelming advantage of the decision-maker. Standards of review such as those expressed "in the clearest case of error", or "the clearest of cases" applied to credibility findings do not misstate this advantage. But overall, if they do not imply a lower standard of review where witness credibility is not an issue, such standards should be judged as similarly strict as other expressions employed in *Housen*. These include "plainly seen", "obvious", or "clearly wrong", all of which represent the high degree of non-interventionist deference owed to decision-maker's findings of fact.

[41] Additionally, because most credibility findings are multifaceted, often representing an accumulation of different inconsistencies, improbabilities and observations described in the reasons, concluding that plainly seen errors are found in one or even two of the supporting rationales, may not be sufficient to overturn the credibility finding unless determined to be "overriding" in effect.

(5) Categories of errors

[42] To terminate this discussion, errors of administrative tribunals subject to review may broadly be said to fall into three categories. First are procedural or fairness issues pertaining to the decision-making process as a whole, i.e. bias of the decision-maker, or failure to know the case to be met. Similar process fairness issues (reviewable errors) apply to factual findings as

described above. Both categories of fairness issues generally attract a correctness standard. The second group of errors relate to evidence assessment findings of fact, inferences of fact and questions of mixed fact and law where the legal question is not extricable. They will attract a reasonability standard of review, but with a stricter more non-interventionist threshold and form of analysis that permits their setting aside only when the error is plainly seen. The third category comprises errors of law, which for administrative tribunals, depending upon their nature and context may be subject to either a reasonableness or correctness standard of review.

C. *The Standard of review applied to the issues raised by the Applicants*

(1) Issue 2) a), the RAD's assessment of the admissibility of new evidence

[43] With respect to Issue 2) a), the RAD's assessment of the admissibility of new evidence is reviewable on a reasonableness standard (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paragraph 9 [*Singh*]). The RAD may admit new evidence under section 110(4) of the IRPA only where it arose after or was not reasonably available at the time of the RPD's decision, or in circumstances where the Applicants could not reasonably have been expected to have presented it to the RPD.

[44] This said, I agree with the following proposition in *A.N. v Canada (Citizenship and Immigration Canada)*, 2016 FC 549 [*A.N.*] at paragraph 23 that:

> [23] … "[t]he restrictions on presenting evidence under subsection 110(4) of the IRPA and Rule 29(4) of the RAD Rules should not necessarily be applicable when the evidence presented on an appeal to the RAD raises issues about the procedural fairness of the proceeding before the RPD and not about the credibility, facts, or substance of a refugee's claim."

[45] Conversely, however, the RAD's decision in assessing evidence in relation to procedural fairness must nevertheless be reviewed on a reasonableness standard. The issue is whether the

RAD erred in its factual conclusion that the Applicants failed to raise concerns with the RPD about the interpretation at the earliest reasonable opportunity.

[46] The Court in *A.N.* specifically noted that this was not an issue before it at paragraph 23, as follows:

> [23] … Even if it could be said that such restrictions may be applicable, the evidence of the Applicant's difficulty with the hearing being held in Uyghur and her Aunt's conflicting interests only emerged after rejection of the Applicant's claim and she could not reasonably have been expected in the circumstances of this case to have presented evidence of her Aunt's conflict of interest until it was revealed and disclosed to her.
>
> [My emphasis.]

[47] The admissibility of new evidence alleging procedural unfairness under section 110(4) of the IRPA still requires the demonstration of the factors needed to establish an allegation of unfairness, i.e. – no waiver of inadequate interpretation. This is an issue which is determined on the basis of events occurring before the RPD as described in the proceedings.

[48] In essence, the issue regarding the admissibility of the interpreter's evidence comes down to the submission by the Applicants to set aside a finding of fact by the RAD. It relates to the assessment and weighing of evidence to support the factual conclusion that no reasonable complaint of inadequate interpretation was made at the first opportunity (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, [2000] 3 FC 371, 2000 CanLII 17118 (FC) [*Mohammadian*] at paragraph 28: "It will be a question of fact in each case whether it is reasonable to expect a complaint to be made [emphasis added]." This finding of fact can only be set aside if the error is plainly seen and overriding.

[49] With respect to Issue 2)c), assuming both the admission of the interpretive evidence and the reasonableness of the standard of interpretive adequacy, the RAD's finding of fact that the Applicant was able to adequately express herself and tell her story to the RPD can only be set aside where plainly seen and overriding.

[50] With respect to Issue 2)d), the admissibility of new evidence is reviewable on a reasonableness standard (*Singh* above).

[51] Issue 3 concerns the adverse credibility finding of fact of the RAD. The Court can only overturn an assessment of the Applicant's credibility finding where the error is plainly seen.

[52] With respect to Issue 4)a), whether the RAD was procedurally unfair in failing to provide notice of its inferential factual finding that, upon removal, the Applicant would likely be accompanied by her husband, is an alleged "process error" of a finding of fact. It is subject to a standard of correctness (*Kallab* at paragraphs 29-34 citing *Judicial Review of Administrative Action in Canada*, D. J. M. Brown & The Honourable J. M. Evans, 14:3520).

[53] The Applicant also argues regarding Issue 4)b), that the RAD's inferential finding of fact that her husband would return to Iraq was speculative and without support in the evidentiary record. The foundational facts and evidence in support of the impugned inference are subject to the same rule pertaining to the review of facts that they may only be overturned in the clearest of cases as is the drawing of the adverse inference and is of an overriding effect.

[54] If the inference of the husband's accompaniment is sustained, the Issue at 4)b), whether the Applicant and her daughter would be at risk if removed to Iraq, is similarly an assessment

finding of fact, or mixed fact and law, either of which can only be overturned in the clearest of cases.

VII. Analysis

[55] By way of introduction, the Court commends the RAD for the thoroughness, justification, transparency and intelligibility of its reasons. It responded to each of the Applicants' numerous submissions with detailed and comprehensive reasons. The fact that the Applicants raise so many issues in no way reflects on the quality of the RAD's reasons, which demonstrate a thorough understanding and response to the facts and law.

A. *Whether the Applicants failed to raise the issue of interpretation at the earliest opportunity with the RPD*

[56] The Applicants' initial submission was that "the RAD did not definitively decide the issue of waiver and did not establish the facts necessary for the application of the doctrine of waiver." They argue that it is incumbent on the party that relies on the doctrine of waiver to establish the facts necessary for its application, advancing this submission as an issue of onus that the RAD did not meet.

[57] I disagree. Justice Pelletier described what constituted waiver in *Mohammadian* at paragraph 11, i.e. "[w]aiver (in the form of absence of complaint before the CRDD) …" The RAD's opening statement on this issue described its finding that "the Appellants failed to raise the issue of interpretation at the earliest opportunity."

[58] Finally, on this issue the Applicants contend that they never waived their right to adequate interpretation "because they were not aware of the ubiquity of the translation errors until after the fact". This submission is not responsive to the findings of the RAD.

[59] The RAD provided extensive reasons over two lengthy paragraphs, with explicit references, to exchanges at the RPD's two hearings. For instance, at the beginning of the first hearing, the RPD member put the Applicant on notice to raise concerns about interpretation and to inform the RAD if she had any difficulty communicating with the interpreter.

[60] The RAD also pointed out the Applicant's statement at the beginning of the second sitting, which occurred several weeks after the first hearing date, where she testified: "I expect I am anticipating that I am more lucky this time with the interpreter". The errors in question are said to have arisen in the first hearing. It is also worth noting that the RPD member indicated at the conclusion of the first hearing, when discussing issues to be addressed in final submissions, that "credibility is certainly still an issue", particularly as she had been caught in an intentional and serious misrepresentation. Credibility is the principal area of contention said to be adversely affected by the alleged inadequate interpretation

[61] The RAD member notes that the Applicant's counsel would have heard the foregoing statement that she was "unlucky". It would have provided a basis during the second hearing to raise the issue to investigate the quality of the translation during the first hearing. Additionally, if the client had such concerns that are intended to have been described being unlucky with the first interpreter, she should have addressed them with her counsel who thereafter could have raised them with the RPD member.

[62] I find this conclusion consonant with the principle of waiver as described in *Mohammadian* at paragraph 17, as follows:

> [17] … A more accurate statement might well be that where the applicant is represented by counsel, and where there are manifest problems with interpretation, the claimant cannot say nothing at

> the hearing, and then raise the matter as a ground of relief in a subsequent application.

[63] Given these concerns by the Applicant, the RAD also found that there was no reasonable explanation why the affidavit from the interpreter, including the examination of the RPD transcript, could not have been provided before the several weeks it took the RPD to reject the claim.

[64] The RAD's conclusion that the Applicant and her counsel failed to raise questions about the quality of interpretation at the earliest reasonable opportunity is supported by the evidence with no error raised that would provide a ground to set it aside.

[65] Not having met the prerequisite requirements to support a submission of inadequate interpretation, the Applicant similarly failed to meet the statutory requirements for admissibility as new evidence. In other words, evidence that is inadmissible cannot be proffered as new evidence for appeal. Similarly, considerations of procedural unfairness are irrelevant to the RAD's decision to refuse admission in an interpreter's affidavit when the preconditions for its admission are not met.

B. *Whether the RAD erred in its statement of the required standard of an adequate interpretation of the Applicant being able to "adequately express herself and tell her story to the RPD"*

[66] Despite its ruling on waiver, the RAD proceeded to consider the interpretive evidence and concluded that "the evidence shows they received adequate interpretation and that they were able to adequately express themselves and tell her story to the RPD."

[67] In response to this conclusion, the Applicants submit that "the RAD diluted the standard of 'continuous, precise, competent, impartial and contemporaneous' interpretation." I reject this submission.

[68] The RAD correctly set out the applicable legal principles governing the standard required of testimonial interpretation as follows:

> [22] Interpretation should be continuous, precise, impartial, competent and contemporaneous. Although the standard of interpretation is high, it need not be so high as to be perfect. If a breach of this standard is shown, it is not necessary to show actual prejudice (*R v.Tran*, [1994] 2 SCR 951, [*Tran*]). What is important is whether the Appellant understood the interpretation and was able to adequately express himself through the interpreter (*Lawal, Kayode Fasasi v. MCI*, 2008 FC 861, at para 26, (de Montigny) [*Lawal*]). To put it another way, persons who do not speak and understand one of the official languages must be able to tell their story, and the interpretation must be of such quality that they are not impeached in their ability to make their case (*Dhaliwal, Hardial Singh v. MCI*, 2011 FC 1097, at para. 18 (de Montigny) [*Dhaliwal*]).
>
> [Emphasis added, but footnotes omitted.]

[69] It is apparent that the Applicants take issue with Justice de Montigny's restatement, in both *Lawal* and *Dhaliwal*, of the principle in *R v Tran*, [1994] S.C.J. No. 16, [1994] 2 S.C.R. 951 [*Tran*] as to the measure of an adequate interpretation. I see no basis to do so. In *Mohammadian* at paragraph 7, the Court precised the description of interpretation in *Tran*, which was "continuous, precise, impartial, competent and contemporaneous" under the heading "(ii) Guaranteed Standard of Interpretation". It reads as follows:

> [7] The elements of the constitutionally guaranteed standard are briefly described below:
>
> "in general terms, the standard of interpretation is high but not so high as perfection.

> "continuous: without breaks or interruptions, i.e., interpretation must be provided throughout the proceedings without any periods where interpretation is not available.
>
> "precise: the interpretation should reflect the evidence given without any improvement of form, grammar or any other embellishment.
>
> "impartial: the interpreter should have no connection to parties or interest in the outcome.
>
> "competent: the quality of the interpretation must be high enough to ensure that justice is done and seen to be done.[*Tran*, para 62]
>
> "contemporaneous: the interpretation must be available as the evidence is given, though not necessarily simultaneously.
>
> [My emphasis.]

[70] Justice de Montigny's two statements "whether the Appellant understood the interpretation and was able to adequately express himself through the interpreter" (Lawal, at paragraph 26) and "they must be able to tell their story, and the interpretation must be of such quality that they are not impeached in their ability to make their case" (*Dhaliwal*, at paragraph 18) capture the essence in *Tran* of a competent interpretation being of "high enough quality to ensure that justice is done and seen to be done".

C. *Was the Applicant able to adequately express herself and tell her story?*

[71] The RAD concluded that there was no breach of natural justice in relation to any interpretation issues. It found first that there were not enough serious errors to cause the RAD to doubt the fairness of the RPD hearing, and secondly that the errors were not material to the RPD's findings (*Aseervatham v Canada (Citizenship and Immigration)*, 2018 FC 1006 at paragraph 23), "[w]hile the Applicant is not required to prove actual prejudice due to an error of translation, the error needs to be material to the RPD's findings."

[72] The Applicants particularly emphasize that because of a number of times the interpretation was incomplete or an exchange was not interpreted, this demonstrated it was not "continuous". The Supreme Court in *Tran* at paragraph 57 described not continuous as "This interpreter became unavailable" and in *Mohammadian* at paragraph 7 "any periods where interpretation is not available". This refers to situations of missing portions of the transcript such that the reviewing decision-maker cannot be satisfied that important statements were not considered in the missing interpretations. That is not the case in this matter. Most references of problems mentioned by the interpreter were to one or two words. All but one reference bears any materiality to the RPD's decision.

[73] The only material claim of poor interpretation advanced by the Applicants was in relation to the RAD's inferential credibility finding that the Applicant had intentionally come to Canada when eight months pregnant for the purpose of having a Canadian-born child. There were references in the interpreter witness' transcript to notes to inadequate interpretation in respect of the questioning of the Applicant on this subject. The first section of the relevant interpreted passage is reproduced below with my emphasis where relevant:

> Previous Criticism of the interpreter witness: The word application was interpreted as claim… and this caused some confusion
>
> Q. And according to the various visa applications and notes that I have been provided, there was some concern previously that that was an intentional thing… that you intentionally came to Canada so that child ?
>
> Was that the case?
>
> A. No… the first claim
>
> You mean that the claim was for the purpose for the visa?

> Q. That you intentionally came to Canada for the purpose of having a child here
>
> Second Criticism: "Wrong interpretation"
>
> A. Sorry I don't understand [in English]
>
> No it was not intentional, my husband was…has a work trip, and it was a coincidence

[74] Three points should be noted. First, any previous confusion about "application" being translated by "claim" as raised by the Applicant was cleared up by the interpreter stating more clearly the question about her intentionally coming to give birth to her child in Canada. Also, where a witness indicates that words are misinterpreted, this should be objectively corroborated by dictionaries to the extent possible where the translated language will otherwise not be understood by the decision-maker.

[75] Moreover, the transcript demonstrates that the Applicant fully understood the import of the question by the RPD member. She first switched to English to indicate that she did not fully understand the question ("Sorry I don't understand"). Immediately thereafter she demonstrated not only that she understood the question, but that she understood the issue regarding the timing of her visiting Canada when eight months pregnant. Indeed, she responded that it was not her intention to have her child born in Canada, but rather a coincidence: "No it was not intentional, my husband was…has a work trip, and it was a coincidence". This is the very statement that the RAD found to be lacking in credibility.

[76] Second, is the criticism of the interpreter that the sentence: "That you intentionally came to Canada for the purpose of having a child here" was labelled a "[W]rong interpretation". This comment is problematic because it leaves the decision-maker hanging without the correct interpretation being provided. The absence of the correct interpretation limits any assessment of

the severity of the error. This occurred in other instances. It did not matter at this point in the transcript, as the Applicant immediately seized on the question by denying intention and stating that it was a coincidence that her child was born in Canada.

[77] Moreover, there is no explanation why the interpreter would point out the previous error of translating “application” as “claim”, yet not advise the decision-maker what exactly was the error in the crucial credibility question of the RPD of the Applicant visiting Canada when eight months pregnant. This inconsistency of the absence of the key correct translation reflects poorly on the interpreter.

[78] Third, the Court has recently commented extensively about its concerns that the evidence of forensic expert witnesses is being admitted and relied upon without proper consideration as to the weight or admissibility of the evidence, (*Moffatt v Canada (Citizenship and Immigration),* 2019 FC 896). The point is particularly significant in cases regularly found in immigration related matters where the opinion of the witness is not substantively challenged due to the absence of an opposing expert opinion.

[79] The Supreme Court of Canada has repeated concerns about potential dangers arising from the misuse of expert evidence: *White Burgess Langille Inman v Abbott and Haliburton Co,* 2015 SCC 23, paragraphs 17 and 18. First, the party is paying for the opinions. Second, unless the opinions are helpful to the party’s case, they will not be submitted to the decision-maker, i.e. the witness not retained. It is generally recognized that opinions paid for to support a party to achieve benefits by means of some form of forensic process start, at least in terms of appearance, from the premise that they are biased. Given the premise, it takes little to conclude that inconsistencies are a form of advocating for the client party. This is serious as experts are

supposed to provide evidence to assist the Court. They have an overriding duty to fully advise the decision-maker in a neutral and impartial fashion: "their primary duty is to the court and not to the party that called them", D. M. Paciocco and L. Stuesser, The Law of Evidence (7th ed. 2015) at page 223.

[80] The continuation of the transcript and the interpreter witness' comments on the testimony is equally problematic. It is set out below.

> Q. And can you help understand how travelling to Canada at 8 months pregnant resulted in a coincidence having a child here?
>
> A. I will explain what happened exactly
>
> My husband had already a visa – for like a job trip
>
> Ok I ask him if I can go with him. He told me no its difficult for you, you are pregnant and is not easy for you
>
> I told him that I will ask for a visa and we will see if it is approved we will go together.
>
> And he told me, no it will take time, and may be you will deliver before getting the visa
>
> We tried, he went and submit the application for the visa
>
> And after two weeks we got the visa, so that is what happened
>
> Q. Ok ... what about that concern your husband had... that you would have the baby before taking the trip
>
> Comment: Madam member said before taking the trip. Interpreter said before taking the Visa so the response of the Applicant was related to taking the visa
>
> A. He told me there is no point to submit the application, because the visa usually takes time, the application, and maybe I will be already gone, and you deliver here… you won't get the visa before
>
> Q. So how is it that you didn't know that travelling at 8 months pregnant might be problematic?

> A. So I know, but the opportunity came... so we travel to Canada
>
> Comment: Addition… the Applicant did not mention the word opportunity

[81] The RPD member followed up on the Applicant's previous answer as to how having the child in Canada when eight months pregnant is coincidence. Thereafter the Applicant gives her full explanation on this critical issue of intention or coincidence in having the child in Canada. Clearly, she had a full opportunity to present her evidence on the issue.

[82] The RPD member quite properly finds the answer unresponsive and first asks to expand on the husband's concerns ("concern your husband had…that you would have the baby before taking the trip"). The Applicant's interpreter comments that the translation of "taking the trip" was incorrect, being that of "taking the visa". The Court has some concerns about this interpretation given that the RPD's interpreter in three sentences above properly interpreted both words in the same sentence [with my emphasis] "My husband had already a visa – for like a job trip". Additionally, thereafter the RPD's interpreter correctly translated the term "trip" in various other sentences. As noted, no objective corroboration of the distinction in the terms was provided to support the alleged error.

[83] Furthermore, the RPD's interpreter properly interpreted the terms "application" and "claim" found in the same sentence, despite the earlier confusion in the terms noted regarding the interpretation of these words.

[84] In any event, the RPD member persisted in questioning on the issue of coincidence, this time asking how travelling at eight months pregnant might be problematic, to which she responded that she knew (that it would be problematic), "but the opportunity came … so we

travel to Canada". The Applicant's interpreter claims that she did not use the term "opportunity", but provides no further explanation as to what she said.

[85] However, in his explanatory affidavit accompanying his transcript and comments, the interpreter indicates that "the word coincidence was wrongly interpreted as opportunity". It is not clear why this was not stated in the comments on the transcript in the first place. Moreover, the term coincidence was previously properly interpreted when used both by the Applicant and the RPD member, raising a question for the Court as to why it would be improperly interpreted on this occasion.

[86] In any event, all of this commentary appears irrelevant inasmuch as neither "coincidence" nor "opportunity" became the focal point of the Applicants' submissions, rather being that of "fate". This term was apparently mentioned in a previous document noted by Visa officers. It is not found in the transcript of the proceedings before the RPD.

[87] For the reasons described above, the Court determines that the RAD reasonably and correctly concluded that even assuming the admissibility of the Applicants' new interpretive evidence, no procedural unfairness would have been proven.

D. *Whether the RAD erred in its assessment of the Applicant's credibility*

[88] A credibility assessment can only be set aside in the clearest of cases. This extends to adverse inferred improbable credibility findings. With respect, the ruling in in *Valtchev v Canada (Citizenship and Immigration*), 2001 FCT 776, [2001] FCJ No. 1131 (TD) at paragraph 7 et seq. that implausibility findings of adverse credibility should only be made "in the clearest of cases misstates the law" *Kallab*, paragraphs 103-132.

[89] The RAD found no error in the RPD's negative assessment of the Applicant's credibility as it was relevant and supported by the evidence. The RAD concluded that her intentional misrepresentation about returning to Iraq in 2013 was a relevant consideration. This finding along with the RAD's further rejection of the explanation for the return because of a grave illness and thereafter pending loss of eyesight of her brother-in-law, significantly detracted from the credibility of the Applicant's allegations that the family was being targeted by her uncles. The Applicants do not address these issues in their submissions to the Court.

[90] With respect to the RPD's adverse credibility findings concerning the Applicant's intention for the 2010 childbirth in Canada, the RAD found that the issue was relevant to issues of credibility. Given the various factors cited, the RAD found, with my emphasis, that "it was likely that she was going to have her child in Canada". This is an implausibility finding, more accurately described as an "improbability finding", that is based on the evidence in the record. On that basis, members of both divisions concluded that the Applicant was not credible in stating otherwise.

[91] The Applicants argue that "[p]roof of knowledge of the possibility or likelihood of an event does not mean that the Applicant intends for such an event to occur". First, dealing with the threshold required proving a fact, the RAD did not speak of possibilities. Evidence of possibilities does not form the foundation for findings of fact. Relevant evidence must prove the fact at the threshold of a likelihood or probability. Thus, the RAD's use of the term "likely" is standard terminology to prove the fact.

[92] The RPD and RAD members both concluded as an improbable inference that the statement made by the Applicant that the trip was planned for pleasure purposes to accompany

her husband was more unlikely than likely to be true. This adverse inference was drawn based principally upon the general knowledge of human experience reasonably attributed to the Applicant that children tend to be born approximately nine months after conception, and sometimes before that time, in addition to other related facts. The other fact was not only that traveling to Canada while eight months pregnant is problematic being contrary to normal flight restrictions, but that the Applicant would then have to fly back to Jordan two weeks later, which would make it even more probable that the birth would have to occur in Canada.

[93] Nor do these reasons even speak to the fact that the birth in Canada would provide the child with advantages generally flowing from the sought-after status of being a Canadian citizen.

[94] In the circumstances, the Applicants have not demonstrated that the adverse credibility finding regarding the purpose of traveling to Canada when eight months pregnant was not supported by the evidence or an error in the clearest of cases.

E. *Objective risk upon return to Iraq*

[95] The Applicants argue that the RAD breached the principles of natural justice by raising a new issue of fact relied upon to reject the objective evidence of risk upon return to Iraq without providing the Applicants either notice or an opportunity to address the new fact.

[96] The RAD agreed that it was an error for the RPD not to assess whether the Applicants possessed an objective risk upon return to Iraq. Nevertheless, the RAD based its decision on the objective evidence that the profile of women and children most at risk in Iraq are those without protection from their family or tribal network. The RAD found that there was no evidence that the husband would be unwilling or unable to accompany the Applicants if returned to Iraq.

[97] The Applicant claims that the RAD's determination that the husband would accompany the family was a new issue of fact. In her affidavit filed in response to this issue, the Applicant deposed that she does not believe that her husband would have moved from Jordan to Iraq to take care of her and her daughter and that she could not force her husband to make this decision.

[98] I agree with the Respondent that the RAD did not raise a new issue in making a finding of fact that was relevant to the profile of women and children at risk in Iraq based upon the evidence, or lack thereof in the materials before it. A new issue must be legally and factually distinct from the grounds of appeal raised by the parties (*Quan v Cusson* , 2009 SCC 62 at paragraph 39; *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at paragraphs 67-71). The issue was framed within the Applicant's grounds of appeal and particularly relevant to the profile of women at risk upon return to Iraq (*Caleb v Canada (Citizenship and Immigration)*, 2018 FC 384 at paragraphs 20-23).

[99] Moreover, I conclude that the Applicants have misstated, or at least misunderstood that they bore the onus to introduce the relevant evidence before the RPD that would demonstrate that they had the profile of persons at risk who were returned to Iraq.

[100] Given the misplaced onus, the RAD could have simply found that there was insufficient evidence before it to demonstrate that the Applicants meet that profile that they would be unaccompanied by the husband, i.e. their onus. In other words, the Applicants presented the profile of women and children at risk upon return to Iraq being significantly diminished when unaccompanied or unprotected. The evidence before the RAD leads to the opposite conclusion that the Applicants would most likely have been accompanied by the husband, or not met other profiles where they would have been at risk.

[101] In this regard, I also note that these conclusions constitute inferential adverse finding of credibility that may only be set aside by the Court in the clearest of cases. The foundational facts for the inference are not contested. They include reference to their committed relationship, his letter supportive of her refugee claim in the past, as well as being financially well-established and operating a successful business. In addition, he had been mindful of the safety of the Applicant and the children when they returned to Iraq in 2013, thereby demonstrating an ability and intent to care for his family wherever they resided. As well, it was noted that the husband had supportive family members in Iraq, including a brother-in-law (misstated as his brother) who had welcomed the family to his home in Baghdad when they traveled there in 2013. This is considerably more than "some evidence" to support the conclusion of the improbability of being at risk if accompanied by the husband.

[102] Finally, the Applicant submits that the Court should accept the evidence contained in her supplementary affidavit. She deposed that she did not believe that her husband would move from Jordan to Iraq to take care of her and her daughter. The Applicant argues that this evidence should be accepted because she was not cross-examined on her affidavit. There was no need for cross-examination from the Applicant who it was found had intentionally misled the RPD member and was not credible concerning her childbirth in Canada. More importantly, there was no explanation as to why the husband would not have provided a sworn affidavit with respect to his intentions regarding accompanying the Applicant and the children if removed to Iraq. The fact that he would not provide such an affidavit even when the Applicant's credibility had been seriously impugned by the RPD and RAD undermines what little weight the Court could have possibly given of the Applicant's belief that her husband would not have accompanied them on return to Iraq.

[103] Finally, the Applicant further argues that the RAD's finding was unreasonable because the country condition evidence indicates that women without support and protection are particularly vulnerable to being harassed, kidnapped or sexually assaulted, etc. She interprets the statements to mean that women are still vulnerable, even if not particularly so. The RAD concluded additionally that "the preponderance of the evidence indicates that such problems in many cases are significantly decreased by the fact that the Appellants have a supportive male bread-winner [my emphasis]."

[104] The documentation submitted by the Applicant refers to the situation severely deteriorating as a result of the conflict with ISIS, sexual harassment, harmful traditional practices and female genital mutilation. There was no evidence that the high-risk circumstances applied to the Applicant, her children or her husband living in Baghdad when accompanied by her husband. Additionally, the RAD noted that the country condition documentation indicates no significant risk for mixed sect couples and families in urban areas of Iraq such as Baghdad.

F. *Other alleged errors by the RAD in failing to admit the new evidence*

[105] The RAD refused to admit evidence submitted on appeal from the Applicant's husband and mother, in addition to the additional documents proffered pursuant to Rule 29 from the Applicant's brother-in-law, sister and her parents' Swedish refugee documents. The Applicants did not provide oral submissions with respect to these points given the time expended on the other issues.

[106] As I have already indicated, I find that the decision of the RAD to be comprehensive and fully responsive to issues raised by the Applicants on appeal. As in the case of refusing to admit the interpretive evidence, the RAD nevertheless alternatively considered the substantive

evidence in the new documents and equally found them as having no impact on the outcome of the appeal. Having carefully perused the reasons of the RAD and the submissions of the parties, I am satisfied that there is no basis to conclude that the RAD's decision was unreasonable in refusing to admit the new documents.

VIII. Conclusion

[107] The Applicants' application is dismissed for the reasons described. The RAD's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law, while supported by a decision-making process that demonstrates the characteristics of justification, transparency and intelligibility.

[108] No issues were advanced to be certified for appeal and none are certified.

JUDGMENT in IMM-268-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no questions are certified for appeal.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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