**Date: 20070615**

**Docket: IMM-2275-07**
**IMM-2276-07**

**Citation: 2007 FC 647**

**Ottawa, Ontario, the 15th day of June 2007**

**Present: the Honourable Mr. Justice Shore**

**BETWEEN:**

**MOHAMED SOUL KABA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**
**AND MINISTER OF PUBLIC SAFETY**
**AND EMERGENCY PREPAREDNESS**

**Respondents**

**REASONS FOR ORDER AND ORDER**

## INTRODUCTION

[1] The pre-removal risk assessment (PRRA) officer has no duty to rule on each and every document in question.

Contrary to what was alleged by the applicant, documentary evidence on a country is insufficient to warrant a positive risk assessment since the risk must be personal:

> [28] That said, the assessment of the applicant's potential risk of being persecuted if he were sent back to his country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is

> problematic does not necessarily mean there is a risk to a given individual (*Ahmad v. M.C.I.*, [2004] F.C.J. No. 995 (F.C.); *Gonulcan v. M.C.I.*, [2004] F.C.J. No. 486 (F.C.); *Rahim v. M.C.I.*, [2005] F.C.J. No. 56, 2005 F.C. 18 (F.C.)).

(*Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, [2005] F.C.J. No. 506 (QL); see also *Rizkallah v. Canada (Minister of Employment and Immigration)* (1992), 156 N.R. 1 (F.C.A.), [2002] F.C.J. No. 412 (QL); *Moussaoui* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FC 133, [2004] F.C.J. No. 146 (QL); *Sanusi v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 987, [2004] F.C.J. No. 1215 (QL); *Zilenko v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 846, [2003] F.C.J. 1086 (QL); *Sivagnanam v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1216, [2003] F.C.J. No. 1542 (QL).)

Accordingly, in the case at bar the general documentary evidence on the economic and political situation in Guinea cannot **of itself** establish that the protection application is valid when the connection between that evidence and the applicant himself has not been made, under both sections 96 and 97 of the IRPA.

> [5] In my opinion, the applicant's claim is entirely unfounded. It is settled law that an applicant must demonstrate an objective and subjective fear of persecution. In this case, it was not sufficient simply to file documentary evidence. It was necessary at the very least to establish that the applicant himself had a real fear of persecution. In the absence of such evidence, the Board members were entitled to conclude as they did.

(*Sinora v. Canada (Minister of Employment and Immigration)* (1993), 66 F.T.R. 113, [1993] F.C.J. No. 725 (QL), at pp. 114 et 115 (*per* Marc Noël J.); see also *Alexibich v. Canada (Minister of*

*Citizenship and Immigration)*, 2002 FCTD 53, [2002] F.C.J. No. 57; *Ithibu* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 288, [2001] F.C.J. No. 499 (*per* Pierre Blais J.).)

The applicant must necessarily establish a connection between the present situation in his country and his personal situation. The PRRA officer was not satisfied that the applicant had made such a connection.

Additionally, in her reasons the officer noted and analysed in detail the allegations and documents filed by the applicant in support of his H&C application and in support of his PRRA application, since in dealing with risk the applicant had specifically referred to his PRRA application. The officer's reasons are clear, detailed and based on the evidence submitted. (Reasons of H&C decision, pages A-9 to A-13.)

The officer concluded that the personal circumstances alleged by the applicant, including the alleged risks of return, were not such that he would undergo unusual and unjustified or excessive problems if he was required to submit from outside Canada a permanent resident visa application.

**JUDICIAL PROCEEDING**

[2] At issue are two motions seeking to stay enforcement of a removal order made against the applicant. These motions are associated respectively with:

- the decision rejecting the PRRA application (IMM-2275-07);

- the decision denying the applicant an exemption from the requirement of obtaining a permanent resident visa from outside Canada on account of the existence of humanitarian grounds (H&C, IMM-2276-07).

[3] These PRRA and H&C decisions were made by the PRRA officer on April 13, 2007.

**PRELIMINARY – Application to vary style of cause**

[4] As the *Department of Public Safety and Emergency Preparedness Act* (S.C. 2005, c. 10) has come into effect, the Minister of Public Safety and Emergency Preparedness must be designated as the respondent in addition to the Minister of Citizenship and Immigration, in accordance with the Order in Council made on April 4, 2005 (P.C. 2005-0482).

[5] Consequently, the respondent asked that the style of cause be amended to add the Minister of Public Safety and Emergency Preparedness as respondent in addition to the Minister of Citizenship and Immigration.

**FACTS**

[6] The following facts appeared from the applicant's motion record and his immigration record with Citizenship and Immigration Canada (CIC):

- on June 7, 2005 the applicant arrived in Canada;

- on June 17, 2005 he claimed refugee status, alleging he was a member of the Rassemblement du people de Guinée (RPG) party and was arrested and detained following government operations to arrest those responsible for an attack on the president of Guinea which took place in January 2005;
- on March 28, 2006 the Refugee Protection Division (RPD) dismissed his refugee application: the decision was based on a total lack of credibility in the applicant and his account;
- the applicant filed an application for leave and judicial review of this RPD decision, and it was dismissed by this Court on July 25, 2006;
- in November 2006 the applicant filed an application for an exemption from the requirement of obtaining a permanent resident visa from outside Canada, citing humanitarian considerations (H&C): this application was denied on April 13, 2007;
- in March 2007 the applicant filed a PRRA application: on April 13, 2007 the PRRA officer dismissed this application filed by the applicant;
- those are the two decisions which the applicant is challenging by an application for leave and judicial review;
- since mid-May 2007, the applicant has been summoned to the CIC office to finalize his arrangements for departure from Canada;
- the officer responsible for his removal even gave him time to allow him to purchase an air ticket to Mali, since the applicant had told her he wished to leave Canada for Mali rather than for Guinea;
- on May 23, 2007 the applicant signed a statement in which he said he agreed to his departure and would leave Canada: following the meeting of May 23 the removal officer

had confirmation that a visa was necessary for Mali and she accordingly summoned him again on May 24, 2007;

- the applicant did not appear for his meeting on May 24, 2007, nor did he appear for the other meeting arranged for June 6, 2007: as to the latter meeting, counsel for the applicant contacted the removal officer to tell her that her client thought the meeting had been arranged for June 7, 2007; another interview to arrange departure was accordingly set for June 12, 2007;
- on that date, the removal officer gave the applicant himself the notice of summons for his removal from Canada set for 6:30 pm on June 16, 2007: at the meeting the applicant stated [TRANSLATION] “I will comply with the Act – if I must leave, I will do so and I will go to Guinea. It is $4,000 to Mali and I do not have the money”;
- at 2 pm on June 13, 2007 the applicant served the instant application for a stay on the respondent.

[7] The respondent referred this Court to Exhibit A, filed in a bundle, of the affidavit of Ketsia Dorceus.

[8] Accordingly, it is clear from the record that the applicant has used and exhausted all the remedies available to him under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) to avoid being removed from Canada.

[9] Further, by failing to attend two of his meetings to arrange for departure, to which he was duly summoned, the applicant does not come to this Court [TRANSLATION] “with clean hands”.

This is a ground for dismissing the application to stay at bar. (*Manohararaj v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 376, [2006] F.C.J. No. 495 (QL); *Sook v. Canada (Minister of Citizenship and Immigration)*, IMM-2186-06, May 18, 2006; *Thakorbhai Patel v. Canada (Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness*), IMM-3442-06, June 28, 2006; *Vernege v. Canada (Minister of Public Safety and Emergency Preparedness*), IMM-4346-05, July 16, 2005.)

[10] To determine the validity of the motion for a stay this Court must decide whether the applicant meets the judicial criteria set by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302, [1988] F.C.J. No. 587 (QL).

[11] The three criteria must be met for this Court to grant the stay requested. If only one of them is not met, the Court cannot grant the stay requested. (*Pao v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 941, [2005] F.C.J. No. 1173 (QL).)

[12] It is apparent from the applicant's motion record that he submitted no satisfactory evidence to establish the existence of:

(a) irreparable harm;

(b) a serious issue;

(c) greater hardship than that which the respondent might suffer from the stay of execution of the removal order.

**IRREPARABLE HARM**

[13] The applicant was not in any way able to show by clear and persuasive evidence that he would suffer irreparable harm if he was returned from Canada to Guinea, while his proceedings in the Federal Court went ahead.

[14] The concept of irreparable harm was defined in *Kerrutt v. Canada (Minister of Employment and Immigration)* (1992), 53 F.T.R. 93, [1992] F.C.J. No. 237 (QL), as being the removal of an individual to a country where his or her life and safety are at risk.

[15] On irreparable harm, the applicant alleged the following points or arguments:

[16] The applicant alleged that enforcement of the removal order would make the relief sought by his applications for leave and judicial review ineffective and this would cause him irreparable harm.

[17] This Court has several times held that this is not irreparable harm. In particular, Yvon Pinard J. said the following in *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 16, [2005] F.C.J. No. 36 (QL):

> [6] With respect to the Applicant's allegation that her appeal will be rendered moot because if removed she would be unable to return to Canada, this kind of argument was recently dismissed by the Federal Court of Appeal in *Ghanaseharan Selliah v. Canada (M.C.I.)*, 2004 F.C.A. 261. In that case, the applicants argued that the removal would render their appeal nugatory, and the Court of Appeal held:

> Since the appeal can be ably conducted by experienced counsel in the absence of the appellants and since, if the appeal is successful, the appellants will probably be permitted to return to Canada at public expense, I cannot accept that removal renders their right of appeal nugatory.

(See also *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, [2004] F.C.J. No. 1200 (QL); *El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42, [2005] F.C.J. No. 189 (QL); *Uzkar v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1734, [2005] F.C.J. No. 2146 (QL).)

[18] The applicant alleged that enforcement of the removal order would infringe his liberty, safety and health as he would probably be arrested.

[19] In *Akyol v. Canada (Minister of Citizenship and Immigration)*, Luc Martineau J. noted that irreparable harm must not be speculative or based on possibilities:

> [7] . . . irreparable harm must not be speculative nor can it be based on a series of possibilities. The Court must be satisfied that the irreparable harm will occur if the relief sought is not granted: Atakora, *supra*, at para. 12; *Syntex Inc. v. Novopharm Inc.* (1991), 36 C.P.R. (3d) 129 at 135 (F.C.A.); *Molnar v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 559, 2001 FCTD 325, at para. 15.

(See also *Kerrutt*, *supra*; *Blum v. Canada (Minister of Citizenship and Immigration)* (1994), 90 F.T.R. 54, [1994] F.C.J. No. 1990 (QL); *Williams v. Canada (Minister of Employment and Immigration)* (1994), 24 Imm. L.R. (2d) 167, [1994] F.C.J. No. 258 (QL).)

**Risks cited in stay are same as those cited in refugee application, PRRA and H&C application**

[20] Further, the applicant's refugee application in respect of Guinea has already been denied and his fear was based on the same facts in question. Moreover, the Federal Court dismissed judicial review of that decision (PRRA decision, pages A-1 to A-8).

[21] Before the RPD, the applicant was found to be completely lacking in credibility on:

[TRANSLATION]

- His political involvement in the RPG – inconsistency between testimony and RPG membership card on joining the party. On his involvement, the applicant testified vaguely and superficially, repeating that he used to teach people how to be aware (RPD decision, page A-27).
- Summonses by authorities – improbability of testimony and anomalies apparent in summonses. These documents contained several spelling errors and anomalies usually indicative of fraudulent documents. This evidence shows that the applicant was never really summoned by the police, a central point in the refugee application, the PRRA application and the H&C application.
- Wanted by police: the applicant clearly alleged at the point of entry that he was not wanted by the police, which is apparent from the RPD decision and directly contradicts the police summonses he entered in evidence.
- His detention – inconsistency of evidence on the applicant's date of escape (May 8, 2005 versus May 15, 2005) and the length of his detention (10 days versus 17 days) – even if there had been an error in the dates, it is unlikely that there would be an error in the length of the detention period as well. The panel noted that the applicant altered the date of his alleged escape to make his evidence consistent with the press article indicating that the prison was attacked on May 15 and that inmates were able to escape (RDP decision, page A-25).
- His departure from the country – contradictions – on the one hand, he alleged he went through immigration without difficulty with a false passport. He subsequently alleged he got onto the plane without going through immigration as his aunt arranged everything for him.

[22] Accordingly, relying on the many defects, contradictions and improbabilities found in the evidence, the RPD concluded that the applicant had submitted a story that was completely trumped-up.

[23] The applicant has also had a PRRA and a risk of return assessment in connection with an H&C application. Those applications were denied based on the personal evidence presented, the

applicant's situation and the objective situation existing in Guinea as of April 2007 (barely two months ago).

[24] Accordingly, the risk alleged by the applicant has been assessed several times and each time there was a negative decision.

[25] In the case at bar, the PRRA officer concluded in both the PRRA decision and the H&C decision that there was no evidence of personal risk to the applicant pursuant to sections 96 and 97 of the IRPA.

[26] In this connection, the following is a recent judgment on the absence of irreparable harm found by a decision of a PRRA officer:

> [11] The evidence in this case either consists of points already dealt with in previous proceedings or is speculative and vague.
>
> [12] Point (i) was already examined by the PRD and the PRRA officer and was not accepted. The Applicant is not presenting any new evidence in that respect but merely repeats the assertions made before those two decision makers. Merely repeating assertions in previous proceedings is not sufficient to meet the *Toth* test (see *Nalliah v. Canada (S.G.)*, 2004 FC 1649 at para. 27).

(*David v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1486, [2006] F.C.J. No. 1872 (QL).)

See also:

> [27] Simply alleging that the persons will suffer the harm they have claimed in their PRRA applications is not sufficient for the purposes of the test. I first note

> that the vast majority of the affected persons have received the benefit of a number of risk assessments. Prior to the PRRA decisions, in all cases, the affected persons have been party to earlier processes under the IRPA.

(*Nalliah v. Canada (Solicitor General) (F.C.)*, [2005] 3 F.C.R. 210, [2004] F.C.J. No. 2005 (QL).)

> [8] . . . This Court has held that where an applicant's account was found not to be credible by the Refugee Division, this account cannot serve as a basis for an argument supporting irreparable harm in a stay application . . .

(*Akyol*, *supra*.)

(See also *Ulusoy v. Canada (Minister of Citizenship and Immigration)*, IMM-3277-05, June 3, 2005 (*per* Yves De Montigny J.); *Cerna v. Canada (Minister of Citizenship and Immigration)*, IMM-5744-04, July 12, 2004 (*per* Michel Beaudry J.); *Lee* v. *Canada (Minister of Citizenship and Immigration)*, IMM-5752-04, July 12, 2004 (*per* Beaudry J.).)

[27] Additionally, in the H&C decision the officer mentioned that the public and reliable objective documentary evidence indicated that individuals arrested as part of the investigation into the attempted assassination of President Conte (the fundamental point in his refugee application) had been released and some were in voluntary exile.

[28] Accordingly, these facts indicate that even if the applicant's story had been credible, which clearly is not the case, he is no longer a target in his country as of this date, in view of the release of the prisoners established by the objective documentary evidence.

[29] Additionally, following the assessment of the objective general evidence consulted on Guinea, the PRRA officer also noted that the mere fact of being a member of an opposition political party does not by itself constitute a risk factor. The officer concluded that the applicant's profile was not that of a high-profile opponent. The applicant's membership in the RPG was found not to be credible and the alleged political activities amounted to the distribution of T-shirts with the party's logo in front of his business. (H&C decision and RPD decision, pages A-12 and A-26 and A-27.)

[30] In support of the application at bar, the applicant filed an affidavit from the political secretary of the RPG – Canada Section, Lancine Sakoh, to support his arguments of irreparable harm.

[31] With regard to the affidavit by the political secretary of the RPG – Canada Section, the respondent submitted:

> [TRANSLATION]
>
> - The RPD found the applicant not be credible (due to contradictions and the poor quality of his testimony in general) regarding his membership in the RPG political party, summonses by the police, his detention and his departure from Guinea. Accordingly, this affidavit deals with the same facts as those submitted to the RPD and found not to be credible on fundamental points in the claim. Further, the decision was affirmed by the Federal Court, which denied the leave application. The facts and the applicant's political involvement in Guinea are thus *res judicata*. This affidavit cannot serve to re-establish the applicant's credibility regarding his account dealing with Guinea. (RPD decision, pages A-22 to A-29).
> - The affidavit does not originate with a neutral and objective source.
> - The affidavit offers no new facts regarding the applicant's political involvement in Guinea.
> - It was not in any way established that the maker of this affidavit had personal knowledge of the applicant and of the events in Guinea involving the applicant at the time in question in 2005, especially as Lancine Sakoh has been in Canada since September 26, 2000. In the

same way, the maker of this affidavit did not indicate any neutral, reliable and objective source to support his allegation that the applicant was being sought by the Guinea authorities and would be detained on his arrival, or even that he was regarded by the authorities as a political opponent.

- In Canada, the applicant's activities were limited to his participation in the RPG's monthly meetings and a few demonstrations. There was nothing to indicate that the applicant's alleged activities were known to the authorities of his country.

- Additionally, in paragraph 16 of the affidavit Mr. Sakoh stated that certain members of the RPG in the U.S. and Europe had already received threats of reprisals for their activities abroad. In this connection, first, there is no evidence of such threats being made to the applicant. Second, the affidavit gives no further details as to what these alleged [TRANSLATION] "reprisals" would be. Third, there is no evidence as to the profile of these individuals who were allegedly threatened in the U.S. and Europe. Fourth, there is even less evidence to show that the applicant had a political profile comparable to the persons allegedly threatened. Fifth, there is no objective evidence showing that Guineans coming from Canada had in fact been arrested for their activities in Canada.
- Finally, the affidavit certainly cannot counteract the reliable and objective documentary evidence analysed by the PRRA officer last April, showing that mere membership in an opposition political party was not in itself a risk factor. (H&C decision, page A-12, PRRA decision, pages A-27 and A-28.)

[32] For all these reasons, this affidavit cannot validly serve to establish irreparable harm in the applicant's case.

[33] Finally, the general documentary evidence on the economic and political situation in Guinea was already analysed in connection with the refugee application, the PRRA application and the H&C application.

[34] This general evidence cannot in any way serve to establish irreparable personal harm to the applicant.

[35] Additionally, before rendering her decision on the alleged risk in Guinea, the PRRA officer consulted reports from reliable and disinterested organizations establishing that mere membership in an opposition political party does not place a person at risk, such as:

- *Freedom in the World Report 2006 - Guinea*;
- *U.S. Department of State Country Report on Human Rights Practices 2006 - Guinea*;
- *Amnesty International Annual Report 2006 - Guinea*;
- *Human Rights Watch World Report 2007 - Guinea*.

[36] On the question of harm, it is very important to consider that the applicant told the removal officer on June 12, 2007 [TRANSLATION] “I will comply with the Act – if I must leave, I will do so and I will go to Guinea. It is $4,000 to Mali and I do not have the money”.

[37] For all these reasons, the motion for a stay should be automatically dismissed for lack of any proof of irreparable harm.

**SERIOUS ISSUE**

**PRRA decision**

[38] The applicant challenged the PRRA decision, alleging the following points.

**Confusion between new evidence and new facts and error regarding 113(*a*) IRPA test**

[39] The evidence submitted in this argument concerns:

- the letter from the applicant's wife (pages B-82 and B-83 of the applicant's record and item of evidence No. 18 in PRRA decision, page A-4);

- list of members of RPG political office (B-32 to B-38 and item of evidence No. 8 in PRRA decision).

[40] On these items of evidence, it appeared from the PRRA decision that they were clearly entered in evidence within the meaning of section 113(*a*) of the IRPA. Accordingly, the items were considered and analysed by the officer. The question is simply as to the assessment of the probative value of the evidence by the PRRA officer. In this regard, the officer gave reasonable grounds to justify her position (PRRA decision).

**Ignorance of new risk allegations and new evidence: paragraphs 22 to 27 of applicant's memorandum**

[41] Letter B-65 appears in the PRRA decision as an item entered in evidence by the officer. Accordingly, the applicant cannot properly argue that this item was ignored.

[42] Exhibit B-45, a press article on the protest by Guineans in Montréal: the respondent admitted that this document was not specifically analysed by the officer in her reasons. However:

[TRANSLATION]

- as already mentioned, the officer does not have a duty to rule on each and every one of the documents submitted; and

- contrary to what was argued by the applicant, the document is not conclusive since the newspaper article does not in any way indicate personal political activities by the applicant nor even the representatives of the RPG. The document provides no new facts regarding the applicant personally.

[43] Documents B-14 and B-17 are items entered in evidence by the officer and considered as general documentary evidence on conditions in the country. These items cannot serve to show personal risk to the applicant.

**Unreasonable conclusions**

[44] Letter B-65 cannot be used to show that the applicant was personally at risk as a member of the RPG since:

[TRANSLATION]

- The same facts were already considered by the RPD and found to be completely lacking in credibility. Accordingly, this letter does not obliterate all the contradictions on points fundamental to the claim (RPD decision, pages A-22 to A-29).
- The letter provides no new information which is any different from that submitted to the RPD on the applicant's account regarding Guinea.
- It was not in any way established that the author of this letter had personal knowledge of the facts that occurred in Guinea involving the applicant, since the author was already in Canada at the time of the events in question.
- The applicant's involvement in Canada was not alleged in the PRRA application and the applicant's comments, so it is not a risk which the officer had to consider.

**PERSONAL RISK**

[45] The applicant alleged that the officer erred in law by requiring that the applicant show risk of persecution personal to himself.

[46] Contrary to what was alleged by the applicant, documentary evidence on a country is insufficient to warrant a positive risk assessment since the risk must be personal:

> [28] That said, the assessment of the applicant's potential risk of being persecuted if he were sent back to his country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual (*Ahmad v. M.C.I.*, [2004] F.C.J. No. 995 (F.C.); *Gonulcan v. M.C.I.*, [2004] F.C.J. No. 486 (F.C.); *Rahim v. M.C.I.*, [2005] F.C.J. No. 56, 2005 F.C. 18 (F.C.)).

(*Jarada*, *supra*); see also *Rizkallah*, *supra*; *Moussaoui*, *supra*; *Sanusi*, *supra*; *Zilenko*, *supra*; *Sivagnanam*, *supra*.)

[47] Accordingly, in the case at bar the general documentary evidence on the economic and political situation in Guinea cannot of itself establish that the protection application is valid when the connection between that evidence and the applicant himself has not been made, under both sections 96 and 97 of the IRPA.

> [5] In my opinion, the applicant's claim is entirely unfounded. It is settled law that an applicant must demonstrate an objective and subjective fear of persecution. In this case, it was not sufficient simply to file documentary evidence. It was necessary at the very least to establish that the applicant himself had a real fear of persecution. In the absence of such evidence, the Board members were entitled to conclude as they did.

(*Sinora*, *supra*; see also *Alexibich*, *supra*; *Ithibu*, *supra*.)

[48] The applicant must necessarily establish a connection between the present situation in his country and his personal situation. The PRRA officer was not satisfied that the applicant had made such a connection.

**Credibility and right to interview**

[49] The duty of fairness incumbent on the officer is set out in paragraph 113(*b*) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). Paragraph 113 (*b*) of the Act provides that a hearing may be held if the Minister (and so the PRRA officer, whose responsibility results from ministerial delegation) considers it necessary in view of the prescribed factors. These factors are set out in section 167 of the Regulations.

| | |
|---|---|
| **167**. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following: | **167**. Pour l'application de l'alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise : |
| (*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act; | *a*) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur; |
| (*b*) whether the evidence is central to the decision with respect to the application for protection; and | *b*) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection; |
| (*c*) whether the evidence, if accepted, would justify allowing the application for protection. | *c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection. |

[50] As the English version of this section clearly shows, the tests are conjunctive: if the applicant's situation does not meet one test, the hearing is not held. (*Bhallu v. Canada (Solicitor General)*, 2004 FC 1324, [2004] F.C.J. No. 1623 (QL); *Malhi v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 802, [2004] F.C.J. No. 993 (QL.).)

[51] In the case at bar, the applicant did not meet the conditions set out in this section of the Regulations and the PRRA officer accordingly did not have to summon the applicant to an interview. (*Abdou v. Canada (Solicitor General)*, 2004 FC 752, [2004] F.C.J. No. 916 (QL); *Kim* v. *Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 321, [2003] F.C.J. No. 452 (QL); *Allel v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 533, [2003] F.C.J. No. 688 (QL), at para. 25; *Youmis v. Canada (Solicitor General)*, 2004 FC 266, [2004] F.C.J. No. 339 (QL); *Sylla v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 475, [2004] F.C.J. No. 589 (QL), at para. 6.)

[52] Further, what the applicant argued was that the PRRA officer committed a serious error by giving the applicant no hearing, when he had questioned the applicant's credibility in the same way as the RPD.

[53] This allegation is wrong in law since, even if the PRRA officer had made findings on credibility, which is not the case, her decision was based on the insufficient evidence submitted by the applicant to discharge his burden of showing that he was personally at risk, as provided in sections 96 and 97 of the IRPA, should he return to Guinea. (*Allel*, *supra*; *Sylla*, *supra*; *Houcine v. Canada (Minister of Citizenship and Immigration)*, IMM-795-03, April 29, 2003 (*per* Paul Rouleau J.).)

[54] Consequently, the PRRA officer did not have to summon the applicant to an interview since she had not questioned his credibility. She simply stated that the applicant submitted in evidence the same risks which he had mentioned to the RPD and which had been found not to be credible.

[55] As to the letter from the applicant's wife, it is entirely permissible for the PRRA officer to assess the evidentiary value of this letter without holding a hearing. As the officer mentioned, the letter supported facts already considered by the panel and on which the applicant was found not to be credible. For these reasons, and the fact that the letter did not come from an independent source, the officer attached very little evidentiary value to it. This conclusion does not in any way meet the criteria of section 167 of the Regulations.

[56] ***Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177, cited by the applicant, does not apply here as the applicant in fact had a complete hearing before the RPD.**

[57] Accordingly, there is no serious issue in this regard.

**H&C DECISION**

[58] The applicant did not establish that there was a serious issue that would invalidate the H&C decision.

**Standard for intervention by courts in H&C applications**

[59] It is well settled that an application for an exemption is an exceptional measure which is purely discretionary in nature. As such, the standard of review applicable to applications for visa exemptions is reasonableness *simpliciter*. The discretionary power conferred on the immigration officer should be treated with some deference and respect: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1570 (QL); *Canada* (*Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748.

**Validity of H&C decision in case at bar**

[60] In view of the purpose and objectives sought by the exemption application assessment procedure set out under subsection 25(1) of the Act, the H&C decision is correct in fact and in law.

[61] In his H&C application (see Exhibit A of Ketsia Dorceus's affidavit), the applicant alleged:

- on the one hand, the risk of return to Guinea: in this regard, he referred to the risk he alleged in his PRRA application;
- on the other hand, the ties established with Canada.

[62] The applicant did not dispute the officer's conclusions regarding his ties and his social integration since he has been in Canada. In this regard, the officer noted that the applicant's whole family is in Guinea (including four children) and that the applicant had been employed for only a short period (three months).

[63] In his H&C application form, the applicant said regarding the risk of return [TRANSLATION] “I am still afraid of returning to Guinea for the reasons I will eventually indicate when I make use of the PRRA”. Accordingly, the applicant confined himself to repeating exactly the same facts and risks as those he had alleged before the RPD and in his PRRA application, and which were found to be not credible or insufficient to establish personal risk.

[64] In her reasons the officer noted and analysed in detail the allegations and documents filed by the applicant in support of his H&C application and in support of his PRRA application, since in dealing with risk the applicant had specifically referred to his PRRA application. The officer’s reasons are clear, detailed and based on the evidence submitted. (Reasons of H&C decision, pages A-9 to A-13.)

[65] The officer concluded that the personal circumstances alleged by the applicant, including the alleged risks of return, were not such that he would undergo unusual and unjustified or excessive problems if he was required to submit from outside Canada a permanent resident visa application.

[66] **This decision which the applicant is seeking to have quashed was made pursuant to section 25 of the IRPA, which is an exceptional, discretionary, measure. As Iacobucci J. noted in *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84 (which dealt with section 114(2) of the old Act, replaced by section 25 of the present IRPA), at para. 64:**

> **. . . an application to the Minister under s. 114(2) is essentially a plea to the executive branch for special consideration which is not even explicitly envisioned by the Act. (Emphasis by Court.)**

**(See also *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] F.C.J. No. 457 (QL), at paras. 15 and 16.)**

[67] In the case at bar, the officer set out her reasons clearly and in detail in support of her negative finding, and they are legally valid because they are judicious and based on the evidence that was before her.

**BALANCE OF CONVENIENCE**

[68] As the applicant did not establish a serious issue or irreparable harm, the balance of convenience favours enforcement of the respondent's removal order (*Morris v. Canada (Minister of Citizenship and Immigration)*, January 24, 1997, IMM-301-97).

[69] The balance of convenience favours the Minister, who has an interest in the removal order being enforced on the date set for it (*Mobley v. Canada (Minister of Citizenship and Immigration)*, January 18, 1995, IMM-106-95, *per* Simon Noël J.).

[70] Subsection 48(2) of the IRPA provides that a removal order must be carried out as soon as reasonably practicable.

[71] The Court of Appeal has discussed the question of the balance of convenience in a stay and the public interest that must be taken into account:

> Balance of convenience
>
> **[**21] Counsel says that since the appellants have no criminal record, are not security concerns, and are financially established and socially integrated in Canada, the balance of convenience favours maintaining the status quo until their appeal is decided.
>
> **[**22] I do not agree. They have had three negative administrative decisions, which have all been upheld by the Federal Court. It is nearly four years since they first arrived here. In my view, the balance of convenience does not favour delaying further the discharge of either their duty, as persons subject to an enforceable removal order, to leave Canada immediately, or the Minister's duty to remove them as soon as reasonably practicable: IRPA, subsection 48(2). This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control.

(*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, [2004] F.C.J. No. 1200 (QL); see also *Atwal v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427, [2004] F.C.J. No. 2118 (QL); *Pao, supra*; *Dasilao* v. *Canada (Solicitor General)*, 2004 FC 1168, [2004] F.C.J. No. 1410 (QL); *Membreno-Garcia v. Canada (Minister of Employment and Immigration)*, [1992] 3 F.C. 306, [1992] F.C.J. No. 306 (QL); *Jean* v. *Canada (Minister of Citizenship and Immigration)*, April 1, 1996, IMM-1051-96; *Kerrutt v. Canada (Minister of Employment and Immigration)* (1992), 53 F.T.R. 93, [1992] F.C.J. No. 237 (QL).)

[72] **In the case at bar, the applicant was able to claim refugee status, challenge the decision in the Federal Court, make a PRRA application and make an H&C application.**

[73] The applicant has exhausted the remedies he is allowed by law.

[74] The respondent's interest in carrying out the removal order promptly takes precedence over the hardship which the applicant may suffer.

[75] The balance of convenience is accordingly in the respondent's favour.

**ORDER**

**THE COURT ORDERS that** the two motions seeking stay of execution of a removal order made against the applicant are dismissed.

"Michel M.J. Shore"
Judge

Certified true translation

Brian McCordick, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2275-07<br>IMM-2276-07 |
| **STYLE OF CAUSE:** | MOHAMED SOUL KABA v. MINISTER OF CITIZENSHIP AND IMMIGRATION AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | Ottawa, Ontario |
| **DATE OF HEARING BY TELECONFERENCING CALL:** | June 15, 2007 |
| **REASONS FOR ORDER AND ORDER BY:** | THE HONOURABLE MR. JUSTICE SHORE |
| **DATED:** | June 15, 2007 |

**APPEARANCES:**

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|---|---|
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| Patricia Deslauriers | FOR THE RESPONDENTS |

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