Federal Court  Cour fédérale

Date: 20200205

Docket: IMM-2507-19

Citation: 2020 FC 203

Ottawa, Ontario, February 5, 2020

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

A.B.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This application is subject to an Anonymity Order issued in accordance with the Federal Court's Practice Guidelines for Citizenship, Immigration and Refugee Law Proceedings.

[2] The Applicant seeks judicial review of the opinion of a Ministerial Delegate that she should be removed from Canada as a danger to the public in accordance with section 115 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [*IRPA*].

II. **Background**

[3] The Applicant is a citizen of Iran of Kurdish ethnicity. Along with other members of her family she was determined to be a Convention Refugee and granted permanent resident status in Canada following several years in a refugee camp in another country. She landed in Canada as a young adolescent. While growing up, she experienced strict rules and suffered abuse. As a result, she left home at the age of 16. At 18, she participated in the violent robbery of a male she had enticed to a hotel room. While on bail pending trial she became engaged to be married and had a child.

[4] On April 7, 2010 the Applicant was convicted of one count of robbery contrary to section 344(1) of the *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*] and received a 42 month sentence in a federal institution. During her incarceration, her child was cared for by its paternal grandmother. The engagement with the child's father was terminated. In January 2011, a deportation order was issued against the Applicant at an admissibility hearing before the Immigration Division of the Immigration and Refugee Board [IRB].

[5] Following her release from the penitentiary, the Applicant resumed caring for her child and became involved with another man who allegedly trafficked in drugs. On January 8, 2016, the Applicant was convicted of two counts of unlawful possession of a controlled substance for

the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19. She received sentences of 7 years on each count to be served concurrently. The paternal grandmother again assumed responsibility for the care of the child.

[6] A warrant for removal was issued against the Applicant on September 7, 2017, but given the Applicant's refugee status, the Canadian Border Security Agency [CBSA] was required to seek a danger opinion from a Delegate of the Minister of Immigration, Refugees and Citizenship [the Minister] before removal would be possible.

A. *The Danger Opinion*

[7] The Delegate's opinion [the Decision] was issued on March 25, 2019. The Delegate determined that the Applicant constitutes a danger to the Canadian public and may therefore be removed from Canada under paragraph 115(2)(a) of the *IRPA*. That provision states that the principle of non-removal of a protected person to a country where they will be at risk of persecution does not apply to a person "who is inadmissible on ground of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada".

[8] Further, the Delegate found the deportation could be carried out without violating the Applicant's section 7 rights under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*], as she would not face a risk to her life, liberty, or security of the person today in Iran.

[9] The Decision was based at least in part on allegations made against the Applicant while she was detained at the Edmonton Institution for Women [EIFW] in Edmonton, Alberta by staff of the Correctional Service of Canada [CSC].

B. *Reclassification, Involuntary Transfer, and Habeas Corpus Application*

[10] In December 2018, CSC involuntarily transferred the Applicant from the EIFW to the Nova Institution for Women in Truro, Nova Scotia and reclassified her security status from medium to maximum.

[11] The transfer and reclassification decisions were based on a number of allegations. Specifically, CSC staff alleged that the Applicant was the "shot caller" of a gang at the EIFW, that she coordinated an assault against another inmate, and that she was storing urine in her cell to defeat drug testing. CSC records indicate that as of December 2019, these allegations were still under investigation:

> "[A]t this time the circumstances surrounding the above noted incident is still being investigated and an update will be provided once the information is substantiated. Pending the outcome of the investigation a 'gist' will be provided regarding [A.B.'s] behaviour."

[12] The Applicant contested the allegations, which had not resulted in any criminal or institutional charges. Despite this, they are referenced repeatedly in the Delegate's decision.

[13] To challenge the involuntary transfer to Truro, the Applicant brought a *Habeas Corpus* application in the Nova Scotia Supreme Court. Before the matter could be heard, she was

returned to Edmonton and reclassified as requiring medium security. She was subsequently released into the community under supervision.

C. *Sexual Identity*

[14] The Applicant now self-identifies as gay. She deposes in her affidavit evidence that her sexual identity emerged while she was incarcerated and that she had several romantic liaisons while in the EIFW. She says that not all of these liaisons were documented by CSC but acknowledges that one relationship was with the leader of an inmate gang. She denies any involvement in the gang beyond that association.

[15] Sexual identity was not the basis of the Applicant's claim of a fear of persecution against Iran at the time of her admission to Canada. Her claim was then dependent upon her father's which was based on grounds of imputed political opinion.

[16] The Delegate found that there is "insufficient evidence on file to lead me to conclude that [the Applicant] has had a sexual relationship with a woman outside the confines of the penitentiary. The information on file indicates that [the Applicant] uses sexual relationships in order to further her own goals".

[17] In an affidavit affirmed on May 1, 2019, the Applicant asserts that she is in a relationship with another woman she met in prison in 2014. This is a new fact that was not before the Delegate at the time that she made her decision.

D. *Subjective Fear of Persecution and Family Separation*

[18] The Applicant has expressed a subjective fear of persecution if returned to Iran based on her sexual orientation and gender. She is not a practicing Muslim. The Applicant has said she follows the "Aboriginal way" which she articulates as a cultural practice.

[19] She also fears she and her child will face hardship from separation, believing that if deported it will be unlikely she can bring her daughter to Iran as the child has no access to Iranian citizenship. The Applicant fears that if her child is able to emigrate, she will face risks and hardship by extension and in proximity to her gay, unmarried mother.

III. **Issues**

[20] Having considered the parties' submissions the issues I will address are the following:

(1) Did the Applicant receive procedural fairness?

(2) Did the Delegate apply the correct legal test for assessing risk?

(3) Were the conclusions of the Delegate reasonable?

IV. **Relevant Legislation**

[21] Several sections in the *IRPA* are particularly relevant to the subject matter of this judicial review:

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 themself of the protection of each of those countries; or

(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.

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) 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.

Protection (non-refoulement)

115 (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.

Principe (non-refoulement)

115 (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.

Exceptions	**Exclusion**
(2) Subsection (1) does not apply in the case of a person	**(2)** Le paragraphe (1) ne s'applique pas à l'interdit de territoire :
(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or	**a)** pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;
(b) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.	**b)** pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité du Canada.

[22] Section 7 of the *Charter* is also relevant:

Legal Rights	**Garanties juridiques**
Life, liberty and security of person	***Vie, liberté et sécurité***
7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice	**7** Chacun a droit à la vie, a la liberté et a la sécurité de sa personne ; il ne peut être porté atteinte a ca droit qu'en conformité avec les principes de justice fondamentale

V. **Standard of Review**

[23] I agree with the parties that the correctness standard applies where the Applicant alleges that the Delegate applied the wrong legal test and breached procedural fairness (*Galvez Padilla v Canada (Citizenship and Immigration),* 2013 FC 247 [*Galvez Padilla*] at para 31), and that the Delegate's assessment of danger and risk is reviewable on the reasonableness standard, implying that the delegate is entitled to a high degree of deference regarding factual findings (*Nagalingam v Canada (Minister of Citizenship and Immigration),* 2008 FCA 153 (CanLII) at para 32).

[24] The parties made these submissions before the release of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII). At the hearing, counsel for the parties were agreed that the standards of review applicable to this matter would not change under the new framework enunciated by the Supreme Court. I would note, however, that as suggested by Professor Paul Daly in "The Vavilov Framework II: Reasonableness Review" https://www.administrativelawmatters.com/blog/2019/12/21/the-vavilov-framework-ii-reasonableness-review/ retrieved January 16, 2020, there has been a change in how reasonableness review is articulated. Whereas in *Dunsmuir v New Brunswick,* 2008 SCC 9 [*Dunsmuir*] the reviewing Court was to determine whether a decision "falls" within the range of possible acceptable outcomes in view of the facts and the law, in *Vavilov* the issue is whether the decision is "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[25] As I indicated to the parties at the hearing, in my view this change in the language of reasonableness review bears on the question of how that issue should be decided in this application. In particular it relates to whether the Delegate's reasoning was sufficiently grounded in the relevant documentary evidence and principles from the case law.

VI. **Analysis**

A. *Did the Applicant receive procedural fairness?*

(a) *Admissibility of Garson Affidavit*

[26] As a preliminary matter, the Respondent objects to the admission of the affidavit of Hanna Garson, counsel for the Applicant on the *habeas corpus* application against the CSC pertaining to her transfer and security level reclassification. The affidavit was previously determined to be admissible, in part, by Order of the Court dated August 15, 2019 "given the exceptional circumstances in which the Applicant seeks to file the affidavit". This was in keeping with the holding of the Federal Court of Appeal in *Connolly v Canada (Attorney General)*, 2014 FCA 294 at paras 6-7 [*Connolly*], that where evidence is relevant, was not available to the Applicant at the time of the decision, will assist the Court, and will not cause substantial or serious prejudice to the Respondent, the Court can exercise its discretion to allow a party to file an affidavit after the record has been established.

[27] Paragraphs 12 and 15-18 of the affidavit were struck in the August 19, 2019 Order. The Applicant seeks to rely on paragraphs 9-11 to establish: 1) that CSC did not disclose the legal basis for the Applicant's involuntary transfer and reclassification; 2) that CSC had conducted no

investigations into the allegations after December 21, 2018; and 3) that the Applicant was advised by CSC on May 30, 2019 that she was being reclassified as requiring medium security and returned to Edmonton. The Respondent objects to the admission of paragraph 10 which contains the second assertion on the grounds that it is speculative. I agree and have disregarded that paragraph.

[28] The remainder of the affidavit, in particular the attached exhibits, is helpful to the Court and admissible in these proceedings in accordance with the principles set out in *Connolly.*

(b) *CSC allegations*

[29] The Applicant contends that there was never any basis for the CSC allegations of gang related activity and that it was unfair for the Delegate to take them into account in considering whether she was a risk to Canadian society since they were still under investigation at the time of the Delegate's decision. In view of the risk based interests that were engaged, she argues that she was owed an elevated duty of fairness under the framework established in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817).

[30] I agree with the Respondent that the Delegate's consideration of the CSC allegations against the Applicant was within her discretion. Administrative decision-makers such as the Delegate are not bound by the strict rules of evidence (*Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 [*Sittampalam FCA*] at para 48). The unproven nature of any evidence goes to the weight the decision-maker should attach to it, but does not automatically exclude it or suggest it is not useful (*Ibid* at para 49). The question is whether the

tribunal finds the evidence credible and trustworthy, taking the wider context of the case into account (*Ibid* at paras 52-53). In the particular circumstances of this matter it was not procedurally unfair of the Delegate to accept the CSC allegations as credible and trustworthy but they appear to have been given disproportionate weight in the dangerousness assessment.

(c) *Credibility findings*

[31] The Applicant claims that credibility findings were reached by the Delegate. She cites *Atawnah v Canada (Public Safety and Emergency Preparedness*), 2016 FCA 144 at paras 31-32, where the Court of Appeal affirmed that an oral hearing is required where credibility findings are made in the context of risk-based claims (i.e. involving the possibility of deportation). As she was not given an oral hearing, or even notice that the Delegate had concerns about the validity of her claims about her sexual orientation, she argues that this was a breach of procedural fairness.

[32] The Delegate wrote that the Applicant "uses sexual relationships in order to further her own goals…" and that she "chooses her intimate partners to her own advantage…". While the Delegate acknowledged that the Applicant had a same-sex partner in prison, the Delegate was not prepared to accept that the Applicant was genuinely homosexual.

[33] The Respondent argues that the Delegate did not make a credibility finding about the Applicant's sexual orientation. The Delegate determined that there was insufficient evidence to lead her to conclude that the Applicant would engage in a same sex relationship once she was released from prison. I note that the Applicant's affidavit statement that she is currently in a

same-sex relationship was not before the Delegate at the time the decision was made and that the Applicant was at that time still in custody.

[34] In my view, the Delegate had reason to be sceptical about the Applicant's claim of having discovered her sexual orientation in prison given her prior relationships with men. Same sex relationships during long term incarceration are commonly known to occur. The Delegate did not err in questioning whether the Applicant's claim was legitimate but in the circumstances of this case, that line of inquiry amounted to a credibility assessment which called for an interview. Particularly when the Delegate drew adverse inferences from the Applicant's prior involvement with men. The failure to convoke an interview in these circumstances constituted a breach of procedural fairness.

[35] While this conclusion is sufficient to determine this application I believe that it is necessary to address the other issues for the benefit of the Delegate who is to reconsider the matter.

B. *Did the Delegate apply the correct legal test for assessing risk?*

[36] Justice Judith Snider outlined the principles and steps to be taken in conducting a danger opinion under paragraph 115(2)(a) in *Hasan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1069 at para 10. They are the following:

1. A protected person or a Convention refugee benefits from the principle of non-refoulement recognized by s. 115(1) of IRPA, unless the exception provided by paragraph 115(2)(a) applies;

2. For paragraph 115(2)(a) to apply, the individual must be inadmissible on grounds of serious criminality (s. 36 of IRPA);

3. If the individual is inadmissible on such grounds, the delegate must determine whether the person should not be allowed to remain in Canada on the basis that he or she is a danger to the public in Canada; 2008 FC 1069 (CanLII) Page: 7.

4. Once such a determination is made, the delegate must proceed to a s. 7 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the Charter) analysis. To this end, the delegate must assess whether the individual, if removed to his country of origin, will personally face a risk to life, security or liberty, on a balance of probabilities. This assessment must be made contemporaneously; the Convention refugee or protected person cannot rely on his or her status to trigger the application of s. 7 of the Charter (Suresh, above, at paragraph 127).

5. Continuing his analysis, the delegate must balance the danger to the public in Canada against the degree of risk, as well as against any other humanitarian and

compassionate considerations (Suresh, above, at paragraphs 76-79; Ragupathy, above, at paragraph 19).

[37] The Delegate outlined the test to be applied as follows:

> A determination that [the Applicant] does not pose a danger to the public will permit her to remain in Canada. A determination that the Applicant constitutes a danger to the public permits her to be refouled to Iran if to do so is in accordance with section 7 of the *Canadian Charter of Rights and Freedoms (Charter).* As outlined in the Supreme Court decision in *Suresh,* to comply with section 7 of the *Charter* requires a balancing of the risk [the Applicant] faces should she be refouled to Iran and the danger to the public should she remain in Canada. Where the evidence demonstrates a substantial risk of torture or the death penalty, the individual cannot be removed save in exceptional circumstances. Humanitarian and compassionate considerations also factor into the balancing exercise.

[38] The Applicant contends that the Delegate erred in focusing on persecution to the exclusion of other legally relevant risks. The definition of risk in a danger opinion encompasses more than the risk of persecution or torture.

[39] The Supreme Court of Canada has held, in the context of an extradition proceeding, that a s. 7 risk analysis can take into account "general evidence of pervasive and systemic human rights abuses in the receiving state" that would create a substantial risk of torture or mistreatment: *India v Badesha,* 2017 SCC 44 at para 45:

> [45] The Attorney General of Canada contends that "generic evidence" of human rights conditions in the receiving state cannot establish, on its own, that the person sought faces a substantial risk of torture or mistreatment. With respect, I disagree. The assessment of substantial risk decidedly requires that the Minister

> consider the "personal risk" faced by an individual: Suresh, at para. 39. But I would not foreclose the possibility that there may be cases in which general evidence of pervasive and systemic human rights abuses in the receiving state can form the basis for a finding that the person sought faces a substantial risk of torture or mistreatment.

[40] In this matter, the Delegate acknowledged that Iranian laws "are inherently discriminatory to women", and that the Applicant would be at risk of imprisonment and of having custody of her daughter removed if she failed to follow these laws.

[41] I agree with the Applicant that it is not enough for the Delegate to have reasoned that the Applicant would "be able to choose to obey the law and live freely, or disobey and face the consequences". In a previous decision dealing with a negative refugee determination I held that "concluding that persecution would not exist because a gay woman in Iran could live without punishment by hiding her relationship to another woman may be erroneous, as expecting an individual to live in such a manner could be a serious interference with a basic human right, and therefore persecution": *Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)*, 2004 FC 282 at para 29. It was unreasonable, in my view, for the Delegate to have adopted a similar position in this assessment.

[42] Based on the country condition evidence, the Applicant faces a serious risk of mistreatment or worse if returned to Iran as an unmarried female, identifying as a lesbian, with a history of having multiple sexual partners, with criminal convictions, with or without an ability to bring her daughter with her. The Delegate erred, in my view, in not considering the evidence

of “pervasive and systemic human rights abuses in Iran” in determining whether the legal test had been met.

A. *Were the Conclusions of the Delegate reasonable?*

[43] The Applicant contends that the Delegate made unreasonable findings with respect to the risks faced by gay persons in Iran. The record and material before the Delegate would lead one to reasonably conclude that there is particularized risk to the Applicant if deported based on her self-identified sexual identity.

[44] In the Decision, the Delegate did not refer to any of the country condition evidence concerning LGBTQ persons; a material omission in my view.

[45] One of the country condition documents before the Delegate which addressed the treatment of LGBTQ persons in Iran was from the Austrian Centre for Country of Origin and Asylum Research and Documentation [ACCORD] entitled “Iran: Women, children, LGBTI persons, persons with disabilities, ‘moral crimes’” (December 2015). It seems that a substantial part of this report was omitted from the disclosure to the Delegate including the section titled “Treatment of individuals of diverse sexual orientations and gender identities” which begins at p. 63.

[46] This section of the report explains how various articles in the revised Islamic Penal Code maintain brutal punishments for same-sex activities, both male and female. For instance, Article 238 through 240 deals with *musaheqeh*, which is defined as an act “where a female person puts

her sex organ on the sex organ of another person of the same sex". Article 239 states that "[t]he hadd punishment for musaheqeh shall be one hundred lashes" (p. 64). On another omitted page, the report references the Freedom House 'Freedom in the World 2015' report which states that "members of the LGBT community face harassment and discrimination…the problem is underreported due to the criminalized and hidden nature of these groups in Iran".

[47] There is also evidence of gender-based persecution in Iran. From the same ACCORD report referenced above – but this time with the selection included in the disclosure received by the Delegate – is a note about how women who appear in public places without wearing an Islamic hijab "shall be sentenced to ten days to two months' imprisonment or a fine of fifty thousand to five hundred Rials". Moreover, not wearing the hijab or even improperly securing one's hijab can lead to violent attacks in public.

[48] The Delegate reasoned that since the Applicant "came of age in Iran" and was 13 years old when she departed, she would be well-accustomed to the restrictions imposed upon her. The age reference was erroneous if not serious. The Applicant left Iran at the age of 11 and spent two years in a refugee camp before coming to Canada. But the question was not whether she was accustomed to the social and cultural restrictions in Iran but whether it would be reasonable to require her to hide or contain the innate characteristics of her life in order to avoid violent reprisals, discrimination, social exclusion, corporal punishment, or a jail sentence.

[49] In *Atta Fosu v Canada (Citizenship and Immigration)*, 2008 FC 1135 at para 17, Justice Russel Zinn held that it was unreasonable for an administrative decision-maker to find that a

refugee claimant can avoid the danger of his LGBTQ status by "hid[ing] or deny[ing] the *innate characteristic* which forms the basis of his claim of persecution" (emphasis added).

[50] With regard to the best interests of the Applicant's nine year old child, the Delegate correctly identified the legal test in the context of paragraph 115(2)(a) assessments. It is not the same as is required under s 25 of the IRPA in a Humanitarian and Compassionate Grounds [H&C] analysis. Other factors, such as dangerousness, are more salient. As found by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 38: "children's best interests will not always outweigh other considerations".

[51] The Applicant was not, unfortunately, represented by experienced counsel in preparing her submissions to the Delegate in response to the notice that she received. At first she had the assistance of an articling student and the lawyer who assumed responsibility for the file had never before handled a danger opinion matter. In the result, the Applicant's submissions to the Delegate were not as thorough as they could have been. Nonetheless, there were enough compelling points made by the Applicant about her risk factors to warrant a more thorough review under s. 7 of the *Charter* than she received.

[52] The materials before the Delegate highlighted how the Applicant's profile creates several overlapping layers of vulnerability in the context of Iran (LGBTQ allegedly, female, unmarried, single mother, criminal record, does not wear the hijab) sufficient to make out a *prima facie* case of a risk of torture or similar abuse as recognized in *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, 2002 SCC 1 at para 39.

[53] The Delegate's failure to adequately address the Applicant's personal risk factors leads me to conclude that the Decision is not justified in relation to the relevant factual and legal constraints as required by *Vavilov* at para 99.

[54] For all of the above reasons, this application will be granted and the matter returned for reconsideration by another Delegate.

VII. **Certified Question**

[55] In pre-hearing correspondence dated January 14, 2020, the Applicant proposed the following certified question:

> Where, as part of a danger opinion determination, the Minister intends to rely on allegations that are under investigation in their "danger to the public" assessment, does fundamental justice/procedural fairness require that those investigations be completed before a decision is rendered and that the product of those investigations be disclosed to the person concerned?

[56] This question arises from the fact that the Delegate took into consideration the allegations of improper behaviour on the part of the Applicant when she was an inmate at the Edmonton Institution for Women. As noted above, this information was contained in documents prepared by CSC, which had not concluded its investigation of the allegations when the documents were produced.

[57] It is asserted by the Applicant that this question transcends the interests of the immediate parties, is of general importance, and is dispositive of this case, thereby meeting the test for

certification as articulated in *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9. The Respondent opposed certification of the question and did not propose any alternatives.

[58] Given the conclusions and result that the Court has reached, the proposed question would not be dispositive of an appeal. But as the parties were advised at the hearing, I would not have certified the question had the outcome been different.

[59] On certification the Court plays an important gatekeeping function. Justice Denis Pelletier, writing for a unanimous Court in *Varela v Canada (Citizenship and Immigration),* 2009 FCA 145 at para 23 held that section 74(d) of the *IRPA* fits within a larger scheme designed to "ensure that a claimant's right to seek the intervention of the Courts is not invoked lightly, and that such intervention, when justified, is timely".

[60] The Court of Appeal has held that if the law on the question is settled, the question cannot raise an issue of broad significance or general importance (*Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at para 36). In my view the law on the proposed question is settled: see *Muneeswarakumar v Canada (Citizenship and Immigration)*, 2013 FC 80 at para 20; *Alkhalil v Canada (Minister of Citizenship and Immigration)*, 2011 FC 976 at para 45; *Sittampalam v Canada (Minister of Citizenship and Immigration),* 2007 FC 687 at paras 35-38); *Sittampalam FCA* at paras 50-51.

JUDGMENT IN IMM-2507-19

THIS COURT'S JUDGMENT is that the application for judicial review is granted and the matter is remitted for reconsideration by a different Minister's Delegate in accordance with these reasons. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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