

Federal Court



Cour fédérale

Date: 20190301

Docket: IMM-3404-18

Citation: 2019 FC 254

Ottawa, Ontario, March 1, 2019

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

TIMOTHY DURKIN

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

SUPPLEMENTARY JUDGMENT AND REASONS

[1] In accordance with my Judgment in this matter found at 2019 FC 174, the Applicant has proposed the following two questions for certification:

1. When seeking submissions from a long-term permanent resident prior to referring a report to an admissibility hearing under section 44(2) of the IRPA, does the duty of procedural fairness require the disclosure of the evidence in the possession of the Minister which will be relied upon in making a decision?

2. When seeking submissions from a long-term permanent resident prior to referring a report to an admissibility hearing under section 44(2) of the IRPA, does the duty of procedural fairness require the disclosure of information that was withheld from the Minister's response to a request under the Access to Information Act when the Minister intends to rely on that information in making a decision?

[2] The Applicant asserts that these questions meet the test for certification because they would be dispositive of the appeal and also raise an issue of general importance concerning the scope of procedural fairness.

[3] The Respondent argues that these questions should not be certified because they would not be dispositive of the appeal and because they do not raise an issue of general importance.

[4] In my Judgment and Reasons I found that a duty of disclosure could arise in the context of a referral under s 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Indeed, the relevant authorities indicate that, in appropriate situations, the Minister of Public Safety and Emergency Preparedness [Minister] may be required to disclose information to a permanent resident facing the prospect of an admissibility hearing.

[5] The Court's decision was based only on the Applicant's failure to meet the burden of proving that he required information from the Minister to understand and respond to the outstanding criminal allegations in the United States. I found the evidence he submitted was insufficient to establish a lack of awareness, particularly in the face of the notoriety of the criminal charges brought against him and three others in Alabama in connection with a Ponzi scheme.

[6] In the face of this specific finding of a failure to meet the required evidentiary burden, the questions proposed would not be dispositive of an appeal nor do they raise an issue that transcends the facts of this case.

[7] For the foregoing reasons, no questions will be posed for certification.

JUDGMENT in IMM-3404-18

THIS COURT'S JUDGMENT is that no questions will be certified in this proceeding.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3404-18

STYLE OF CAUSE: TIMOTHY DURKIN v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 17, 2019

SUPPLEMENTARY JUDGMENT AND REASONS: BARNES J.

DATED: MARCH 1, 2019

APPEARANCES:

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