

Date: 20090317

Docket: IMM-2648-08

Ottawa, Ontario, March 17, 2009

PRESENT: The Honourable Madam Justice Hansen

BETWEEN:

JOEL DUNCAN COLLINS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER

UPON an application for judicial review of the May 28, 2008 decision of the Immigration and Refugee Board (Immigration Division) (ID);

AND UPON reading the Certified Tribunal Record and the materials submitted by the parties;

AND UPON hearing the submissions of counsel for the parties;

AND UPON considering the following:

In the impugned decision, the ID Member observed that a review of the Minister's decision to proceed with an admissibility hearing is a matter for the Federal Court to determine. He expressed discomfort with proceeding with an admissibility hearing in light of the circumstances leading up to the preparation of the report. However, he stated that his function was not to review the decision of the border officer or the exercise of Ministerial discretion. He concluded that despite his views he had been provided with a referral and a report and he was "obliged to proceed with the hearing."

At the hearing of the judicial review, the Applicant reformulated the central issue as whether the ID has the jurisdiction to decline to hold a hearing if it finds that a report prepared pursuant to section 44 of the *Immigration and Refugee Protection Act, S.C. 2001, c.27* is invalid.

As the Respondent submits, this formulation is premised on the ID having the jurisdiction to inquire into the validity of the section 44 report.

The Applicant was unable to point to, and I have been unable to find, any legislative, regulatory or jurisprudential support for the proposition that the ID has the jurisdiction to enter into an inquiry regarding the validity of a section 44 report. Indeed, the jurisprudence confirms the very limited jurisdiction of the ID in these circumstances: *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 429. Accordingly, I reject the Applicant's argument that in these circumstances the ID erred in concluding that it was obliged to hold the hearing.

I also wish to add that, in my view, in bringing of the application for judicial review of the ID's decision, the Applicant was attempting to indirectly attack the validity of the section 44 report. However, a challenge to the validity of this report should have

parties;

been brought by way of an application for leave and judicial review of the report.

AND UPON neither party having submitted a serious question of general importance for certification;

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. No question is certified.

"Dolores M. Hansen"

Judge