Federal Court  Cour fédérale

Date: 20111212

Docket: IMM-2626-11

Citation: 2011 FC 1461

Ottawa, Ontario, December 12, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

GERMAN GUILLERMO MOLANO FONNOLL
(a.k.a. GERMAN GUILLERM MOLANO FONNOLL)
SANDRA RODRIGUEZ MIRANDA
JUAN CAMILO MOLANO RAMIREZ

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board (the Board), rendered on March 7, 2011, where it determined that German Guillermo Molano Fonnol and his wife, Sandra Rodriguez Miranda, are excluded from Convention refugee status under section 1E of the *United Nations Convention relating to the Status of Refugees* (the

Convention). It also concluded that Mr. Fonnol, Ms Miranda and Mr. Fonnol's son, Juan Camilo Molano Ramirez (all together the applicants), are neither convention refugees nor persons in need of protection as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*].

[2] For the reasons that follow, this application for judicial review is dismissed in part.

II. Facts

[3] Mr. Fonnoll is a citizen of Colombia who claims refugee protection because he is persecuted by the Revolutionary Armed Forces of Colombia [FARC]. He is accompanied by his wife and his son from a previous marriage.

[4] Mr. Fonnoll alleges that he is persecuted by the FARC due to his perceived political opinion and membership in the Liberal party. He submits that he worked for that party during past political campaigns.

[5] In 1992, Mr. Fonnoll and his wife founded a pre-school center called "Jardin Infantil Divino Nino". The center was located in the rural area of Cota, a suburb of Bogota.

[6] In 1998, Mr. Fonnoll and his wife were able to award five scholarships to the indigenous community of Cota. In return, they were to receive fiscal incentives. The scholarships included full tuition and other expenses paid.

[7] On March 8, 1999, Ms. Miranda received a threatening call because indigenous children were enrolled at the center.

[8] The following weeks, systematic calls were received demanding the withdrawal of the indigenous children from the center.

[9] On April 16, 1999, Mr. Fonnoll accompanied Mr. Gomez, the bus driver who was driving the children to their homes. On the road from Suba to Cota, an orange Jeep stopped right in front of the bus, forcing Mr. Gomez to stop abruptly. Two men came out of the Jeep identifying themselves as FARC members. One of them pointed a gun at Mr. Gomez's head and the other one violently hit Mr. Fonnoll on the back of his head with a shotgun. They threatened Mr. Fonnoll and warned him to expel the indigenous children from his school. After threatening him, the FARC members violently kicked the two men, breaking Mr. Fonnoll's jaw and nose.

[10] On the same day, Mr. Fonnoll reported the incident to the police. However, they told him to come back if this kind of situation occurred again. FARC members were also requesting money from Mr. Fonnoll on a monthly basis.

[11] Another incident occurred at the center when parents were in attendance. The parents' vehicles were allegedly damaged by members of FARC. These incidents were reported to the police who then decided to investigate.

[12] In early July of 1999, Mr. Fonnoll and his wife decided to expel the indigenous children from their pre-school center, thinking their problem would be resolved. This decision was taken while they were away on vacation.

[13] Returning home, they received another call. The caller informed Mr. Fonnoll that he had now become a military target due to his involvement with the Liberal party and his failure to pay the war taxes. This event forced Mr. Fonnoll and Ms. Miranda to abandon their center, leaving the two instructors in charge. They also rented their apartment and left for Cucuta, where they stayed with Ms. Miranda's father.

[14] On October 24, 1999, Mr. Fonnoll left for the United States of America [USA] as he had obtained a visitor's visa. Ms. Miranda joined him on December 7, 1999. They extended their visitor's visas once and after learning about the immigration process, applied for asylum on December 13, 2000. Their claim was rejected on February 20, 2003, because their application was filed late. However, they were granted a withholding of removal. Mr. Fonnoll and Ms. Miranda were also given work permits and a social security number.

[15] As time passed, applicants never received any further correspondence from the American authorities, notifying them of a removal date. Fearing that they could be deported at any time, and seeing Colombians in a similar position being deported, they enquired about the possibility of seeking refuge in Canada.

[16] In November 2008, they left the USA and arrived in Canada. Mr. Fonnoll's son came and joined them in August 2009 from Colombia.

III. Legislation

[17] The applicable legislation is appended to this decision.

IV. Issues and standard of review

A. Issues

1. Did the Board err in determining that Mr. Fonnoll and Ms. Miranda were excluded under Article 1E of the Convention?

2. Did the Board err in determining that the applicants were neither Convention refugees nor persons in need of protection?

B. Standard of review

[18] In *Zeng v Canada (Minister of Citizenship and Immigration)*, [2010] FCJ No 632, 2010 FCA 118 [*Zeng*], the Court of Appeal writes, at paragraph 11 of its decision "the parties agree, and I concur, that the test for exclusion under Article 1E of the Convention is a question of law of general application to the refugee determination process and is reviewable on a standard of correctness.

Whether the facts give rise to exclusion is a question of mixed fact and law yielding substantial deference to the RPD" and calling for the standard of reasonableness.

[19] The standard of review applicable to the Board's determination of the applicants' objective and subjective fear is the standard of reasonableness (see *Moreno v Canada (Minister of Citizenship and Immigration)*, 2011 FC 841 at para 7).

[20] The standard of review on the Applicant's status under Article 1E of the *Convention* is correctness.

V. Parties' submissions

A. Applicants' submissions

[21] The Board found that Mr. Fonnoll and his wife were excluded from Convention refugee status under Article 1E of the Convention. Mr. Fonnoll and his wife argue that the central issue in considering exclusion under Article 1E of the Convention is whether an individual possesses the same rights and obligations than that of nationals of the country that has granted them asylum; in this instance, the United States of America.

[22] They submit that the Board failed to properly analyze their claim as they never possessed the rights and obligations of American nationals. They could not leave and re-enter the USA. Mr. Fonnoll and his wife submit that the right to return to the country of residence is crucial in the

application of Article 1E of the *Convention* as in *Shamlou v Canada (Minister of Citizenship and Immigration)*, 103 FTR 241 [*Shamlou*]; *Mahdi v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1623, 32 Imm LR (2d) 1; *Olschewski v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1065).

[23] Mr. Fonnoll submits that he and his wife could not work freely without any restrictions. He had to re-apply for his work permit on a regular basis. American authorities could have decided not to review his permit at any time. In addition, his social insurance security was only valid if accompanied by proper identification from immigration. Mr. Fonnoll argues that this requirement demonstrates that he had restricted rights when compared to those of an American citizen.

[24] Mr. Fonnoll did not have a study permit and did not have access to social services in the USA. He instead had a pending removal date. He states that several of his friends with the same status were arrested and deported without any notice or right of appeal.

[25] Mr. Fonnoll further submits that the Board was under the obligation to review all relevant factors when analyzing his status. Mr. Fonnoll argues that he and his wife should not be excluded under 1E of the *Convention* more so when the criteria set by the Federal Court of Appeal in *Zeng* is applied in this instance.

[26] Mr. Fonnoll also submits that the Board erred in law when it applied *Wangden v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 344 [*Wangden*].

[27] It is submitted by Mr. Fonnoll that the Board committed another error when it concluded that he had no subjective fear. The Board, having accepted that Mr. Fonnoll was targeted by the FARC in Colombia, should therefore not have rejected his claim on the basis of subjective fear.

[28] In *Shanmugarajah v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 583 [*Shanmugarajah*], the Federal Court of Appeal states, at paragraph 3 of its decision that "… it is almost always foolhardy for a Board in a refugee case, where there is no general issue as to credibility, to make the assertion that the claimants had no subjective element in their fear…"

[29] Mr. Fonnoll argues that his decision to leave the USA and come to Canada was consistent with his fear of persecution in his home country. He could not stand the uncertainty under which he was living in the USA and he was terrified because he saw how people were being deported from the USA.

[30] The Board concluded that the Mr. Fonnoll would no longer be targeted by the FARC due to the passage of time and that he did not fit the profile of those listed in the United Nations High Commissioner for Refugees Guidelines (Guidelines).

[31] The Board's interpretation of the facts is misleading, as the FARC targeted Mr. Fonnoll and his wife because they created scholarships for indigenous children. The fact that the center was situated in Bogota is immaterial. The FARC targeted the applicant for his social and political opinion.

[32] Mr. Fonnoll argues that the Board based its decision on immaterial considerations. The fact that his son was not targeted in Colombia is not determinative. Mr. Fonnoll testified that his son was living with his biological mother and never was a part of the problem concerning the FARC. He contends that it was never relevant to the claim.

[33] Mr. Fonnoll also provided objective evidence that FARC members continue persecuting their enemies, even years after they have fled Colombia. Many Colombians who have fled and gone back after years were persecuted upon their return. Moreover, Mr. Fonnoll submits that the National Documentation Package [NDP] concurs with this contention.

[34] Mr. Fonnoll argues that he presented reliable evidence that people who were once targeted by the FARC continue to face a serious risk in Colombia even several years after the initial threats. The Board ignored all the evidence that supported his claim. The failure to address the evidence that directly contradicted the Board's conclusion is a reviewable error (*Cepeda-Guitierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35; *Villicana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1205).

B. Respondent's submission

[35] The respondent concedes that the Board made an error in excluding Mr. Fonnoll under Article 1E of the *Convention*. Nonetheless, this finding is not determinative of the Applicant's claim as the Board found that they were neither Convention refugees nor persons in need of protection, due to a lack of both objective and subjective fear. The respondent submits that the Board's decision

is reasonable and that is does not require the Court's intervention (see *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 224 at para 79; *Bouasla v Canada (Minister of Citizenship and Immigration)*, 2008 FC 930).

[36] Both Mr. Fonnoll and his wife decided to leave the USA to come to Canada despite their withholding status and the fact that no removal order had been issued against them. The protection offered by a withholding status was discussed in *Wangden* cited above. The Board considered the *Wangden* case and concluded that Mr. Fonnoll's decision to come to Canada demonstrated a lack of subjective fear. The Respondent argues that this determination is reasonable and consistent with the jurisprudence of the Federal Court of Appeal.

[37] The applicants argue that since the Board found them credible, it could not conclude that they did not have a subjective fear. However, the respondent argues that even if the Board can find a narrative of events credible, it can also determine that Mr. Fonnoll and his wife lacked subjective fear.

[38] The applicants submit that the Board erred in finding that Mr. Fonnoll and Ms. Miranda did not have the profile of people who have a risk of objective fear of persecution in Colombia. They did not however demonstrate that they are part of one of the groups at risk described in the Guidelines according to respondent.

[39] The respondent submits that the Board examined the nature of the applicants' profiles in Colombia, including Mr. Fonnoll's membership in a political party, his ownership of a flower

business and his partnership with Ms. Miranda in a pre-school center. The Board also made a distinction between teachers in rural areas and Mr. Fonnoll and Ms. Miranda's pre-school center which was situated in the suburbs of Bogota. Contrary to what is argued by the applicants, the Board's analysis regarding the location of the center was relevant in order to determine if both Mr. Fonnoll and his wife were at risk.

[40] In addition, the issue of whether the FARC has the capacity to pursue its victims, after several years spent outside Colombia, is distinct from the issue of whether it is more likely than not that the FARC would target the applicants. There is no indication that the Board ignored evidence regarding the risk for certain individuals in Colombia. Rather, the Board's findings do not contradict that evidence and, as such, it did not require a specific reference in the Board's decision.

[41] Finally, contrary to what is argued by the applicants, the respondent submits that since Mr. Fonnoll's son was not targeted by the FARC, it shows a lack of objective fear. The Board concluded that Mr. Fonnoll's son had not demonstrated any subjective or objective fear. The applicants did not dispute this finding. Consequently, the Board's decision is reasonable.

VI. Analysis

1. Did the Board err in determining that Mr. Fonnoll and Ms. Miranda were excluded under Article 1E of the Convention?

[42] The Federal Court of Appeal formulated a test in instances where reference to the applicability of Article 1E of the Convention is raised. The Court writes, at paragraph 28 of *Zeng* cited above, that

> [28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[43] According to *Zeng*, the Board must first determine whether an Applicant has a status substantially similar to that of nationals of the third country". The Board found that Mr. Fonnoll and his wife are excluded on the basis that they obtained a withholding of removal status, which guarantees the fundamental core rights, such as non-discrimination, freedom of religion, access to courts and education.

[44] Mr. Fonnoll and his wife argue that, in applying the framework established by *Zeng*, one must come to the conclusion that they are not excluded under Article 1E of the *Convention*. On the date of the hearing before the Board, Mr. Fonnoll and Ms. Miranda did not have a status in the USA similar to that of its nationals. Their withholding of removal status ceased upon their departure from the USA and therefore, the answer to the first question of the test set-out in *Zeng* is negative. Furthermore, they never possessed a status in the USA similar to that of its nationals. The answer to the second question in *Zeng* is also in the negative. Hence, Mr. Fonnoll and Ms. Miranda argue that they are not excluded under Article 1E of the Convention.

[45] As for the respondent, he concedes that the Board erred in its application of Article 1E. However, it is alleged that this error is not determinative of the Board's decision since it found the applicants were neither Convention refugees nor persons in need of protection.

[46] The Board cited the *Wangden* case in support of its decision. Justice Mosley concluded that "Though a person granted withholding has a more limited range of rights than a person granted asylum under U.S. law, he or she still enjoys several important entitlements. The differences do not undermine my conclusion that withholding of removal is equivalent to recognition as a Convention refugee" (see *Wangden v Canada (Minister of Citizenship and Immigration),* 2008 FC 1230 at para 75). He also concluded that "holders of withholding of removal status in the United States are Convention refugees within the meaning of paragraph 101(1)*(d)* of the IRPA" (see *Wangden* at para 77). Based on the objectives of the *IRPA* and the wording of section 101(1)*(d)*, Justice Mosley determined that parliament "did not want to assist persons who simply prefer asylum in one country over another. The Convention and the Immigration Act should be interpreted with the correct purpose in mind" (*Mohamed v Canada (Minister of Citizenship and Immigration),* 127 FTR 241, [1997] FCJ No 400 at para 9) which is, to protect individuals at risk (see *Wangden* at para 72). All of Justice Mosley's conclusions were accepted and confirmed by the Federal Court of Appeal.

[47] However, the ineligibility decision in the present case is based on section 98 of the *IRPA* rather than paragraph 101(1)*(d)* of the *IRPA*. Paragraph 101(1)*(d)* of the *IRPA* is not applicable and a withholding of removal based on section 98 of the *IRPA* is not a recognition of a Convention Refugee Status. Justice Harrington held in *Valaei-Bakhshayesh v Canada (Minister of Citizenship*

and Immigration), 2011 FC 1130 at para 19, that "Article 1E thereof provides that the Convention does not apply to a person recognized in the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country". This is not the case here.

[48] The Court agrees with the applicants that the Board erred in determining that they had the same status in the United States as that of its nationals. In *Shamlou*, Justice Teitelbaum accepted the criteria outlined by Mr. Lorne Waldman in *Immigration Law and Practice*, Vol. 1, which underlines that "if the applicant has some sort of temporary status which must be renewed and which could be cancelled, or if the applicant does not have the right to return to the country of residence, clearly the applicant should not be excluded under Art. 1E" (See *Shamlou* at para 35; Lorne Waldman, *Immigration Law and Practice*, Vol. 1, Markham, Ontario: Butterworths, 1992, [sec.] 8.218 at 8.204-8.205). The Board's finding that Mr. Fonnoll and Ms. Miranda were excluded under Article 1E of the Convention is unreasonable.

2. Did the Board err in determining that the applicants were neither Convention refugees nor persons in need of protection?

[49] Mr. Fonnoll contends that the Board recognized that he was targeted by the FARC. Consequently, the Board's conclusion that Mr. Fonnoll and his wife did not have a subjective fear is unreasonable. The Board did not find that Mr. Fonnoll and his wife were targeted by FARC members but instead concluded that Mr. Fonnoll was a credible witness as his narrative was consistent with the narrative of his US claim.

[50] On the issue of credibility, Mr. Fonnoll relies on the Federal Court of Appeal's decision in *Shanmugarajah* where the Court writes that "… it is almost always foolhardy for a Board in a refugee case, where there is no general issue as to credibility, to make the assertion that the claimants had no subjective element in their fear…" In the present case, the Board noted that Mr. Fonnoll and Ms. Miranda received a withholding of deportation ruling in the USA which had enabled them to work. They obtained work permits and exploited their own flower business. Mr. Fonnoll also had a driver's licence. There was no deportation order issued against them. Mr. Fonnoll and his wife decided to abandon their withholding of deportation in the USA to come to Canada. As a result, they took a chance that is indicative of a lack of subjective fear since they could be deported in their country of origin at anytime.

[51] Mr. Fonnoll argues that his precarious situation in the USA was consistent with his fear of persecution in Colombia. The Court finds the Board's conclusion to be reasonable since no order of deportation was ordered against Mr. Fonnoll or Ms. Miranda. Their fear of being deported from the USA is purely speculative and is not supported by any objective evidence.

[52] The Board also found that they were not included in any of the groups at risk within the Guidelines. This conclusion is reasonable as it demonstrates that there is no objective evidence to support their claim.

[53] Mr. Fonnoll contends, however, that the Board's finding on this issue is immaterial since the FARC were targeting him on the basis of his social and political opinions. The Board did not

explicitly discuss the issue of Mr. Fonnoll's political and social opinions in its decision. Firstly, the Board was under no obligation to discuss the issue of the indigenous children since this problem was supposedly resolved. As for his political opinions, there was no evidence before the Board to show that he was persecuted because of such opinions and affiliation with the Liberal Party.

[54] The Board additionally determined that Mr. Fonnoll's son did not have any subjective or objective fear of persecution since there was no evidence to support his allegations.

[55] The Court finds the Board's decision to be reasonable as the applicants lacked in subjective and objective fear of persecution. There was no objective evidence before the Board to support their allegations. Since they lacked subjective fear, the Board did not have to discuss whether the FARC could, even after several years, find the applicants in Colombia. The applicants failed to demonstrate the likelihood that the FARC would target them in their country of origin.

[56] "Tribunals have a margin of appreciation within the range of acceptable and rational solutions… In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New-Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). The Board's decision, although not perfect, is within the range of possible and acceptable outcomes as per *Dunsmuir*. Decisions being reviewed on the reasonableness standard must be accorded deference.

VII. Conclusion

[57] This application for judicial review is dismissed in part since the Board's finding on article 1E of the Convention is unreasonable. However, the Board's conclusion on sections 96 and 97 of the *IRPA* is reasonable as the applicants failed to adduce any objective evidence to support their fear of persecution in Colombia.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. this application for judicial review is dismissed in part, the Court is setting aside the portion of the Board's decision finding that the principal applicant to be excluded under Article 1E of the Convention, that matter is referred back to the Board, the remainder of the decision is upheld; and

2. there is no question of general importance to certify.

"André F.J. Scott"

Judge

ANNEX

Sections 96, 97, 98 and 101(1) of the Immigration and Refugee Protection Act, SC 2001 c 27 read as follows:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Exclusion — Refugee Convention

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

Exclusion par application de la Convention sur les réfugiés

98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

Ineligibility

101. (1) A claim is ineligible to be referred to the Refugee Protection Division if

(*a*) refugee protection has been conferred on the claimant under this Act;

(*b*) a claim for refugee protection by the claimant has been rejected by the Board;

(*c*) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;

Irrecevabilité

101. (1) La demande est irrecevable dans les cas suivants :

a) l'asile a été conféré au demandeur au titre de la présente loi;

b) rejet antérieur de la demande d'asile par la Commission;

c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;

(*d*) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;	*d*) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;
(*e*) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or	*e*) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(*f*) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(*c*).	*f*) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)*c*) — , grande criminalité ou criminalité organisée.

Article 1E of the *United Nations Convention Relating to the Status of Refugee* reads as follows:

1E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	1E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	GERMAN GUILLERMO MOLANO FONNOLL (a.k.a. GERMAN GUILLERM MOLANO FONNOLL) SANDRA RODRIGUEZ MIRANDA JUAN CAMILO MOLANO RAMIREZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 22, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	SCOTT J.
DATED:	December 12, 2011

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