



[2021] 3 F.C.R. D-18

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Judicial review of decision by Refugee Appeal Division (RAD) affirming decision by Refugee Protection Division (RPD) denying applicant's refugee claim — Applicant Hong Kong citizen who participated in pro-democracy movement — Investigated by police for assault — Eventually arrested, released on bail — Given notice to reappear at police station for identification lineup — Applicant stated that police were trying to charge her on false grounds without evidence — Filing refugee claim in Canada — RPD denied applicant's claim on grounds applicant did not establish persecution under *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), s. 96 or harm under Act, s. 97 — Prior to appeal before Refugee Appeal Division (RAD), applicant discovering that RPD member had past appointment with government of Hong Kong Special Administration Region (SAR) — RAD described grounds of appeal raised by applicant as "underdeveloped" — Rejecting argument that RPD member relied on his own "personal point of view to judge this case and its credibility" — Applicant bringing up apprehension of bias on part of RPD member for first time here — Alleging, *inter alia*, that RPD member's behaviour towards her evidence of member's lack of impartiality — Main issue whether RPD member's recent employment in Hong Kong Executive branch, conduct at hearing gave rise to reasonable apprehension of bias — Questions to be decided whether applicant waived her right to raise bias by not raising it before RAD, whether evidence of member's past employment admissible on judicial review — Respondent arguing that applicant waived her right to argue bias based on *Love v. Canada (Privacy Commissioner)*, 2015 FCA 198 wherein Federal Court of Appeal stated that "allegations of [bias] must be made before the administrative decision-maker and cannot be raised for the first time on judicial review" — However, present case distinguishable from other cases in that applicant did raise issue of member's impartiality, hearing conduct before RAD, although not in precise legal language of apprehension of bias — Applicant expressed her concern about member's presumptions about her case in her post-hearing submission to RPD — Clear that applicant alleged "prejudice", lack of impartiality on part of member — RAD briefly addressed applicant's impartiality concern — Given that applicant did raise conduct of member in her appeal to RAD, applicant did not waive her right to raise bias — However, applicant waived her right to raise issue of bias based on member's previous employment with government of Hong Kong SAR — Member's previous employment *per se* not raising reasonable apprehension of bias — RPD members presumed to be impartial, required to swear oath of impartiality — This presumption applying regardless of members' prior employment — Nevertheless, member's conduct giving rise to reasonable apprehension of bias in this case as member's questioning going over line of being inquisitive, becoming argumentative — Member's tone throughout hearing dismissive, almost contemptuous — RAD decision not curing appearance of bias — Matter returned to RAD for determination by different member — Application allowed.

CHAN V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-2239-20, 2021 FC 1378, Go J., reasons for judgment dated December 8, 2021, 29 pp.)