Federal Court  Cour fédérale

Date: 20091016

Docket: IMM-3257-08

Citation: 2009 FC 1056

Ottawa, Ontario, October 16, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

CHARLES GÉRARD PLACIDE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
and
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] Between 1986 and 2005, the applicant was convicted of 44 criminal offences. The applicant is a danger to the Canadian public. In his decision, the Minister's delegate emphasized the fact that the reports on the applicant emphasized his unstable lifestyle, his association with criminal peers and his entrenched delinquent values which contribute to his criminal behaviour. In his decision, the Minister's delegate relied on evidence and information about the applicant's

criminal convictions, especially those for offences against the person—sexual assault, armed assault and assault—and for trafficking in substances included in Schedule I and conspiracy to traffic.

[2] The decision of the Minister's delegate is consistent with the criteria set out in section 246 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR), and case law.

[3] The Court agrees with the respondent's oral arguments.

II. Judicial Procedure

[4] The applicant seeks judicial review of a decision of the Minister's delegate dated July 15, 2008, wherein the Minister's delegate rejected the applicant's application for refugee protection under subsection 112(3) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), because he was inadmissible on grounds of serious criminality.

III. Facts

[5] The applicant, Charles Gérard Placide, born on September 23, 1962, in Port-au-Prince, Haiti, came to Canada as a member of the family class when he was 20 years old.

[6] Between 1986 and 2005, Mr. Placide was convicted of **44 criminal offences**, for which he was subject to several removal orders.

[7] His criminal convictions include a sexual assault, an assault with a weapon, assault, several thefts, and possession of and trafficking in substances.

[8] Mr. Placide's last conviction was in 2005, when he was sentenced to three years' imprisonment for trafficking in substances included in Schedule 1 (2 counts) and conspiracy to traffic substances included in Schedule I, contrary to subsection 5(1) and paragraph 5(3)(*a*) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and paragraph 465(1)(*c*) of the *Criminal Code*, R.S.C. 1985, c. C-46 (affidavit of Hélène Jarry, Exhibit B).

[9] On June 13, 2006, a second removal order was issued against Mr. Placide as a result of his conviction (affidavit of Hélène Jarry).

[10] On September 4, 2007, Mr. Placide applied for a pre-removal risk assessment (PRRA) under subsection 112(3) of the IRPA.

[11] On November 15, 2007, counsel for Mr. Placide made submissions on his behalf.

[12] On November 16, 2007, a PRRA officer issued her assessment of the risks Mr. Placide would face in Haiti and stated that, in her opinion, he would face a risk to his life or a risk of cruel and unusual treatment or punishment.

[13] On November 22, 2007, Mr. Placide, who had begun to serve his sentence on November 22, 2005, obtained a statutory release. He was turned over to the Canada Border Services Agency (CBSA) under an arrest warrant issued on June 13, 2006, under subsection 55(1) of the IRPA (affidavit of Hélène Jarry).

[14] On November 23, 2007, the CBSA referred Mr. Placide's file to National Headquarters for a danger opinion under subsection 112(3) and paragraph 113(*d*) of the IRPA (affidavit of Hélène Jarry).

[15] On November 30, 2007, Mr. Placide was released by the Immigration Division on several conditions, including the obligation to go for six months of treatment at the Portage drug treatment centre (affidavit of Hélène Jarry).

[16] On December 21, 2007, Mr. Placide was refused admission to the Portage drug treatment centre, and the CBSA applied to have his release cancelled (affidavit of Hélène Jarry).

[17] On January 18, 2008, Mr. Placide was released by the Immigration Division while in the custody of the CBSA. Mr. Placide was released after he agreed to reside in a Correctional Service of Canada (CSC) halfway house and to participate in specific programs (affidavit of Hélène Jarry).

[18] On February 26, 2008, the CBSA sent Mr. Placide a copy of the PRRA together with a copy of the assessment of the restrictions issued under subsection 112(3) of the IRPA and supporting documents.

[19] On March 18, 2008, a warrant to arrest Mr. Placide and to suspend his statutory release was issued under section 135 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, because of his behaviour and adaptation problems in the halfway houses (affidavit of Hélène Jarry).

[20] On June 11, 2008, a new arrest warrant was issued for Mr. Placide under subsection 55(1) of the IRPA because of his inadmissibility under paragraph 36(1)(*a*) of the IRPA and the order issued for his removal (affidavit of Hélène Jarry).

[21] On June 13, 2008, the National Parole Board (NPB) cancelled the suspension of Mr. Placide's release (affidavit of Hélène Jarry).

[22] On June 16, 2008, Mr. Placide was turned over to the CBSA and taken into custody (affidavit of Hélène Jarry).

[23] On June 18, 2008, the Immigration Division upheld Mr. Placide's detention (affidavit of Hélène Jarry).

[24] On June 20, 2008, the Immigration Division ordered that Mr. Placide be released under several very strict conditions (affidavit of Hélène Jarry).

[25] On March 27, 2008, June 19, 2008, and June 30, 2008, counsel for Mr. Placide filed additional submissions in support of Mr. Placide's application for refugee protection under subsection 112(3) of the IRPA.

IV. Impugned decision

[26] On June 15, 2008, the Minister's delegate rejected Mr. Placide's application for protection by concluding that, on a balance of probabilities, Mr. Placide would not be subjected to a danger of torture or to a risk to life or of cruel and unusual treatment or punishment if he were returned to Haiti and that he was a present and future danger to the public in Canada:

a. As far as the risk of detention in Haiti was concerned, the Minister's delegate found that, on the basis of the evidence in the record, nothing showed that Mr. Placide was facing a risk of detention in Haiti;
b. As far as the danger of torture by the authorities was concerned, the Minister's delegate found that, on the basis of the documentary evidence, torture was not used by government agents and the authorities allowed international organizations to visit prisons to monitor conditions and assist inmates;
c. As far as the assessment of danger was concerned, the Minister's delegate found that, on a balance of probabilities, Mr. Placide was a present and future danger to the Canadian public.

(Delegate's decision, at pp. 18-29-30).

V. Issues

[27] (1) Was the Minister's delegate required to confront Mr. Placide with the U.S. State Department report, published on March 11, 2008?

(2) Was the Minister's delegate's assessment of the evidence unreasonable?

VI. Analysis

Applicable legislation

[28] Under paragraph 112(3)(*b*) of the IRPA, refugee protection may not result from an application for protection by an applicant determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years:

Application for protection	Demande de protection
112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).	**112.** (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).
...	[...]
Restriction	Restriction
(3) Refugee protection	(3) L'asile ne peut être

may not result from an application for protection if the person	conféré au demandeur dans les cas suivants :
...	[...]
(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence 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*) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

[29] In such a case, under paragraph 113(*d*) of the IRPA, the application for a PRRA is considered on the basis of the factors set out in section 97 and in light of the fact that the applicant determined to be inadmissible on grounds of serious criminality is a danger to the security of Canada:

Consideration of application	Examen de la demande
113. Consideration of an application for protection shall be as follows:	**113.** Il est disposé de la demande comme il suit :
...	[...]
(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set	*d*) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

out in section 97 and	
(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or	(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,
(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

[30] However, under subsection 114(1) of the IRPA, in such an instance, a positive decision regarding the PRRA would merely have the effect of staying the removal order against such an applicant, but not of conferring refugee protection:

Effect of decision	Effet de la décision
114. (1) A decision to allow the application for protection has	**114.** (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.
(*a*) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and	
(*b*) in the case of an applicant described in subsection 112(3), the	

effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

[31] Under section 172 of the IRPR, before making a decision, the Minister shall consider the written assessments of the grounds for protection described in section 97 and the factors set out in subparagraph 113(*d*)(i) of the IRPA. The two assessments are disclosed to the applicant, who has 15 days to file written submissions with the Minister's delegate. If the Minister concludes that the applicant is not described in section 97, he is not required to take the factors set out in subparagraph 113(*d*)(i) into consideration and can reject the application for refugee protection:

Applicant described in s. 112(3) of the Act	Demandeur visé au paragraphe 112(3) de la Loi
172. (1) Before making a decision to allow or reject the application of an applicant described in subsection 112(3) of the Act, the Minister shall consider the assessments referred to in subsection (2) and any written response of the applicant to the assessments that is received within 15 days after the applicant is given the assessments.	**172.** (1) Avant de prendre sa décision accueillant ou rejetant la demande de protection du demandeur visé au paragraphe 112(3) de la Loi, le ministre tient compte des évaluations visées au paragraphe (2) et de toute réplique écrite du demandeur à l'égard de ces évaluations, reçue dans les quinze jours suivant la réception de celles-ci.
Assessments	Évaluations
(2) The following assessments shall be given to the applicant:	(2) Les évaluations suivantes sont fournies au demandeur :
(*a*) a written assessment on	*a*) une évaluation écrite au

the basis of the factors set out in section 97 of the Act; and

(*b*) a written assessment on the basis of the factors set out in subparagraph 113(*d*)(i) or (ii) of the Act, as the case may be.

...

When assessments given

(3) The assessments are given to an applicant when they are given by hand to the applicant or, if sent by mail, are deemed to be given to an applicant seven days after the day on which they are sent to the last address that the applicant provided to the Department.

Applicant not described in s. 97 of the Act

(4) Despite subsections (1) to (3), if the Minister decides on the basis of the factors set out in section 97 of the Act that the applicant is not described in that section,

(*a*) no written assessment on the basis of the factors set out in subparagraph 113(*d*)(i) or (ii) of the Act need be made; and

regard des éléments mentionnés à l'article 97 de la Loi;

b) une évaluation écrite au regard des éléments mentionnés aux sous-alinéas 113*d*)(i) ou

[...]

Moment de la réception

(3) Les évaluations sont fournies soit par remise en personne, soit par courrier, auquel cas elles sont réputées avoir été fournies à l'expiration d'un délai de sept jours suivant leur envoi à la dernière adresse communiquée au ministère par le demandeur.

Demandeur non visé à l'article 97 de la Loi

(4) Malgré les paragraphes (1) à (3), si le ministre conclut, sur la base des éléments mentionnés à l'article 97 de la Loi, que le demandeur n'est pas visé par cet article :

a) il n'est pas nécessaire de faire d'évaluation au regard des éléments mentionnés aux sous-alinéas 113*d*)(i) ou (ii) de la Loi;

(*b*) the application is rejected.	*b*) la demande de protection est rejetée.

The Minister's delegate's decision on the risks to the applicant in Haiti

[32] A PRRA is a factual inquiry. The Minister's delegate's duty was to determine, on the basis of the evidence before him, whether Mr. Placide would be subjected to a danger of torture or to a risk to life or of cruel and unusual treatment or punishment if he were returned to Haiti. If applicable, he also had to determine whether Mr. Placide was a danger to the security of Canada and if so, whether this warranted Mr. Placide's removal in spite of the risk he might be subjected to (paragraph 113(*d*) of the IRPA).

[33] Specifically, the Minister's delegate reached the following conclusions from the evidence:

a. He noted, on the basis of the documentary evidence, that the political situation in Haiti had stabilized considerably and that the country was receiving substantial international aid and was striving to rebuild its security and improve its judicial, correctional and police institutions (delegate's decision at pp. 17–18).

b. The Minister's delegate referred to a U.S. State Department report published on March 6, 2006 (Country Reports on Human Rights Practices, 2006. Released by the Bureau of Democracy, Human Rights and Labor, U.S. Department of State, March 6, 2007), on the basis of which the PRRA officer who performed the risk assessment on November 16, 2007, had found that Mr. Placide was subject to a risk of detention upon his arrival in Haiti and that this detention considering the

harsh conditions was equivalent to a risk of cruel and unusual treatment or punishment (delegate's decision at p. 18).

c. He noted, however, that, according to the latest U.S. Department of State report published on March 11, 2008, the situation described was different from that described in the 2007 report. The situation had in fact greatly improved. The government can detain repatriated citizens for two weeks if they have a criminal record in Haiti. Because there was no indication in the file that Mr. Placide has a criminal record in Haiti, the Minister's delegate found that he could not conclude that Mr. Placide would be detained (Country Reports on Human Rights Practices, 2007. Released by the Bureau of Democracy, Human Rights and Labor, U.S. Department of State, March 11, 2008; applicant's record (AR), at p. 249);

d. The same report emphasizes that the government has changed its previous policy on detention, which applied to all repatriated citizens who had served a sentence abroad. The report states that the government has changed its policy in response to the lack of space available in its prisons and detention centres and also because the IOM continues to assist the government in reintegrating deported persons in society. Considering the Haitian government's policy changes, the delegate was satisfied that, on a balance of probabilities, Mr. Placide was no longer at risk of being detained for already having served a sentence in a foreign country (Country Reports on Human Rights Practices, 2007. Released by the Bureau of Democracy, Human Rights and Labor, U.S. Department of State, March 11, 2008; AR, at p. 249);

e. In the alternative, he noted that the national authorities, with the help of international organizations, are making considerable efforts to improve prison conditions. According to the U.S. Department of State report published in March 2008, the United Nations, the International Committee of the Red Cross, the Haitian Red Cross and human rights groups are helping deported criminals who have already served their sentence and who are returned to Haiti by the United States and other countries (delegate's decision at pp. 18–19);

f. The delegate referred to other documents according to which torture is no longer used in Haiti and the authorities allow international organizations to visit prisons to monitor conditions and assist inmates and noted that the situation in Haiti has improved (delegate's decision at pp. 18–19).

[34] The delegate accordingly concluded that, on a balance of probabilities, Mr. Placide would not be subjected to a danger of torture or to a risk to life or of cruel and unusual treatment or punishment if he were returned to Haiti (delegate's decision at pp. 18–19).

The Minister's delegate was not required to confront the applicant with the U.S. Department of State report, published on March 11, 2008

[35] Mr. Placide alleges that the Minister's delegate did not give him a chance to comment on the conclusions based on the U.S. Department of State report published on March 11, 2008, concerning the risks of detention in Haiti (AR, at p. 505, at paras. 3, 4 *et seq*.).

[36] The respondent pointed out that the Minister's delegate referred to two U.S. State Department reports, one published on March 11, 2008, and another published on March 6, 2007 (delegate's decision at p. 18).

[37] In addition, in his reasons, the Minister's delegate drew attention to the conclusions reached by the PRRA officer who issued his assessment on November 16, 2007, and who had referred to the U.S. State Department report published in March 2007.

[38] According to the principles established in *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461, 161 D.L.R. (4th) 488 (C.A.), a decision-maker is not required to give an opportunity to comment evidence from a public source which is available:

a. Fairness does not require the disclosure of documents from public sources in relation to general country conditions if they were available and accessible in documentation centres at the time submissions were made by an applicant;
b. As to documents from public sources in relation to general country conditions which were available and accessible after the applicant had filed his submissions, fairness requires disclosure where they are novel and significant and where the evidence changes in the general country conditions that may affect the decision.

[39] In *Guzman v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 838, 131 A.C.W.S. (3d) 1124, this Court stated that the reports published by the U.S. State Department are publicly available and available online. The Court wrote the following:

> [5] ...
>
> a. that the research documents prepared by the IRB which available at IRB documentation centres are not extrinsic materials.
>
> b. and that procedural fairness does not require disclosure by the PRRA officer . . . of such documents to the Applicant prior to a determination being reached ...

[40] The U.S. State Department report referred to in this case is the same type of document as that mentioned in *Guzman*, above (which was also a U.S. State Department report). The report in this case is a document that was published on March 11, 2008, and is from a public source and available online and at Immigration and Refugee Board (IRB) documentation centres. Mr. Placide made additional submissions on March 27, 2008, June 19, 2008, and June 30, 2008 (delegate's decision at p. 3). The document was therefore available to him at that time.

[41] In addition, the assessment of a PRRA application does not involve an exchange of points of view between the applicant and decision-maker (*Aoutlev v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 111, [2007] F.C.J. No. 183 (QL)).

[42] In light of the above, it is clear that the Minister's delegate did not have to disclose the U.S. State Department report dated March 11, 2008, to Mr. Placide. Procedural fairness was therefore not breached in this case. An intervention by this Court is consequently not warranted.

The Minister's delegate did not have to refer to all the evidence

[43] Mr. Placide alleged that the Minister's delegate did not refer to a series of articles by journalist Caroline Touzin (AR, pp. 461 *et seq.*), an affidavit from his sister Rose-Mélanie Placide (AR, p. 145) or a report from the National Human Rights Defense Network (RNDDH) (AR, at p. 511, para. 3.19).

[44] There is a presumption that a decision-maker considered all of the evidence before making a decision (*Hassan*; *Florea*). It is well established that decision-makers are not required to refer to every piece of evidence considered in their decision and that it is open to them to discount or to disbelieve the evidence (*Woolaston*; *Hassan*, above; *Zhou*). In addition, decision-makers are not bound to explain why they did not accept every item of evidence before them (*Ozdemir)*. (*Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317, 36 A.C.W.S. (3d) 635 (F.C.A.); *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL); *Woolaston v. Minister of Manpower and Immigration)*, [1973] S.C.R. 102, 28 D.L.R. (3d) 489; *Zhou v. Canada (Minister of Employment and Immigration)* (1994), 49 A.C.W.S. (3d) 558, [1994] F.C.J. No.1087 (C.A.F.) (QL); *Ozdemir v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331, 282 N.R. 394 at para. 9).

[45] The assessment of evidence and risks is a question of fact within the jurisdiction of a decision-maker, as Justice Luc Martineau reiterated in *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 39, 128 A.C.W.S. (3d) 559:

> [15] ... Questions of weight and credibility to be given to the evidence in risk assessments are entirely within the discretion of the PRRA Officer and, normally,

> the Court should not substitute its analysis for that of the Officer(*Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2*; Ferroequus Railway Co. v. Canadian National Railway Co.*, [2003] F.C.J. No. 1773 at para. 14 (F.C.A.) (QL); *Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 974 at para. 4 (T.D.) (QL)).

[46] In this case, the Minister's delegate referred to all the documents submitted by Mr. Placide in his decision. The three documents at issue in this case are specifically mentioned (delegate's decision at pp. 12–13). As required by case law, however, the delegate restricted his analysis to relevant, important evidence with a certain probative value (*Ozdemir*, above, at para. 10). In *Gourenko*, the Court set out three criteria to be applied when determining whether a document is sufficiently important to be referred to in the reasons: the document must be timely, that is, it must bear on the relevant time period; and it must be prepared by a reputable, independent author who is in a position to be the most reliable source of information. In addition, the topic addressed in the document must be directly relevant to the applicant's claim. (*Gourenko v. Canada (Solicitor General)* (1995), 93 F.T.R. 264, 55 A.C.W.S. (3d) 806 (F.C.T.D)).

[47] The affidavit of Mr. Placide's sister, Rose-Mélanie Placide, is not a neutral document and is based on personal opinion. It does not qualify under the *Gourenko* criteria above.

[48] As to the articles by journalist Ms. Touzin, it is clear that the Minister's delegate took them into consideration because he cited excerpts in his decision (delegate's decision at p. 12). As is allowed by case law, however, he preferred to rely on more probative and reliable sources of information.

[49] As to the RNDDH report (AR, at p. 435), this document describes the situation in Haitian prisons but says nothing about the fate of criminals returned to Haiti from abroad. It is therefore not relevant for assessing Mr. Placide's risk of return to Haiti, since the Minister's delegate concluded that Mr. Placide was not subjected to a risk of detention.

[50] The Minister's delegate's notes on his decision are very detailed and meet the requirements for reasons set out by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

> In his submissions, the applicant never stated that he would be in danger in Haiti because of his health problems

[51] Contrary to what he claimed in his factum, Mr. Placide never alleged in his submissions, in the section on risks, that his life would be in danger in Haiti because of his health problems.

[52] His counsel at the time, Ms. Petit, filed submissions on November 15, 2007, March 27, 2008, June 19, 2008, and June 30, 2008. Ms. Petit referred to Mr. Placide's health problems, but did so in the section of the submissions on the assessment of the danger posed by Mr. Placide rather than in the section on his risk of return Haiti (AR, at p. 172).

[53] Consequently, the Minister's delegate did just that: he took into consideration the psychological assessment performed by Dr. Laurion when he analyzed the danger posed by Mr. Placide. This is what the Minister's delegate had to say:

> [TRANSLATION]
> She stated that according to Dr. Laurion's report on the psychological assessment of Mr. Placide, Mr. Placide has mental health issues (an unspecified bipolar disorder) as a result of which Mr. Placide was transferred on March 5, 2008, to the Martineau halfway house, which is specialized in mental health.

(Delegate's decision, at p. 27)

[54] The Minister's delegate also noted in his reasons that the NPB had mentioned in its report, dated June 13, 2008, that a psychiatrist, Dr. Roy, had overturned the diagnosis of bipolar disorder made by psychologist Sylvie Laurion (delegate's decision, at p. 25).

[55] Considering the above, since Mr. Placide did not refer to his state of health in his submissions as a factor for which he would be subjected to risk in Haiti and his health problems were not confirmed by the psychiatrist mentioned in the NPB report dated June 13, 2008, this argument cannot be considered by the Court.

The question of a change of circumstances does not apply in this case

[56] Mr. Placide stated that the 2008 U.S. State Department report was sufficient to conclude that there was a significant change of circumstances justifying the Minister's delegate to reverse the decision of the PRRA officer dated November 16, 2007.

[57] To make this argument, Mr. Placide relied on subsection 114(2) of the IRPA, which allows the Minister to cancel a stay of removal if the circumstances surrounding a stay of the enforcement of a removal order have changed.

[58] Mr. Placide's argument is unfounded in law and is based on a misunderstanding of the IRPA. In this case,

a. the Minister did not reverse (according to the terms used by Mr. Placide) the PRRA officer's decision dated November 2007. In fact, the reasons thus provided by the officer are only an assessment which the Minister's delegate has to consider in his final decision, but which he or she is not bound by;
b. the change of circumstances referred to in subsection 114(2) concern changes that occurred after a final decision by the Minister's delegate under subsection 112(3) of the IRPA; and
c. the delegate made his own decision as required under the IRPA on the basis of the evidence before him at the time of his decision.

[59] Mr. Placide is trying to give the November 2007 PRRA weight that it does not have. To fully understand this, a brief review of the scheme of the IRPA is required.

[60] In general, any foreigner who is subject to a removal order that is in force and who is not named in a security certificate or a danger opinion may apply to the Minister for protection (subsection 112(1) of the IRPA). If a foreigner, like Mr. Placide, is described in subsection 112(3) of the IRPA, refugee protection may not result (subsection 112(3) *in limine*). Consideration of such a person's application, in contrast to that of a regular application, which is considered on the basis of sections 96 to 98 of the IRPA, is—in a situation such as Mr. Placide's—on the basis of the grounds for protection set out in section 97 and the nature and

severity of acts committed by the applicant or the danger that the applicant constitutes to the security of Canada (subparagraph 113(*d*)(i) of the IRPA).

[61] Before making a decision, the Minister's delegate must take into consideration the written assessments of the grounds for protection described in section 97 and the factors set out in subparagraph 113(*d*)(i) of the IRPA (subsection 172(1) of the IRPR). The two assessments are disclosed to the applicant, who has 15 days to file written submissions with the Minister's delegate. If the delegate concludes that the applicant is not described in section 97, he or she is not required to take the factors set out in subparagraph 113(*d*)(i) into consideration and can reject the application for refugee protection (subsection 172(4) IRPR). This process is in fact a codification of *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1, at paras. 122–123).

[62] Finally, if, however, the Minister's delegate concludes that the applicant would be subjected to a risk described in section 97, he or she must assess the factors set out in subparagraph 113(*d*)(i) and, if applicable, conduct a balancing exercise to determine whether the applicant's situation is exceptional enough to warrant his removal to a country where torture is used (paragraph 113(*d*) of the IRPA; *Suresh*, above, at paras. 76–79; *Charkaoui (Re)*, [2006] 3 F.C.R. 325, 2005 FC 1670, at paras. 12–13)).

[63] In this context, it is obvious that the PRRA officer who conducted the assessment, dated November 16, 2007, merely gave advice or made a suggestion that is not binding upon the

Minister's delegate. In accordance with section 6 of the IRPA, the Minister did not delegate to the PRRA officer but to National Headquarters only the power to dispose of an application for protection described in subsection 112(3) of the IRPA (Immigration Manual, ch. 1L3, CIC Instrument of Designation and Delegation, Item 48 (Delegated authority – Form an opinion whether, in relation to the eligibility of a claim under subsection 101(2) of the Act, a person who is inadmissible on grounds of serious criminality by reason of a conviction outside Canada is a danger to the public in Canada.) This is delegated to National Headquarters).

[64] In fact, case law requires that the delegate make the decision himself and give reasons for it: "the reasons must also emanate from the person making the decision, in this case the Minister, rather than take the form of advice or suggestion" (*Suresh*, above, at para. 126). The process is similar to that of *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, at pages 399 to 401, in which the Court ruled that the holder of a power who receives a recommendation is not required to follow it (case law has several similar examples: *Jaballah (Re)*, [2005] 1 F.C.R. 560, 2004 FCA 257, at paras. 17–22 (PRRA; *obiter*); *Robinson v. Canada (Canadian Human Rights Commission)* (1995), 90 F.T.R. 43, 52 A.C.W.S. (3d) 1098, at para. 23; *Jennings v. Canada (Minister of Health)* (1995), 97 F.T.R. 23, 56 A.C.W.S. (3d) 144, at paras. 31–32, aff'd by (1997), 211 N.R. 136, 56 A.C.W.S. (3d) 144, leave to appeal to S.C.C. refused, see [1997] S.C.C.A. No. 319; *Abdule v. Canada (Minister of Citizenship and Immigration)* (1999), 176 F.T.R. 282, 92 A.C.W.S. (3d) 578 at para. 14).

[65] Otherwise, the Minister’s delegate would not really be exercising the power conferred on him. The Minister’s delegate would merely be approving assessments administratively and giving them force of law. This would essentially give PRRA officers a decision-making power which the Minister decided to delegate to another officer in the public service.

[66] In the cases of applicants described in subsection 112(3) of the IRPA, when the Minister’s delegate concludes after balancing the above-mentioned factors that an applicant cannot be removed, it is not refugee protection that is conferred on the applicant but rather a stay of removal to the country in question (subsection 114(1) of the IRPA). Such a stay of removal can occur only after the Minister’s delegate makes a final positive decision.

[67] It is only following this final positive decision that the Minister’s delegate may revoke the stay if he or she considers that the circumstances have changed.

[68] In this case, therefore, it is clear that the Minister’s delegate did not reverse the decision of the PRRA officer dated November 16, 2007. No change of circumstances within the meaning attributed by Mr. Placide occurred between the PRRA decision in 2007 and the decision of the Minister’s delegate in 2008.

[69] It should be added that the Federal Court of Appeal stated that there is no separate legal test to be applied when considering a Convention refugee claim where there has been a change in country conditions in an applicant's country of origin, and that the only issue to be determined is

the factual question of whether, at the time of the hearing of the claim, there is a well-founded fear of persecution in the event of return. In this respect, see *Yusuf v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 35 (QL), 52 A.C.W.S. (3d) 1332 (F.C.A.):

> [2] We would add that the issue of so-called "changed circumstances" seems to be in danger of being elevated, wrongly in our view, into a question of law when it is, at bottom, simply one of fact. A change in the political situation in a claimant's country of origin is only relevant if it may help in determining whether or not there is, at the date of the hearing, a reasonable and objectively foreseeable possibility that the claimant will be persecuted in the event of return there. That is an issue for factual determination and there is no separate legal "test" by which any alleged change in circumstances must be measured. The use of words such as "meaningful" "effective" or "durable" is only helpful if one keeps clearly in mind that the only question, and therefore the only test, is that derived from the definition of Convention Refugee in s.2 of the Act: does the claimant now have a well founded fear of persecution? . . .
> (Emphasis added.)

[70] In this case, consistent with the IRPA and case law, the Minister's delegate performed his own analysis on the basis of the evidence before him at the time of his decision. He questioned whether Mr. Placide would be at risk in Haiti. In addition, he was warranted in concluding in his reasons that the results of his research showed that the present situation in Haiti was different from that described in the PRRA dated November 16, 2007 (delegate's decision, at p. 17).

The Minister's delegate's decision on the danger to the public

[71] Mr. Placide disagrees with the conclusion of the Minister's delegate that he is a present and future danger to the Canadian public (AR, at p. 512).

[72] The question raised by Mr. Placide must not be considered to be at issue.

[73] In fact, the crux of the issue in this case is the conclusion of the Minister's delegate that Mr. Placide would not be subjected to risk as described in section 97 of the IRPA if he were removed to Haiti. If the Minister's delegate did not make an unreasonable error by concluding that there was no risk, the application for judicial review must be dismissed.

[74] It is accordingly of little importance if the Minister's delegate made an error likely to be reviewed in the assessment of the danger posed by Mr. Placide. Whether it is performed in accordance with subsection 112(1) of the IRPA or, as in this case, subsection 112(3), the purpose of the PRRA is to determine if the applicant is in need of the surrogate protection Canada offers to foreigners who are within its territory. When, as in this case, this conclusion is negative, the Minister's delegate is not required to balance the risk incurred and the danger posed by Mr. Placide (*Almrei v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 355, 262 F.T.R. 7, at para. 36).

[75] Therefore, the Court's conclusion according to which the decision was not based on an unreasonable assessment of the risk would inevitably result in the rejection of Mr. Placide's application for refugee protection, even if the matter were referred to another delegate for a new decision.

[76] This proposition is still valid even if, as alleged by Mr. Placide, the decision of the Minister's delegate had been based on an unreasonable finding of risk. In that case, the decision would be cancelled and a second decision-maker would have to repeat the decision-making

process. If that decision-maker also found that there was no risk, the application for protection would be rejected outright, and the assessment of danger and the balancing exercise required under paragraph 113(*d*) of the IRPA would not have to be performed.

[77] It is only if the second delegate concluded that there was a risk that he or she would have to balance it against the danger posed by Mr. Placide and determine if the danger is so great that it overrides Mr. Placide's need for protection within the meaning of *Suresh*, above. The second decision-maker would presumably not be able to complete this exercise without updated evidence about the danger posed by Mr. Placide. Any mistake—supposing that a mistake was made—could then be corrected and the issues raised by Mr. Placide on this point would be based on a proper factual basis. Otherwise, the issue before the Court would be based on abstractions and hypotheses.

[78] The finding to the effect that Mr. Placide is a danger to the Canadian public is reasonable.

[79] First, the delegate stated that, consistent with this Court's case law, "danger to the public" has been interpreted as meaning a present or future danger to the public. In fact, he cites *Williams v. Canada (Minister of Citizenship and Immigration)*, [1997] 2 F.C.646, 70 A.C.W.S. (3d) 885 (C.A.), in his decision (delegate's decision, at pp. 28-29).

[80] In addition, contrary to the statement made by Mr. Placide in his factum, the delegate considered the submissions made by counsel for Mr. Placide and the documents from the CSC and NPB.

[81] The delegate noted that between 1986 and 2005, Mr. Placide was convicted of 44 criminal offences. The CSC criminal profile report dated May 29, 2006 showed that

a. Mr. Placide was part of a criminal organization which basically operated like a street gang;
b. his record included several violent crimes, including the sexual assault of a 15-year-old girl, assault with a weapon and assault;
c. drug addiction, an unstable lifestyle, association with criminal peers and delinquent values contributed to Mr. Placide's criminal behaviour;
d. his long disciplinary record included no less than 50 disciplinary offences, some involving verbal threats and physical violence; and
e. the Board consequently refused to release Mr. Placide.

(CSC report dated October 27, 2006, AR, at pp. 114-115).

[82] On September 21, 2007, the NPB stated the following in its report:

a. The subject had a tendency to blame others and to minimize his excessive and criminal behaviour;
b. Mr. Placide's self-analysis was poor and he required close supervision;

c. Mr. Placide was admitted to the intensive supervision program to allow him to return to society;

d. The Board specified that because of the removal order issued against him, he would be turned over to Citizenship and Immigration Canada;

e. The Board ordered a statutory release with some special conditions specifically concerning the factors contributing to his criminal conduct.

(AR, at pp. 120–121).

[83] It should be recalled that when he was released on January 18, 2008, Mr. Placide agreed to be transferred to a halfway house at the request of the Immigration Division. However, because of his behaviour and adaptation problems in the halfway houses, a suspension of Mr. Placide's release was ordered on March 18, 2008.

[84] Mr. Placide was heard before the NPB on June 13, 2008, and the report stated the following:

a. On January 18, 2008, the IRB ordered the release of the subject on special conditions, including the requirement to voluntarily report to the Prosper–Boulanger (PB) Community Residential Centre (CRC) and follow the program there;

b. The report emphasized that Mr. Placide was part of a criminal organization which basically operated like a regular street gang;

c. Mr. Placide reported to the PB CRC on January 22, 2008. Because an accomplice was also at the PB CRC, Mr. Placide was sent to the Sherbrooke Correctional Centre on January 29, 2008. Following a psychological assessment which suggested a mental health problem, he was sent to the Martineau Community Correctional Centre on March 4, 2008 (AR, at pp. 120–121);

d. As soon as he arrived, signs of disorganization were noted, as he was always late, had difficulties with peers and was involved in daily confrontations;

e. He attended only three sessions of the drug addiction program;

f. On March 18, 2008, a warrant for the suspension of Mr. Placide's release was issued;

g. On June 5, 2008, the psychiatrist from the Martineau Centre did not confirm unspecified bipolarity. He did, however, diagnose substance abuse that was in remission and limited borderline personality disorder. Considering these diagnoses, it was not found to be appropriate to allow Mr. Placide to remain at the Martineau Centre any longer;

h. The report notes that despite the interventions of the various centres, Mr. Placide did not change. He continues to defend himself without admitting his faults;

i. The Board was of the opinion that the suspension of his statutory release was warranted considering his behaviour and attitude as it became difficult if not impossible to supervise him;

j. Following his return to the penitentiary, Mr. Placide's behaviour improved. He did not re-offend. Accordingly, his release was ordered.

[85] Section 246 of the IRPA specifies the criteria that must be taken into consideration to determine if a person constitutes a danger to the public. These criteria include the fact that a person was found guilty of a sexual offence, an offence involving violence or weapons or drug trafficking:

Danger to the public	Danger pour le public
246. For the purposes of paragraph 244(*b*), the factors are the following:	**246.** Pour l'application de l'alinéa 244*b*), les critères sont les suivants :
(*a*) the fact that the person constitutes, in the opinion of the Minister, a danger to the public in Canada or a danger to the security of Canada under paragraph 101(2)(*b*), subparagraph 113(*d*)(i) or (ii) or paragraph 115(2)(*a*) or (*b*) of the Act;	*a*) le fait que l'intéressé constitue, de l'avis du ministre aux termes de l'alinéa 101(2)*b*), des sous-alinéas 113*d*)(i) ou (ii) ou des alinéas 115(2)*a*) ou *b*) de la Loi, un danger pour le public au Canada ou pour la sécurité du Canada;
(*b*) association with a criminal organization within the meaning of subsection 121(2) of the Act;	*b*) l'association à une organisation criminelle au sens du paragraphe 121(2) de la Loi;
(*c*) engagement in people smuggling or trafficking in persons;	*c*) le fait de s'être livré au passage de clandestins ou le trafic de personnes;
(*d*) conviction in Canada under an Act of Parliament for	*d*) la déclaration de culpabilité au Canada, en vertu d'une loi fédérale, quant à l'une des infractions suivantes :
(i) a sexual offence, or	(i) infraction d'ordre sexuel,

(ii) an offence involving violence or weapons;	(ii) infraction commise avec violence ou des armes;
(*e*) conviction for an offence in Canada under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,	*e*) la déclaration de culpabilité au Canada quant à une infraction visée à l'une des dispositions suivantes de la *Loi réglementant certaines drogues et autres substances*:
(i) section 5 (trafficking),	(i) article 5 (trafic),
(ii) section 6 (importing and exporting), and	(ii) article 6 (importation et exportation),
(iii) section 7 (production);	(iii) article 7 (production);
...	[...]

[86] On the basis of the information in these reports, the Minister's delegate was warranted to conclude that Mr. Placide was a danger to the Canadian public. In his decision, the Minister's delegate noted that the reports about Mr. Placide emphasized his unstable lifestyle, his association with criminal peers and his entrenched delinquent values which contribute to his criminal conduct. For his decision, the Minister's delegate relied on the evidence and the information on Mr. Placide's criminal convictions, especially those for offences against the person—sexual assault, armed assault and assault—and for trafficking in substances included in Schedule I and conspiracy to traffic.

[87] The decision of the Minister's delegate is consistent with the criteria set out in section 246 of the IRPA and case law.

[88] In addition, on January 18, 2008, Mr. Placide was released by the Immigration Division on the condition that he agree to living in a CSC halfway house and participating in specific programs. However, on March 18, 2008, a warrant to arrest Mr. Placide and to suspend his statutory release was issued because of his behaviour and adaptation problems in the halfway houses (affidavit of Hélène Jarry).

[89] Mr. Placide's last release dates back only to June 20, 2008; the decision of the Minister's delegate was dated July 15, 2008. Considering Mr. Placide's long history of criminality and behavioural problems, the period of less than a month between his last release and the delegate's decision was too short to allow the delegate to note any improvement in Mr. Placide's behaviour.

[90] In addition, as the Minister's delegate indicated in his decision, it was only in a penitentiary environment that an improvement was noted. Mr. Placide's behaviour during his stays at the other centres had been characterized by instability and violence.

[91] The Minister's delegate examined all of the evidence, but as case law allows, only relied on the facts which were relevant (*Stelco Inc. v. British Columbia Steel Canada Inc.*, [2000] 3 F.C. 282, 95 A.C.W.S. (3d) 656 (C.A.), at para. 24).

[92] Even though it is quite understandable that Mr. Placide does not share the Minister's point of view, this does not mean that his assessment of the evidence was unreasonable, that is, that it was not defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

VII. Conclusion

[93] In light of the above, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review is dismissed;

2. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

Certified true translation
Johanna Kratz

SOLICITORS OF RECORD

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