Federal Court Cour fédérale

Date: 20130521

Docket: IMM-5446-12

Citation: 2013 FC 524

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 21, 2013

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

WODSON DERISCA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of a decision by the Minister of Citizenship and Immigration's delegate, dated May 4, 2012, which concluded that Wodson Derisca (the applicant) constituted a danger to the public in Canada and that, as a result, he was excluded from the protection against refoulement under paragraph 115(2)(a) of the IRPA.

[2] For the following reasons, the Court finds that there is no reason to intervene and that, consequently, the application for judicial review should be dismissed.

I. Facts

[3] The applicant, born in 1980, is a Haitian citizen. He arrived in Canada with his mother and his two sisters on July 8, 1999, and they applied for refugee status on July 26 of the same year. The refugee claim was rejected on November 6, 2000.

[4] On October 24, 2006, the applicant's application for permanent residence based on humanitarian and compassionate considerations was also rejected. However, the applicant's PRRA application was approved on September 6, 2006.

[5] On November 21, 2011, the applicant was ordered deported under subsection 44(2) of the IRPA following an inadmissibility report on grounds of serious criminality.

[6] On January 6, 2012, the Canada Border Services Agency (CBSA) informed the applicant of its intention to obtain an opinion from the Minister under subsection 115(2) of the IRPA. On January 30 and April 11 of that year, the applicant submitted written representations to the Minister. Then, on May 4, the Minister's delegate determined that the applicant constituted a danger to the public and that he was a person referred to in subsection 115(2) of the IRPA.

[7] The applicant has been convicted of numerous crimes. The following chart summarizes them:

Date of conviction	**Section of *Criminal Code and description***	**Sentence**
20/6/2005	Impaired driving – 253(1)(a)	Fine with six months to pay
13/7/2005	Failure to comply with a recognizance – 145(3)(b)	1 day
11/10/2005	Failure to comply with a condition of an undertaking – 145(3)(b)	$200
16/6/2006	Assaults – 266(a)	Suspended sentence and probation for 2 years
19/6/2006	Exercising control – 212(1)(h)	3 months (9 months pre-sentence and probation for 2 years
11/6/2008	(1) Obstruction – 129(a)(e) (2) Failure to comply with a recognizance – 145(3)(b) (3) Failure to comply with a probation order – 733.1(1)(b)	(1) $200 (2-3) 7 days for each count (concurrent)
8/7/2011	(1) Indictable offence – living on the avails of juvenile prostitution – 212(2.1) (2) Exercising control – 212(1)(h) (3) Sexual assault – 271(1)(a) (4) Uttering threats – 264.1(1)(a) (3 counts) (5) Assaults – 266(a) (6) Unauthorized possession of a prohibited or restricted weapon – 91(2) (7) Disobeying a court order – 127(1)(a)	(1-6) 29 months on each count and credit for the equivalent of 55 months of pre-sentence time (7) 1 year
18/7/2011	(1) Possession of a prohibited or restricted firearm with ammunition – 95(2)(a) (2 counts) (2) Possession of a loaded prohibited or restricted firearm – 95(2)(a) (3) Storage of a firearm or restricted weapon contrary to the regulation – 86(2) (4) Possession of a firearm, prohibited or restricted weapon obtained through crime – 96(2)(a) (5) Possession of a firearm or ammunition contrary to a prohibition order – 117.01(1)	(1-4) 45 months and 15 days on each count (and 2 months and 15 days pre-sentence time) (5) 1 year

[8] It should be noted that the applicant claims he was not convicted on July 18, 2011, of the five offences indicated above. It is true that the tribunal record is not conclusive in this regard and even appears inconsistent. Those convictions do not appear in the [TRANSLATION] "Criminal History Table – Danger Opinion" prepared by a CBSA enforcement officer (TR, pp 332-333). They are also not in the *Plumitif criminel et pénal* [criminal and penal court record] dated August 23, 2011 (Société québécoise d'information juridique), which is at page 482 of the tribunal record. On the other hand, they are in the "Summary of Police Information" prepared by the Royal Canadian Mounted Police (RCMP) (TR, pp 339-340) and in the [TRANSLATION] "report under subsection 44(1) of the IRPA" (TR, pp 452-453), although in the latter case, the offences are dated July 8, 2011. I will return to this issue shortly.

II. Impugned decision

[9] The Minister's delegate first confirmed that the applicant was, in fact, inadmissible on grounds of serious criminality under paragraph 36(1)(a) of the IRPA to the extent that he was convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten years or of an offence under an Act of Parliament for which a term of imprisonment of more than six months was imposed.

[10] She then assessed the threat posed by the applicant, first examining the circumstances surrounding the offences committed. She cited excerpts from the sentences imposed for the assault convictions dated June 16, 2006, the convictions for exercising control over a person for the purpose of abetting or compelling that person to carry on prostitution dated June 19, 2006, and the convictions for the offences the applicant was convicted of on July 8, 2011.

[11] The delegate noted that the applicant was convicted twice (2006 and 2011) of juvenile prostitution offences and that he was convicted of assaults, sexual assault, uttering threats and offences related to possessing a prohibited weapon. She also observed that these offences were serious and/or violent in nature, that the record indicated an increase in the seriousness of the actions and that the first prostitution-related sentence did not have a deterrent effect. Last, she referred to a number of aggravating factors noted by Justice Cadieux at the sentencing hearing on July 8, 2011, including the victim's age, the violence used against her, the possession of a prohibited weapon, the failure to comply with court orders and the recidivism.

[12] The delegate then addressed the applicant's potential for rehabilitation, which she found to be poor. As proof of this, she pointed to the accused's criminal history, the fact that he had reoffended and the fact that the applicant had not taken any steps to rehabilitate himself. She also considered the fact that the applicant's Criminal Profile Report indicated that he denied sexually assaulting the victim and that he refused a phallometric assessment. The delegate also cited a Correctional Services report dated October 2011, which indicated that the applicant's risk of reoffending and his social dangerousness were high. Based on this evidence, she found that the applicant represented a risk to the public and wrote the following:

> [TRANSLATION]
>
> I do not question Mr. Derisca's willingness to stop and to distance himself from criminal activities; however, his past actions make the burden of proving his willingness and ability to change more onerous and, given the evidence on file, I am not satisfied that he has discharged it. In my opinion, his lack of empathy for his victim, his lack of responsibility, his propensity for violence and the significant risk of reoffending as shown above are such that I am of the view, on a balance of probabilities, that Mr. Derisca currently poses a present

> and future danger to the public in Canada. Moreover, in my opinion, the fact that he has re-established contact with his family is not sufficient to diminish this risk.
>
> Decision, p 13

[13] The delegate then examined the risk the applicant would personally face if he were returned to Haiti. She stated that the applicant claimed he would be imprisoned indefinitely in overcrowded prisons and feared he would have problems because of his uncle, who was involved in politics.

[14] In her analysis of the issue, the delegate cited long passages from the following four documentary sources: Human Rights Watch, *Country Summary 2012: Haiti,* January 2012; International Committee of the Red Cross (ICRC), *Haiti: Improving Conditions of Detention*, January 2012; United Nations Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, March 2009 and United States Department of State, *2007 Country Reports on Human Rights Practices – Haiti,* March 2008. She noted that the conditions in Haitian prisons were improving and that the number of arbitrary detentions was decreasing, particularly with respect to repatriated citizens who have been imprisoned in a foreign country.

[15] The delegate concluded that the applicant would not personally face a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment if he were returned to Haiti:

> [TRANSLATION]
>
> Based on the evidence before me and the general situation in the country, I am satisfied, on a balance of probabilities, that Mr. Derisca would not be subjected personally to a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment if returned to Haiti. Although life is still difficult for many Haitians, it is reasonable to believe that Mr. Derisca will encounter difficulties in re-establishing himself if he is returned to Haiti, a country he left more than ten years ago. In my opinion, that does not constitute

> serious grounds that lead me to believe he will be subjected personally to torture within the meaning of the *Convention Against Torture* or to a risk to his life or a risk of cruel and unusual treatment or punishment if returned to Haiti.
>
> Decision, p 20.

[16] Given that the applicant would not personally face any of the risks described in sections 96 and 97 of the IRPA and that he represents a danger to the public in Canada, the delegate found that the balance favoured removing the applicant.

[17] The delegate then addressed the issue of humanitarian and compassionate circumstances. She noted that the applicant was 31 years old, had been in Canada since the age of 19, had no family in Haiti and had a spouse and daughter in Canada. On the other hand, she observed that the record did not indicate that the applicant had been in contact with his daughter since he was imprisoned or that he supported her financially. The delegate added that the applicant's departure would certainly have negative repercussions for his daughter but that the applicant and his daughter were already living apart and that the applicant's family, who live in Canada, as well as the community, could assist his daughter. In light of this situation, she stated that she thought there were insufficient humanitarian and compassionate considerations to find that the applicant's return to Haiti would cause unusual and undeserved or disproportionate hardship.

[18] The delegate's final conclusions are contained in these two paragraphs:

> [TRANSLATION]
>
> In my view, the information submitted to me shows that Wodson Derisca constitutes a present and future danger to the public in Canada. In light of my risk assessment, I am satisfied on a balance of probabilities that it is unlikely that removing Mr. Derisca to Haiti will subject him personally to a risk to his life, a risk of cruel and unusual treatment or punishment or a danger of torture within the meaning of Article 1 of the Convention Against Torture. In addition, I am of the view that there is no serious possibility that he will be persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion.
>
> After carefully reviewing all the facts of the case, including humanitarian and compassionate circumstances, and assessing the potential risks Mr. Derisca could personally face if he were returned to Haiti, as well as the need to protect Canadian society, I find that the last factor is more important than the first. In other words, after considering all the above-noted factors, I am satisfied that the need to protect Canadian society justifies removing Mr. Daresca from Canada, notably because of my finding that he would not be subjected personally to any of the risks described in section 97 and 96 of the *IRPA* if removed to Haiti. I therefore find that Mr. Daresca may be deported despite subsection 115(1) of the *IRPA* because his removal to Haiti would not violate his rights under section 7 of the *Canadian Charter of Rights and Freedoms*.
>
> Decision, pp 23-24.

III. Issues

[19] In my opinion, this case raises the following issues:

a. Did the delegate commit a reviewable error by not taking into account the applicant's submissions in her analysis of the possibility for rehabilitation?

b. Did the delegate commit a reviewable error by not considering humanitarian and compassionate circumstances?

c. Did the delegate commit a reviewable error by taking into consideration the offences for which the applicant was not convicted?

d. Did the delegate commit a reviewable error in assessing the risk the applicant would personally face if returned to Haiti?

IV. Analysis

A. *Statutory scheme*

[20] The IRPA provides a statutory framework that permits Canadian authorities to remove permanent residents or foreign nationals to their country of origin if they have committed a serious criminal offence:

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants:
(*a*) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	*a*) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

[21] The removal of a protected person or a person who is recognized as a Convention refugee is generally prohibited by the principle of non-refoulement under subsection 115(1) of the IRPA. However, paragraph 115(2)(a) permits the Minister to disregard this restriction and to remove a person to a country where he or she is at risk of persecution or torture if that person is inadmissible on grounds of serious criminality and constitutes a danger to the public:

115. (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	115. (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.
(2) Subsection (1) does not apply in the case of a person	(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire:
(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or	a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;

[22] The requirements for applying the exception under subsection 115(2)(a) of the IRPA were set out clearly by Justice Evans in *Ragupathy v Canada (Minister of Citizenship and Immigration),* 2006 FCA 151 at para 18-19, [2007] 1 FCR 490:

> 18. If the delegate is of the opinion that the presence of the protected person does not present a danger to the public, that is the end of the subsection 115(2) inquiry. He or she does not fall within the exception to the prohibition in subsection 115(1) against the refoulement of protected persons and may not be deported. If, on the other hand, the delegate is of the opinion that the person is a danger to the public, the delegate must then assess whether, and to what extent, the person would be at risk of persecution, torture or other inhuman punishment or treatment if he was removed. At this stage, the delegate must determine how much of a danger the person's continuing presence presents, in order to balance the risk and, apparently, other humanitarian and compassionate circumstances, against the magnitude of the danger to the public if he remains.

> 19. The risk inquiry and the subsequent balancing of danger and risk are not expressly directed by subsection 115(2), which speaks only of serious criminality and danger to the public. Rather, they have been grafted on to the danger to the public opinion, in order to enable a determination to be made as to whether a protected person's removal would so shock the conscience as to breach the person's rights under section 7 of the Charter not to be deprived of the right to life, liberty and security of the person other than in accordance with the principles of fundamental justice. See *Suresh v. Canada (Minister of Citizenship and Immigration)*, especially at paragraphs 76-79 [of the Federal Court of Appeal].

[23] I will therefore examine the issues in this case in accordance with these parameters.

B. *Standard of review*

[24] The question as to whether Mr. Derisca constitutes a danger to the public in Canada turns essentially on an analysis of the facts. It is settled law that the appropriate standard of review for this type of question is reasonableness. Moreover, that is the conclusion this Court has reached in similar situations: see, in particular, *Le v Canada (Minister of Citizenship and Immigration)*, 2007 FC 785 at para 6-8, 159 ACWS (3d) 253; *Nagalingam v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 153 at para 32, [2009] 2 FCR 52 [*Nagalingam*]; *Randhawa v Canada (Minister of Citizenship and Immigration)*, 2009 FC 310 at para 3, 79 Imm LR (3d) 44; *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1473 at para 9 (available on CanLII).

[25] When the Court exercises its review power using the reasonableness standard, it must show deference and resist the temptation to substitute its assessment of the evidence for the minister's. As the Supreme Court of Canada pointed out in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, "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."

(1) Did the delegate commit a reviewable error by not taking into account the applicant's submissions in her analysis of the possibility for rehabilitation?

[26] The applicant criticizes the delegate for not taking into account his counsel's submissions regarding his ability to rehabilitate himself and his risk of reoffending. In his letter of January 30, 2012, counsel for the applicant mentioned, *inter alia*, the following factors:

- the applicant has stopped drinking and will continue to abstain;
- the applicant regrets causing harm to his family;
- the applicant has re-established contact with his family, which will facilitate his reintegration;
- the applicant's mother and sister will be able to give him guidance when he is released from prison;
- the applicant has been trained as an orderly and a forklift operator and will be able to find employment;
- the applicant wants to take care of his daughter and continue his relationship with his spouse;
- the applicant wants to work in the construction field.

[27] The delegate considered this information and even explicitly referred to it in her decision (Decision, p 12). She nevertheless reached the conclusion, having regard to all the evidence on file, that the applicant showed poor rehabilitation potential. This conclusion does not seem unreasonable to me in the circumstances of this case.

[28] The delegate noted at the outset that the applicant's convictions were all serious and/or violent in nature, that the applicant's entire criminal record showed a continuing escalation in the seriousness of his actions and that his precarious immigration status had not had a deterrent effect

on his criminal activities. She also relied on what Justice Cadieux had said at the sentencing hearing on July 8, 2011, where he enumerated a number of aggravating factors in support of his decision (notably, the fact that he normally carried a weapon, did not comply with court orders, did not at any time express regret or remorse for the young victim whom he, *inter alia*, had sexually assaulted, the fact that the 21-month sentence for procuring that he completed in 2006 had not prevented him from subsequently committing a similar crime, and his refusal to acknowledge that he had participated in procuring or had committed a sexual assault).

[29] The delegate cited the correctional plan of September 27, 2011, in which it was noted that the applicant's potential for social reintegration was poor given his history of non-compliance with orders, the fact that he communicated with his victim in breach of a court order and the fact that he showed very little stability. She also quoted the applicant's Criminal Profile dated October 4, 2011, which stated that the applicant's risk of reoffending was high because of the applicant's lack of empathy towards the victim and his propensity for violence. According to that report, the fact that the applicant had re-established contact with his family was insufficient to reduce the danger he posed to the Canadian public.

[30] The delegate was aware of the fact that she had to assess the applicant's degree of dangerousness for the future, not the past. Moreover, she cited in this regard the Federal Court of Appeal decision in *Canada (Minister of Citizenship and Immigration) v Williams*, [1997] 2 FC 646, 4 Admin LR (3d) 200, where Justice Strayer wrote (at para 29):

> . . . In the context the meaning of "public danger" is not a mystery: it must refer to the possibility that a person who has committed a serious crime in the past may seriously be thought to be a potential re-offender. It need not be proven—indeed it cannot be proven—that

> the person will reoffend. What I believe the subsection adequately focusses the Minister's mind on is consideration of whether, given what she knows about the individual and what that individual has had to say in his own behalf, she can form an opinion in good faith that he is a possible re-offender whose presence in Canada creates an unacceptable risk to the public.

[31] Based on the evidence on file, it was certainly not unreasonable for the Minister's delegate to find that the applicant's potential for rehabilitation was poor. The delegate considered the applicant's submissions, the offences he had committed, the sentences imposed by the courts and the reports prepared by the correctional service. She did not misapprehend the test for determining whether a person represents "a danger to the public". In short, I have no difficulty in finding that the delegate's conclusion was one of the "possible, acceptable outcomes which are defensible in respect of the facts and law."

(2) Did the delegate commit a reviewable error by not considering humanitarian and compassionate circumstances?

[32] As I stated previously, the Minister must take into account humanitarian and compassionate circumstances when balancing the danger the applicant poses with the risk he would personally face if returned to his country. The applicant acknowledges that the delegate properly considered the best interests of his four-year-old child but submits that she did not consider other humanitarian and compassionate circumstances without, however, specifying the circumstances he is referring to.

[33] In the letter he sent to the delegate on January 30, 2011, counsel for the applicant had mentioned a number of factors under the heading [TRANSLATION] "humanitarian and compassionate considerations":

- the applicant arrived in Canada over ten years ago when he was only 19;
- the applicant has settled into Canadian society;
- the applicant has a spouse and a child to whom he is very attached;
- the applicant has re-established contact with his family;
- the applicant's family is in Canada;
- the applicant's mother and sister are ready to assist him and guide him;
- the applicant has no family in Haiti;
- the applicant studied in Canada and can find employment in Canada;
- the applicant wants to look after his daughter;
- the applicant is fluent in French and functional in English;
- the applicant has never left a job impulsively and has always declared his employment.

[34] Contrary to the applicant's submissions, the delegate did, in fact, consider a number of these factors. *Inter alia*, she noted that the applicant had been in Canada since the age of 19, that he had a certificate showing he was trained as an orderly, that he had a spouse and was the father of a four-year-old girl and that he no longer had family in Haiti. However, she also took into account that, prior to his incarceration, the applicant had no legitimate employment and lived on the avails of prostitution or drug trafficking and that there was nothing on file indicating that the applicant had had contact with his daughter since being incarcerated or that he had taken care of her financially before his incarceration. Finally, the delegate noted that there was no letter of support from his spouse on file and that it was his mother who had taken him in after his release from prison.

[35] It was after analyzing all these factors that the delegate reached the conclusion that the humanitarian and compassionate factors were not of such magnitude that they outweighed the danger the applicant posed to the public. On the evidence in the record and, after reviewing the delegate's opinion, I cannot find that she erred in her analysis or that her conclusion is unreasonable,

especially since the applicant did not elaborate in his written representations or at the hearing on the factors that she allegedly disregarded in her reasons.

(3) Did the delegate commit a reviewable error by considering the offences for which the applicant was not convicted?

[36] The applicant alleges that five of the twenty convictions the delegate relied on to write her opinion, which appear on pages five and six of her decision, do not exist. These five convictions relate to the possession of a firearm, dated July 18, 2011, for which the applicant was sentenced to 45 months in prison (for the first four convictions) and one year in prison (for the fifth conviction). The applicant submits that these five offences could only have influenced the delegate to the extent that they could have induced her to believe that he had reoffended with respect to firearms offences.

[37] As I mentioned in paragraph 8 of these reasons, the evidence on this point seems to be inconsistent. At the hearing, counsel were unable to clarify the situation, and thus the Court is unable to determine with certainty whether the five convictions dated July 18, 2001, were actually entered.

[38] On the other hand, one can only speculate on the impact these convictions may have had in the delegate's risk assessment. Although it is possible and even probable that she considered them before concluding that he had a [TRANSLATION] "lifestyle strictly focused on crime" and represented a present or future danger to the population, it must be noted that these offences are not the most serious ones. The applicant was also convicted more than once of procuring and, in addition, was

convicted of sexual assault. It is therefore far from clear that the delegate's findings would have been different had the convictions of July 18, 2011, not been on file, and nothing in the delegate's reasons indicates that these convictions had a determinative impact.

[39] Moreover, the applicant had a number of opportunities to correct his criminal record. The RCMP report referring to the convictions of July 18, 2011 (TR, p 339), as well as an excerpt from the known offender Data Bank, which also lists these convictions (TR, p 334), was appended to the letter from the Canada Border Services Agency dated December 22, 2011, advising the applicant of the Minister's intention to request a danger opinion giving rise to his removal from Canada. The July 18, 2011, convictions were also mentioned in the *Ministerial Opinion Report* prepared by the CBSA and disclosed to the applicant on March 30, 2012.

[40] The applicant actually filed submissions (January 30, 2012 and April 11, 2012) after receiving these two letters. However, he made no objection or submission regarding the convictions of July 18, 2011, and it was only on this application for judicial review that, for the first time, (through his counsel) he took the position that these convictions do not exist. The applicant did not explain why he had not taken the opportunities that had been provided to him to rectify the information he thought was incorrect. In these circumstances, I find that he is now precluded from raising this argument.

(4) Did the delegate commit a reviewable error in assessing the risk the applicant would personally face if returned to Haiti?

[41] The applicant argued that the delegate erred in determining that he would personally face a risk if returned to Haiti but that the risk was unlikely. In his view, the delegate should have simply decided that a risk existed and should not have addressed the probability that the applicant would face it.

[42] As the respondent points out, this argument runs counter to the Federal Court of Appeal's jurisprudence, which states that the risk must be [TRANSLATION] "balanced":

> If, on the other hand, the delegate is of the opinion that the person is a danger to the public, the delegate must then assess whether, and to what extent, the person would be at risk of persecution, torture or other inhuman punishment or treatment if he was removed.
>
> *Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 at para 18, [2007] 1 FCR 490.

[43] In *Nagalingam*, above, the Federal Court of Appeal stated that when the delegate conducts this analysis, "the delegate must assess whether the individual, if removed to his country of origin, will personally face a risk to life, security or liberty, on a balance of probabilities" (at para 44).

[44] Accordingly, the onus was on the applicant to establish that he would personally face a risk to his life or a risk of cruel and unusual treatment or punishment everywhere in his country, which he failed to establish. At most, he argued that, as a criminal deported to Haiti, he would be detained for an indeterminate period. In support of this argument, he submitted an anonymous article published on an Internet site stating that American citizens who are deported to Haiti after serving a sentence in the United States are routinely imprisoned. He criticizes the delegate for instead relying on the *2007 Country Reports on Human Rights Practices – Haiti*, published on March 11, 2008, by the United States Department of State, and for concluding that he was not at risk of being detained

on his arrival. The delegate also cited a report by the United Nations Human Rights Council dated March 26, 2009. These documents indicate that the Haitian government has changed its previous policy of detaining all citizens who have served a sentence abroad.

[45] In the absence of meaningful evidence that the policy of routinely detaining deported criminals had been re-established, the Minister's delegate was free to rely on a document from a credible source to find that the applicant's risk of detention had diminished. This is a finding of fact that is entitled to a high degree of deference. It is not this Court's role to reassess the weight that should be given to the documentary evidence that the delegate considered.

[46] The delegate's assessment is all the more reasonable given that the document the applicant referred to is an anonymous document that has no probative value. In addition, nothing on file indicated that the risk of illegal detentions, particularly with respect to deported citizens who served their prison sentences elsewhere, has changed since the earthquake. In these circumstances, the delegate's decision was reasonable.

[47] Last, the applicant alleges in his written representations that the delegate erred in law by imposing on him the burden of proving that he was still at risk, which runs counter to *Németh v Canada*, 2010 SCC 56, [2010] 3 SCR 281 [*Németh*]. However, he abandoned this argument at the hearing and was right to do so. In fact, this Court already rejected this contention in *Alkhalil v Canada (Minister of Citizenship and Immigration)*, 2011 FC 976, 395 FTR 76, noting properly that *Németh* was decided in the context of an extradition and does not apply to decisions made by the minister in accordance with subsection 115(2) of the IRPA.

[48] In short, the Minister's delegate conducted an exhaustive analysis of the documentary evidence on the general situation in Haiti and the conditions in the prisons. This assessment of the evidence and the risks is a question of fact that fell within her expertise. The applicant did not demonstrate that the delegate's decision was based on an erroneous finding of fact, made in a perverse or capricious manner or without regard for the material before her (*Federal Courts Act*, RSC 1985, c F-7, paragraph 18.1(4)(d)), and consequently the Court should not substitute its own analysis for that of the delegate in the absence of clear error.

[49] For all the foregoing reasons, the application for judicial review is dismissed. No question is certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Yves de Montigny"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 17, 2013
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DATED:	May 21, 2013

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