Federal Court Cour fédérale

Date: 20240829

Docket: IMM-7931-21

Citation: 2024 FC 1351

Ottawa, Ontario, August 29, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

SHEJAT NURANI ROHAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a deportation order issued by the Minister's Delegate based on an inadmissibility report prepared by a Canada Border Services Agency [CBSA] officer and issued under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant argues that: (a) the Minister's Delegate lacked jurisdiction to issue the deportation order and was required, pursuant to paragraph 228(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*], to refer the matter to the Immigration Division [ID]; (b) in the alternative, the decision was unreasonable; and (c) his procedural fairness rights were breached.

[3] For the reasons that follow, I am not satisfied that the Applicant has established any basis for the Court's intervention. Accordingly, the application for judicial review shall be dismissed.

I. Background

[4] The Applicant is a citizen of Bangladesh. In September of 2018, he entered Canada on a study permit.

[5] In November of 2019, the Applicant was involved in a car crash in Regina, Saskatchewan, for which he was charged with impaired driving. The Applicant retained a lawyer who advised him that the Crown offered to charge him summarily and he would receive a sentence consisting of a fine of $2,200 and a one-year driving prohibition. In December of 2019, the Applicant pled guilty to the charge of impaired driving pursuant to paragraph 320.14(1)(a) of the *Criminal Code*, RSC, 1985, c C-46. The Applicant states that his lawyer did not advise him that the charge or pleading guilty to it would impact his immigration status.

[6] In March of 2021, the Applicant left Canada to visit his family in Bangladesh.

[7] On September 20, 2021, the Applicant sought to re-enter Canada. He was interviewed by a CBSA officer and questioned about his criminal conviction. The officer issued a subsection 44(1) report alleging the Applicant was inadmissible to Canada for serious criminality pursuant to paragraph 36(1)(a) of the *IRPA*. That same day, a Minister's Delegate interviewed the Applicant and reviewed the subsection 44(1) report. The Minister's Delegate made a deportation order against the Applicant pursuant to paragraph 228(1)(a) of the *Regulations* because they were satisfied that the Applicant was inadmissible under paragraph 36(1)(a) of the *IRPA*, on grounds of serious criminality for having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

[8] In their notes, the Minister's Delegate explained that they considered several factors prior to issuing the deportation order and gave the following reasons and additional comments:

> Allowed to leave was considered but was rejected as subject did not make a request to withdraw his application to enter Canada and stated his desire to remain in Canada. […]
>
> Several factors were considered prior to the issuance of this deportation order. The issuance of a Temporary Resident Permit was deemed to be inappropriate as there does not appear to be any significant humanitarian and compassionate grounds nor any significant benefit to Canada. Client does not have family members in Canada, nor does he have any children here. There is no issue with client travelling to Bangladesh as he was returning from a six month stay in that country. With regards to significant benefit to Canada: the loss of revenue for the University of Regina may be considered, however, since client already had the intention of pursing online studies for the Fall semester this is a moot point.
>
> Allowing the client to withdraw his application to enter Canada and leave Canada without delay was considered as an option but was ultimately rejected. Client has thus far failed to take responsibility for his actions and has continued to blame his friends for the series of events that led to his arrest. This officer is satisfied that he has completed his court mandated Driving Without Impairment Program and has committed to changing his behaviour. However,

> given the serious nature of the offence and the concerted effort that the Government of Canada undertook in 2018 to extend the maximum term of imprisonment for Operation While Impaired it is imperative that the rights of the individual are balanced against the safety of Canadians.
>
> As such it is incumbent on this Minister's Delegate to issue a deportation order in the absence of other options and given the fact the inadmissibility report is correct in fact and in law.

II. Preliminary Issue

[9] In their Further Memorandum of Fact and Law, the Respondent requests an order amending the style of cause to name the Minister of Public Safety and Emergency Preparedness as Respondent, given that the decision was made by a Minister's Delegate of the CBSA. The Applicant did not oppose the request. I am satisfied that the request should be granted and the style of cause shall be amended accordingly.

III. Issues and Standard of Review

[10] The Applicant states that the issues raised on this application for judicial review are: (i) whether the Minister's Delegate had the jurisdiction to issue the deportation order; (ii) whether the Applicant's procedural fairness rights were violated; and (iii) in the alternative, whether the Minister's Delegate's decision was unreasonable.

[11] I find that issue (i), when properly characterized, goes to the reasonableness of the Minister's Delegate's decision and accordingly, it will be considered together with issue (iii). As such, the two issues for determination on this application are:

A. Whether the Minister's Delegate's decision was reasonable; and

B. Whether the Applicant's procedural fairness rights were breached.

[12] The applicable standard of review for the first issue is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. A reasonable decision 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11, citing *Vavilov*, *supra* at para 100].

[13] In relation to the second issue, breaches of procedural fairness in administrative contexts have been considered reviewable on either a correctness standard or subject to a "reviewing exercise [...] 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" [see *Canadian Pacific Railway Company v Canada (Attorney General)*, at para 54]. The duty of procedural fairness is "eminently variable," inherently flexible and context-specific. It must be determined with reference to all the circumstances, including the *Baker* factors [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77]. A court assessing a procedural fairness question is required to ask whether the procedure

was fair, having regard to all of the circumstances [see *Canadian Pacific Railway Company*, *supra* at para 54].

IV. Analysis

A. The decision was reasonable

[14] The Applicant's primary attack on the reasonableness of the decision is his assertion that the Minister's Delegate lacked the jurisdiction to issue the deportation order and was required to refer the matter to the ID for an inadmissibility determination.

[15] In terms of the legislative context, section 44 of the *IRPA* sets out the requirements for preparing and referring inadmissibility reports:

Preparation of report	**Rapport d'interdiction de territoire**
44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	**44 (1)** S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.
Referral or removal order	**Suivi**
(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign	**(2)** S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

national. In those cases, the Minister may make a removal order.

[16] In this case, the Minister's Delegate determined that the subsection 44(1) report was well-founded. Having made such a determination, subsection 44(2) required that the Minister's Delegate consider whether any of the circumstances prescribed by the *Regulations* apply to this Applicant. If they do, the Minister's Delegate is empowered to make a removal order and need not refer the matter to the ID.

[17] Subsection 228(1) of the *Regulations* identifies the circumstances where the Minister's Delegate need not refer a report to the ID. In this case, the relevant provision is paragraph 228(1)(a). At the relevant time, subsection 228(1) provided:

Subsection 44(2) of the Act — foreign nationals	**Application du paragraphe 44(2) de la Loi : étrangers**
228 (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be	**228 (1)** Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déférée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :
(a) if the foreign national is inadmissible under paragraph 36(1)(a) or (2)(a) of the Act on grounds of serious criminality or criminality, a deportation order;	**a)** en cas d'interdiction de territoire de l'étranger pour grande criminalité ou criminalité au titre des alinéas 36(1)a) ou (2)a) de la Loi, l'expulsion;
(b) if the foreign national is inadmissible under paragraph 40(1)(c) of the Act on grounds of	**b)** en cas d'interdiction de territoire de l'étranger pour fausses

misrepresentation, a deportation order;

(b.1) if the foreign national is inadmissible under subsection 40.1(1) of the Act on grounds of the cessation of refugee protection, a departure order;

(c) if the foreign national is inadmissible under section 41 of the Act on grounds of

(i) failing to appear for further examination or an admissibility hearing under Part 1 of the Act, an exclusion order,

(ii) failing to obtain the authorization of an officer required by subsection 52(1) of the Act, a deportation order,

(iii) failing to establish that they hold the visa or other document as required under section 20 of the Act, an exclusion order,

(iv) failing to leave Canada by the end of the period authorized for their stay as required by subsection 29(2) of the Act, an exclusion order,

(v) failing to comply with subsection 29(2) of the Act as a result of non-compliance with any condition set out in paragraph 183(1)(d), section 184 or subsection 220.1(1), an exclusion order,

(vi) failing to comply with the requirement under subsection 20(1.1) of the Act to not seek to enter or remain in Canada as a temporary resident while being the

déclarations au titre de l'alinéa 40(1)c) de la Loi, l'expulsion;

b.1) en cas d'interdiction de territoire de l'étranger au titre du paragraphe 40.1(1) de la Loi pour perte de l'asile, l'interdiction de séjour;

c) en cas d'interdiction de territoire de l'étranger au titre de l'article 41 de la Loi pour manquement à :

(i) l'obligation prévue à la partie 1 de la Loi de se présenter au contrôle complémentaire ou à l'enquête, l'exclusion,

(ii) l'obligation d'obtenir l'autorisation de l'agent aux termes du paragraphe 52(1) de la Loi, l'expulsion,

(iii) l'obligation prévue à l'article 20 de la Loi de prouver qu'il détient les visa et autres documents réglementaires, l'exclusion,

(iv) l'obligation prévue au paragraphe 29(2) de la Loi de quitter le Canada à la fin de la période de séjour autorisée, l'exclusion,

(v) l'une des obligations prévues au paragraphe 29(2) de la Loi pour non-respect de toute condition prévue à l'alinéa 183(1)d), à l'article 184 ou au paragraphe 220.1(1), l'exclusion,

(vi) l'obligation prévue au paragraphe 20(1.1) de la Loi de ne pas chercher à entrer au Canada ou à y séjourner à titre de résident temporaire pendant qu'il faisait

subject of a declaration made under subsection 22.1(1) of the Act, an exclusion order, or	l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi, l'exclusion,
(vii) failing to comply with the condition set out in paragraph 43(1)(e), an exclusion order;	**(vii)** une condition prévue à l'alinéa 43(1)e), l'exclusion;
(d) subject to paragraph (e), if the foreign national is inadmissible under section 42 of the Act on grounds of an inadmissible family member, the same removal order as was made in respect of the inadmissible family member;	**d)** en cas d'interdiction de territoire de l'étranger pour inadmissibilité familiale aux termes de l'article 42 de la Loi, sauf dans le cas prévu à l'alinéa e), la même mesure de renvoi que celle prise à l'égard du membre de la famille interdit de territoire;
(e) if the foreign national is inadmissible on grounds of an inadmissible family member in accordance with paragraph 42(2)(a) of the Act, a deportation order; and	**e)** en cas d'interdiction de territoire de l'étranger pour inadmissibilité familiale conformément à l'alinéa 42(2)a) de la Loi, l'expulsion;
(f) if the foreign national is inadmissible under paragraph 35(1)(d) or (e) of the Act on grounds of violating human or international rights, a deportation order.	**f)** en cas d'interdiction de territoire de l'étranger pour atteinte aux droits humains ou internationaux au titre des alinéas 35(1)d) ou e) de la Loi, l'expulsion.

[18] While subsection 228(1) has since been amended, the amendments are inconsequential to the issue before the Court, as the amendments added additional subparagraphs detailing further grounds of inadmissibility.

[19] The Applicant asserts that the double negative in subsection 228(1) results in a positive, such that the Minister's Delegate can only decide an inadmissibility issue without referring the report to the ID if the inadmissibility report does not include any grounds listed in the subparagraphs of subsection 228(1). The Applicant submits that the legislation does not state what an officer should do if the alleged ground of inadmissibility is listed in subsection 228(1) of the

Regulations, but that a logical deduction from the provision is that the officer must refer the matter to the ID. Further, the Applicant asserts it is a general principle that inadmissibility reports need to be reviewed and determined by the ID. Since the Applicant's inadmissibility in this case was based on paragraph 36(2)(a) of the *IRPA*, the Applicant asserts that the Minister's Delegate was obligated to refer this matter to the ID for an admissibility hearing.

[20] I reject the Applicant's interpretation of subsection 228(1) of the *Regulations*, which ignores the clear language of the provision. Subsection 228(1) sets out in its subparagraphs a list of various grounds of inadmissibility and the resulting type of removal order that must be made by the Minister's Delegate. Where the subsection 44(2) report includes only grounds of inadmissibility included in that list, the report need not be referred to the ID. That is made clear by the inclusion of the words "other than those set out in the following circumstances," which language the Applicant ignores. As serious criminality is included in paragraph 36(1)(a), and no other ground of inadmissibility was raised in the subsection 44(1) report, the Minister's Delegate had the jurisdiction to make the deportation order at issue.

[21] The illogicality of the Applicant's interpretation is further highlighted by the fact that, if the circumstances listed in the subparagraphs are those that require a referral to the ID (as suggested by the Applicant), there would be no need to specify in each subparagraph which type of removal order the Minister's Delegate is to make.

[22] The Applicant's interpretation also ignores the case law of this Court and the Federal Court of Appeal that confirms the Minister's Delegate has the jurisdiction to issue the deportation order in question.

[23] In *Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126, the Federal Court of Appeal considered, among other things, the scope of the Minister's Delegate's discretion under subsection 44(2) of the *IRPA* when making a removal order. The case involved a foreign national who was found inadmissible to Canada on the basis of criminality under subparagraph 36(2)(a). The Federal Court of Appeal addressed the issuance of subsection 44(1) reports, and the Minister's Delegate's ability to then issue a removal order, stating:

> [34] When a report prepared by an immigration officer against a foreign national does not include any grounds of inadmissibility other than serious or simple criminality in Canada, the Minister's delegate is expected under subsection 228(1) of the Regulations to make a deportation order if he is of the opinion that the report is well founded (i.e. that the immigration officer correctly found that all the requirements described above have been met) and if he is further satisfied that no rehabilitation within the meaning of section 18.1 of the Regulations has taken place and that the foreign national meets the age and mental condition requirements set out in subsection 228(4) of the Regulations.
>
> [Emphasis added.]

[24] This is a clear pronouncement by the Federal Court of Appeal as to the proper interpretation of paragraph 228(1)(a) and confirms that the Minister's Delegate has the jurisdiction to issue a deportation order where the sole ground of inadmissibility raised in the subsection 44(1) report is serious criminality, as was the case here.

[25] In *Mun v. Canada (Citizenship and Immigration)*, 2019 FC 246, the applicants were issued deportation orders by the Minister's Delegate after they were determined to be inadmissible to Canada for misrepresentation, pursuant to paragraph 40(1)(c) of the *IRPA*. Citing the Federal Court of Appeal's decision in *Cha, supra*, this Court held that the Minister's Delegate was expected to make a deportation order if they are of the opinion that the section 44 report is well-founded:

> [27] In short, pursuant to s 44(2), the Delegate found that the s 44(1) reports were well founded and that the Applicants were, pursuant to s 40(1), inadmissible for misrepresentation. Accordingly, and pursuant to s 228(1)(b) of the IRP Regulations, and without necessity of referring the reports to the Immigration Division for an admissibility hearing, the Delegate issued the deportation orders. I note that in *Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126 [*Cha*], the Federal Court of Appeal held, in the context s 228(1)(a) and a finding of inadmissibility due to criminality, that the delegate is expected to make a deportation order if he or she is of the opinion that the s 44 report is well founded. That is, where the immigration officer correctly found that all of the inadmissibility requirements had been met. The Federal Court of Appeal stated that immigration officers and delegates are simply on a fact-finding mission, no more, no less. However, although inadmissibility has been determined, a foreign national can still seek a stay of the removal order on H&C considerations or in the course of a PRRA (*Cha* at paras 34, 35 and 48).
>
> [Emphasis added.]

[26] In *Cox v Canada (Citizenship and Immigration)*, 2019 FC 1414, the applicant was issued an exclusion order by the Minister's Delegate in accordance with subparagraph 228(1)(c)(iii) of the *Regulations*. The case turned on the interpretation of the Minister's Delegate's home statute, including subparagraph 228(1)(c)(iii) of the *Regulations*. This Court stated that the provision "empowers the [Minister's Delegate] to issue an exclusion order for 'failing to establish that [foreign nationals] hold the visa or other document as required under section 20'" of the *IRPA* [see *Cox, supra* at para 14]. The Court stated that there was "no question" the Minister's Delegate had

the authority to determine whether the *IRPA* and *Regulations* were satisfied, such that an exclusion order could be issued [see *Cox*, *supra* at para 15].

[27] I therefore agree with the Respondent that the jurisprudence is clear. The Minister's Delegate was empowered to issue a deportation order against the Applicant without referring the matter to the ID.

[28] In the alternative, the Applicant asserts that the decision is unreasonable because the Minister's Delegate failed to exercise their discretionary power under the *IRPA* or consider whether the objectives of the *IRPA* could be achieved without issuing the inadmissibility report and the deportation order against the Applicant.

[29] There is no merit to this assertion, as the Minister's Delegate explicitly considered the exercise of their discretion and provided detailed reasons for not exercising their discretion in this particular case (as set out above).

[30] The Applicant further asserts that the Minister's Delegate's decision was unreasonable because "it is still unclear whether the Applicant was in fact convicted or received any conditional sentence." The Applicant asserts that the CBSA officer who examined the Applicant concluded that he was convicted based on his admission that he pled guilty to an offence under paragraph 320.14(1)(a) of the *Criminal Code*, but did not indicate what steps they took to confirm that the Applicant was, in fact, convicted. The Applicant states that, "it is known that a guilty plea is not equivalent to a finding of conviction."

[31] There is also no merit to this assertion. First, the Applicant provided no authority for the assertion that a guilty plea is not equivalent to a conviction. Second, I find it was reasonable for the Minister's Delegate to conclude that the Applicant was convicted based on the evidentiary record before them, which included: (a) the Applicant's admission during his interview that he was convicted of the offence; (b) that the Applicant was asked whether he understood the subsection 44(1) report which clearly stated that he had been convicted and, when asked whether anything in the report was incorrect or untrue, he answered "no"; (c) an "Order of Driving Prohibition Against an Offender," which stated that the Applicant was found guilty of the offence in question; and (d) a copy of a letter dated December 16, 2019, from SGI (which appears to be an insurance company), which stated that "[a]s a result of a conviction disqualifying you from driving, your driver's licence has been cancelled." There is simply no evidence in the certified tribunal record that could render the conclusion that the Applicant was convicted unreasonable.

[32] Accordingly, I find that the Minister's Delegate's decision was reasonable.

B. There was no breach of procedural fairness

[33] The Applicant submits that he was entitled to a high degree of procedural fairness because: (a) the decision was final; (b) the decision had a serious impact on his right to liberty and security; (c) the decision would subject him to removal; and (d) he has no right of appeal.

[34] The Applicant asserts that his procedural fairness rights were breached as: (a) he was questioned by the Minister's Delegate without the opportunity to seek legal advice; (b) he was not able to make submissions and the decision was made summarily; (c) he did not receive a hearing

before the ID; and (d) he did not receive the Minister's Delegate's reasons for decision, which he alleges were altered after-the-fact.

[35] Contrary to the Applicant's assertion, he was not entitled to a high degree of procedural fairness. This exact issue was addressed in *Cha, supra*, a matter also involving a foreign national who had a deportation order issued against him by the Minister's Delegate. In its decision, the Federal Court of Appeal stated:

> [52] […] The review of the five *Baker* factors lead, quite to the contrary, to the conclusion that a relatively low degree of participatory rights is warranted. I am satisfied that the following participatory rights meet the requirements of the duty of fairness:
>
> - provide a copy of the immigration officer's report to the person;
>
> - inform the person of the allegation(s) made in the immigration officer's report, of the case to be met and of the nature and possible consequences of the decision to be made;
>
> - conduct an interview in the presence of the person, be it live, by videoconference or by telephone;
>
> - give the person an opportunity to present evidence relevant to the case and to express his point of view.

[36] The Federal Court of Appeal also addressed the issue of legal counsel and held that there was no obligation on the Minister's Delegate to give notice that the person has a right to legal counsel in a subsection 44(1) and (2) process. Rather, the responsibility lies with the person to request that their legal counsel be present or to attend the interview accompanied by legal counsel [see *Cha, supra* at paras 53-56].

[37] I find that the Applicant has failed to demonstrate that his procedural fairness rights were breached. The Applicant was provided with a copy of the subsection 44(1) report and he indicated that he understood and agreed that the contents of the report were true. The Minister's Delegate specifically asked whether the Applicant had any evidence that contradicted anything in the report, to which he answered "no." During the interview, the Applicant asked if he could get a lawyer because he "read online that you can make the charge go away." The Minister's Delegate asked whether the Applicant was asking about seeking an expungement or pardon, to which the Applicant replied "yes." The Minister's Delegate stated the Applicant could seek a lawyer to explore his options, but that the Minister's Delegate was looking at the facts "as they are now." When the Minister's Delegate asked the Applicant why he had not yet sought a pardon, the Applicant stated that it was hard to find a lawyer in Regina during the pandemic, that lawyers in Regina were rude and that the lawyers in Toronto wanted too much money. At no point during the interview did the Applicant request that the interview be adjourned to allow him to contact legal counsel so that they could be present during the interview.

[38] Moreover, the fact that an inadmissibility determination was made by the Minister's Delegate and not referred to the ID cannot constitute a breach of the Applicant's procedural fairness rights. Rather, as detailed above, it is the procedure prescribed by the *Regulations*.

[39] Finally, the Rule 9 response triggered by this application for leave and judicial review provided the Applicant with the subsection 44(1) report, the decision issuing the deportation order, the notes explaining the reasons for the decision and the notes from the Applicant's interview with the Minister's Delegate. There is therefore no merit to the Applicant's assertion that he did not

receive the Minister's Delegate's reasons. Moreover, I find the Applicant's assertion that the reasons for decision appear to have been modified *ex post facto* baseless.

[40] Accordingly, I find that there was no breach of the Applicant's procedural fairness rights.

V. Certified Questions

[41] The day before the hearing of this application, counsel for the Applicant submitted the following two proposed questions for certification:

(1) Whether the Minister's Delegate had the jurisdiction under section 228(1) of the *Immigration and Refugee Protection Regulations* to issue a deportation order based on the Applicant's inadmissibility under section 36(1)(a) of the *Immigration and Refugee Protection Act* without referring the matter to the Immigration Division for an admissibility hearing.

(2) Whether the failure of the Minister's Delegate to provide the Applicant with an opportunity to seek legal counsel and respond to the allegations of inadmissibility, prior to the issuance of the deportation order, constituted a breach of the Applicant's rights to procedural fairness under Canadian administrative law.

[42] I deny certification of both questions, as counsel for the Applicant did not comply with the five days' notice requirement prescribed by this Court's *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings*. While counsel for the Applicant provided the Court with a number of reasons as to why he did not comply (including an overwhelming workload), I am not satisfied that such reasons justify the delay. This is particularly

the case given that the questions did not arise from any of the submissions made by the Respondent in their Further Memorandum of Fact and Law. The questions now proposed by counsel were squarely raised by the Applicant in his materials filed in December of 2022 and March of 2023. As such, counsel for the Applicant could have served and filed his proposed certified questions at any point after leave was granted in June of 2024.

[43] Moreover, neither proposed question meets the criteria for certification as set out by the Federal Court of Appeal in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46:

> […] The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application.[…]

[44] Under the issue of broad significance or general importance component of the test, if the proposed question is already answered in the case law, then the question need not be certified. A question of general importance must be a question that has not been previously settled, as all properly certified questions lack decided binding authority [see *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 36, 39; *Ogunfowora v Canada (Citizenship and Immigration)*, 1997 CanLII 5493 (FC); *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203 at para 98]. For the reasons detailed above, I am satisfied that the issues raised by the Applicant in his proposed questions are sufficiently settled in the case law and thus cannot be characterized as issues of broad significance or general importance.

[45] Accordingly, no question will be certified.

JUDGMENT in IMM-7931-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to name the Minister of Public Safety and Emergency Preparedness as Respondent.
2. The application for judicial review is dismissed.
3. No question is certified.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7931-21
STYLE OF CAUSE:	SHEJAT NURANI ROHAN v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 14, 2024
JUDGMENT AND REASONS:	AYLEN J.
DATED:	AUGUST 29, 2024

APPEARANCES:

Washim Ahmed	FOR THE APPLICANT
Aneta Bajic	FOR THE RESPONDENT

SOLICITORS OF RECORD:

OWS Law Barristers and Solicitors North York, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT