

Federal Court



Cour fédérale

Date: 20190405

Docket: IMM-4394-17

Citation: 2019 FC 412

Ottawa, Ontario, April 5, 2019

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

KHAWAJA HASSAN ABBAS

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondents

JUDGMENT AND REASONS

I. Nature of the Proceeding

[1] The Applicant, Mr. Abbas, seeks judicial review of the decision made by a Senior Immigration Officer [the Officer] on September 8, 2017 [the Decision] rejecting Mr. Abbas' Pre-Removal Risk Assessment [PRRA] application. The Officer found that Mr. Abbas was not at risk under subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, I have found that the Decision was not reasonable.

II. Background

[3] Mr. Abbas is a Shia Muslim who was born and raised in Karachi, Pakistan. He entered Canada on February 17, 2009 at Windsor, Ontario along with his wife, two daughters and a son. His son died in a motorcycle accident on August 2, 2011 after which the family moved to Surrey, British Columbia for a fresh start.

[4] Before arriving in Windsor, Mr. Abbas, his wife and children lived in the United States from September, 1997 to February 17, 2009.

[5] On January 28, 2015, Mr. Abbas' wife and daughters were found by the Refugee Protection Division [RPD] to be Convention refugees. Although their refugee claims had been separated from the claim of Mr. Abbas, they relied solely on his Personal Information Form [PIF]. They each confirmed to the RPD that the information in his PIF was correct. The RPD stated it had "no reason to doubt the truthfulness of these claimants."

[6] In the narrative put before the RPD, Mr. Abbas disclosed that he had been a member of the Muhajir Quami Movement Altaf Group [MQM-A] from 1984 to 1997. He claimed that he was an active worker (volunteer) in the MQM-A, that he was not a member but rather was a sympathizer. The RPD accepted that he held meetings at his house to promote and educate the general public about the MQM-A movement which he described as geared "toward freeing the Pakistani people from their dictatorship regime."

[7] On March 16, 2016, Mr. Abbas was found by the Immigration Division [ID] to be inadmissible to Canada under paragraph 34(1)(f) of the *IRPA* for being a member of a group which engaged in “terrorism” as set out in paragraph 34(1)(c).

[8] On April 18, 2016, the RPD notified Mr. Abbas that his pending RPD proceeding was terminated because the Canada Border Services Agency had advised that his claim for refugee protection had become ineligible to be determined.

[9] At the time of finding that he was inadmissible, the ID made a deportation order against Mr. Abbas. His application for leave to judicially review the ID decision was dismissed on June 29, 2016.

III. The Immigration Division Decision

[10] The Immigration Division [ID] decision is dated March 16, 2016. Three issues were considered; all were answered in the affirmative.

[11] The ID determined that:

1. The MQM-A was an organization;
2. The MQM-A was a terrorist organization; and
3. Mr. Abbas was a member of the MQM-A.

[12] In the course of arriving at those determinations, the ID reviewed Mr. Abbas’ PIF and his testimony at the hearing. He was represented by counsel and was cross-examined by counsel for

the Minister. The ID concluded that the information in the PIF was accurate but, at the hearing, Mr. Abbas had tried to minimize his involvement with the MQM-A.

[13] The ID found that Mr. Abbas had received threatening phone calls from a rival group and that gunmen, believed to be members of that group, had fired on his home. He and his family temporarily moved to live with his in-laws but after six months returned home. Three months after that, the threatening phone calls began again. On March 24, 1996, his house caught on fire and was badly damaged. He then moved back to his in-laws' home.

[14] On June 2, 1996, the police arrested Mr. Abbas at his in-laws' house and took him to the local police station where he was held for six days. During that time, he was beaten and tortured. His family paid a bribe for his release. On December 11, 1996, he was kidnapped and tortured by the MQM-H and then thrown in the street. His wounds were severe and he was hospitalized for six days.

[15] The ID found there was no evidence that Mr. Abbas committed any of the terrorist acts attributed to the MQM-A. His most significant activity was promoting the MQM-A's agenda to the general public by holding meetings at his home and at the mosque every two to three months for two or three years. He also allowed the MQM-A to put pamphlets in the waiting room of his x-ray lab.

[16] Although Mr. Abbas never formally joined the MQM-A, the ID reviewed the jurisprudence and found that informal participation or support for a group could be enough. It

noted that three criteria should be considered including the nature of the person's involvement in the organization, the length of time involved, and the degree of the person's commitment to the organization's goals and objectives. Other factors are also noted such as knowledge of the organization's methods and goals, voluntariness of participation, and membership in related groups.

[17] In finding that Mr. Abbas was a member of the MQM-A, the ID noted that he was involved with the organization for a long time (at least from 1988 to 1996), knew about the group's methods and goals, and held educational seminars about the group.

[18] The ID found that Mr. Abbas displayed a very high degree of commitment to the MQM-A. He was threatened and shot at but continued to hold his meetings despite such persecution.

[19] The ID also accepted as accurate all the information in Mr. Abbas' PIF. The PIF included a description of various persecutory events experienced by Mr. Abbas, which are detailed in these reasons.

IV. The RPD decision

[20] Mr. Abbas included with his submissions to the Officer a copy of the RPD decision, granting refugee status to his wife and daughters. The RPD set out that the claims before the panel were unique as it was the narrative of Mr. Abbas which supported them and he was not before the RPD.

[21] The panel found that the three women were members of a particular social group: Shia Muslim women with no male support who have adopted western values. As a result, the panel reviewed the claims only on the basis of section 96 of the *IRPA*. The RPD determined that they would be in danger because of their gender and as returnees from a western country, displaying western values. The panel specifically found that Shia Muslims are a minority in Pakistan and are targeted for gratuitous violence.

[22] The RPD determined that the family members were Convention refugees. It found the family members were credible witnesses and accepted that what they alleged in support of their claims were accurate. The panel, however, rejected as purely speculative that anyone associated with the MQM or any other political party would still be interested in harming Mr. Abbas.

[23] The panel determined there was no Internal Flight Alternative [IFA] anywhere in Pakistan for the family:

One of the major issues for these claimants is that they will be easily recognizable as being westernized and that this creates a serious possibility that radicals, and/or thieves will target them.

[24] In addition, it noted that the relatives of Mr. Abbas might try to locate his wife and daughters to put pressure on him to resume sending money to them or, to sponsor the family to Canada. To avoid that, the family members would have to have no family contact and Mr. Abbas would have to make sure he did not divulge their whereabouts to his relatives.

V. Legislation

[25] Mr. Abbas was found to be inadmissible under section 34(1) of the *IRPA* for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism.

[26] As a result of that inadmissibility finding, Mr. Abbas falls under paragraph 112(3)(a) of the *IRPA* as a person who may not receive refugee protection. Even if he had received a positive PRRA, his removal order would only have been stayed by virtue of paragraph 114(1)(b). If the Minister subsequently became of the opinion that the circumstances surrounding the stay had changed, subsection 114(2) provides that there could be a re-examination of the PRRA and the stay could be cancelled.

[27] Since the inadmissibility of Mr. Abbas was based on security grounds, his PRRA was limited to a consideration of section 97 of the *IRPA* along with “whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada” as provided in subparagraph 113(d)(ii) of the *IRPA*. For this reason, the Officer was precluded from considering section 96 grounds.

[28] Relevant excerpts of the legislation referred to in these reasons are attached at Annex “A.”

VI. Decision under Review

A. *Mr. Abbas's submissions to the Officer*

[29] In his PRRA application, submitted March 14, 2017, Mr. Abbas alleged that he was fearful of returning to Pakistan due to risks arising from:

- his status as a Shia Muslim;
- his past involvement in politics in Pakistan;
- his extended family in Pakistan whom he says may harm him as:
 - he stopped supporting them financially;
 - he did not sponsor them for immigration to Canada;
 - they may extort him as they continue to seek funds and immigration sponsorship;
- his long absence from Pakistan.

[30] Mr. Abbas submitted that the refugee claim of his wife and daughters was allowed on the same basis as his claims were being made.

[31] Mr. Abbas also submitted that he would not be a danger to the security of Canada:

- his involvement with MQM-A was minimal;
- he was not a member of MQM-A; he was merely a volunteer and sympathizer;
- he has a number of health conditions for which he is now taking medication;
- he operates a business and supports his family;
- he does not present a risk to Canadian society in any way;
- he has no criminal record anywhere in the world;
- he has never been back to Pakistan since he left.

[32] In his written submissions, it was pointed out by Mr. Abbas that he had explained his situation and circumstances in detail in his enclosed sworn affidavit.

B. *Documents before the Officer*

[33] Accompanying the submissions were current police clearance certificates from the RCMP, the U.S. Department of Justice, and the District of Central Karachi as well as a number of supporting documents about the conditions in Pakistan for those in the Shia Muslim minority.

[34] The RPD decision for the successful refugee claim of the wife and daughters of Mr. Abbas was submitted as was the personal affidavit of Mr. Abbas sworn on March 27, 2016 in support of his PRRA application.

[35] A vast number of letters of support from a cross-section of the community were also submitted. Other business owners, religious leaders, family and personal friends all attested to the good character of Mr. Abbas as well as his hard work and honesty. He is described repeatedly as a good member of the community. Mr. Abbas' health records, business records, and a number of family photographs were also before the Officer.

[36] A psychological assessment of Mr. Abbas' wife by Dr. Paul Ungar dated November, 2014 was submitted. Dr. Ungar concluded that she suffered from "Adjustment Disorder with Depressed Mood, Dependent Personality Disorder and Other Conditions that may be of clinical attention: existential insecurity." The gist of the report was that she had a chronic pattern of over-reliance on her husband which had worsened after the death of her son. She was also found to have "an intense fear of separation from her husband, and bewilderment at the prospect of having to live without a male protector" if he was deported.

C. *The Officer's Findings*

[37] The Officer identified the risks for Mr. Abbas in Pakistan as his religion, being a minority Shia Muslim, and his own family members.

[38] The Officer noted that the PRRA application of Mr. Abbas would be conducted only on the basis set out in section 97 of the *IRPA* because he was described in subsection 112(3).

[39] The Officer went on to refer to the finding of the ID that Mr. Abbas was a member of MQM-A and set out a lengthy extract from the ID decision discussing the PIF and summarizing at a high-level the discussion regarding why the ID came to the conclusion that Mr. Abbas was a member of the MQM-A.

[40] The Officer then summarized the PRRA application of Mr. Abbas referring to his fear of violence and the atrocities being committed against Shia Muslims: namely, he is afraid people in the city and country pose the great risk to his life and that the government of Pakistan is unwilling and/or unable to control the violence against Shia Muslims.

[41] The Officer also set out the submissions that Mr. Abbas has no criminal record, was not active in the MQM-A nor violent and that he feared his extended family as he no longer supports them.

[42] The Officer discusses that a number of news articles and reports were submitted by Mr. Abbas and responds to this material as follows:

These documents contain varied information on criminal acts, are generalized in nature and do not mention the applicant or address the material elements of the present application. While I have considered this documentation and articles in the context of assessing country conditions, I do not find that they demonstrate that the applicant is personally at risk in Pakistan. Furthermore, neither the applicant nor his counsel have provided any other submissions relating to any risks that are personal to the applicant. None of this material corroborates or substantiates the applicant's allegations or addresses his personal circumstances in any way. I acknowledge the country conditions and find they are far from favourable however there is insufficient persuasive evidence to indicate that the applicant would be personally targeted.

[43] The Officer observed that the various documents of support, photographs in Canada, and Canada Revenue Agency documents submitted by Mr. Abbas address humanitarian and compassionate issues that do not fall under sections 96 and 97 of the *IRPA*.

[44] The Officer stated that there was insufficient objective evidence that Mr. Abbas would be at risk if he returned to Pakistan. He had not provided evidence that he would likely be a person of interest to the fanatics targeting Shia Muslims. He had not provided sufficient objective evidence that because of his personal circumstances or his past activities, he would be a person of interest to anyone if he returned to Pakistan.

[45] The Officer then finds that there is insufficient evidence to conclude that Mr. Abbas, if returned to Pakistan, would be subjected personally to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. There was also insufficient evidence to

conclude that “the instigator of such harm in this case is an official of the Pakistani government in any form, or that the Pakistani government would consent to an individual harming”

Mr. Abbas.

[46] As set out in detail in the analysis portion of these reasons, no specific reasons were given by the Officer for these findings.

[47] Nonetheless, based on the conclusions, the Officer rejected the PRRA application under section 97 of the *IRPA*.

VII. Issues and Standard of Review

A. *Issues*

[48] Mr. Abbas raises three issues:

- 1) Did the Officer incorrectly analyze the evidence?
- 2) Was the Decision unreasonable and was there a failure to weigh evidence?
- 3) Did the Officer breach procedural fairness by failing to provide Mr. Abbas with an oral hearing as he never received a refugee hearing?

[49] In addressing these issues, the Respondent argues that the Decision was reasonable and there was no procedural fairness requirement to interview Mr. Abbas as the Officer’s concerns did not pertain to credibility.

[50] As I have found the Decision was not reasonable, it is not necessary to consider whether it was arrived at in a manner that was procedurally fair.

B. *Standard of Review*

[51] The standard of review applicable to a negative PRRA decision is reasonableness:

Nagarasa v Canada (Citizenship and Immigration), 2018 FC 313 at para 16.

[52] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[53] If the reasons, when read as a whole, “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met”: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Nfld Nurses*].

[54] The Officer, sitting as an administrative tribunal, is not required to consider and comment in their reasons upon every issue raised by the parties. The issue for the reviewing court is whether the decision when viewed as a whole in the context of the record, is reasonable: *Nfld Nurses* at para 16.

VIII. Parties Submissions

A. *Mr. Abbas' submissions*

[55] Mr. Abbas submits that he provided relevant and reliable information on the country conditions in Pakistan and that the Officer's reference to them as being generalized in nature

with no link to how these risks are personal to Mr. Abbas was “totally irrational” as, of course, he would not be named. What the documents address is the overall condition in Pakistan for Shia Muslims and others such as those who have been tortured after arrest or kidnapping.

[56] In reviewing the evidence on file, the Officer referred to the Board and to “his refugee hearing” rather than the ID. In his notes for reasons, the Officer indicated in a footnote that a lengthy quotation came from the RPD decision. The excerpt he included was part of the ID decision. Mr. Abbas submits that when the Officer incorrectly called the ID admissibility hearing his refugee hearing, it showed that the Officer had closed his mind to the PRRA application. He says it was not a simple typographical error.

[57] Mr. Abbas argues that the RPD decision when granting protection to his wife and daughters accepted the same risks that he put forward in his PRRA (except for discarding his political aspect and accepting their gender aspect). He says it would have been clear that the risks to his wife and daughters, if they were returned to Pakistan, were directly related and linked to the same risks he faced.

[58] Mr. Abbas also states that the RPD decision corroborates his risks but, it was ignored. He points to paragraph 60 of the RPD decision which the RPD cited as being based on the National Documentation Package for Pakistan in the United States Department of State country reports on human rights practices for 2013:

Police often failed to protect members of religious minorities, including Christians, Ahmadiyya Muslims and Shia Muslims from *[sic]* attack. The claimants fall within these religious categories.

B. *The Respondent's Submissions*

[59] The Respondent submits that the reference to the refugee hearing and the Board rather than the inadmissibility hearing and the ID is simply a clerical error. The date given in the footnote is the date of the ID decision.

[60] The Respondent also notes that the Officer referred to the letters of support and found they were generalized documents speaking to humanitarian and compassionate issues but could not be considered under section 97.

[61] The Respondent also points out that there is a list of documents in the Certified Tribunal Record [CTR] and the Officer stated "I have thoroughly reviewed the applicant's PRRA application, as well as documentary evidence on country conditions in Pakistan." Also, the fact that Pakistan is dangerous is a generalized risk and Mr. Abbas is not at personal risk due to the country conditions.

[62] The Respondent also submitted that Mr. Abbas would not be at risk as he was not a high-profile member of MQM-A.

[63] The Respondent says that although the Officer did not pinpoint to evidence that is not the same as dismissing it out of hand. The Officer did refer to the evidence, such as Mr. Abbas' fear of his own family and his religion as a Shia Muslim, but found that he had not made out on the evidence risk to his life or risk of torture. The Respondent adds that discrimination is not persecution.

[64] The Respondent also submits that the family of Mr. Abbas is not a government actor and the family dispute does not fall within the ambit of section 97.

IX. Analysis

[65] The Respondent has submitted that the Officer's treatment of the evidence and ultimate conclusions are reasonable. Citing *Nfld Nurses*, the Respondent submits that a reviewing court should first seek to supplement reasons before subverting them and that reasons need not be perfect. Reasons need only demonstrate why the tribunal reached its conclusion and allow a court to determine whether the conclusion falls within the range of acceptable outcomes.

[66] I agree with the Respondent. However, as stated by Mr. Justice Rennie when he was a member of this Court and confirmed when he was a member of the Court of Appeal, "it is also the case that *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking": *Komolafe v. Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115 at para 24.

[67] While there is a presumption that the Officer considered the entire record and, in this case, the Officer stated that to be so, there still must be an analysis of the evidence and not just a summary of it and the statement of a conclusion: *Navarrete Andrade v Canada (Citizenship and Immigration)*, 2013 FC 436 at para 28.

[68] In this case, the Officer set out at some length excerpts from the ID decision. The Officer then stated the submissions of Mr. Abbas practically verbatim. No analysis or comment was added by the Officer in either instance.

[69] The RPD decision and the ID decision each found Mr. Abbas' PIF to be credible, including the statements he made about belonging to the MGM-A and the basis for his fears of return to Pakistan. The Officer did not address or challenge those findings.

[70] When the Officer concluded that the evidence was insufficient, it was a bald statement. No analysis was provided to show how or why the conclusions were reached.

[71] The following two examples demonstrate the Officer's flawed approach in this case.

A. *Mr. Abbas' Fears of his Relatives and as a Shia Muslim*

[72] In his affidavit, Mr. Abbas specifically stated his fear of going back to Pakistan was because his own family may try to harm him for not supporting them financially. He swore that because he has a business in Canada, they would think he is wealthy. He also stated that his family wants money all the time, calling him almost every month and always on religious holidays asking him to send money to them.

[73] While the RPD decision considered the section 96 risk to Mr. Abbas' wife and daughters as members of a particular social group, it also accepted that the siblings and family members of

Mr. Abbas posed a risk because they were unhappy with him for stopping payments to them and not sponsoring them to Canada.

[74] The RPD assessed and accepted several reasons given by Mr. Abbas' wife and daughters for their fear of returning to Pakistan. Three of those reasons apply equally to the personal situation of Mr. Abbas: (1) he would be identified as coming from a western country which would put him in a real danger of being identified as wealthy, thus a vulnerable target for thieves and religious zealots; (2) he would be part of the Shia minority in Pakistan which is often violently targeted; and (3) there is no IFA in Pakistan for someone perceived to be westernized.

[75] I note that the first reason is on the same basis as Mr. Abbas' fear of harm by his family.

Mr. Abbas at paragraph 18 of his affidavit says:

I fear going to Pakistan because of my own family. I fear that they may try and harm me as I am no longer supporting them financially. They know I have business in Canada and think that I must have loads of Money. People in Pakistan think people who live in the west have lots of Money and I've heard of many stories where people get kidnapped for money a lot in Pakistan. Even my family once Money all the time. They call almost every month and always on Religious holidays wanting me to send money to them [*sic*].

[76] In the Order granting a stay of the deportation of Mr. Abbas, reported at 2018 FC 126, and made after the PRRA decision, Mr. Justice Zinn noted that the only assessment of risk to Mr. Abbas in Pakistan was in the PRRA decision. Mr. Justice Zinn described the risk to Mr. Abbas, based on the RPD decision, this way at paragraph 9 of the Order:

. . . This is factually a very unique case. Mr. Abbas's spouse and daughters were accepted to be Convention refugees based on the risk they face in Pakistan from the family of Mr. Abbas, and that

they had no internal flight alternative. The reason for that risk appears to extend to Mr. Abbas. I must infer that had Mr. Abbas been able to present his refugee claim, he too would have been successful on that basis. Accordingly, there is clear and non-speculative evidence that he faces a risk to health and life if he is returned to Pakistan at this time; namely the same risk that founded his family's positive refugee determination.

[77] The Officer accurately set out the nature of the fear of his own family held by Mr. Abbas as arising from the fact that he no longer supports them financially and they wanted him to sponsor some of them to Canada.

[78] No analysis of that fear is found in the Decision.

[79] Mr. Abbas identified the main reason that he was afraid to go back to Pakistan was his religion. His personal affidavit evidence included that his father-in-law built a Shia mosque in Karachi that was bombed and worshippers were killed and injured.

[80] Mr. Abbas swore that due to his father-in-law's reputation and prominence, he is afraid the people in Karachi and in Pakistan pose a grave risk to his life and safety. He mentioned that there are credible and authenticated country reports showing violence against Shia Muslims is on the rise. The Officer did not mention or address that evidence or review in the Decision the country condition documents.

[81] These two risks set out by Mr. Abbas are briefly considered, together, by the Officer:

The applicant has provided insufficient objective evidence that he would be at risk upon his return to Pakistan. The applicant has not provided evidence that he would likely be a person of interest to

the fanatics targeting minority Shia Muslims and/or government of Pakistan or his family members. Similarly, he has not provided sufficient objective evidence that, because of his personal circumstances or his past activities, he would be a person of interest to anyone if he were to return to Pakistan. I have insufficient objective evidence before me that the applicant would be a person at risk upon his return to Pakistan.

[82] This is the sum total of the Officer's discussion of Mr. Abbas' fear of his relatives in Pakistan and of being a Shia Muslim in Pakistan. It does not enable Mr. Abbas or the Court to understand why the Officer made those findings.

[83] The RPD conducted a risk analysis of Mr. Abbas' wife and children should they have been returned to Pakistan. The RPD accepted that the fears of harm from Mr. Abbas' relatives and their risk of gratuitous violence as a Shia Muslim were valid. On the evidence, each of those fears apply to Mr. Abbas but they are not examined by the Officer although articulated by Mr. Abbas and supported in the record.

[84] At no point did the Officer refer to the conclusions in the RPD decision which were reached after review of the country condition documents. It surely falls into the category of "objective evidence" and, it accepts that there is risk from the family members of Mr. Abbas.

[85] The personal affidavit of Mr. Abbas attests to this fear. It provides the reasons for his fear and that he is afraid they can harm him. As the perpetrators are his relatives or in-laws, that cannot possibly be said to be a generalized, non-personal risk.

[86] The RPD in its risk analysis recognized both of these fears as being valid risks for Mr. Abbas' wife and daughters and explained why it came to those conclusions. While the Officer may have perceived a basis upon which those same fears, when held by Mr. Abbas, should result in a different risk analysis outcome, it cannot be found in the Decision.

[87] The Officer provided conclusions without any analysis or discussion of the risks set out in the personal affidavit evidence of Mr. Abbas, the contents of his PIF and in the supportive findings made by the RPD. In that respect, the decision-making process is not justified, transparent or intelligible; it is not possible to understand why the Officer came to the conclusions set out in the Decision. As such, the *Dunsmuir* criteria are not met and the Decision is unreasonable.

[88] From a review of the record and for the reasons given above, I am satisfied that the Decision must be set aside and returned for redetermination by another Officer.

[89] Neither party submitted a serious question of general importance for determination and none arises on these facts.

JUDGMENT IN IMM-4394-17

THIS COURT'S JUDGMENT is that:

1. This application is allowed.
2. The matter is remitted for redetermination by another officer.
3. No serious question of general importance arises for certification.

"E. Susan Elliott"

Judge

ANNEX A

Immigration and Refugee Protection Act,
SC 2001, c 27

Inadmissibility**Security**

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

...

(c) engaging in terrorism;

...

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

...

Refugee Protection**Refugee Protection, Convention Refugees and Persons in Need of Protection**

...

Convention Refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Interdictions de territoire**Sécurité**

34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

...

c) se livrer au terrorisme;

...

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

...

Protection des réfugiés**Notions d'asile, de réfugié et de personne à protéger**

...

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

...

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

...

Pre-Removal Risk Assessment

Protection

Application for Protection

112 (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

...

Exception

(2) Despite subsection (1), a person may not apply for protection if

...

(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;

...

Restriction

(3) Refugee protection may not be conferred on an applicant who

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

...

Examen des risques avant renvoi

Protection

Demande de protection

112 (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

...

Exception

(2) Elle n'est pas admise à demander la protection dans les cas suivants :

...

b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);

...

Restriction

(3) L'asile ne peut être conféré au demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

...

Consideration of Application

113 Consideration of an application for protection shall be as follows:

...

(d) in the case of an applicant described in subsection 112(3) — other than one described in subparagraph (e)(i) or (ii) — consideration shall be on the basis of the factors set out in section 97 and

...

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada;

...

Effect of decision

114(1) A decision to allow the application for protection has

(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and

(b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

Examen de la demande

113 Il est disposé de la demande comme il suit :

...

d) s'agissant du demandeur visé au paragraphe 112(3)— sauf celui visé au sous-alinéa e)(i) ou (ii) —, sur la base des éléments mentionnés à l'article 97 et, d'autre part :

...

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada;

...

Effet de la décision

114(1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.

Cancellation of Stay

(2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(d) and the regulations, the grounds on which the application was allowed and may cancel the stay.

Révocation du sursis

(2) Le ministre peut révoquer le sursis s'il estime, après examen, sur la base de l'alinéa 113d) et conformément aux règlements, des motifs qui l'ont justifié, que les circonstances l'ayant amené ont changé.

FEDERAL COURT
SOLICITORS OF RECORD

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