Date: 20061018

Docket: IMM-7441-05

Citation: 2006 FC 1222

Ottawa, Ontario, October 18, 2006

PRESENT: THE HONOURABLE MR. JUSTICE LEMIEUX

BETWEEN:

Maria Concepci6n ANGUIANO ACUNA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On November 22, 2005, the Immigration Protection Division (the panel) determined that Maria Concepci6n Anguiano Acuna (the applicant or the claimant), a citizen of Mexico, is not a Convention refugee or a person in need of protection. The applicant is challenging this decision through this application for judicial review.

[2] The panel points out that the applicant's "testimony was credible on the whole". It dismissed her refugee claim as it was of the view that she had an internal flight alternative (IFA).

[3] She raised two grounds for setting aside the panel's decision:

1. She has a reasonable apprehension of bias on the part of the panel because it breached its duty to give her a fair and impartial hearing. It was ironic and sarcastic and was disrespectful to her;

2. The panel improperly assessed the evidence regarding the existence of an internal flight alternative for Ms. Acuna.

[4] The applicant's story is not disputed. She is a psychologist and a teacher. In 1999, she was employed as a professor at the University of Tijuana, in La Paz, Baja California (the university).

[5] This institution was a private institution which was not accredited by the Department of Education, because it did not satisfy its requirements. In the panel's opinion, the applicant, who was questioned by the students' parents in regard to pending accreditation, had to tell them that despite the claims of university management, the university was not doing anything to become accredited.

[6] In May 2002, the applicant allegedly saw the university rector trafficking drugs on the university campus; he recognized her.

[7] Several months after this incident, the rector left for the city of Tijuana to run for office in the elections; he was elected. Afterward, the university secretary allegedly warned the applicant not to say anything whatsoever about the rectors' deviant behaviour.

[8] In July 2002, the applicant learned from workers that her office at the university was no longer hers. Based on this, she concluded that she had lost her job and filed a complaint with the centre for conciliation and arbitration (the Centre).

[9] She claimed that in November and December 2002 she received anonymous death threats, telling her to stop her proceedings before the Centre. In some phone calls,, she was told that she would never work as a psychologist or teacher in any area of Mexico ever again.

[10] The applicant as well as the university's counsel, who had allegedly threatened her with serious problems following her compliant against the university, appeared before the Centre on April 21, 2003. Apparently, at this time, the Centre's decision is still under consideration.

[11] On June 26, 2004, the applicant, hired as a psychologist in an elementary school, was advised that her contract would end on the 30th of the same month and that her position had been eliminated. In September 2004, she learned from her sister that her position had been filled by another person. According to the panel, she determined that this was all the fault of the former university rector, now a member of parliament.

[12] She submitted that following these incidents, she had been permanently marginalized in her profession. She allegedly filed six job applications with other universities in Mexico, which were fruitless, and she believed that she was rejected because of bad references from the university.

[13] The panel explained its findings regarding the applicant's internal flight alternative as follows:

> The documentation tabled as evidence indicates that there are 4,183 institutions of higher learning in Mexico, attended by 2,147,100 students. In 2002, there were 56 universities.
>
> The claimant had an impressive career in her field of psychology. She was a member of the psychologists' society of Guadalajara, since there was no such society in her home province of Baja California.

> When questioned about the possibility of flight to another city in Mexico, such as Guadalajara or Mexico City, cities of over a million inhabitants, the claimant stated that her alleged persecutor . . . was responsible for her employment not being renewed and for the lack of acknowledgment of the applications she had sent to other educational institutions in Mexico. It was only after she arrived in Canada that the claimant learned that the primary school teaching position she had held, which had been abolished, had been given to someone else in September. The claimant saw this as persecution.
>
> The claimant testified that after she learned that her job had been given to someone else, she made no attempts to find a job. Although the right to earn a living is a basic one, the work does not necessarily have to be in a person's field or in the place where he or she is living.
>
> The claimant testified that she would have no difficulty travelling to a city like Guadalajara and finding a job, but that it was a city where the cost of living was high. She did not demonstrate to the panel that the possibility of internal flight was unreasonable.
>
> The claimant did not prove that her alleged persecutor was at the root of her inability to get the few positions she claimed to have applied for.
>
> [Emphasis added.]

ANALYSIS

(a) Principles

[14] The legal principles which apply in this case are very well known.

[15] With respect to the concept of reasonable apprehension of bias, I refer to the comments of my colleague Mr. Justice Beaudry in *Fenanir v. Canada (Minister of Citizenship and Immigration)* 2005 FC 150, at paragraphs 10, 11, 12 and 14 of his decision:

> **[10]** The Supreme Court considered the issue of bias in *Wewaykum Indian Band v. Canada*, 2003 SCC 45 (CanLII), [2003] 2 S.C.R. 259 at paragraph 59. It stated as follows:
>
> > . . . "[i]mpartiality is the fundamental qualification of a judge and the core attribute of the judiciary" (Canadian Judicial Council, *Ethical Principles for Judges* (1998), at p. 30). It is the key to our judicial process, and must be presumed. As was noted by L'Heureux-Dubé J. and McLachlin J. (as she then was) in *S. (R.D.), supra*, at para. 32, the presumption of impartiality carries considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption. Thus, while the requirement of judicial impartiality is a stringent one, the burden is on the party arguing for disqualification to establish that the circumstances justify a finding that the judge must be disqualified.
> > (Emphasis added.)
>
> **[11]** De Grandpré J. also stated in *Committee for Justice and Liberty v. National Energy Board* 1976 CanLII 2 (S.C.C.), (1978) 1 S.C.R. 369, at pages 394 and 395 ::

> . . . the apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. . . . that test is "what would a informed person, viewing the matter realistically and practically--and having thought the matter through--conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."
>
> . . .The grounds for this apprehension must, however, be substantial and I . . . [refuse] to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".

[12] In *Arthur v. Canada (Attorney General),* 2001 FCA 223 (CanLII), [2001] F.C.J. No. 1091 (F.C.A.) (QL), 2001 FCA 223, we read the following at paragraph 8 :

> . . . An allegation of bias, especially actual and not simply apprehended bias, against a tribunal is a serious allegation. It challenges the integrity of the tribunal and of its members who participated in the impugned decision. It cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of an applicant or his counsel. It must be supported by material evidence demonstrating conduct that derogates from the standard. . . .

. . .

[14] In the book entitled *Judicial Review of Administrative Action in Canada* (Brown and Evans, Toronto : Canvasback Publishing, 1998) at pages 11-31 and 11-32, it reads:

> Extensive and "energetic" questioning alone by tribunal members will not in itself give rise to a reasonable apprehension of bias. And particular latitude is likely to be given to tribunals operating in a non-adversarial setting, such as refugee determination hearings, where there is no one appearing to oppose the claim. Nor will an expression of momentary impatience or loss of equanimity by a tribunal member result in disqualification, particularly where it was merely an attempt to control the manner of proceeding. Similarly, a sarcastic comment when a party refused to give evidence, or an ill-chosen and insensitive phrase, will not, without more, lead to disqualification. [Footnotes omitted.]

[16] With regard to the issue of burden of proof in the context of an IFA, I refer to a decision by Blais J. in *E.H.S. v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1325, at paragraphs 13 and 14:

> [13] The question of who has the burden of proof to establish that there is a risk throughout the country when an IFA is raised was addressed by Linden J.A. in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (F.C.A.), [1994] 1 F.C. 589. Linden J.A., at paragraph 5, quotes Mahoney J.A. in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, stating:
>
> > Mahoney J.A. held that, since the question of whether or not there is an IFA is simply part and parcel of whether or not the claimant is a Convention refugee, the onus of proof rests on the claimant to show, on a balance of probabilities, that there

> is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA.
>
> [14] The applicant therefore has the burden of establishing, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the area that is alleged to be an IFA.

[17] As for the substance of the principle of internal flight alternatives, I refer again to Blais J. in *E.H.S.*, *supra*, at paragraphs 11 and 12:

> [11] For a person to be a Convention refugee, there cannot be an IFA. The Federal Court confirmed that the notion of an IFA is inherent to the definition of a refugee. Mahoney J.A. in *Rasaratnam v. Canada (Minister of Employment and Immigration),* [1992] 1 F.C. 706, stated the following at paragraph 8:
>
> > . . . a Convention refugee must be a refugee from a country, not from some subdivision or region of a country, a claimant cannot be a Convention refugee if there is an IFA. . . .
>
> [12] The Federal Court of Appeal developed a two-part test to determine whether a person claiming refugee status has an IFA in another part of their country. The test was clearly reiterated by Beaudry J. in *Dillon v. (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 463, at paragraph 11:
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> > In *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (F.C.A.), [1994] 1 F.C. 589 (C.A.) at paragraph 2, the Federal Court of Appeal listed two elements to be considered when establishing an IFA: the Board must be satisfied on the balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists, and, taking into account all the circumstances, including those specific to the applicant, the situation in the proposed location must be such that it would not be unreasonable for the applicant to seek shelter there.

[18] As we can see, the key decision is the one by Linden J.A. of the Federal Court of Appeal in *Thirunavukkarasu v. Canada, Minister of Employment and Immigration* [1994] 1 F.C. 589.

[19] I would like to quote a few passages from this judgment by Linden J.A. regarding the notion of unreasonableness in the context of an IFA:

> [12] Mahoney J.A. expressed the position more accurately in *Rasaratnam*, *supra*, at page 711:
>
> > In my opinion, in finding the IFA, the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in Colombo and that, in all the circumstances including circumstances

> particular to him, conditions in Colombo were such that it would not be unreasonable for the appellant to seek refuge there.

Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.

[13] Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?

[14] An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.

[15] In conclusion, it is not a matter of a claimant s convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country.

(b) The standard of review

[20] When this Court is called to review a decision by an administrative tribunal bearing on the issue of an IFA, the appropriate standard of review is that of patent unreasonableness where, as in this case, it is a matter of applying recognized legal principles to a set of facts, which is a question of mixed fact and law (see the decision by Shore J. in *Gilgorri v. Canada (Minister of Citizenship and Immigration)* 2006 FC 559.

[21] It appears that the notion of standard of review does not apply when the Court must decide whether the conduct of the first decision-maker gives rise to a reasonable apprehension of bias. In this case, Ms. Acuna's counsel did not raise any reasonable apprehension of bias during the hearing and did not make a request for recusal. Accordingly, the panel did not decide this issue. In this context, it is this Court's responsibility to decide the issue by applying the legal principles relevant to the facts identified by reviewing the transcript.

(c) Apprehension of bias

[22] Two affidavits were filed in support of the existence of a reasonable apprehension of bias: the affidavit of Ms. Acuna and the affidavit of Carlos Hoyos-Tello, an immigration consultant, who represented the applicant before the panel.

[23] Ms. Acuna's affidavit has many pieces of evidence, including:

1. An excerpt from the beginning of the hearing of October 5, 2005, establishing that the panel denied Ms. Acuna the right to make her statement under oath with the Bible, the panel stating "we no longer swear on the Bible, we are a secular government". The affidavit also refers to the notice to appear sent to Ms. Acuna to the effect that "At the hearing, you will be required to make a solemn

affirmation before giving testimony. If you prefer to make an oath, you must bring a holy book with you to the hearing.";

2. A statement regarding the panel's treatment of two letters of support that her representative had submitted to the panel. The applicant states that the panel [TRANSLATION] "showed us a great lack of respect. Once the first letter was read, he literally threw the letter … from his desk to the desk of my immigration advisor, passing it over the computer … he did the same with the second letter. In both cases, the discarded letters landed on the desk of Mr. Hoyos, my immigration advisor";

3. A letter from sister Agnès Bouchard, an observer at her hearing, in which she states: [TRANSLATION] "during the hearing I thought that they were treating her like a street person, if not an offender";

4. Certain passages from the transcript show that the applicant had a justifiable apprehension of the panel's bias.

[Emphasis added.]

[24] In his affidavit, Mr. Hoyos-Tello stated that he had been a [TRANSLATION] "direct witness to the unfair hearing that my client, Ms. Aguiano Acuna had before the member . . . He was ironic, sarcastic and he breached his duty to properly examine the evidence." Carlos Hoyos-Tello also stated that the panel and the refugee protection officer (the RPO) had been appointed at the last minute. He referred to certain passages of the transcript in support of his statements.

[25] From the transcript of the hearing of October 5, 2005, I listed the following passages in order to assess the correctness of Ms. Acuna's statement to the effect that the panel's comments support her claim, that they raise a reasonable apprehension of bias on the part of the panel, i.e. a reasonable apprehension that the panel did not decide fairly:

1. The panel had asked Ms. Acuna whether she had any acknowledgements of receipt for her job applications at several universities. She testified that only one person responded by mail and that the other refusals were in person and that she had not taped the phone calls. The panel asked her

[TRANSLATION] "do you know the Latin proverb? Have you ever studied Latin? No?" Ms. Acuna replied "No". The panel made the following remark:

> [TRANSLATION] O.K. *scripta valente*, *verba volente* [sic]; words fly, the writing remains. So, that is why I'm telling you . . . I asked you whether you had written evidence of your refusals. So, you're saying that you only have one? (Certified Record, page 312).

2. Ms. Acuna testified that during 2002-2003, when she filled temporary positions at two universities in La Paz, she was told that there was no work for her, adding [TRANSLATION] "yet I saw that there were other people who got jobs" . . . to which the panel stated: [TRANSLATION] ". . . yes, these are things that happen in life" (Certified Record, page 313).

3. Responding to the panel regarding how many accredited universities there were in Tijuana, Ms. Acuna listed several, following which the panel exclaimed [TRANSLATION] "Good gracious, those are a lot of universities for one small city" (Certified Record, page 321).

4. In response to a question from the panel, why she had never said anything about the drug exchange, Ms. Acuna replied [TRANSLATION] "because I was so stunned" following which the panel added [TRANSLATION] "but you recover from your astonishment the next morning and run to the police where you file an anonymous report, as it is possible to do by internet in Mexico" (Certified Record, page 326).

5. Ms. Acuna testified that at the university where she was teaching there were two professors for 250 students and that the department was small, to which the panel retorted : [TRANSLATION] "well, 200 students for two professors, I find that big, myself" (Certified Record, page 337).

6. Following Ms. Acuna's testimony that counsel in Mexico [TRANSLATION] "can keep, if they win, can keep half of what they win from the person" the panel exclaimed [TRANSLATION] "My goodness, Canadian legal services could model that" (Certified Record, page 348).

7. Ms. Acuna testified before the IRB that she was not seeking reinstatement at the university and admitted that the $1,600 for three months of salary she was claiming was not much (Certified Record, pages 349 and 350). The panel later said [TRANSLATION] "what I find odd, myself, is that a person as important as a deputy would be concerned about something ultimately costing $1,600 Canadian. I find that bizarre that a highly placed guy could ask people to threaten you with death because you were after them for $1,600, you don't find that a little bizarre?" (Certified Record, page 356).

8. The panel had asked Ms. Acuna whether she had attempted to record the anonymous death threats she had received by telephone, she replied that she could not buy herself an answering machine. After a discussion about the cost of an answering machine in Mexico, Ms. Acuna submitted that she could not buy one because she was earning less. The panel retorted [TRANSLATION] "no, especially not when one's life is in danger, right?" (Certified Record, page 358).

9. The panel asked Ms. Acuna whether she had applied for her old position at the private catholic elementary school when the position was re-opened, to which she replied that she had not because she had been in Canada, to which the panel added [TRANSLATION] "of course, naturally if the position opens and you aren't there, you can't be hired, hmm?" (Certified Record, page 360).

10. At one point in her testimony she was asked the name of the missionaries for whom she had done community psychology in Africa. Ms. Acuna stated [TRANSLATION] "let's say they were like the Jesuits, but we called them the Combonians," to which the panel replied [TRANSLATION] "okay, watch it there because I myself studied under the Jesuits" (Certified Record, page 370).

    [Emphasis added.]

11. Ms. Acuna was married in September 1997 in France where she studied at the Université Catholique de Lille but was divorced in April 1999. She testified that the couple lived in Fayence in the South of France. The panel exclaimed [TRANSLATION] "lucky", to which Ms. Acuna said [TRANSLATION] "weather-wise, yes", prompting the panel to state "yes, yes, I'm not referring to … your married life" and Ms. Acuna added "yes, yes, yes, weather-wise, it was good" (Tribunal Record, page 373).

    [Emphasis added.]

12. During the hearing, the panel wanted to know whether something prevented Ms. Acuna from going to Guadalajara once she had returned to Mexico from France via the Mexico City airport and the RPO had asked her: [TRANSLATION] "you could have therefore continued on to Guadalajara? The panel added [TRANSLATION] "by bus, car, foot, donkey?" (Tribunal Record, page 379).

    [Emphasis added.]

13. In her Personal Information Form, Ms. Acuna wrote that in June 2004, she had met the Chairperson of the Centre and that he had informed her that her case was difficult, very difficult and even that she would lose. Ms. Acuna confirmed this meeting during her testimony. The panel stated that it was very surprised by this meeting, to which Ms. Acuna responded that it was the father of a young child from the school where she worked. The panel exclaimed the following:

    > [TRANSLATION]
    >
    > Yes, yes, but what I am saying, madam, is that . . . if you went to see him to talk about ice cream, I am okay with that , but if you went to see him before a decision was made to find out where your case was going, that's too bad, I'm going to change my tune right away.
    >
    > You have no right to interfere with the judicial process. So, when you say that you went to see the Chairperson to know where your case was going , you know, there are politicians here who are very well (inaudible), there, simply because they talked to the judge, so … (Certified Record, page 380).
    >
    > [Emphasis added.]

14. During Ms. Acuna's testimony, there was the matter of the owner of the University of Tijuana naming his son as rector. She testified that the father had a lot of power and had been involved in fraud and that the attitude of this gentleman was [TRANSLATION] "if you are not with me and you are against me, I will do something" to which the panel threw out the following remark: [TRANSLATION] "yes, it's as the Lord said, those who are not with me will be against me" (Tribunal Record, page 384).

    [Emphasis added.]

16. During his examination of Ms. Acuna, the panel always addressed the claimant using the term "madam". Nearing the end of the hearing, the panel told her [TRANSLATION] "well now, I haven't any other questions, miss" … to which Ms. Acuna said [TRANSLATION] "yes, I would like"… the

> panel interrupted her, saying [TRANSLATION] "no, no, I'm not saying that to make you feel younger, I'm calling you 'miss' instead of 'madam'" (Tribunal Record, page 402).
>
> [Emphasis added.]

[26] It is recognized in the case law that a panel's interventions during a hearing can give rise to a reasonable apprehension of bias by the claimant. Each case is determined on its own facts.

[27] Several decisions by the Federal Court of Appeal and our Court have condemned interventions by the panel during the hearing as an indication of a lack of impartiality:

1. The panel's intrusive and intimidating interventions interfered significantly with the applicant's presentation of his case (*Kumar v. Canada*, [1988] 2 F.C. 14 (F.C.A.)).

2. The panel's harassment during cross-examination, "cross-examination was worthy of a criminal trial" (*De Leon v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 852.

3. Intimidating, abusive, hostile, sarcastic, inappropriate as well as gratuitous and uncalled for interventions or comments *(Mohammad c. Canada (Minister of Citizenship and Immigration)*, [[2000] F.C.J. No. 319] and *Guermache v. Canada (Minister of Citizenship and Immigration*), [[2004] F.C.J. No. 1058]).

4. Comments made by a panel during the hearing which give the impression of excessive or unfair aggressiveness or irrelevant remarks for which there are no valid reason.

5. Sexist, uncalled for, or highly inappropriate remarks by the panel. In *Yusuf v. Canada (Minister of Employment and Immigration*), [1992] 1 F.C. 629, Mr. Justice Hugessen, then a member of the Federal Court of Appeal, wrote at paragraph 23 "The day is past when women who dared to penetrate the male sanctum of the courts of justice were all too often met with condescension, a tone of inherent superiority and insulting "compliments". A judge who indulges in that now loses his cloak of impartiality. The decision cannot stand." In this case, Hugessen J. noted that the panel had addressed the claimant as "my dear lady" and had described her as "a tiny little woman."

6. On the other hand, an energetic intervention intended to clarify the evidence does not raise a reasonable apprehension of bias (*Mahendran v. Canada (Minister of Employment and Immigration*), [1991] F.C.J. 549 (F.C.A.)).

[28] My review of the transcript of hearing does not support a finding that the panel's interventions prevented the applicant from filing all of the evidence that she wanted to file in order to establish a well-founded fear of persecution if she were to return to Mexico.

[29] As stated, the applicant was represented by an immigration consultant with a master's degree in international law from the Université du Québec à Montréal who has represented clients at the IRB for more than five years. This consultant is a Mexican and is very familiar with Mexican cases. Further, a refugee protection officer (RPO) was also present at the hearing.

[30] The applicant had been questioned first by the panel. That examination was followed by a period of questions by the RPO, whose examination was often interrupted by the lone member. The applicant's representative intervened several times and, near the end of the hearing, asked his client several questions (see Certified Record, page 391 to 396).

[31] The applicant's examination in this case is analogous to the one that I discussed in *Burianski v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 826, at paragraph 30:

> My reading of the transcript shows the tribunal members had held two prehearing conferences with counsel for the applicants where issues were identified and lines of questions suggested. It is true the presiding member intervened considerably but counsel for the applicants was content with these interventions and never objected. Where he felt it necessary to complement or supplement the answers which his clients gave, he would do so by asking followup questions. As I see it, in a very real sense, counsel for the applicants was working in tandem with the tribunal members and, at the first hearing with the RCO, to elicit the applicants' story.

[32] While I must admit that while certain conduct and remarks made by the member were irrelevant and sarcastic, I am not persuaded that the member's conduct was in this case such that a well-informed person would be led to believe that the member had not decided fairly, given that the applicant was able to file all of the evidence that she deemed relevant and that her credibility had not been challenged. I would add that even if I consider that the member's conduct is explained by

his wish to be humourous or by his penchant for theatrics, members must have a certain decorum considering that they are hearing matters of great importance to the parties involved.

[33] I do not think it appropriate to condemn the panel's refusal to let her swear on the Bible in that there is insufficient evidence in the record: the applicant filed an incomplete transcript. As a result, it is impossible to establish the circumstances surrounding the refusal that Ms. Acuna is alleged to have endured and this Court cannot base its findings on speculation.

[34] Indeed, even assuming that the member's conduct did betray a reasonable apprehension of bias, the failure of Ms. Acuna's advisor to raise this objection during the hearing amounts to an implied waiver of the right to raise it.

[35] The principle to the effect that an objection based on this ground must be raised in a timely fashion is firmly established in the case law. See: *Ghirardosi v. Minister of Highways for British Columbia*, [1966] S.C.R. 367, *Abdalrithah v. Canada (Minister of Employment and Immigration)*, [1988] F.C.J. 117 and *Ithubuv. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. 499.

[36] In order to determine that there was an implied waiver of the right to raise a reasonable apprehension of bias, the party or his or her representative had to be fully cognisant of the right to take objection, as Mr. Justice Nadon pointed out in *Khakh v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 548. In this decision, the Court decided that given the fact that the applicant's representative was not a lawyer, waiver could not be inferred.

[37] In the case before us, the applicant's advisor is not a lawyer. He alleged in his affidavit that he has a master's degree in international law from the Université du Québec à Montréal and that he has represented clients before the IRB for more than five years. He did not argue before this Court that he did not know that he could have objected to continuing the hearing before the member based on an apprehension of bias. Accordingly, in my opinion his failure to raise such an objection before the member amounts to a valid waiver of the right to raise an apprehension of bias, despite *Khakh*.

[38] In fact, Nadon J.'s remarks in *Khakh* do not signify that the Court must find that, given that Ms. Acuna's representative before the IRB was not a lawyer, he was unaware that he had the right to raise an objection based on a reasonable apprehension of bias. Mr. Justice Reed's remarks, at paragraphs 9 and 10 of *Johnpillai v. Canada (Secretary of State)*, [1995] F.C.J. 194, indeed are in agreement in that sense:

> While the applicant's representative was not a barrister and solicitor, it is clear that she was a representative of a legal firm. It is reasonable to assume that if she is representing herself as an assistant at a legal firm, she discussed the applicant's case with someone at that firm who had legal training. More importantly, however, I do not think Mr. Justice Nadon's comments in *Khakh* can be taken as far as counsel for the applicant suggests. In the context of hearings before many tribunals, refugee hearings included, an applicant has a choice of representing himself or herself, of hiring legal counsel or of having a non-legally trained representative appear. I am reluctant to agree that Mr. Justice Nadon set out a rule that a claimant who chooses a non-legally trained representative or who appears for himself or herself is in a more advantageous position when it comes to asserting that no waiver occurred in the course of a hearing than is a person who elects to be represented by legal counsel. Individuals who appear before the courts or tribunals and choose not to be legally represented are, in general, expected to know the law. They are not usually entitled to have a decision, which goes against them, set aside at a later date because of such unfamiliarity on their part.
>
> At the same time, there may be circumstances when the lack of such knowledge does lead to a finding that there was insufficient awareness of the right so as to vitiate implied waiver. Mr. Justice Nadon found that to be the situation in the case before him. But, I could not find it to be so here. Indeed, there is no evidence that the applicant's representative in this case was unaware of the requirement that objections based on an alleged lack of natural justice must be made expeditiously. It is simply assumed that because she lacked the formal credentials of a barrister and solicitor that this was so. I would not be prepared to make that assumption and indeed, in any event, as noted, she consented to the pre-filing.

(d) Internal flight alternative

[39] The applicant claimed that the IRB erred in analyzing the evidence regarding the existence of an internal flight alternative. As I mentioned earlier, the appropriate standard of review for this issue is that of patent unreasonableness. I consider that there is no evidence of such an error before this Court.

[40] The burden was on the applicant to establish on a balance of probabilities that she was at risk of persecution everywhere in the country, despite the internal flight alternative. Insofar as she acknowledged before the IRB that she could find employment in Guadalajara where she was a member of the order of psychologists, the IRB was correct to find that there was an internal flight alternative. The case law recognizes that it is not unreasonable to identify an internal flight alternative that does not enable the claimant to secure suitable employment (*Thirunavukkarasu v. Canada, Minister of Employment and Immigration*, *supra*). Insofar as we can expect that the applicant would be able to manage in Guadalajara, it cannot be determined that the IRB erred in identifying this city as an internal flight alternative. I must add that this finding is supported by the fact that the applicant stated in her PIF That she lived there from June 1, 1993 to August 30, 1995.

JUDGMENT

1. The application for judicial review is dismissed; no question of importance was proposed.

"François Lemieux"
Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7441-05
STYLE OF CAUSE:	**MARIA CONCEPCION ANGUIANO ACUNA** **Applicant** **and** **MINISTER OF CITIZENSHIP AND IMMIGRATION** **Respondent**
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	JULY 18, 2006
REASONS FOR JUDGMENT AND JUDGMENT:	**THE HONOURABLE MR. JUSTICE LEMIEUX**
DATE OF REASONS:	October 18, 2006

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