

**Date: 20080908**

**Docket: IMM-122-08**

**2008 FC 1003**

**Ottawa, Ontario, September 8, 2008**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**JULIUS R. NASSO**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of a visa officer in the Canadian consulate in New York dated October 26, 2007, refusing the Applicant's application for a temporary resident permit (TRP) to enter Canada. For the reasons that follow, the application is dismissed.

**BACKGROUND**

[2] Mr. Nasso is a successful businessman in the United States of America with Canadian business interests. He owns and operates a large marine medical supply company headquartered in New York City which supplies 11 Canadian marine companies located in Vancouver, Montreal and

Dartmouth. He is also involved in the motion picture industry in the USA and is a partner in a film production company in Toronto.

[3] It was his film production activities in the USA that ultimately led to Mr. Nasso being charged and convicted of the criminal offence of “knowingly and intentionally conspiring to commit extortion” contrary to US Code, Title 18, Section 1951(b)(2). The Canadian equivalent of this offence is extortion, as defined in section 346(1) of the *Criminal Code*, R.S.C. 1985 c. C-46. The offence arose in relation to a financial dispute between the Applicant and his then business partner. Mr. Nasso claimed that his partner owed him a substantial sum of money. Rather than leaving the dispute to be resolved through the judicial process, Mr. Nasso resorted to a self-help measure which ultimately led to his conviction. Through a plea bargain, Mr. Nasso received a sentence of one year plus one day to be served at a minimum security prison, payment of a fine in the amount of \$75,000, probation and mental health counselling.

[4] The Applicant has served 9-1/2 months of his sentence and was released from prison on June 28, 2005. His probationary period ended on June 26, 2006 and his parole officer has confirmed that Mr. Nasso has met all the terms of his sentence.

[5] The Applicant’s current predicament is that he would like to come to Canada in connection with his business interests here, but cannot do so due to his criminal background. In his application for a TRP, counsel for Mr. Nasso describes the purpose of his visit to Canada in the following manner:

Mr. Nasso wishes to enter Canada for short periods of time to meet with executives from the Canadian shipping companies that Mr. Nasso's marine medical supplies company services and to oversee his interest in a Canadian film company that he formed with Canadian partners. The company, Lee-Nasso-Wynn Productions, is actively involved in making films in Canada and has recently produced an award-winning film, starring Daryl Hannah and Roy Scheider.

[6] Mr. Nasso remains inadmissible to Canada on grounds of serious criminality pursuant to section 36(1)(b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which provides as follows:

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality	36. (1) Empovent interdiction de territoire pour grande criminalité les faits suivants :
.....	.....
(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;	b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

[7] There is a discretionary exemption to section 36(1)(b), set out in section 24(1) of the Act, which reads as follows:

24. (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if	24. (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il
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<p>an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.</p>	<p>délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.</p>
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[8] The objectives and exceptional nature of this exemption were recently described in detail by my colleague Justice Shore in *Farhat v. Canada (The Minister of Citizenship and Immigration)*, 2006 FC 1275:

[22] The objective of section 24 of IRPA is to soften the sometimes harsh consequences of the strict application of IRPA which surfaces in cases where there may be "compelling reasons" to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with IRPA. Basically, the TRPs allow officers to respond to exceptional circumstances while meeting Canada's social, humanitarian, and economic commitments. (Immigration Manual, c. OP 20, section 2; Exhibit "B" of Affidavit of Alexander Lukie; *Canada (Minister of Manpower and Immigration) v. Hardayal*, [1978] 1 S.C.R. 470 (QL).)

[23] Before a TRP is issued, consideration must be given to the fact that TRPs grant their bearer more privileges than do visitor, student or work permits. Like the foreign nationals from those two categories, a TRP bearer becomes a temporary resident after being examined upon his entry to Canada, but may also be eligible for health or social services and can apply for a work or student permit from Canada. Furthermore, he may obtain, without discretion, permanent resident status if he resides in Canada throughout the validity period and does not become inadmissible on other grounds than those for which the TRP was granted. (Immigration Manual, c. OP 20, section 5.7; Exhibit "B" of Affidavit of Alexander Lukie.)

[24] TRPs should thus be recommended and issued cautiously. Parliament was aware of the exceptional nature of TRPs and has retained a supervisory function in their regard; thus the Minister includes in the annual report to Parliament the number of TRPs granted under s. 24 of IRPA, "categorized according to grounds of

inadmissibility, if any." (Immigration Manual, c. OP 20, s. 5.2 (paragraph 2) and 5.22; Exhibit "B" of Affidavit of Alexander Lukie; Subsection 94(2) of IRPA.)

[9] In his refusal letter of October 26, 2007, the visa officer informed Mr. Nasso that “[y]ou have failed to demonstrate that your request is compelling enough [that] such an exceptional document should be issued.” He further writes:

I am not satisfied the need for you to be in Canada is sufficient to overcome the inadmissibility. Therefore, the need for you to be in Canada is not compelling enough to overcome any risk of recidivism. For these reasons, I have refused your application.

[10] These reasons are consistent with the officer’s Computer Assisted Immigration Processing System (CAIPS) notes which read as follows:

ASSESSMENT ON THE DOCS PRESENTED IN APPLN (W/C ALSO INCLUDE THE COURT PROCEEDINGS, COPY OF JUDGE’S DECISION ALLOWING SUBJ TO TRAVEL TO TORONTO ON AN INTERMITTENT BASIS PROVIDED CDN REQS ARE COMPLIED WITH, DOC EVIDENCE OF TERM OF SUPERVISED RESEASE AS OF 30/06/06 LORS, STATUTES

LEGAL REP HIGHLIGHTS SUBJ’S PROF BACKGROUND IN FILM INDUSTRY, HIS MEDICAL SUPPLY CO (...) STATES THAT SBJ’S SOLE CONVICTION WAS AN INDICATION OF “ABERRANT BEHAVIOUR” AND THAT SUBJ POSES NO RISK TO CANADIAN SOCIETY. (...) LEGAL REP OUTLINES ASSESSMENT OF NEED VS RISK.

NONETHELESS, SUBJ WAS CONVICTED OF A VERY SERIOUS CRIME (...) SUBJ IS NOT ELIGIBLE FOR NHQ REHAB UNTIL 30/6/11.

SINCE HIS INADMISSIBILITY (...) SUBJ’S BUSINESSES CONTINUE AND APPEAR TO THRIVE (...) WHERE TECHNOLOGY IS ACCESSIBLE (TELECONFERENCING ET

AL.), I DO NOT FIND HIS REASONS TO ENTER CDA COMPELLING AND IT IS MY OPINION THAT HIS INABILITY TO ENTER CDA, ALBEIT INCONVENIENT, WILL NOT RESULT IN UNDUE HARDSHIP.

## ISSUES

[11] The Applicant submitted four issues to this Court; however, in my opinion, they may be collapsed into the following:

1. Whether the visa officer erred in his interpretation of section 24(1) of the Act; and
2. Whether the visa officer's decision was unreasonable in light of the evidence presented.

## STANDARD OF REVIEW

[12] Highly discretionary decisions such as the decision to issue a TRP were previously held to attract deference to the point of patent unreasonableness: *Mount Sinai Hospital Centre v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, as cited by this Court in *Farhat*. Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, the appropriate standard is "reasonableness" as that concept is elaborated by the Supreme Court, it being understood on the basis of existing case law that a negative TRP decision would have to be highly irregular to justify the intervention of the Court: *Ali v. Canada*, 2008 FC 784, at para. 9. The Applicant submits, on the authority of *Dunsmuir*, that where the issue is one of statutory interpretation, the standard of review is correctness.

*Did the Officer err in his interpretation of the statute?*

[13] Mr. Nasso submits that the officer erred in his interpretation of section 24(1) of the Act by reading in a requirement that there be a “compelling need” shown by an applicant before the exemption is warranted. The Applicant points to the following passages from the refusal letter and CAIPS notes as evidence that the officer employed a standard of compelling need.

...the need for you to be in Canada is not compelling enough to overcome any risk of recidivism.

THERE HAS BEEN NOTHING FROM CAN, IN PARTICULAR,  
HIS NEED/NEED TO BE IN CAN.

[14] It is submitted that while the officer’s interpretation is consistent within the policy guideline, IP1 – Temporary Resident Permits, it imposes on section 24(1) of the Act a condition greater than the requirement specified in that section that the permit be “justified in the circumstances”.

[15] I am not convinced that there is any misinterpretation of section 24(1), as alleged. As is noted by Justice Shore in *Farhat*, section 24 of the Act allows officers to soften the harsh consequences of a strict application of the Act in “exceptional circumstances”. It seems to me that an applicant who cannot satisfy an officer that he has a requirement or, to use the words of the decision under review, a compelling need to enter Canada, cannot establish that a permit is justified in the circumstances. In other words, to be granted a TRP in these exceptional circumstances requires more than showing that one has a wish or desire to enter Canada – it requires much more – otherwise, it is not an exceptional circumstance. When the Applicant claims that he needs to enter Canada for business purposes, then he ought to be able to establish that those purposes cannot be

met or satisfied from his own country but require his presence in Canada. That, to my mind, is a compelling need. Accordingly, I find that the officer did not misinterpret the requirements in section 24(1) of the Act.

*Was the officer's decision unreasonable?*

[16] In my view the officer gave the Applicant a full and fair opportunity to present his case for admission to Canada. The CAIPS notes and letter indicate that the officer fairly considered the reasons advanced by Mr. Nasso but ultimately found that they did not justify the admission of Mr. Nasso to Canada.

[17] It was submitted that the officer's decision was unreasonable because he speaks of the "risk of recidivism" when the evidence shows that this one crime was aberrant behaviour on the part of the Applicant. I find this unconvincing as the officer clearly speaks of the "risk" of re-offending. It is also submitted that the officer's decision was unreasonable because he says that "there is something awkward about a person recently convicted from requesting money from investors who may or may not know of his past" when there is no evidence that Mr. Nasso intends to seek money from investors. The Applicant in advancing this submission ignores the full explanation of the officer that contains the passage that is disputed. What the officer writes is as follows:

AS FOR HIS OTHER "INVESTMENTS" THERE IS NOTHING CLEAR ABOUT THIS AND WHILE I CANNOT PEER INTO HIS DEALINGS THERE IS SOMETHING A LITTLE ACKWARD ABOUT A PERSONAL (*sic*) RECENTLY CONVICTED OF EXTORTION FROM REQUESTING MONEY FROM INVESTORS WHO MAY, OR MAY NOT, KNOW OF HIS PAST, OR KNOW THAT HE IS, IN FACT, INADMISSIBLE TO CAN.



[18] In short, the officer acknowledged that his comments are speculative in nature. In the context of the entire decision and the reasons for it, I am not satisfied that this speculation played any role in the decision not to grant the permit. It is also submitted that the officer erred in that he considered that Mr. Nasso had been convicted of extortion when he had been convicted of conspiracy to commit extortion. In my view this difference is immaterial and, in any event, the Canadian equivalent of the offence for which he was convicted was acknowledged to be that found in section 346(1) of the *Criminal Code*, which is extortion.

[19] For all of these reasons, the application for review is dismissed. Neither party proposed any question for certification nor is there any.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No question is certified.

“Russel W. Zinn”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-122-08

**STYLE OF CAUSE:** JULIUS R. NASSO v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 27, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN J.

**DATED:** September 8, 2008

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