**Date: 20090909**

**Docket: IMM-1273-09**

**Citation: 2009 FC 887**

**Ottawa, Ontario, September 9, 2009**

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

**BETWEEN:**

**TEE MENG LIEW**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The immigration matters related to Mr. Liew have been convoluted at best. This judicial review is but another one of the twists and turns in his litigation with the Minister.

## I. BACKGROUND

[2] The judicial review at issue this time is related to a negative PRRA decision rendered February 9, 2009. One of the issues raised was the nature of the assurance given by the Government of Malaysia as to the likelihood that the death penalty would not be imposed on Mr. Liew for murder in his home country or if imposed, that it would not be carried out.

[3] This type of assurance has been required by Canada as a result of the decisions in *United States v. Burns*, [2001] 1 S.C.R. 283 and *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, so that the Canadian government is not connected with the deprivation of "life, liberty or security".

[4] The "assurance" first given by Malaysia and upon which the PRRA Officer relied in his decision merely stated that since murder charges had been pending for 17 years "the chances to charge Mr. Liew would be minimal".

[5] Subsequent to the granting of leave for judicial review, the Respondent brought a motion to adjourn the judicial review hearing and consenting to the judicial review. The reason for the change in the Respondent's position is that the Malaysian government had sent a further Diplomatic Note advising Canada that it cannot give the assurances requested related to the death penalty and cannot do so because the laws of Malaysia do not allow such assurances to be given.

[6] Despite the Respondent's concession, the Applicant opposed the consent to judicial review. The sole point of the Applicant's opposition is that the motion contained no terms as to the time in

which to conduct a new PRRA, no promise that the PRRA would be positive, and no reference to the Applicant's incarceration.

[7] The Applicant seeks a ruling that the Diplomatic Note is insufficient, an unconditional release and costs exceeding $25,000.

[8] In view of the Applicant's position, the judicial review continued as scheduled. The hearing could have been avoided by the Applicant accepting the Respondent's concession and requesting a teleconference to settle the terms of the order granting leave.

[9] Given the history of this case and the allegations that the Applicant's counsel had made against Respondent's counsel and against members of this Court, it was reasonable for the Department of Justice to have two lawyers present to avoid any delay if lead counsel had to step aside to address allegations suggested in the Applicant's material.

## II. ANALYSIS

[10] In addressing the grounds of opposition to the Respondent's consent to judicial review, the Court will not issue directions to the PRRA Officer conducting the new PRRA. There have been too many developments in this case to justify carving matters in stone prematurely. The Officer is expected to do his duty in light of all of the circumstances.

[11] However, it is evident, and this may serve as guidance, that barring some other events, the most recent Diplomatic Note does not meet the required assurances imposed by the Supreme Court of Canada.

[12] The Court will make no order as to incarceration as this is a matter for another body to determine.

[13] The Applicant has consented through counsel to waive his right to make submissions on the new PRRA. As such, thirty (30) days to render a PRRA decision is reasonable and will be so ordered.

[14] Finally, as to costs, there are no “special reasons” to make such an order against the Respondent. When the new Diplomatic Note was available, counsel advised the Applicant and the Court of its consent to the granting of judicial review. If there were any “special reasons”, they would tend against the Applicant who forced a matter on for hearing in Edmonton which could have been disposed of in a far more expeditious manner.

## III. CONCLUSION

[15] Therefore, the judicial review will be granted, the PRRA decision will be quashed and the matter will be remitted to the Respondent to be determined by a new officer within thirty (30) days of the date of the Court’s Order. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is granted, the PRRA decision is quashed and the matter is remitted to the Respondent to be determined by a new officer within thirty (30) days of the date of the Court's Order.

"Michael L. Phelan"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1273-09 |
| **STYLE OF CAUSE:** | TEE MENG LIEW<br><br>and<br><br>THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Edmonton, Alberta |
| **DATE OF HEARING:** | September 8, 2009 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Phelan J. |
| **DATED:** | September 9, 2009 |

**APPEARANCES:**

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| Mr. Timothy E. Leahy | FOR THE APPLICANT |
| Ms. Kareena R. Wilding<br>Mr. Manuel Mendelzon | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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