Federal Court  Cour fédérale

Date: 20230217

Docket: IMM-5860-21

Citation: 2023 FC 239

Ottawa, Ontario, February 17, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

BALJEET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Baljeet Singh, seeks judicial review of a decision of the Refugee Protection Division ("RPD") dated August 11, 2021, denying his application to declare abandoned the application for cessation of his refugee protection filed by the Minister of Immigration, Refugees and Citizenship (the "Minister"), pursuant to subsection 168(1) of the

Immigration and Refugee Protection Act, SC 2001, c 27 ("*IRPA*"). The RPD found insufficient grounds to conclude that the Minister had abandoned the application for cessation.

[2] The Applicant submits that the RPD erroneously found that the delays in scheduling the cessation application and in rendering the decision on the abandonment application did not amount to an abuse of process. The Applicant further submits that the RPD breached the duty of fairness owed to the Applicant by failing to apply the *Refugee Protection Division Rules*, SOR/2012-256 (the "*Rules*") equally to all parties, and the decision to refuse the Applicant's abandonment application is therefore unreasonable.

[3] For the reasons that follow, I find that the RPD's decision is reasonable. The application for judicial review is dismissed.

I. Facts

A. *The Applicant*

[4] The Applicant is a 39-year-old citizen of India. He arrived in Canada on September 9, 2009. He made a refugee claim that was granted on March 10, 2011. The Applicant became a permanent resident on April 17, 2012. On August 1, 2013, the Consulate General of India in San Francisco, California issued the Applicant a national passport.

[5] The Applicant traveled to India on November 19, 2013 and returned to Canada on March 6, 2014. On March 7, 2014, the Applicant told a Canada Border Services Agency ("CBSA")

officer that he returned to India because it was safe for him to travel there and he had intended to remain there until January 2014, but a medical reason kept him in India until March 7, 2014.

[6] On November 28, 2013, the Applicant married Prabjot Kaur (Ms. "Kaur"), who is also a citizen of India. The Applicant filed an application to sponsor Ms. Kaur for permanent residence in April 2014, but this application has not yet been processed.

[7] On January 20, 2015, the Applicant told another CBSA officer that he returned to India on October 15, 2014 to visit his family, he remained there for 95 days, and that he was aware that he was not supposed to return to India given his refugee protection against India.

[8] On March 6, 2015, the Minister applied for cessation of the Applicant's refugee status under section 108 of *IRPA*. The Minister alleged that the Applicant availed himself of India's protection by returning there twice and receiving a passport from the Indian consulate.

[9] On January 30, 2020, the RPD issued the parties a Notice to Appear for the Minister's cessation application, scheduled to be heard on March 10, 2020. On February 28, 2020, the RPD denied the Applicant's request to postpone the hearing due to previously arranged travel.

[10] The Applicant and his counsel attended the cessation hearing on March 10, 2020. The Minister's counsel failed to appear. The Applicant's counsel pleaded preliminary submissions on the cessation application, and requested that the RPD declare the Minister's cessation application abandoned due to the failure of the Minister's counsel to appear.

[11] On March 12, 2020, the RPD wrote to the Minister, requesting an explanation for the Minister's counsel's failure to appear. The Minister's counsel responded in a letter on March 20, 2020, stating that her failure to appear was a result of "human error" as she had not realized the change in time from daylight savings time and that worry for her husband's health may have caused her to lose sight of the time change. The counsel requested that the matter proceed with a new date.

[12] In a letter dated March 24, 2020, the Applicant's counsel responded to the Minister's counsel's letter, stating that her explanation was insufficient and there is no legal authority to request a postponement at this stage, after the hearing. The Applicant's counsel requested that the matter be declared abandoned, as the counsel's failure to appear resulted in a prejudice to the Applicant, amounted to an abuse of process, and her explanation was unsupported by evidence of her husband's medical issues.

[13] On October 5, 2020, the Applicant's counsel sent a letter to the RPD to follow up on the abandonment application. This included a personal letter from the Applicant, detailing the hardships caused by the delay. The Applicant's counsel sent the RPD further submissions on the abandonment application, dated October 15, 2020.

[14] On February 26, 2021, the Applicant's counsel filed a *mandamus* application for the RPD's decision on the abandonment application. This Court subsequently made three requests to the RPD to produce its reasons, to no avail.

[15] On August 5, 2021, the Applicant's counsel filed a memorandum without the RPD's reasons. The RPD issued its decision to dismiss the Applicant's abandonment application on August 13, 2021. This refusal is the subject of this application for judicial review.

B. *Decision Under Review*

[16] In a decision dated August 11, 2021, the RPD denied the Applicant's application to declare abandoned the Minister's application for cessation of his refugee protection. The RPD considered subsection 168(1) of *IRPA*, which states:

Abandonment of proceeding	**Désistement**
168 (1) A Division may determine that a proceeding before it has been abandoned if the Division is of the opinion that the applicant is in default in the proceedings, including by failing to appear for a hearing, to provide information required by the Division or to communicate with the Division on being requested to do so.	**168 (1)** Chacune des sections peut prononcer le désistement dans l'affaire dont elle est saisie si elle estime que l'intéressé omet de poursuivre l'affaire, notamment par défaut de comparution, de fournir les renseignements qu'elle peut requérir ou de donner suite à ses demandes de communication.

[17] The RPD noted that Rule 65 of the *Rules*, which only outlines a process for abandonment proceedings where a refugee claimant fails to appear, does not apply to a situation where the Minister's counsel fails to appear. The RPD instead consulted *Chairperson Guideline 6: Scheduling and Changing the Date or Time of a Proceeding* ("*Chairperson Guideline 6*"), which states that the Immigration and Refugee Board ("IRB") can expect counsel to be available to present a party's case at the scheduled time and if counsel does not appear, the IRB may proceed

without counsel, commence abandonment proceedings, or simply declare the case abandoned. The RPD acknowledged that it did not proceed with any of these three options and, rather, sought an explanation from the Minister for the counsel's non-appearance, and provided the Applicant with an opportunity to respond to the counsel's explanation.

[18] The RPD considered the Applicant's submission that the counsel sought a postponement *post facto* and therefore, the RPD must seek leave from this Court before setting a new date for the cessation proceedings. The RPD determined that a hearing had not taken place because it had not heard testimony or final observations from the parties on the underlying cessation application. Therefore, the RPD found it still had jurisdiction to rule on the abandonment request and set a new date for proceedings on the cessation application to continue if needed. The RPD found that the Minister had not provided any indication of an intent to abandon the cessation application against the Applicant.

[19] The RPD noted the Applicant's submission that the Minister's counsel's explanation for her non-appearance at the cessation hearing lacked credibility. However, the RPD found no reason to doubt its credibility. The RPD found that although the Applicant cited the lack of medical evidence supporting the counsel's explanation that her husband was ill, the Applicant did not reference any requirement for such evidence. The RPD found that the Minister's counsel had established the facts supporting her explanation and noted that it is normal practice to continue with such proceedings when the party who fails to appear demonstrates a willingness to proceed at the first available opportunity.

[20] The RPD addressed the Applicant's further submissions regarding the hardships caused him by the delay in the proceeding, including financial strain and familial separation. The RPD found that these allegations fall under humanitarian and compassionate considerations ("H&C"), which the RPD does not have jurisdiction to consider under applications for cessation, as per section 108 of *IRPA*. The RPD therefore decided not to address the Applicant's further submissions on the alleged difficulties caused by the delay.

[21] Lastly, the RPD considered the Applicant's submissions that the delay in rendering a decision on the abandonment application amounted to an abuse of process. The RPD noted that an abuse of process occurs where proceedings are unfair to the point of being contrary to the interest of justice. In the Applicant's case, the Minister sought a cessation of the Applicant's refugee protection on March 6, 2015, and the cessation hearing took place on March 10, 2020. On February 21, 2020, the Applicant applied for a postponement of the hearing, as he had traveled to India on January 19, 2020, was scheduled to return on March 8, 2020, and claimed that this did not give him sufficient time to prepare for the hearing on March 10. The RPD noted that this postponement application was denied on March 2, 2020, which gave the Applicant ample time to prepare for the hearing on March 10, 2020, prior to his travel abroad.

[22] The RPD acknowledged that five years had elapsed between the Minister's application for cessation and the hearing date, but found that the Applicant made no requests to have a date set for the cessation hearing during this time. Although the Applicant has been proactive in his application to deem the Minister's cessation application abandoned, and that the delay in rendering a decision on the abandonment application is attributable to the RPD, there is

ultimately no legal basis to conclude that the delay constitutes an abuse of process. The RPD found insufficient grounds to declare abandoned the Minister's cessation application.

II. Issues and Standard of Review

[23] This application for judicial review raises the following issues:

A. *Whether the RPD's decision to refuse the Applicant's abandonment application is unreasonable, including its finding that there was no abuse of process.*

B. *Whether the RPD breached the duty of fairness.*

[24] The parties agree that the standard of review for evaluating the RPD's decision is reasonableness, and that the applicable standard of review on the issue of procedural fairness is correctness. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*"); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[25] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant

administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[26] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[27] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

III. Analysis

[28] In my view, the RPD reasonably assessed the Applicant's abuse of process allegation and the Minister's counsel's explanation for her failure to appear at the March 10, 2020 hearing. I also do not find that the RPD breached procedural fairness.

A. *Whether the RPD's decision is unreasonable*

[29] The Applicant submits that the RPD unreasonably denied his application to declare the Minister's cessation application abandoned. The Applicant contends that the RPD erred in finding that the delay did not amount to an abuse of process, and by failing to adequately question the Minister's counsel's explanations for her non-appearance, or adequately address discrepancies in the her claims.

(1) Abuse of Process

[30] The Applicant states that five years elapsed between the Minister's cessation application and the cessation hearing scheduled for March 10, 2020, and an additional 17 months elapsed between this hearing date and August 11, 2021, when the RPD rendered its decision on the Applicant's abandonment application. This resulted in a delay of over six years from when the cessation application was made. The Applicant submits that this delay resulted in serious consequences for him as a protected person, as he was unable to exercise the rights afforded to permanent residents, such as sponsoring family members or applying for Canadian citizenship. The Applicant contends that he waited five years for the cessation hearing to be scheduled, only for the Minister's counsel to fail to appear.

[31] The Applicant submits that the RPD erroneously impugned him for not making efforts to further the proceedings, stating, "during the intervening period, Mr. Singh made no requests to have a date set for hearing of the Minister's application." The Applicant contends that he does not bear the obligation to make such efforts and any such responsibility falls on the Minister,

who brought the application. The RPD's willingness to blame him for delays in the proceeding, coupled with the Minister's apparent lack of interest in having the application heard in a timely manner, renders the RPD's decision unreasonable.

[32] The Applicant further submits that the RPD misinterpreted and failed to account for the totality of his submissions regarding the delays in the proceedings, which he claims result in an abuse of process. The RPD's reasons consider the Applicant's allegation of an abuse of process only in the context of the RPD's delay in rendering a decision on the abandonment application. The Applicant submits that the RPD failed to consider the additional five years of delay prior to scheduling the hearing and the resulting hardship for the Applicant.

[33] The Applicant submits that the RPD's assessment of the hardship resulting from the delay failed to adequately account for the Applicant's evidence and submissions. The Applicant notes that the Minister's counsel's letter, explaining her reasons for failing to appear, stated that the Applicant has not been harmed by her non-appearance because he had already applied for a postponement prior to the March 10, 2020 hearing date, needing more time to prepare as he had just returned from his trip to India. The Applicant acknowledges that he made a postponement request, but notes that the Applicant was returning from visiting his wife in a third country, because the Applicant's sponsorship application for his wife was delayed until the cessation application could be concluded. His postponement application was ultimately refused, and it is therefore unreasonable to suggest that he received his desired outcome through the further delay caused by the counsel's failure to appear.

[34] The Applicant also submits that the RPD mischaracterized his evidence regarding the hardship resulting from the delay as being a request to assess H&C considerations. The hardship factors submitted by the Applicant in his abandonment application were put forth to illustrate the significant prejudice caused by the delay. The Applicant references the factors outlined by the Supreme Court of Canada in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 ("*Blencoe*"): the time taken compared to the inherent time required for the matter; the causes of delay beyond the inherent time required for the matter; and the impact of the delay, such as the prejudice caused and other harms (at para 160). Considering these factors, the Applicant submits that the delay in these proceedings were neither normal nor the result of the complexities of the case; the Minister provided no justifiable cause for the delay; and the delay has resulted in significant negative impact on the Applicant. The Applicant submits that the RPD failed to consider these factors to the evidence before it, which shows that these factors weigh in favour of a finding that the delay amounts to an abuse of process.

[35] The Respondent maintains that the RPD's assessment of the Applicant's abuse of process allegation is reasonable and in line with the relevant jurisprudence. The Respondent cites *Blencoe* for the proposition that the Applicant bears the onus to demonstrate that a delay is unacceptable to the point of being "oppressive as to taint the proceeds" and "tainted to such a degree that it amounts to one of the clearest of cases" (at paras 120-121). The Respondent further submits that mere assertions of prejudice are insufficient to meet this high threshold, as found in *Blencoe*. The Respondent relies on *Bernataviciute v Canada (Citizenship and Immigration)*, 2019 FC 953, where this Court found that a delay of six years was not inordinate,

given that much longer delays were not found to amount to abuses of process without sufficient evidence of prejudice resulting directly from the delay (at para 34).

[36] The Respondent further submits that the Applicant mischaracterizes the RPD's reasons regarding the abuse of process allegation. The RPD considered three significant factors in assessing whether there was an abuse of process: that the Applicant's own request for a postponement undermined his claim of prejudice caused by the delay; that the Applicant did not facilitate a hearing or lodge a complaint with the RPD during the five-year delay, and; that the Applicant demonstrated an ability to be proactive in bringing the abandonment application, when it suited him. The Respondent submits that the RPD is entitled to consider these factors and reasonably found that the Applicant failed to meet the high threshold for a determination that the delay resulted in an abuse of process.

[37] The Respondent submits that the RPD reasonably concluded that H&C factors are not to be considered in cessation proceedings and that this applies to the abandonment application, which was brought in the context of the underlying application for cessation. The Respondent notes that the Applicant's submissions were about general hardships, such as family separation, and not evidence relating to the impact of the delay on the fairness of the hearing process.

[38] The Respondent submits that this Court ought to consider the Applicant's own contribution to the delay in question, by bringing the abandonment application. The Respondent further notes that the Minister's counsel requested that the cessation hearing be rescheduled, both in her March 20, 2020 letter to the RPD, and in her October 10, 2020 letter, and this indicates the

Minister's willingness to proceed with the matter and the counsel's efforts to "get things back on track."

[39] I agree with the Respondent. In my view, the RPD did not commit a reviewable error in its assessment of the Applicant's allegation that the delay in these proceedings amounts to an abuse of process. The Respondent rightly notes that the threshold for finding that a delay constitutes an abuse of process is a high one, as is emphasized by the Supreme Court in *Blencoe* (at paras 119-120). While I do not find that *Blencoe* established that a delay can *only* amount to an abuse of process where the fairness of the hearing is directly compromised, I do agree with the submission that *Blencoe* emphasized the rarity of a delay—even one that is much lengthier than the one in the Applicant's case—meeting the threshold for an abuse of process, absent clear evidence of direct prejudice caused by the delay. The Supreme Court in *Blencoe* found the following at paragraphs 115 and 120:

> 115 I would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. Where inordinate delay has directly caused significant psychological harm to a person, or attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process. The doctrine of abuse of process is not limited to acts giving rise to an unfair hearing; there may be cases of abuse of process for other than evidentiary reasons brought about by delay. It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute. The difficult question before us is in deciding what is an "unacceptable delay" that amounts to an abuse of process.

> […]
>
> 120 In order to find an abuse of process, the court must be satisfied that, "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (Brown and Evans, supra, at p. 9-68). According to L'Heureux-Dubé J. in Power, supra, at p. 616, "abuse of process" has been characterized in the jurisprudence as a process tainted to such a degree that it amounts to one of the clearest of cases. In my opinion, this would apply equally to abuse of process in administrative proceedings. For there to be abuse of process, the proceedings must, in the words of L'Heureux-Dubé J., be "unfair to the point that they are contrary to the interests of justice" (p. 616). "Cases of this nature will be extremely rare" (Power, supra, at p. 616). In the administrative context, there may be abuse of process where conduct is equally oppressive.
>
> [Emphasis added]

[40] This Court has applied this threshold in the immigration context. In *Ching v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 839 ("*Ching*"), Justice Diner stated that this Court has applied both the approach set out by the majority in *Blencoe* and that laid out in the dissenting judgment and, ultimately, "either approach is appropriate, since both involve a contextual analysis of all the circumstances relevant to the delay at issue" (at para 85). In *Torre v Canada (Citizenship and Immigration)*, 2016 FCA 48, the Federal Court of Appeal found that the applicant "had to do more than make vague allegations that the delay endangered his physical and psychological integrity … without providing any evidence to support them" (at para 5).

[41] The Applicant provided insufficient evidence pointing to the RPD's failure to apply the relevant jurisprudence. The reasons illustrate a mindfulness to the "contextual analysis" required of an abuse of process analysis (*Ching* at para 85). Since the Applicant's submissions with

respect to his allegation of an abuse of process relate to the alleged impact of the delay, which is one of the three considerations outlined in *Blencoe*, it is reasonable for the RPD to consider the factors that may undermine the evidence of hardship. These include the Applicant's willingness to further delay the proceedings with his abandonment application; his application for a postponement, and; his apparent silence in the interim period prior to the cessation hearing being scheduled, despite his efforts to declare the application abandoned. I do not wish to minimize the difficulty that the Applicant's prolonged separation from his wife has caused him. This unfortunate circumstance, however, does not mean that the Applicant has provided sufficient evidence to show that the approximately six-year delay in the cessation proceedings is unfair to the point of being contrary to the interests of justice (*Blencoe* at para 120).

[42] A significant portion of the Applicant's lengthy submissions on this point appear to engage in a reassessment of the evidence before the RPD. The Applicant's submissions reanalyze the evidence before the RPD under each of the *Blencoe* factors, and appear to repeat his submissions regarding the abuse of process. However, reweighing the evidence before the decision-maker is not this Court's role on reasonableness review (*Vavilov* at para 125). The reviewing court must also "refrain from deciding the issue themselves," as reasonableness review "does not ask what decision it would have made in place of that of the administrative decision maker" or "seek to determine the 'correct' solution to the problem" (*Vavilov* at para 83). I therefore do not find that the Applicant's submissions on the abuse of process issue point to a reviewable error in the RPD's reasons.

[43] I do, however, find the RPD's delay in these proceedings to be troublesome. It is difficult to justify why the hearing in the cessation application should take five years to schedule, or why the RPD should take 17 months to render its decision on the abandonment application. While it is reasonable to find that this does not amount to an abuse of process in this particular case, this should not be taken to mean that such unnecessary delays should be the norm and are expected.

(2) Analysis of Minister's Counsel's Letter

[44] The Applicant submits that the Minister's counsel's letter, explaining her reasons for failing to appear at the March 10, 2020 hearing, lacks credibility. The Minister's counsel explained that she did not realize the time due to daylight savings time, and she may have forgotten the time change due to her husband's hospitalization. The Applicant submits that it is implausible that no one at the IRB offices noticed the one-hour time change between March 8 and March 10, especially given that all electronic clocks would change automatically. The Applicant further contends that the counsel did not say with any certainty that she was worried about her husband, only that "it was possible". The Applicant submits that the RPD failed to question the counsel's explanations and accepted them without any skepticism, rendering the decision unreasonable.

[45] The Applicant further submits that the RPD erroneously found it was "normal practice" to continue with a proceeding when the party at fault demonstrated a readiness to proceed. The Applicant submits that this is not based on any evidence of the Minister's counsel's willingness to proceed, given that she made no efforts to have the cessation application scheduled, failed to

attend the March 10, 2020 hearing, and failed to request a timely decision on the Applicant's abandonment application. The Applicant contends that the counsel's conduct clearly demonstrates a lack of interest in proceeding with the matter, which the RPD erred in failing to adequately address.

[46] The Respondent submits that the sum of the Applicant's submissions regarding the credibility of the Minister's counsel's explanation for her non-appearance amount to a request for this Court to reassess the veracity of her explanation and, in turn, to reweigh the evidence before the decision-maker. The Respondent submits that this is not the Court's role on reasonableness review, citing *Vavilov*. I agree. Once again, a bulk of the submissions on this issue is an attempt to reweigh the evidence before the RPD. Absent specific evidence of a reviewable error committed by the RPD, conducting a fresh assessment of the evidence in order to arrive at a particular outcome is not the purpose of reasonableness review (*Vavilov* at para 125).

[47] I also take issue with the specific grounds upon which the Applicant attacks the credibility of the Minister's counsel and her explanations for failing to appear at the hearing. I am not excusing the counsel's failure, nor am I undermining its seriousness or the further delay this caused. That being said, I find that the Applicant's submission that the counsel's actions exhibit an unwillingness to continue with the underlying cessation application is misplaced. The Applicant appears to impugn the counsel's credibility and her willingness to proceed with the underlying matter on the basis of actions or omissions that are not attributable to her.

[48] For instance, the Applicant submits that the counsel made no efforts to have the cessation application scheduled during the five years between commencing the application and the March 10, 2020 hearing date. However, the Applicant fails to cite any evidence of a positive obligation for the Respondent to make such efforts, despite submitting that the RPD unreasonably noted the Applicant's own failure to make similar efforts during these five years and that this comment is not based on evidence of such a responsibility. The Applicant also submits that the Minister's counsel made no efforts to obtain a timely decision by the RPD on the abandonment application. However, the abandonment application was brought by the Applicant himself. If this Court was to accept that the party bringing the application has an obligation to make such efforts to request a timely decision, it would be the Applicant's responsibility in the context of the abandonment application, and not that of the Minister. I find the RPD's assessment of the counsel's explanation to be reasonable.

[49] The Minister's counsel explained that her failure to appear at the hearing was the result of a human error. The Applicant's submissions challenging the credibility of this human error, essentially claiming that she is insincere about the confusion caused by daylight savings time and about her husband's illness, appears to be little more than a personal attack against the Minister's counsel. It would have been more helpful to this Court had the Applicant provided a tangible reason to doubt the counsel's explanation.

B. *Whether the RPD breached the duty of fairness*

[50] The Applicant submits that the RPD's reference to section 168(1) of *IRPA* is misplaced because the Applicant in this application for judicial review is *not* the Applicant in the cessation

application brought by the Minister. Therefore, the wording of section 168(1) applies to the Minister and asks the RPD to determine whether this proceeding is abandoned on the basis that the Minister is in default, including by failing to appear. The Applicant further notes that the RPD erroneously failed to reference Rules 69 and 70, which grant the RPD powers to address a situation that is not governed by any specific rule.

[51] The Applicant notes the RPD's acknowledgement that *Chairperson Guideline 6* applies equally to both parties, but submits that the RPD erroneously found that the Applicant had not provided a legal basis to require the Minister's counsel to provide evidence to support her explanations for failing to appear at the hearing. The Applicant notes that *Chairperson Guideline 6* states that "if an application to change the date or time of a proceeding is made for medical reasons, other than those associated with counsel, the application should be supported by a medical certificate," and that in the absence of a certificate, the claimant must provide detailed explanations. The Applicant submits that this Court has found that rules apply equally to all parties and there is no basis to hold parties to differing standards in administrative proceedings, citing *Abi-Mansour v Canada (Passport)*, 2015 FC 363, and *Qita v Immigration Consultants of Canada Regulatory Council*, 2020 FC 671. The Applicant contends that the RPD engaged in an unequal application of its rules that is procedurally unfair.

[52] The Respondent maintains that the RPD's decision is procedurally fair. The RPD was entitled to make a procedural choice in suspending the cessation hearing, seeking an explanation from the counsel regarding her failure to appear at the hearing, granting the Applicant an opportunity to respond to this explanation, and giving both parties the opportunity to make

further submissions for consideration in the abandonment application. The Respondent submits that these actions are consistent with procedural fairness and the principles of natural justice.

[53] The Respondent further submits that the RPD was entitled to consider the abandonment application on its merits, as per the broad residual authority granted to the RPD to manage its own proceedings. The Respondent submits that the RPD can make determinations on how best to proceed in matters before it, provided it does so fairly and in line with principles of natural justice (*Lakhani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 612 at para 12).

[54] The Respondent contends that the Applicant's submission does not account for the clear language of the relevant provisions, which repeatedly refer to "claimants". The Respondent submits that this amounts to a complaint about the RPD's attempts to treat both parties equally, contrary to the Applicant's position, given that it allowed the Minister's counsel to explain her absence, gave the Applicant the ability to respond, and decided the abandonment application thereafter. The Respondent submits that this Court has consistently found that section 168(1) of *IRPA* applies to refugee claimants and the Applicant failed to provide any jurisprudence to show otherwise. The RPD reasonably considered the Minister's counsel's two requests to reschedule the cessation hearing as continuing intent to proceed with the matter, and reasonably found her explanations credible.

[55] I do not find that the RPD's decision breached procedural fairness. While the Applicant correctly notes that the RPD has discretion to take necessary action in situations with no governing rule, this discretion does not guarantee a particular outcome in favour of the

Applicant. The RPD exercised this discretion by referring to Rule 54 of the *Rules* and the *Chairperson Guideline 6* for guidance, reasonably noting that section 168 of *IRPA* and Rule 65 of the *Rules* only refers to refugee claimants, and explaining this rationale transparently and intelligibly in its reasons (*Vavilov* at para 15). The RPD sought an explanation from the Minister's counsel for her absence, sought a subsequent reply from the Applicant, and granted both parties the opportunity to make further submissions on the abandonment application. These actions show equal treatment of the parties in the assessment of the application.

IV. Conclusion

[56] The RPD's refusal of the Applicant's application to declare the Minister's cessation application abandoned is reasonable, and does not give rise to a breach of procedural fairness. This application for judicial review is therefore dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5860-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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