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CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Permanent Residents

Application for judicial review of decision by Refugee Protection Division (RPD) to vacate applicant's status as Convention refugee — In 2017, RPD found applicant to be Convention refugee pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), s. 96 — RPD found him credible, provided positive decision accepting his claim — Applicant's claim based on danger to his life from militant group Al-Shabaab in Somalia — Applicant eventually became permanent resident — In 2020, applicant received application to vacate his refugee status based on respondent's belief that applicant actually Kenyan citizen, two years older, who allegedly entered Canada on student visa in 2016 — Decision to vacate based on RPD member's perceived similarities between applicant, Kenyan student alleged to be applicant after visual comparison of photographs — Applicant stated that RPD breached duty of procedural fairness by denying his requests to determine methodology used to obtain, analyze the comparison photographs, thereby to test reliability of respondent's evidence — Whether RPD breached procedural fairness in limiting applicant's ability to test evidence brought against him — Whether RPD's decision reasonable — Duty of procedural fairness in refugee vacation proceedings determined by applying factors identified by Supreme Court in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 — Application for judicial review in Federal Court only means of challenging vacation decision — Difficult to find process under IRPA with greater imbalance between severe consequences, limited recourse — Overall, considering contextual factors identified in *Baker*, refugee vacation proceedings requiring high level of procedural fairness — RPD breached procedural fairness when it denied applicant's request for further information about source, methodology used by respondent in obtaining, comparing photographs, thereby blocking applicant's attempts to test reliability of evidence being used against him — Also breached procedural fairness by accepting without further examination statements by counsel for respondent that no facial recognition technology was used, that photographs discovered, compared manually — Rules of evidence in RPD proceedings relaxed, RPD may consider any evidence that it considers to be trustworthy, credible in circumstances — However, relaxation of evidentiary rules by RPD cannot be uniform in all matters — They must respond to requirements of procedural fairness, reflect nature of particular proceedings, issues involved, interests at stake — In this case, rules of procedural fairness required more than unsworn, general statements by counsel to an adversary in proceedings regarding provenance of evidence — Applicant entitled to more than an assurance that facial recognition technology was not employed, given high level of procedural protections required in vacation proceedings — Disclosure had to be meaningful, include information that is only to advantage of applicant — Ultimately, unfair for RPD to consider photographic evidence probative enough for revoking applicant's statuses, at same time allow that evidence to be shielded from examination for reliability — RPD ignored, unreasonably dismissed relevant evidence tendered by applicant — Reasonableness of a decision jeopardized when decision maker fundamentally fails to account for evidence before it — RPD's failure to address this evidence rendered its decision unreasonable — In summary, RPD relied on little more than its visual acuity to override decision of

another RPD panel granting refugee status, which in turn revoked applicant's refugee status, exposed him to loss of permanent residence, inadmissibility, removal — Decision unreasonable, unfair, set aside — Matter returned for redetermination — Application allowed.

ALI V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (IMM-2746-23, 2024 FC 1085, Battista J., reasons for judgment dated July 10, 2024, 16 pp.)