

CANADA / JUDGMENT

Rab v. Canada (Citizenship and Immigration)

2025 FC 383

COURT

Federal Court

DECIDED

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Rab v. Canada (Citizenship and Immigration)

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Date: 20250228

Docket: IMM-1076-24

Citation: 2025 FC 383

Ottawa, Ontario, February 28, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ABDUL RAB

ASIA ABDUL RAB

ABDUL WASY

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] The Applicants seek judicial review of the negative determination of their Pre-removal Risk Assessment [PRRA] application.
- [2] The Applicants are a family of three: Abdul Rab [Principal Applicant], his spouse and their minor child. They are all citizens of Pakistan. They entered Canada in 2016 and sought refugee protection. They claimed that they were at risk of persecution at the hands of the Taliban, the Sipah Sahaba and religious fanatics who mistakenly believed that the Principal Applicant had changed his religious affiliation from Sunni Muslim to Christian.
- [3] The Refugee Protection Division [RPD] denied their claim in June 2021. The RPD made multiple adverse credibility findings pertaining to the Principal Applicant and also found that he had reavailed to Pakistan, undermining his claim of subjective fear. It found that the Principal Applicant was not a Convention refugee nor a person in need of protection under ss 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27[IRPA]. As the claims of the other Applicants were dependant upon that of the Principal Applicant, their claims were also refused.
- [4] The Applicants appealed to the Refugee Appeal Division [RAD] which dismissed their appeal. The RAD assessed each of the RPD's credibility findings and, in each case, found that the RPD had not erred. With respect to the 2017 reavailment, the RAD acknowledged the Principal Applicant's testimony that his situation became worse after he returned to Pakistan in 2017, as it was only then that the Taliban and Sipah Sahaba became interested in him. However, he also testified that he was at serious risk from extremists at his mosque prior to his return. Accordingly, the RAD found that the RPD did not err in finding that the Principal Applicant's reavailment undermined his credibility and subjective fear. In its conclusion, the RAD agreed that it is the perception of the agent of persecution that matters and that there would be serious consequences if the Principal Applicant were perceived as an apostate. However, the RAD found that the RPD did not err in determining that the Applicants failed to establish, on a balance of probabilities, that the agents of persecution perceive the Principal Applicant as an apostate. Further, the RPD did not err in its credibility findings. Ultimately, the RAD found that the Applicants did not establish the allegations that formed the basis of their claims on a balance of probabilities.
- [5] An application for leave to judicially review the RAD's decision was dismissed by this Court.

- [6] The Applicants then submitted a PRRA application, which was refused by a senior immigration officer [PRRA Officer] on December 19, 2023. The PRRA decision is the subject of this judicial review.

Decision Under Review

- [7] The PRRA Officer noted that the underlying basis of the Applicants' claim remained the same, being a mistaken belief by the agents of persecution that the Principal Applicant had converted to Christianity, which was apostasy in their eyes. However, that the PRRA was based on six pieces of new evidence purporting to support that the agents of persecution are still interested in and motivated to harm the Principal Applicant.
- [8] The PRRA Officer referred to s 113(a) of the IRPA, which stipulates that an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. The Officer described the proposed new evidence, which was comprised of: documentary evidence; a narrative of the Principal Applicant indicating his risk of harm upon return to Pakistan; and, testimony (statements) of the Principal Applicant's neighbour, Imam, brother-in-law and aunt [together, Statements], each recounting events that occurred in 2023 and which were intended to demonstrate that the agents of persecution are still looking for the Principal Applicant and threatening his life.
- [9] The PRRA Officer found that the documentary evidence was not new evidence as it predated the decisions of the RPD and the RAD. It was therefore available and could have reasonably been presented to the RPD for consideration at the time of the rejection. The remaining items were also not new evidence as the information they contained was not significantly different from what was previously provided at the RPD hearing. Further, it did not rebut any of the RPD's prior credibility findings, portions of which the Officer reproduced in their reasons. Referencing *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385, the PRRA Officer found that the Applicants had restated materially the same information which they had presented to the RPD and the RAD, they had not rebutted any of the findings of the RPD or RAD and, they had not presented any admissible new evidence. As a result, there was insufficient evidence before the PRRA Officer to allow them to arrive at a different conclusion from that of the RPD or the RAD.

Issues and Standard of Review

- [10] The sole issue in this matter is whether the PRRA Officer's decision was reasonable. The parties submit and I agree that the standard of review on the merits of the Officer's decision is reasonableness. On judicial review the court "asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para

99).

Analysis

Applicants' position

- [11] The Applicants submit that the PRRA Officer erred in their treatment of the proposed new evidence. They submit that the PRRA Officer failed to appreciate that the Applicants were presenting new evidence which arose after the RPD's decision and erroneously required the Applicants to present evidence of new risks rather than simply new evidence. Put otherwise, the PRRA Officer misapplied the s 113 test in refusing to assess the new evidence on the basis that it pertained to the original claimed risk (citing *Chen v Canada (Citizenship and Immigration)*, 2015 FC 565, at paras 7–17 [Chen], among other cases). The Applicants submit that, having unreasonably rejected their new evidence, the Officer then relied on previous credibility findings to reject their PRRA application. The new evidence spoke to incidents that occurred after the RPD proceedings and well after the Principal Applicant's reavailment in 2017. The subsequent and ongoing persecution could overcome some of the prior credibility concerns about reavailment, as persecution subsequent to reavailment does not preclude a successful refugee claim. However, the PRRA Officer unreasonably failed to engage meaningfully with the new evidence.
- [12] When appearing before me, the Applicants added that although they had not requested an oral hearing, the PRRA Officer should have convened one to assess the credibility of the new evidence as the Statements came from sources other than the Principal Applicant, who had been found not to be credible.

Respondent's Position

- [13] The Respondent argues that the Applicants submitted a PRRA application alleging that the same agents of persecution continue to seek them for the same reasons. The Officer considered the content of the new evidence provided but found that it did not meet the criteria described in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [Raza]. The Officer also found that the new evidence was not able to overcome the RPD's credibility findings. The Respondent submits that the PRRA Officer was entitled to use the prior, multiple adverse credibility findings as a starting point and that any new evidence had to respond to those findings if it was to overcome them. Here, the evidence was more of the same, even though it related to new events (citing *Kulanayagam v Canada (Citizenship and Immigration)*, 2015 FC 101 [Kulanayagam], among other cases). The Respondent also submits that submissions similar to the Principal Applicant's present argument, concerning persecution subsequent to reavailment, were made and rejected before the RAD. The RAD found that the RPD was correct in determining that the Principal Applicant's reavailment undermined his credibility and subjective fear. Thus, the new evidence would not have affected that finding.

[14] The Respondent submits that the RPD found that the events that had caused the agents of persecution to target the Principal Applicant did not occur. Accordingly, the Applicants ought not to be able to avoid the credibility determinations of the RPD and the RAD by providing additional letters from family and neighbours that purport to demonstrate a continuation of the same risk that the RPD and the RAD found had not been established. The prior credibility findings were not challenged by the proposed new evidence.

Analysis

[15] It is well established that a PRRA application is not an appeal or a reconsideration of a negative decision of the RPD or the RAD. Rather, it is intended to assess new risk developments between the hearing and the removal date (see, for example, *Raza*, at para 12; *Ponniah v Canada (Citizenship and Immigration)*, 2013 FC 386 at para 27 [Ponniah]; *Kaybaki v Canada (Minister of Citizenship and Immigration)*, 2004 FC 32 at para 11; *Nam v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1298 at para 22). The evidence that may be admitted in a PRRA application is limited by s 113(a) of the IRPA. As held by the Federal Court of Appeal [FCA] in *Raza*, s 113(a) is “based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD” (*Raza*, at para 13).

[16] The FCA in *Raza* also identified factors to be considered with respect to s 113(a):

1. **Credibility:** Is the evidence credible, considering its source and the circumstances in which it came into existence? If not, the evidence need not be considered.
2. **Relevance:** Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving a fact that is relevant to the claim for protection? If not, the evidence need not be considered.
3. **Newness:** Is the evidence new in the sense that it is capable of:
 - (a) proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD, or
 - (b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or
 - (c) contradicting a finding of fact by the RPD (including a credibility finding)?

If not, the evidence need not be considered.

4. **Materiality:** Is the evidence material, in the sense that the refugee claim probably would have succeeded if the evidence had been made available to the RPD? If not, the evidence need not be considered.
5. **Express statutory conditions:**

- (a) If the evidence is capable of proving only an event that occurred or circumstances that arose prior to the RPD hearing, then has the applicant established either that the evidence was not reasonably available to him or her for presentation at the RPD hearing, or that he or she could not reasonably have been expected in the circumstances to have presented the evidence at the RPD hearing? If not, the evidence need not be considered.
 - (b) If the evidence is capable of proving an event that occurred or circumstances that arose after the RPD hearing, then the evidence must be considered (unless it is rejected because it is not credible, not relevant, not new or not material).
- [17] Further, PRRA officers are afforded a high degree of deference in making assessments under s 113(a) (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 11 [*Magonza*], citing *Perampalam v Canada (Citizenship and Immigration)*, 2018 FC 909 at para 14).
- [18] While it is correct, as the Applicants submit, that evidence produced in support of a PRRA application cannot be rejected solely on the basis that it “addresses the same risk issue” considered by the RPD, it may, however, be rejected if it cannot prove that the relevant facts, as of the date of the PRRA application, are materially different from the facts as found by the RPD (*Raza*, at para 17). In this case, and contrary to the Applicants’ contention, the PRRA Officer did not require the Applicants to present a new risk. Unlike the officer in *Chen*, cited by the Applicants, here the PRRA Officer acknowledged that the evidence (excepting certain documentary material) was “new” in the sense that it post-dated the RPD and RAD decisions. However, the PRRA Officer went on to describe the content of each of the new Statements and did not err in the assessment of their content or in finding that the evidence was factually similar to that which was considered by the RAD and the RPD. This was because the new evidence restated materially the same information presented to the RPD and the RAD – being that the agents of persecution sought, and continue to seek, the Principal Applicant because they mistakenly believed that the Principal Applicant had changed his religious affiliation.
- [19] As the PRRA Officer noted, Applicants’ counsel stated in their PRRA submissions that the new evidence established that the agents of persecution were still interested in and motivated to harm the Applicants. Specifically, that the new evidence “demonstrate[s] a continuing interest” in the Principal Applicant by the agents of persecution, who falsely believe that the Principal Applicant had embraced the Christian faith. Thus, the Applicants asserted the same risk as they did in their original claim. They did not suggest that the new evidence overcame the negative credibility findings of the RPD and the RAD.
- [20] The PRRA Officer acknowledged and considered the PRRA submissions, as well as the newness of the evidence. In my view, the Officer reasonably determined that it was factually similar to, or not materially different from, the information that was before the RPD and the RAD.

- [21] More significantly, and as the PRRA Officer pointed out, the RPD found that the Principal Applicant continually embellished his claim (which was initially outlined in his Basis of Claim [BOC] narrative), that some of his responses were manufactured and that the cumulative effect of the multiple concerns specifically identified and addressed by the RPD in its reasons was that there was insufficient credible and trustworthy evidence upon which to base a successful claim. The RAD upheld the RPD's credibility findings and, notably, held that the RPD correctly determined that the Applicants had failed to establish, on a balance of probabilities: (i) that the Principal Applicant pursued an interest in the Christian Faith while he was in Pakistan; (ii) that the Applicants had not established that the agents of persecution perceive the Principal Applicant as an apostate; and, ultimately, (iii) "the allegations that form the basis of their claims". In other words, the core basis of the claim had not been established
- [22] The Statements adduced by the Applicants as new evidence all speak to the alleged agents of persecution's continued interest in the Principal Applicant. However, they do not speak to any of the negative credibility findings made by the RPD and affirmed by the RAD, nor to the finding of a lack of subjective fear with respect to the reavilment.
- [23] The RPD's credibility findings included omissions from the Principal Applicant's BOC narrative and contradictions between his BOC narrative and his testimony with respect to the incident that allegedly made him a target by his agents of persecution. With regard to omissions from his BOC narrative, the RPD found that the Principal Applicant omitted that: (i) he sustained injuries during an attack from his alleged agents of persecution; (ii) the agents of persecution that he encountered at a tea shop were members of his mosque (as opposed to individuals who were not known to him, as stated in his BOC narrative); (iii) the threatening calls he received from his agents of persecution included death threats; and (iv) his agents of persecution also threatened the lives of his wife and children in 2017 after he reavailed to Pakistan. With regard to other problematic findings, the RPD noted: (i) inconsistencies with an affidavit of the Principal Applicant's friend, who stated that the Principal Applicant attended church with him on several occasions, and the fact that the Principal Applicant did not mention this in his testimony; (ii) the Principal Applicant's vague and cursory testimony regarding why he was interested in learning about the Christian faith; (iii) affidavit evidence indicating that the Principal Applicant's neighbours and colleagues were under a misapprehension that the Principal Applicant was changing his religion and that this caused a disturbance and, that people from his mosque attended at his home and threatened to kill him and his family, was not mentioned in the Principal Applicants BOC narrative or his testimony (iv) that the Principal Applicant's reavilment undermined his subjective fear and credibility; and, (v) a letter from a church in Canada with respect to his involvement with that church was obtained in an attempt to make a fraudulent claim.
- [24] The RPD gave its reasons for rejecting the Principal Applicant's explanations for these omissions, contradictions, and its other concerns, and found that the cumulative effect of them was being that there was not sufficient credible and trustworthy evidence upon which

to base a determination that the Principal Applicant is a Convention refugee. The RPD's credibility determinations were upheld by the RAD. Indeed, the RAD found that the new evidence submitted before it failed "to overcome the significant credibility concerns, namely the discrepancies in the evidence regarding the precipitating incident, the omissions of the threatening calls in 2016 and 2017 from the BOC narrative, the failure to credibly establish the Principal Appellant's pursuit of Christianity in Pakistan, the omission of other relevant events from the BOC narrative, and the Principal Appellant's reavailment to Pakistan".

- [25] The PRRA Officer did not err when they found that the new evidence failed to rebut the existing credibility findings. Thus, it was not "new" as it was not capable of contradicting prior adverse credibility findings and, therefore, the PRRA Officer did not err in declining to consider it on that basis or on the basis that it was not material.
- [26] A similar case is Kulanayagam, relied upon by the Respondent. In Kulanayagam, the RPD denied the applicant's refugee claim on the basis that he lacked credibility. In his PRRA application, that applicant submitted letters from his family and neighbour indicating that unknown persons had inquired into his whereabouts since the RPD decision. The PRRA officer rejected the application, noting in part that "[t]he information described in these aforementioned documents is materially consistent with that already considered by the RPD and not capable of overcoming any of its findings" (at para 27). Regarding the letters, the officer found that they reiterated "the same material facts that were before the RPD and were not capable of rebutting the RPD's findings" (at para 9). On judicial review, and like in the matter now before me, the applicant submitted that the letters should have been accepted as "new evidence" as they described events that occurred after the refugee hearing – namely, that his agents of persecution had approached and harassed his family and neighbours about his whereabouts since the RPD hearing. The Court found the officer's decision reasonable, in part on the basis that the letters simply provided further details regarding the same risks that had already been litigated. Or, in other words, that "the evidence was simply more of the same, even though it related to new events" (at para 33).
- [27] In Kulanayagam, the RPD had found that the testimony of the applicant was inconsistent on various points, and that he was not credible given that he changed his story and was evasive on more than one occasion. The Court stated that, as alluded to by the officer, the RPD simply did not believe that the applicant had been extorted or that his family members had been threatened after his arrival in Canada. The Court held:
- [29] The Officer did not reject the evidence outright. Rather, he turned his mind to evaluating the evidence and explained why the statutory declaration and two letters failed to overcome the findings made by the Board. The Officer summarized the reasons behind the Board's negative credibility findings, found that the new facts established in the documents were not substantially different from those presented at the RPD, and explained that because the facts were materially consistent with the ones already considered by the RPD, they could not rebut the RPD's findings. In its decision, the Board had considered the alleged threats

against the Applicant from the paramilitary, and rejected them. The letters and Affidavit simply provided further details regarding these same risks that had already been litigated.

- [30] The RPD's finding that the Applicant's family had not been threatened by the EPDP and the army flowed out of its finding that the Applicant had not been extorted or detained in the past. Thus, to rebut the Board's conclusion on the threats, the evidence would have had to have been sufficient to rebut the Board's credibility finding or its finding that the Applicant had not been extorted by the EPDP and the army. The Board's credibility findings were based on a number of factors, including that it found the Applicant to be evasive and lacking in credibility when he was examined at the airport, and that there were several material omissions and inconsistencies between the Applicant's PIF narrative and what he told Immigration authorities regarding his fears and alleged experiences in Sri Lanka. In order for the Officer to have found the documents compelling (or sufficient) enough to overcome the RPD findings, in my view they would have had to have shown something more compelling than simply another visit from paramilitary forces, or belief that the Applicant would be at risk at the airport upon re-entry.
- [28] The PRRA Officer in this case approached the new evidence in the same manner. Here, to be admissible, the new evidence needed to overcome the RPD and the RAD's multiple negative credibility findings and be capable of establishing that the Principal Applicant had been threatened by his agents of persecution because they mistakenly perceived him to be an apostate. This was necessary to ground what the Principal Applicant sought to establish in the PRRA application: that he continued to be threatened by his agents of persecution for the same reason (see Ponniah, at paras 31–33). The PRRA Officer reasonably found that the information in the Statements was not significantly different from, or was materially the same as, what had been provided to the RPD and therefore rejected this evidence as it could not overcome the prior credibility findings.
- [29] This is not a situation like *Tariq v Canada (Citizenship and Immigration)*, 2019 FC 670 [Tariq], as relied upon by the Applicants. In that case, the officer's decision did not allow the Court to understand why the applicant's new evidence was rejected. And while in this case the PRRA Officer did not conduct an express analysis of the application of each of the Raza factors, it is apparent from the reasons that the factors of "newness" (in the sense that it could not overcome the RPD and the RAD's credibility findings) and "materiality" were the predominant concerns for the PRRA Officer, who justified why the Applicants' evidence, in their view, was not new or material. Put otherwise, the PRRA Officer properly applied Raza in declining to accept the evidence under s 113(a) of the IRPA.
- [30] The Applicants also rely on *Magonza*. However, the evidence in issue in that matter was not rejected as inadmissible by the PRRA officer. Rather, the Court found that the PRRA officer's risk analysis was unreasonable because they did not provide intelligible reasons for assigning little weight to most of the new evidence. Further, the Court in *Magonza* found that the officer's finding that the applicant's evidence was insufficient was based on a general and unexplained finding of lack of credibility, made on unreasonable grounds. In particular,

and among other reasons not relevant here, because some of the evidence came from individuals who had an interest in seeing the applicant remain in Canada. In this case, the Officer made no findings that were, or could be construed as, credibility findings.

- [31] The Applicants also rely on *Gurusamy v Canada* (Citizenship and Immigration), 2011 FC 990 [Gurusamy]. Specifically, the Court's determination in that case that a reavilment finding failed to consider that the applicant had fled as a result of two precipitating incidents that occurred after the date of the reavilment, leading to the statement that "[s]ubsequent persecution after re-availment does not preclude a person from making a claim for refugee status without being faced with the re-availment argument" (at para 40). I would first note that Gurusamy did not concern a PRRA decision. Further, in this matter, the RAD addressed the reavilment finding:

[65]...While I acknowledge that the Appellants' situation worsened after the Principal Appellant returned to Pakistan in 2017, it remains that, according to his testimony, prior to his return, religious fanatics had attacked him, people from his mosque had gone to his home and threatened to kill him, and he had received calls threatening to kill him and his family. Considering the serious risk to the Principal Appellant prior to his return to Pakistan, including a physical attack and threats to kill him and his family, I find that the RPD was correct in determining that the Principal Appellant's reavilment undermined his credibility and subjective fear.

- [32] And, in any event, the PRRA Officer's decision was not based on a failure to consider, or rejection of, a claim of persecution subsequent to reavilment. The decision was based on rejection of the new evidence which failed to overcome the RPD and RAD credibility and reavilment findings.
- [33] Finally, the Applicants now argue that the PRRA Officer should have convened an oral hearing to assess the credibility of the new evidence. An oral hearing may be required if a PRRA application is refused due to credibility concerns (see e.g., *AB v Canada* (Citizenship and Immigration), 2019 FC 165 at para 23). However, the Applicants did not seek an oral hearing, nor did the PRRA Officer make any credibility findings. Accordingly, this submission is of no merit.
- [34] To conclude, in my view and in these circumstances, the PRRA Officer reasonably excluded the new evidence and did not err in their treatment of the RPD and the RAD's credibility findings.

Proposed Question for Certification

- [35] At the hearing the Applicants proposed the following question for certification, pursuant to s 74(d) of the IRPA:

Where the PRRA application contains evidence of new acts of persecution targeting the applicant after the RPD hearing but carried out by the same agents of persecution and for the same reasons as alleged at the RPD hearing – is that new evidence that can be considered under IRPA s 113(a)?

- [36] As the Applicants did not provide the Respondent with notice of the proposed question, contrary to the Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings, I allowed the Respondent to make subsequent written submissions to address the proposed question.
- [37] The Respondent opposes the question proposed for certification, arguing that it does not meet the required test. The question is answered by settled case law and, therefore, does not constitute a question of general importance. Further, that it is not dispositive of the appeal. The Respondent submits that the Officer did not find, nor did the Respondent argue on judicial review, that the type of evidence referred to in the proposed question could never meet the test established under s 113(a) and by Raza. The question turns on the particular facts of the case and therefore does not give rise to an answer of general application. Whether new allegations are substantially similar to prior allegations found not to be credible, and whether the quality of “new” evidence is such that the prior credibility findings are capable of being rebutted, is necessarily a fact-dependent question. The FCA could therefore only rule on whether the PRRA Officer reasonably determined that the evidence was not “new” in this particular case.
- [38] I note that in *Tesfaye v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 2040, Justice Gascon recently provided a comprehensive summary of the test for a certified question:
- [76] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved." To be certified, a question must be a serious one that: (i) is dispositive of the appeal; (ii) transcends the interests of the immediate parties to the litigation; and (iii) contemplate an issue of broad significance or general importance (Mason at para 37; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15-16 [Mudrak]; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [Zhang]). The question must also have been dealt with by the Court, and it must arise from the case rather than from the Court's reasons (*Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 28 [Obazughanmwun]; *Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 29). Finally, and as a corollary of the requirement that it be of general importance, it must not have been previously settled in an earlier appeal (*Obazughanmwun* at para 28; *Rrotaj v Canada (Citizenship and Immigration)* 2016 FCA 292 at para 6; *Mudrak* at para 36; *Krishan v Canada (Citizenship and Immigration)* 2018 FC 1203 at para 98; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37).

- [39] The question as framed by the Applicants is not dispositive of this judicial review. Whether or not a PRRA officer can consider new evidence concerning new acts of persecution following a RPD hearing but carried out by the same agents and for the same reasons as alleged before the RPD, is not at issue in this case and consequently is not determinative of the outcome. The PRRA Officer did consider the proposed new evidence. The dispositive issue here is whether the Applicants' new evidence contained materially the same information as was before the RPD and the RAD and, as such, whether it was sufficient to overcome the credibility concerns of the RPD and the RAD.
- [40] It is clear from the language of s 113(a) of the IRPA that PRRA officers are empowered to consider evidence presented by the Applicants "that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection". There is no statutory restriction that prohibits an applicant from presenting evidence of the nature described by the Applicants in the proposed question. Moreover, Raza provides further clarity on what a PRRA officer may consider when assessing new evidence (at para 13), which again does not bar consideration of the new evidence as described by the Applicants in their proposed question for certification.
- [41] I also note that the jurisprudence also suggests that PRRA officers can consider evidence of new acts of persecution targeting an applicant occurring after an RPD hearing, carried out by the same agents of persecution and for the same reasons as alleged at the RPD hearing (see, e.g., Kulanayagam).
- [42] Accordingly, it would not be appropriate in the circumstances to certify the Applicants' proposed question for certification and I decline to do so.

JUDGMENT IN IMM-1076-24

THIS COURT'S JUDGMENT is that

The application for judicial review is dismissed;

There shall be no order as to costs; and

The question proposed is not accepted for certification.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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