



EDITOR'S NOTE: This document is subject to editorial revision before its reproduction in final form in the *Federal Courts Reports*.

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Consolidated applications for judicial review of decision by respondent Minister's delegate finding applicants ineligible to claim refugee status in Canada because of prior claim in United States (U.S.) — Applicants, then minors, came to U.S. from Colombia, applied for asylum — Later withdrew U.S. applications, joined their mother in Canada, claimed refugee status in Canada — Delegate found them ineligible to do so, based on *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act), s. 101(1)(c.1) — Decision based on proof that applicants had made claim for refugee protection in U.S. — Did not mention that applicants were unaccompanied minors when they signed U.S. forms, nor did it explicitly state how it interprets s. 101(1)(c.1) or give reasons for such interpretation — Whether delegate's decision reasonable — Decision unreasonable, because delegate failed to consider relevant evidence regarding applicants' lack of legal capacity to make claim for refugee status — Failure likely based on unstated, unexplained assumptions about meaning or interpretation of s. 101(1)(c.1) — Deciding whether claimants made claim for refugee protection sometimes requiring look beyond foreign authorities' confirmation, because language of Act must be read, applied against backdrop of basic legal principles — One of basic principles being that children lacking legal capacity — Parliament acknowledged this principle in Act, s. 167(2), which requires designation of representative where person under 18 involved in proceedings before Immigration and Refugee Board — No evidence that American law different from Canadian law with respect to basic principle that children lacking legal capacity — Delegate did not address impact of this legal constraint on exercise of decision making power — International law relevant to present matter, since it highlights vulnerable position of unaccompanied minors, shows that solution provided by Canadian law, namely appointment of designated representative distinct from legal counsel, has gained wide acceptance — Nothing in *Shahid v Canada (Citizenship and Immigration)*, 2021 FC 1335 (*Shahid*), *Hamami v Canada (Citizenship and Immigration)*, 2022 FC 222 (*Hamami*) barring consideration of child's lack of legal capacity when assessing whether child can be said to have "made a claim" — S. 101(1)(c.1) not vesting discretion in delegate — However, *Shahid* not dealing with exceptional situation of unaccompanied minor, cannot be read as foreclosing inquiry into whether person had legal capacity to make claim — Delegate did not inquire into whether designated representative appointed to applicants in U.S. asylum proceedings, even though issue brought to delegate's attention — No evidence that any representative appointed at any time during applicants' stay in U.S. — Delegate's decisions quashed — Matter remitted to different delegate for reconsideration — Applications allowed.

GARCÉS V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (IMM-1594-20, IMM-4102-20, 2023 FC 798, Grammond J., reasons for judgment dated June 6, 2023, 15 pp.)