Federal Court  Cour fédérale

Date: 20250508

Docket: IMM-1583-23

Citation: 2025 FC 843

Ottawa, Ontario, May 08, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ANITA HORVATHNE MAJOROS
ATTILA HORVATH
ALEX HORVATH
LEILA MELANI HORVATH
REKA VALERIA RACZ
GABOR MATE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Anita Horvathne Majoros [Anita], Attila Horvath [Attila], Alex Horvath [Alex], Leila Melani Horvath [Leila], Reka Valeria Racz [Reka], and Gabor Mate [Gabor] are all

Roma citizens of Hungary. In June 2018, the Applicants gained Convention refugee protection in Canada.

[2] On June 13, 2021, the Minister of Public Safety and Emergency Preparedness Canada [Minister] made an application to vacate the refugee protection of the Applicants. The Minister alleged that Anita (mother, and primary Applicant), and her adult son, Gabor (Co-Applicant) [together, Primary Applicants] misrepresented and withheld material facts relating to their original claims for refugee protection. Specifically, the Minister alleged the Primary Applicants withheld information regarding criminal charges against them in Hungary.

[3] The Refugee Protection Division [RPD] vacated all the Applicants' claims on March 17, 2022. The Applicants brought an application for judicial review before this Court [IMM-2991-22] and the parties settled the matter, based on the RPD's failure to provide reasons for vacating the refugee status of the [then] minor Applicants, Attila, Alex, Leila, and Gabor's common-law partner, Reka [Associate Applicants]. The underlying decision was set aside, and the matter was remitted for redetermination by a different panel of the RPD.

[4] The RPD's redetermination hearing was held on January 20, 2023. The RPD released its decision on January 26, 2023 [Decision], again vacating the refugee claims of all Applicants.

[5] For the present issue, the Associate Applicants and the Respondent agree the RPD likewise erred in its assessment of the Associate Applicants' claims. Both parties request that the matter of the Associate Applicants be remitted to the RPD for reconsideration.

[6] The Primary Applicants argue that the RPD failed under section 109(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], to consider if any of the evidence relating to the Primary Applicants remained untainted, and to assess any untainted evidence regarding its sufficiency to allow for a positive determination. The Respondent submits that the application for judicial review should be dismissed, in part, concerning the RPD's finding relating to the Primary Applicants.

[7] For the following reasons, the application for judicial review is granted. The matter is remitted to the RPD for redetermination.

II. Background

[8] The Applicants entered Canada and applied for refugee protection February 25, 2015.

[9] The Decision under review has a lengthy history of various proceedings before the RPD and the RAD leading up to this Decision. For the purposes of the present matter, these are not at issue. The only issue remaining from the previous proceedings stems from the misrepresentation or withholding of information related to the histories of criminality of the Primary Applicants prior to entering Canada.

III. The Decision

[10] The RPD vacated the refugee protection of all the Applicants in accordance with *IRPA* s 109(1). The RPD found the grant of refugee protection was obtained as a result of

misrepresenting or withholding material facts relating to the histories of criminality of the Primary Applicants prior to entering Canada. The RPD found there were serious reasons for considering the Primary Applicants committed serious non-political crimes outside of Canada before seeking refugee protection in Canada. The RPD found the Primary Applicants "are excluded from protection" under *IRPA* s 98 and Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*, 28 July 1951 [Article 1F(b)].

[11] Under *IRPA* s 109(2), regarding "other sufficient evidence [that] was considered at the time of the first determination to justify refugee protection", the RPD found:

> [33] The Panel finds that the material facts which the Respondents misrepresented and withheld are so fundamental that the remaining evidence is thoroughly tainted, and that there remains no sufficient evidence on which to reject the Minister's application. The Panel finds that the Respondents obtained refugee protection as a result of the Respondents withholding the material fact of their respective histories of criminality; that the original RPD Panel and the RAD were precluded from determining whether the Respondents should be excluded; and that this likely would have led to a finding that the Respondents' narratives of persecution were not credible.

[12] The RPD found the decision leading to conferral of refugee protection was nullified for the Primary Applicants, and by extension, the Associate Applicants. The Minister's application to vacate the refugee protection of all the Applicants was therefore, granted.

IV. Issues and Standard of Review

[13] The main issue is whether the Decision concerning the Associate Applicants is reasonable. A secondary issue relates to whether the RPD properly exercised its discretion pursuant to IRPA s 109(2) in vacating the Primary Applicants' refugee status.

[14] The parties agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]). A decision will be unreasonable if the reasons, read holistically, fail to reveal a rational chain of analysis, or reveal an irrational chain of analysis. Rationality is questioned where the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations, or an absurd premise (*Vavilov* at paras 103-4). Finally, misapprehension of evidence, or failure to account for evidence, renders the decision unreasonable (*Vavilov* at para 126).

V. Analysis

(1) Applicants' Position

(a) *Is the Decision concerning the Associate Applicants reasonable*

[15] The RPD's determination to vacate all Applicants' refugee protection due to the misrepresentations of the two Primary Applicants was in error. Though the Applicants applied as a family, refugee protected status is an individual protection. The RPD removed the protection of persons in need that had no part in the misrepresentations given.

[16] The RPD cited *Canada (Public Safety and Emergency Preparedness) v Gunasingam*, 2008 FC 81 (at para 7) [*Gunasingam*] as determining the three elements to be considered under *IRPA* s 109(1):

1. There must be a misrepresentation or withholding of material facts.
2. Those facts must relate to a relevant matter.

3. There must be a causal connection between the misrepresenting or withholding on the one hand and the favourable result on the other.

[17] The RPD failed to consider the third element of the test: the need for protection based on the establishment that the Applicants:

> "…as Roma from Miskolc, … have been the victims of repeated incidents of discrimination, harassment, threats, and abuse of a variety of forms cumulatively amounting to persecution. The appellants suffered numerous incidents of slurs and harassment, segregation at school, discrimination in employment, health care, police responses etc."

[18] The Associate Applicants were minors at the time of the refugee protection application. They did not complete Schedule A, nor were they charged for any crime in any country. The alleged criminality of the Primary Applicants has no bearing on the claims of the Associate Applicants. Therefore, the RPD's Decision relating to the Associate Applicants is unreasonable (*Mella v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1587 at paras 33-4, citing *Tobar Toledo v Canada (Citizenship and Immigration)*, 2013 FCA 226, see para 55 [*Toledo*]).

[19] When a minor child's condition is different from that of a vacated parent, the consequence of misrepresentation is not shared by the child (*Toledo* at para 68). Evidence of persecution, racism, and impacts to the education of the Associate Applicants are present in the original claim. Additionally, the amount of time, effort and money defending this application has been quite significant, particularly in light of the Associate Applicants' lack of involvement in the misrepresentations.

[20] *Coomaraswamy v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 153, [*Coomaraswamy*], followed by the RPD, is distinguishable. In that case the misrepresentation related to the Minister's allegations of forged birth certificates, which was central to the granting of the Minor Applicants' claims (*Coomaraswamy* at para 5). In the present case, the withholding of the information was related to the Primary Applicants' previous "histories of criminality" in Hungary.

[21] The misrepresentations in the present case did not relate to the original basis for receiving refugee protection, namely, fear of persecution and maltreatment in Hungary. The protection the Associate Applicants received in Canada was warranted and should not be affected by the Primary Applicants' actions.

[22] Finally, the RPD erred in not considering the applicability of *IRPA* s 109(2) to the Associate Applicants. The RPD is obligated to meaningfully assess whether sufficient untainted evidence remained to support the original determination (*Otabor v Canada (Citizenship and Immigration)*, 2020 FC 830 at para 22 [*Otabor*], citing *Sethi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1178 at para 25 [*Sethi*]). This was never done.

(b) *Did the RPD properly exercised its discretion pursuant to IRPA s 109(2) in vacating the Primary Applicants' refugee status*

[23] Though the RPD's Decision relating to the Primary Applicants under *IRPA* s 109(1) is not disputed, the RPD failed to consider whether, under *IRPA* s 109(2), it should exercise its discretion to justify refugee protection of the Primary Applicants.

[24] Under *IRPA* s 109(2), the RPD may reject the Minister's application where other sufficient evidence justifies refugee protection (*Otabor* at paras 24-5, citing *Sethi*, and *Babar v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 216). Again, this was never done. Instead, the RPD made a blanket statement that the misrepresented and withheld material facts "are so fundamental that the remaining evidence is thoroughly tainted, and that there remains no sufficient evidence on which to reject the Minister's application." This finding is unreasonable and constitutes a serious error, bearing in mind the many instances of discrimination and mistreatment by racist Hungarians and at the hands of police and hospital staff in the evidentiary record.

[25] The police records, hospital records and other evidence were found to be objectively verifiable documents by the RAD in its final grant of Convention refugee protection. However, the RPD's Decision does not address any of this "clear convincing evidence that is both reliable and probative."

[26] The RAD, in initially granting refugee status, found the Applicants' credibility was already in question. Refugee status was granted despite these credibility issues based on the reliable, probative evidence of anti Roma persecution on the record, including the objectively verifiable documented evidence and country condition evidence included in the record. The initial refugee protection was granted due to discrimination and persecution, absent state protection, and in fact perpetrated by the state in some instances, with no viable Internal Flight Alternative.

[27] In this present Decision, the RPD did not consider any of this evidence, nor did it assess whether the criminal charges formed part of the police persecution of the Primary Applicants based on their Roma ethnicity. Regardless of their potential criminality, the RPD had an obligation to assess these factors and determine if the Applicants were nevertheless eligible for refugee protection. The RPD's unexplained blanket statement that the entire record was tainted does not account for this contradictory evidence. The Decision is therefore unreasonable.

(2) Respondent's Position

(a) *Is the Decision concerning the Associate Applicants reasonable*

[28] The Respondent concedes that the RPD should not have excluded nor vacated the claims of the Associate Applicants, and consequently these aspects of the RPD's Decision should be remitted back for reconsideration.

(b) *Did the RPD properly exercised its discretion pursuant to IRPA s 109(2) in vacating the Primary Applicants' refugee status*

[29] The Applicants as a group obtained refugee protection as a direct result of withholding material facts. As a result, in the previous proceedings, the RPD and RAD were precluded from making determinations related to Article 1F(b) exclusion due to criminality. With the benefit of this evidence, the RPD and RAD may have found issues of credibility with the Applicants' narratives of persecution.

[30] Under *IRPA* s 109(1), the RPD can vacate a refugee protection decision where misrepresentation is found. The burden of proof lies with the Minister (*Hailu v Canada (Citizenship and Immigration)*, 2021 FC 15 at para 12), who is required to meet the following test:

> 1. There be a misrepresentation or withholding of material facts;
> 2. Those facts relate to a relevant matter; and
> 3. There be a causal connection between the misrepresenting or withholding on the one hand, and the favourable result on the other.
>
> (*Haji v Canada (Citizenship and Immigration)*, 2022 FC 291 at para 30)

[31] Should the Minister meet this burden, the RPD may still reject the vacation application if it is satisfied there remains other sufficient evidence justifying refugee protection on the record of the first determination (*Gunasingam* at para 8).

[32] The RPD considered whether there was other evidence to justify refugee protection. The RPD found the misrepresentations so fundamentally tainted the remaining evidence that no evidence was left to consider. Therefore, the RPD's findings concerning the Primary Applicants are reasonable.

[33] With no sufficient evidence remaining upon which to grant refugee protection, and the Applicants' failure to point to evidence contrary to the RPD's findings, this is simply a disagreement with the outcome of the redetermination.

[34] The Respondent requests that this application for judicial review be granted only in part, with no order as to costs. The Respondent agrees that the RPD's Decision in relation to the Associate Applicants should be set aside and remitted for redetermination. However, the Respondent requests that the remainder of the judicial review, relating to the RPD's findings on the Primary Applicants' claims be dismissed.

(3) Conclusion

(a) *Is the Decision concerning the Associate Applicants reasonable*

[35] Both the Applicants and Respondent submit that the Decision regarding the Associate Applicants was unreasonable, in error, and should be returned to the RPD for reconsideration. I agree. The RPD's reasons were unintelligible and unreasonable in determining that the Associate Applicants' refugee claims were vacated by extension due to the misrepresentations or withholding of information by the Primary Applicants.

[36] While the parties agree that the RPD's treatment of the Associate Applicants' claims was unintelligible and unreasonable, the parties disagree as to the exercise of discretion pursuant to *IRPA* section 109(2) in relation to the Primary Applicants.

(b) *Did the RPD properly exercised its discretion pursuant to IRPA s 109(2) in vacating the Primary Applicants' refugee status*

[37] On an *IRPA* s 109 application to vacate refugee status, the Minister bears the burden of proof, as noted above, to show: 1) A misrepresentation or withholding of material facts occurred;

2) Those facts relate to a relevant matter; and 3) There is a causal connection between the misrepresenting or withholding on the one hand and the favourable result on the other. It is incumbent on the RPD to make findings on each of these three steps, which involves "full and fair consideration" of all the evidence. (*Gunasingam*; *Canada (Public Safety and Emergency Preparedness) v Bafakih*, 2022 FCA 18 at paras 40 and 43 [*Bafakih*]).

[38] In this case, the Decision specifies:

> [9] The Respondents failed to disclose that they committed a series of criminal acts in Hungary prior to arriving in Canada, namely that Anita (the Principal Respondent) and her son, Gabor (Associate Respondent) failed to disclose that they were wanted fugitives at the time of their arrival in Canada.

[39] The RPD states the Primary Applicants' "histories of criminality" that were withheld would have likely resulted in an Article 1F(b) exclusion. The RPD further found the Applicants are excluded at paragraph 12:

> DETERMINATION
>
> [12] The Minister's application to vacate the status of the Respondents is allowed and the Respondents' refugee claims are deemed to be rejected. **The Panel further finds that the Respondents are excluded from protection under section 98 of the IRPA and Article 1F(b)**. [Emphasis added]

[40] Refugee exclusion under Article 1F(b) is limited to serious crimes. Serious crimes that are generally capable of grounding an Article 1F(b) exclusion finding are those which, if assessed as occurring in Canada, would attract a maximum sentence of ten or more years (*Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404 [*Jayasekara*]; *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 [*Febles*]). In *Jayasekara* the

Federal Court of Appeal listed the following factors, which must be examined on an Article 1F(b) "serious" crime determination:

1. elements of the crime;
2. the mode of prosecution;
3. the penalty prescribed;
4. the facts; and,
5. the mitigating and aggravating circumstances underlying the conviction.

[41] In *Febles*, the Supreme Court of Canada, added to these factors to include consideration of the Canadian sentencing range to determine where the alleged crime would fall in the sentencing spectrum. Though the RPD may not determine the sentence with "precision" it must grapple with the lower and higher ends of the sentencing range given the factual matrix of the case (*Lin v Canada (Citizenship and Immigration)*, 2021 FC 1329 [Lin] at para 34).

[42] After listing the factors for consideration from the jurisprudence, the Decision states:

> [44] The Principal Respondent and adult Associate Respondent (Gabor) were charged by Hungarian law enforcement with drug trafficking offenses and an International Interpol Red Notice was subsequently issued for their arrest. The Panel finds that the evidence constitutes serious reasons for considering that the Respondents committed a serious non-political crimes [*sic*] outside of Canada before seeking refugee protection in Canada.

[43] No factual matrix assessment occurred. Beyond quoting allegations from Gabor's warrants, no findings of fact occurred. No mode of prosecution assessment occurred. No consideration was given to the reasons the police chose to lay charges for possession only (rather

than trafficking), the fact that this would have been a first offence, nor any impact this would have to the mode of prosecution (indictment or summary), nor sentencing range. No mitigating nor aggravating factors were assessed. In particular, no consideration was given to the defendants' age, any previous criminal record or similar charge, any criminal organization connection, any absence or presence of violence, any absence or presence of a weapon, nor even the serious nature nor amount of substance in possession (*Narkaj v Canada (Citizenship and Immigration)*, 2015 FC 26).

[44] The RPD's Decision simply cited the Minister's submissions on the equivalent Canadian offence and the maximum sentence under an indictment charge, without considering the seriousness of the alleged crime itself (*Radi v Canada (Citizenship and Immigration)*, 2012 FC 16 [*Radi*]). This is unreasonable.

[45] Furthermore, the Minister's burden of proof under an Article 1F(b) exclusion must rise to the threshold of "a serious possibility that the applicant has indeed committed a serious crime." Though the crimes need not have been prosecuted, nor convicted, "the Minister cannot simply rely on the laying of charges to meet his burden of proof" (*Arevalo Pineda v Canada (Minister of Citizenship and Immigration)*, 2010 FC 454 at paras 25 and 31 [*Pineda*])**.**

[46] *Pineda* (at paras 27-31) also describes the reasons underpinning the burden of proof on the Minister:

> [27] …the need for "serious grounds" is protection against arbitrary and capricious action especially in light of the dire consequences resulting from an exclusion pursuant to Article 1F(b) of the Convention. <u>For this standard to be meaningful, it requires a</u>

> proper and objective assessment of the context as well as all the evidence presented by the refugee claimant.
>
> …
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> [30]…the RPD must first be satisfied that the issuing authority does respect the rule of law, that is, for example, that it is not dealing with a country known for the filing of false charges as a means of harassment or intimidation. [Emphasis added]

[47] In terms of the "series of criminal acts" committed prior to the Applicants' entry in Canada, the Minister's evidence consists of two sets of charges, as follows.

[48] First, one set of charges pertains to a list of alleged recurrent thefts of razors and perfume by Gabor. The incidents of theft listed in the charges are alleged to have occurred in Hungary after the Applicants arrived in Canada (June 26, 2015, August 3, 2015, August 17, 2015, and August 27, 2015). These charges were terminated prior to this Decision. This information was in the record before the RPD in this Decision. The RPD failed to assess this evidence.

[49] Even if these events had occurred while Gabor was in Hungary, and were entirely legitimate charges, these types of crime do not satisfy an Article 1F(b) exclusion without the presence of significant aggravating factors, even where the alleged criminal acts were committed "on a regular basis" (*Brzezinski v Canada (Minister of Citizenship and Immigration)*, [1998] 4 FC 525, 1998 CanLII 9079 (FC) [*Brzezinski*]).

[50] Second, the Minister provided evidence showing one charge each against Gabor and Anita for possession of an illegal substance. These are the first charges for possession on the criminal record of either of the Primary Applicants' record. The illegal substance is a synthetic

cannabinoid in three 100-gram quantity postal packages. There is no indication on the record of any aggravating factors, such as: use of weapons; injury to persons; serious nature of the type of drugs involved; nor any evidence of this alleged criminal conduct previously (*Brzezinski*).

[51] Letters from the Applicants' Hungarian legal counsel corroborated that: the set of false theft charges had been terminated prior to the hearing; the substance was not illegal at the time of purchase; both Anita and Gabor had not been charged prior to entry in Canada; both Primary Applicants were freely released after police questioning; and neither Primary Applicant had a prior criminal record. This evidence was not assessed by the RPD.

[52] As above, the RPD states the Primary Applicants "failed to disclose that they were wanted fugitives at the time of their arrival in Canada." However, arrest warrants for charges of "Illegal Possession of New Psychoactive Substances" were issued for both Primary Applicants in Hungary on July 22, 2015, five months after the Applicants arrived in Canada. Neither arrest warrant cites charges of trafficking, nor possession for the purposes of trafficking. Without delving into the details of the comparisons of the offences for trafficking or possession, I will simply note that on a first offence, in the amounts indicated, neither charge is sufficient to satisfy the seriousness requirement for exclusion under Article 1F(b).

[53] The Minister's evidence for these charges were international arrest warrants issued by the Court of Miskolc. No assessment of the issuing authority was ever done (*Pineda* at para 30). The RPD simply accepted the Minister's evidence as proof of a "series of criminal acts". The RPD did so despite blatant internal contradictions within the warrants themselves. The RPD gave no

consideration to the obvious falseness of these charges, nor the fact that the charges for possession of an illegal substance and theft on a regular basis were issued by the same authority. This is unreasonable.

[54] In addition to this potential Article 1F(b) exclusion finding, the Decision suggests the Primary Applicants' misrepresentation prevented the RAD from conducting a fulsome analysis of credibility concerns. However, as shown below, the Applicants' credibility was a live issue in the Decision ultimately granting them Convention refugee status. The RAD granted the Applicants refugee status in spite of credibility concerns, and based on the objective evidentiary record.

[55] The arguments presented in the judicial review submissions do not consider the *IRPA* s 109(1) analysis of the Primary Applicants, nor their Article 1F(b) exclusion. The Applicants argue instead that the RPD failed to consider *IRPA* s 109(2) refugee protection based on any remaining untainted evidence on the record.

[56] As above, the Respondent submits the RPD turned its mind to the sufficiency of any untainted evidence to justify refugee protection, finding the misrepresentations so fundamental as to taint the entire record, and justify the Minister's application to vacate.

[57] In terms of the s 109(2) analysis, the Decision states:

> [28] The Panel finds that given this misrepresentation of their personal histories, **the Respondents [*sic*] statements and evidence before the original RPD Panel are thoroughly tainted.**

> …. The Panel finds that this has called into question the Respondents' narratives of persecution.
>
> …
>
> [33] The Panel finds that the material facts which the Respondents misrepresented and withheld are so fundamental that **the remaining evidence is thoroughly tainted, and that there remains no sufficient evidence on which to reject the Minister's application**.

[58] As noted above, the record in this case not only undermines the alleged "history of criminality" but supports the Applicants' claims that they have been wrongfully persecuted by the state. Yet the RPD failed to consider this, failed to examine this evidence, and failed to conduct any analysis of any of the Applicants' objective evidence on the record before it.

[59] The RPD's blanket determination that the remaining evidence is thoroughly tainted, fails to account for the objective evidence that was found to outweigh the Applicants' credibility issues by the RAD. The RPD raises concerns with credibility issues stemming from the Applicants' statements at the port of entry and at their refugee hearing that they had "no" problems with police. However, this precise issue was considered in the RAD's decision granting the Applicants Convention refugee status:

> [14] Having independently reviewed the evidence, the RAD agrees with the appellants. In this regard, the RPD placed undue emphasis upon apparent issues with statements made by the appellants at the port of entry and at the hearing. In this regard, the RPD failed to take into consideration the specific circumstances of these appellants, including their clearly corroborated health issues and psychological obstacles; lack of sophistication regarding immigration processes; and their reliance on interpretation etc. The RPD further failed to adequately consider all of the evidence, including the appellants' detailed narratives and **corroborating documents that included police reports, fine notices, newspaper articles showing their participation in protests**

> **against their evictions, medical documentation, government notices etc.**
>
> [Emphasis added]

[60] Despite credibility issues, the RAD granted Convention refugee status specifically because of the objective documentary evidence, and country condition evidence which clearly corroborated the persecution of the Applicants by the state. I note that the RAD arrived at this conclusion even without having considered the false charges of theft against Gabor. Clearly the Primary Applicants' misrepresentation cannot be said to have led to the granting of Convention refugee status by the RAD.

[61] The Applicants' evidence, including country condition evidence, before the RPD demonstrates clearly that the Applicants have been persecuted by "a country known for the filing of false charges as a means of harassment or intimidation" (*Pineda* at para 30). The RPD failed to assess the evidence before it, failed to consider objectively verifiable corroborative evidence on the record, and failed to consider or even mention relevant country condition evidence.

[62] Applicants facing vacation proceedings are "entitled to the clearest assurance that the Refugee Division has given full and fair consideration to the evidence" (*Bafakih* at para 43). This clearly did not happen in this Decision. Instead, the RPD made a blanket rejection of all of the Applicants' evidence, including the country condition evidence on the record. The RPD made findings that were not supported by, and were even undermined by, the record before them. This misapprehension of evidence, and failure to account for evidence, renders the entire decision unreasonable (*Vavilov* at para 126).

VI. Remedy

[63] The Applicants request that the entire matter be remitted to the RPD for redetermination by a different RPD Member.

[64] The Respondent concedes that the RPD should not have excluded nor vacated the claims of the Associate Applicants. Consequently, the Respondent agrees that the Court should set aside the RPD's vacation and exclusion findings with respect to the Associate Applicants (*Tancos v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 7 at para 24; *Abkarovicova v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1546 at paras 17-18). However, the Respondent maintains that this application for judicial review should be dismissed, in part, with respect to the Primary Applicants' protected status.

[65] The Respondent submits that no costs should be ordered. The Applicants' submissions are silent on costs.

[66] I am declining to exercise my discretion to award costs. Although the Respondent wasted considerable resources by failing to concede several issues until the hearing, the Applicants did not request costs in written or oral submissions.

VII. Conclusion

[67] The application for judicial review concerning the RPD's Decision to vacate the refugee claims of the Applicants is granted.

[68] There is no order for costs.

[69] There is no question for certification.

JUDGMENT in IMM-1583-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The RPD's Decision vacating the Applicants' refugee claims is remitted for redetermination by a different member of the RPD.

2. There is no question for certification.

3. There is no order for costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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