Date: 20070126

Docket: IMM-2782-06

Citation: 2007 FC 66

Ottawa, Ontario, January 26, 2007

Present: The Honourable Mr. Justice Shore

BETWEEN:

SAMIR SOUICI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] There is a narrow distinction between a refusal based on an application for permanent residence for humanitarian and compassionate grounds and the determination of a pre-removal risk assessment (PRRA).

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[2] In *Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] F.C.J. No. 458 (QL), Mr. Justice Luc J. Martineau noted the following:

> [40] . . . the PRRA is closely linked in time to removals and is carried out immediately prior to removal.
>
> [41] The fact that PRRA applicants receive a statutory stay of removal under section 232 of the IRP Regulations is indicative of the legislative intent to have

> PRRAs completed <u>before</u> applicants are to be returned to face the risks they allege . . . . [Emphasis added]

[3] The Canada Border Services Agency (CBSA) is unable to enforce a removal if it is lacking certain preliminary facts to ensure that the risk of removal is considered in full:

> [TRANSLATION]
> The CBSA deals with a certain number of files per week according to operational capacity. This file . . . is part of the files which will be dealt with in the coming months.

(Affidavit of the government officer)

Therefore, there is no question of enforcing any removal at this stage. (According to the requirements for the consideration of a PRRA).

NATURE OF THE JUDICIAL PROCEEDINGS

[4] This is an application for judicial review of a decision of an officer of Citizenship and Immigration Canada (CIC), dated April 24, 2006, rejecting the applicant's application for permanent residence(APR) on the basis of humanitarian and compassionate considerations. This decision was rendered pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act).

FACTS

[5] The applicant, Samir Souici, aged 31 years, alleges that he is a citizen of Algeria. He entered Canada on May 19, 2001, and immediately claimed refugee protection. The Refugee Protection Division of the Immigration and Refugee Board rejected his claim on January 6, 2003. In addition, the Federal Court dismissed the application for judicial review presented by Mr. Souici.

[6] On November 13, 2003, Mr. Souici made an APR based on humanitarian and compassionate considerations. Because he made his application after the permitted deadline of January 31, 2003, he could not rely on the new special procedure enacted to allow persons whose claim for refugee protection has been rejected to apply for permanent residence in Canada, subject to certain conditions. It was therefore on the basis of the regular procedures of "IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds" (IP 5 Directives) that the decision was rendered.

[7] On April 24, 2006, the immigration officer concluded that the humanitarian and compassionate grounds were insufficient to warrant processing Mr. Souici's file. In addition, she determined that obliging Mr. Souici to return to Algeria to submit an application for residency would not entail any unusual and undeserved or disproportionate hardship for him. Accordingly, the Board rejected his application.

IMPUGNED DECISION

[8] Mr. Souici is seeking to have the decision rendered under section 25 of the Act quashed.

[9] Section 25 of the Act is a discretionary exception, as noted by Mr. Justice Frank Iacobucci in *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, [2002] SCC 3:

> [64] … an application to the Minister under s. 114(2) is essentially a plea to the executive branch for special consideration which is not even explicitly envisioned by the Act.

(See also: *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] F.C.J. No. 457 (QL), at paragraphs 15 and 16.)

[10] In fact, obtaining an immigrant visa outside of Canada is a requirement under subsection 11(1) of the Act, and the granting of an exemption under subsection 25(1) of the Act is an exceptional procedure.

[11] In the case at bar, the CIC officer considered all the reasons alleged by Mr. Souici, made a complete analysis and concluded that there were no humanitarian or compassionate grounds which would warrant an exemption from the statutory obligation of applying for an immigrant visa before coming to Canada, under subsection 11(1) of the Act.

[12] On April 24, 2006, the CIC officer rejected Mr. Souici's APR based on humanitarian and compassionate grounds for the following reasons:

(a) The identity documents submitted by Mr. Souici were unsatisfactory as evidence of his identity;

(b) Mr. Souici did not show he was able to support himself without having recourse to social services. He has no stable employment, although he works under a term contract. Since his arrival in Canada, he has lived on welfare or unemployment insurance benefits;

(c) Although the applicant has friends in Canada, the other members of his family live outside of Canada. The applicant owns an automobile, has a driver's licence, and has good financial management habits, but these facts are not determinative in obtaining permanent residency in Canada;

(d) The situation in Algeria has changed since Mr. Souici arrived in Canada in May 2001. Furthermore, as regards the fear of the irregular situation regarding his military service, the evidence shows that the situation could be rectified if he made the appropriate application. In addition, the applicant did not show that there is a risk to his life or safety if he returns to Algeria. The Algerian state has made tremendous progress over the last few years, specifically with regard to terrorist groups and operations conducted by security forces to eliminate violence and abuse.

[13] It was on the basis of these reasons that the CIC officer concluded that requiring Mr. Souici to return to Algeria while his APR on humanitarian and compassionate grounds is processed would not cause any unusual and undeserved or disproportionate hardship for him.

ISSUE

[14] Did the CIC officer make a reviewable error in rejecting Mr. Souici's request for an exemption?

STANDARD OF REVIEW

[15] It is trite law that a request for exemption is an exceptional and purely discretionary measure. Accordingly, the standard of review governing request for exemption from the visa requirement is that of reasonableness *simpliciter*. This standard was expounded by Mr. Justice Iacobucci in *Canada (Director of Investigations and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748, [1996] S.C.J. No. 166, as follows:

> . . . An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination . . . .

> . . .
>
> Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it. The defect, if there is one, could presumably be in the evidentiary foundation itself or in the logical process by which conclusions are sought to be drawn from it . . . .

[16] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; [1999] S.C.J. No. 39, the Supreme Court ruled that the discretionary power granted to an immigration officer must be considered with a certain degree of deference:

> [51] As stated earlier, the legislation and Regulations delegate considerable discretion to the Minister in deciding whether an exemption should be granted based upon humanitarian and compassionate considerations. The Regulations state that "[t]he Minister is . . . authorized to" grant an exemption or otherwise facilitate the admission to Canada of any person "where the Minister is satisfied that" this should be done "owing to the existence of compassionate or humanitarian considerations". This language signals an intention to leave considerable choice to the Minister on the question of whether to grant an H & C application.
>
> . . .
>
> [59] The second factor is the expertise of the decision-maker. The decision-maker here is the Minister of Citizenship and Immigration or his or her delegate. The fact that the formal decision-maker is the Minister is a factor militating in favour of deference. The Minister has some expertise relative to courts in immigration matters, particularly with respect to when exemptions should be given from the requirements that normally apply.
>
> . . .
>
> [62] These factors must be balanced to arrive at the appropriate standard of review. I conclude that considerable deference should be accorded to immigration officers exercising the powers conferred by the legislation, given the fact-specific nature of the inquiry, its role within the statutory scheme as an exception, the fact that the decision-maker is the Minister, and the considerable discretion evidenced by the statutory language. Yet the absence of a privative clause, the explicit contemplation of judicial review by the Federal Court–Trial Division and the Federal Court of Appeal in certain circumstances, and the individual rather than polycentric nature of the decision, also suggest that the standard should not be as deferential as "patent unreasonableness". I conclude, weighing all these factors, that the appropriate standard of review is reasonableness *simpliciter*.

ANALYSIS

[17] The decision of the CIC officer is challenged by Mr. Souici on the following grounds:

(a) The CIC officer rendered an arbitrary and unreasonable decision by not taking into consideration several material factors and by reaching conclusions which are not supported by the evidence;

(b) The CIC officer made an unreasonable mistake by not allowing the applicant to make any submissions about the PRRA, as provided under the Act, meaning that she based her decision on submissions made by the applicant in June 2003, which were not updated for the purposes of her decision.

I. <u>Applicant's identity: the identity documents submitted were unsatisfactory</u>

[18] First of all, in her reasons, the CIC officer noted that the identity documents submitted by Mr. Souici in support of his APR on humanitarian and compassionate considerations did not have any photographs conclusively linking him with this documentation. Likewise, the officer underlined the fact that the applicant did not submit any travel documents or passport to prove his identity. On this last point, in particular, she underlined the fact that Mr. Souici [TRANSLATION] "did not give any reasons explaining why he did not have his own passport" when he [TRANSLATION] "arrived in Canada bearing a forged passport". (Reasons for Decision, at page 3, paragraph 1)

[19] However, in an appendix to the letter that the CIC sent to Mr. Souici on April 4, 2006, requesting that he update his APR on humanitarian and compassionate grounds filed in 2003, he was clearly requested to submit [TRANSLATION] "a complete copy of your valid and/or expired passport or travel documents".

[20] The CIC officer did not err in drawing a negative conclusion from the fact that the applicant did not submit any travel document or passport in support of his application. On this point, this Court, in *Élazi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 212 (QL), ruled as follows:

> [17] I take this opportunity to add that it is entirely reasonable for the Refugee Division to attach great importance to a claimant's passport and his air ticket. In my opinion, these documents are essential to establish the claimant's identity . . . .

[21] This requirement on the part of an applicant is even more relevant under section 25 of the Act, because a favourable decision under this section grants permanent residency status in Canada (not only refugee status). This is why a passport is important for identification purposes.

[22] On this point, Mr. Souici contests the requirement to submit a passport for the following reasons:

> [TRANSLATION]
> First of all, it should be noted that the applicant is claiming refugee protection. **He has always alleged and is still alleging a fear of the Algerian authorities because of his military service, which he did not do, and because he obtained a forged exemption card.**
>
> Claimants for refugee protection are under no obligation to report to the authorities of their country to obtain a passport, especially if they have problems with the authorities in their country. [Emphasis added]

(Applicant’s Record, page 114)

[23] However, the reasons invoked by Mr. Souici for not obtaining a passport—especially the matter of a forged military service exemption card—are precisely the facts which were not

considered credible by the Refugee Protection Division (and for which leave for judicial review was denied by this Court). The reasons for the decision read as follows:

> The fact that the claimant returned home to Mauratia to close up and liquidate his business on April 4, 2000, according to his testimony, or rather in late 2000 according to his answer to Question 18 of his PIF, proves that his fear is not as great as sections 96 and 97 of the Act require. Furthermore, the statements of the claimant contain a contradiction on an essential, major point . . . .
>
> As for the written threats he claims he received in October 1999, consisting of two consecutive letters that came from the GIA and that he allegedly handed over to the police without being prudent enough to keep at least one copy for his personal files, the panel must say that it is most surprised to learn that these letters were typewritten in French and in Arabic. This allegation of the claimant runs counter to the panel's specialized knowledge, according to which the GIA has no concern for both languages. On the contrary, the use of French is repugnant to the GIA, which makes it a point of honour to write strictly in the Arabic language. Moreover, the GIA does not stamp its threat letters with a stamp that is bilingual in French and Arabic. That the GIA would threaten to burn down the shop, which was located less than 900 meters from a police station, seems to be more reckless than bold.
>
> Regarding his claim that he finds himself in an irregular, or even illegal, situation in Algeria in relation to military service because the military card dated December 7, 1994, which grants him an exemption by decision, is a forgery does not hold water. The panel rejects this argument. This decision does indeed exist in favour of the claimant, who has produced no expert opinion to establish that this card is not authentic, nor has he shown what facts would establish that the card should not be regarded as authentic. In the panel's opinion, this document benefits from a presumption of authenticity that has not been overturned by relevant, reliable evidence. The panel also believes, on the basis of the documentary evidence filed in this case, that the claimant, who was born on September 15, 1974, would be eligible to obtain an exemption from national military service solely due to the fact that he is over 27 years of age.
>
> (Reasons for Decision of the Board, at pages 2 and 3)

[24] Accordingly, Mr. Souici did not have sufficient grounds to explain the reasons why he did not try to obtain a passport. Therefore, the CIC officer did not err on this point.

[25] Secondly, the applicant alleged having given the CIC certain documents in 2004 to establish his identity. However, on the one hand, the applicant did not consider it useful to place several of these documents in his file in support of his application for leave and for and judicial review. On the other hand, there is no indication whatsoever that these documents bear any photograph proving the applicant’s identity.

[26] On this point, the Court has recognized on several occasions the importance of photographic identity documents. For example, in *Mukharji v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 721, [2004] F.C.J. No. 911 (QL), Mr. Justice Michel Beaudry wrote the following:

> [24] Furthermore, I find that it was not unreasonable for the Board to question the applicant's identity and draw a negative credibility inference when the applicant had no picture identification to connect him to his other identity documents. It has been confirmed in this Court that travel documents are relevant to the issue of credibility (see *Museghe v. Canada (MCI)*, 2001 FCT 1117, [2001] F.C.J. No. 1539 (T.D.) (QL), at paragraphs 19-22),

[27] Accordingly, the CIC officer’s dissatisfaction with the identity documents submitted by the applicant is reasonable.

[28] Thirdly, Mr. Souici alleges the following:

> [TRANSLATION]
> . . . It was only when he received the reasons for decision that the applicant learned that officer Pelletier, whom he never saw, questioned his identity and implied that he was maybe a citizen of Tunisia, because he resided there.
>
> This is theorizing without any basis. She then wrote that this doubt as to identity was determinative and that she attached considerable weight to his lack of a valid passport.
>
> . . .

> On this point, the decision is unreasonable, as it is not based on any tangible evidence and is pure speculation. If the officer had on hand a document showing that the applicant was Tunisian or Moroccan, she should have confronted him with this evidence.

(Applicant's Record, page 115)

[29] However, nowhere in the reasons given by the CIC officer does she mention or insinuate that the applicant was Tunisian or Moroccan. All she mentions in her reasons is the following:

> [TRANSLATION]
> . . . I note that the applicant did not submit any evidence concerning the fact that he did not have his own passport. However, I do note that the applicant resided in Tunisia.

(Reasons for Decision of the CIC, at page 3).

[30] Accordingly, this excerpt clearly shows that the officer took a negative view of the fact that the applicant did not have any passport to submit and did not give any explanation for this, even though he travelled outside Algeria, which obviously required a passport.

[31] In short, the CIC officer's mention of Mr. Souici's stay in Tunisia expresses further doubt as to the lack of a passport, as opposed to being an insinuation to the effect that he is Tunisian, not Algerian.

[32] In addition, the officer's finding that the applicant stayed in Tunisia is not extrinsic evidence, because it comes from the IMM-5001 form filled out by Mr. Souici on April 12, 2006, as appears from Exhibit A on the Court record.

[33] In this case, Mr. Souici did not discharge the burden of proving his identity. As Madam Justice Judith A. Snider underlined in *Anaschenko v. Canada (Minister of Citizenship and Immigration),* 2004 FC 1328, [2004] F.C.J. No. 1602 (QL):

> [8] It is important to state that an applicant bears the burden of adducing proof of any claim on which the H&C application relies.

Accordingly, the CIC officer's dissatisfaction with regard to the identity documents submitted by the applicant is reasonable. Therefore, the Court's intervention is not warranted on this point.

II. Integration of the applicant in Canada: Integration is not determinative, as Mr. Souici did not establish the existence of unusual and undeserved or disproportionate hardship

[34] Mr. Souici made an exhaustive analysis to prove his integration in Canada. On this point, he gave lengthy explanations about the exact period during which he received social assistance and employment insurance benefits in Canada, when he held various jobs in Canada, and whether such employment was temporary, permanent, part-time or on-call. In addition, the applicant notes that he has his driver's licence, has purchased an automobile and has lived quietly for five years.

[35] With respect, the Court is of the opinion that Mr. Souici's arguments have little to do with the real issue it must decide with regard to the APR on humanitarian grounds.

[36] In this case, the CIC officer considered all the facts relating to the applicant's integration but concluded that [TRANSLATION] "these factors are not determinative in obtaining residence in Canada".

[37] On this point, in *Kawtharani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 162, [2006] F.C.J. No. 220 (QL), the Court underlined the following:

> [32] The degree of establishment of an applicant is not determinative of an H&C application (*Klais*). It is only one of the factors that must be considered. The H&C Officer does acknowledge that Mr. Kawtharani is somewhat established in Canada; nevertheless, this does not mean that there are automatically sufficient humanitarian and compassionate grounds to allow Mr. Kawtharani's application. A complete assessment of all of the relevant factors must be undertaken before a decision can be made.

[38] The opportunity to present an APR on humanitarian and compassionate grounds is intended to provide recourse in case of unusual and undeserved or disproportionate hardship, whereas integration in Canadian society is only one factor among others. In fact, as Mr. Justice James Russell described very recently by in *Davoudifar v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 316, [2006] F.C.J. No. 431 (QL):

> [43] As stated by Justice Paul Rouleau in *Nazim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 159, 2005 FC 125, at para. 15:
>
> The humanitarian and compassionate process is designed to provide relief from unusual, undeserved or disproportionate hardship. The test is not whether the applicant would be, or is, a welcome addition to the Canadian community. In determining whether humanitarian and compassionate circumstances exist, immigration officers must examine whether there exists a special situation in the person's home country and whether undue hardship would likely result from removal. The onus is on the applicant to

> satisfy the officer about a particular situation that exists in their country and that their personal circumstances in relation to that situation make them worthy of positive discretion.

> [44] The Decision made by the Officer is highly fact-based, and as the Officer is in a better position than this Court to assess the facts before her, the exercise of a discretion in assessing the Applicant's case is subject to a high level of deference from this Court. In this case, although the Applicant's situation attracts compassion, the Officer was not unreasonable in making her Decision and, as such, I must decline to intervene.

[39] This decision reiterates what Mr. Justice Paul Rouleau wrote previously in *Chau v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 107, [2002] F.C.J. No. 119 (QL):

> [19] As Pelletier J. stated in Irimie, [2000] F.C.J. No. 1906, (IMM-427-00) at para. 12, the fact that one would be leaving behind friends, perhaps family, employment or a residence, as well as the cost or inconvenience of having to return home to apply in the normal manner would not generally be enough to constitute hardship and thus warrant a positive H&C determination. The weight to be assigned to particular factors or indicators of attachment is discretionary.

[40] Accordingly, the CIC officer was right in concluding that Mr. Souici did not meet the onus he had. As underlined by Russell J. in *Pashulya v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1275, [2004] F.C.J. No.1527:

> [43] An applicant has a high threshold to meet when requesting an exemption from the application of s. 11(1) of *IRPA*. This Court has repeatedly held that the H&C process is designed not to eliminate the hardship inherent in being asked to leave after one has been in place for a period of time, but to provide relief from "unusual, undeserved and disproportionate hardship" caused if an applicant is required to leave Canada and apply from abroad in the normal fashion. That the Applicant must sell a house or car or leave a job or family is not necessarily undue or disproportionate hardship; rather it is a consequence of the risk the Applicant took by staying in Canada without landing (*Irimie v. Canada (Minister of Citizenship and Immigration)* (2000), 10 Imm. LR. (3d) 206 at paras. 12, 17, 26 (F.C.T.D.); *Mayburov v. Canada (Minister of Citizenship and Immigration)* (2000), 183 F.T.R. 280 at para. 7; *Lee v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 7 at para. 14).

III. Lack of a PRRA

(1) The CIC officer was not required to submit the file to a PRRA officer because she performed the same function, and Mr. Souici had every opportunity to explain the risk alleged in his APR on humanitarian and compassionate grounds

[41] In order to support his allegation to the effect that the CIC officer erred, Mr. Souici relies on the decision in *Kawtharani*, *supra*. In this decision, the Court referred to *Babilly v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1469, [2004] F.C.J. No. 1771, in which Mr. Justice John A. O'Keefe concluded that the officer assessing the humanitarian and compassionate grounds (H&C officer) erred in not contacting the applicant to allow him to give additional information about the risk of persecution and in not referring the matter to a PRRA officer for a risk assessment.

[42] However, the principles mentioned in *Babilly, supra*, do not apply to this case. First, the *Kawtharani* and *Babilly* decisions, *supra*, deal with a decision rendered by an H&C officer, which is not the case here. On this point, the affidavit of the Minister reads as follows:

> [TRANSLATION]
> 3. I have read the allegations of counsel for the applicant at pages 118 to 120 of his record, filed on June 7, 2006, in support of his *Application for Leave and for Judicial Review.*
>
> 4. In this case, the fact that officer Marjolaine Pelletier did not—before the final decision was rendered under section 25 of the *Immigration and Refugee Protection Act* (IRPA)—"refer the matter to a PRRA officer for a risk assessment" (*Kawtharani v. M.C.I.*, 2006 FC 162) is explained by the fact that she had been appointed as a PRRA officer from **January 23, 2006, to May 22, 2006**, that is, the period during which she rendered her decision on **April 24, 2006,** in the applicant's case.
>
> 5. Accordingly, during this period, it was part of officer Pelletier's duties to assess the pre-removal risks of applicants applying on humanitarian and compassionate grounds, and in doing so, she was not required to submit the application to another officer.

6. Finally, on **April 24, 2006**, officer Pelletier rendered the decision under section 25 of the IRPA as a PRRA officer.

[43] In the case at bar, unlike in *Kawtharani*, the CIC officer could proceed with an assessment of the risk alleged by Mr. Souici without having to refer his file to another officer. Therefore, no intervention is warranted on this point.

[44] Finally, as regards the issue of the failure of the CIC officer to allow the applicant to update his file for the APR on humanitarian and compassionate grounds with a view to assessing the risk of persecution in his native country, once again, it is necessary to distinguish the present situation from the one described in *Babilly*, *supra*, in which the Court summarized the H&C officer's decision as follows:

> [9] The H&C Officer was not satisfied that the applicant would suffer undue, disproportionate or undeserved hardship if he was required to apply for permanent residence from outside Canada for the following reasons:
>
> 1. While recognizing that the applicant may face some loss of income were he to leave Canada, she was not satisfied the hardship will be disproportionate;
>
> 2. The applicant claimed fear of imprisonment or torture if he was forced to return to Syria, however, no evidence was submitted to support this claim; and
>
> 3. The information submitted was also found to be insufficient to warrant sending this file for a risk opinion, as no new or additional information was submitted since the Convention Refugee Determination Division ("CRDD") hearing and neither the applicant nor his counsel had requested the file be sent for a risk assessment.
>
> . . .

[45] In *Babilly*, *supra*, O'Keefe J. ruled in favour of the applicant, who successfully argued the following:

> [12] It is submitted that the H&C Officer failed in her duty of fairness by not sending the applicant a letter requesting further details of the personalized risk and not stopping her processing of the case in order to give him an opportunity to provide such details. The applicant alleged that the H&C Officer was reasonably alerted to the issue but ignored the requirements of fairness which are reflected in the Respondent's manuals, by unilaterally deciding not to remit the file for a risk opinion once the issue was raised. It is submitted that the H&C Officer breached the obligation of procedural fairness which is accorded to persons in the applicant's circumstances where there is an issue with serious repercussions for them.

[46] Accordingly, in Babilly, *supra*, the H&C officer concluded that the applicant had not submitted sufficient evidence of the risk alleged in his APR on humanitarian and compassionate grounds, the consequence of which is that the officer arbitrarily decided not to refer the risk assessment to a PRRA officer, which resulted in a lack of procedural fairness.

[47] However, in the case at bar, the CIC officer did not conclude that the applicant gave insufficient information to allow deferring his file for a PRRA. Rather, she analyzed this risk in her capacity as a PRRA officer.

[48] In addition, the allegation made by Mr. Souici concerning the alleged refusal to allow him to update his file, which was submitted in 2003, is false. In fact, a letter from the CIC dated April 4, 2006, shows that the CIC asked the applicant to submit this evidence:

> [TRANSLATION]
> This is further to your application for permanent residence in Canada on humanitarian and compassionate grounds, which was received on *November 13, 2003* . . .
>
> . . .

> We are currently processing your application. An update of your file is necessary to allow us to render a decision concerning the exemption from the permanent resident visa requirement.
>
> Therefore, you must send us the information/documents requested in the enclosed list, if applicable, **by April 19, 2006** (15 days).
>
> . . .

[49] In the appendix to the letter in question, more than fifteen documents are mentioned, and it ends by requiring the applicant to submit [TRANSLATION] "any other document or information you may consider relevant for the processing of your application".

[50] To sum up, the CIC officer did not err in not contacting Mr. Souici to allow him to update his file concerning the alleged risk involved should he return to Algeria. In fact, as underlined by Madam Justice Johanne Gauthier in *Melchor v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1327, [2004] F.C.K. No. 1600 (QL), it is up to the applicant to adduce evidence, and he has the opportunity in the case of an APR on humanitarian and compassionate grounds to update his file throughout the process before the decision is rendered:

> [7] In their written submissions, the applicants raised several issues but at the hearing, they focussed on two, viz:
>
> > i) the immigration officer breached her duty of fairness by failing to ask for updated information despite the fact that their application was already fourteen months old when it was examined;
> >
> > . . .
>
> [13] It is trite law that applicants bear the burden of supplying all the documentation necessary to support their application. In that respect, they can provide additional information at any time before a decision was made.
>
> [14] In *Arumugam v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No.1360 (QL) (T.D.) at paragraph 17, McKay, J said:

> In my opinion, although the IO did not seek new or updated country information from the applicant or elsewhere after the interview in March 1999, except for the PDRCC decision, there was no duty on the IO to do so. It was open to the applicant to submit further relevant information following the interview at any time before the decision, whether it be personal or related to the changing circumstances in Sri Lanka. The applicant did not do so. The IO rendered a decision based on the evidence provided to her. I cannot agree that the process was unfair or that the decision was unreasonable where the applicant did not take any initiative to provide further information concerning country conditions which, in his opinion, deteriorated through 1999. The responsibility of the IO was to consider the application to apply for admission on h & c grounds on the basis of the evidence provided by the applicant, and any evidence available from the applicant's immigration records or provided by the Minister. This the officer did."
>
> [15] I fully agree with these comments and I find that the officer did not err in rendering her decision without seeking further information from the applicants.

[51] Accordingly, because Mr. Souici's allegations are identical to those invoked in the cases of *Melchor* and *Arumugan*, *supra*, the intervention of this Court is not warranted on this point.

2) Mr. Souici's file was not yet at the stage of proceedings where it could be considered for a PRRA, and this is why the assessment was not offered.

[52] Mr. Souici alleges that he did not apply under the PRRA program because he had not been given notice make his application, and he criticized the CIC officer for not following procedure by not offering the applicant the opportunity to make a PRRA application or update his file.

[53] However, in *Figurado*, *supra*, Martineau J. noted the following:

> [40] . . . <u>Accordingly, the PRRA is closely linked in time to removals and is carried out immediately prior to removal.</u>
>
> [41] The fact that PRRA applicants receive a statutory stay of removal under section 232 of the IRPA Regulations is indicative of the legislative intent to have

> PRRAs completed before applicants are to be returned to face the risks they allege . . . .

[54] In the case at bar, the CIC officer cannot offer a PRRA to the applicant because the CBSA is currently unable to enforce Mr. Souici's removal. On this point, the affidavit of officer Louis-Philippe Benson explains the following:

> [TRANSLATION]
> 1. Mr. SOUICI is the subject of a removal order, namely a departure order which became a deportation order . . . .
>
> 2. Mr. SOUICI is eligible for the pre-removal risk assessment (PRRA) program.
>
> 3. The CBSA did not ask Mr. SOUICI to file an application for a PRRA because:
>
> (i) The removal process consists of three main steps: (1) notice to obtain travel documents, (2) notice to offer the subject the opportunity to apply for a PRRA, and (3) notice for delivery of the PRRA decision and travel arrangements.
> (ii) To be qualified for a PRRA, the subject must be at step 2; he must be ready for removal and must therefore submit a valid travel document to the CBSA or the CBSA must have on hand an approval for the issue of such a document by the authorities for which the applicant is a national, in this case, Algeria.
> (iii) Mr. SOUICI did not submit such a document.
> (iv) The CBSA processes a certain number of files per week according to operational capacity. Mr. SOUICI's file is among those which will be processed in the future.
> (v) CBSA did not undertake procedures to obtain a pass from the Algerian consulate. Accordingly, Ms. SOUICI will have to be served notice for step 1 of the process.
>
> 4. This is why the PRRA was not offered to Mr. SOUICI.
>
> . . .

[55] As appears from the reasons for decision of the CIC officer, the Canadian CIC authorities did not have any valid passport to enforce the removal to Algeria, and there is therefore no question of enforcing a removal of any kind at this stage.

[56] Accordingly, the CIC officer did not err, and intervention by this Court is not warranted in this case.

CONCLUSION

[57] Considering the foregoing, the application for judicial review is dismissed.

ORDER

THE COURT ORDERS that

1. The application for judicial review be dismissed;

2. No question of general importance be certified.

"Michel M.J. Shore"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2782-06
STYLE OF CAUSE:	SAMIR SOUICI v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 16, 2007
REASONS FOR JUDGMENT AND JUDGMENT BY:	THE HONOURABLE MR. JUSTICE SHORE
DATED:	January 26, 2007

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