Date: 20090421

Docket: IMM-897-08

Citation: 2009 FC 394

Ottawa, Ontario, April 21, 2009

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SEBASTIAMPILLAI KANAKU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA or the Act) for judicial review of a decision by a pre-removal risk assessment (PRRA) officer (the officer), dated December 14, 2007 rejecting the applicant's PRRA application.

[2] The applicant requests that the decision be set aside pursuant to subsection 18(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 and the matter referred back to a newly constituted panel of the Board for redetermination.

Background

[3] Kanaku Sebastiampillai (the applicant) is a citizen of Sri Lanka born January 20, 1938 in Kopay, Sri Lanka. He is a part of the Tamil minority and is Catholic.

[4] On April 24, 2002, the applicant arrived in Canada and claimed refugee status. On June 17, 2003 the application for protection was rejected by the Immigration and Refugee Board.

[5] On June 7, 2005, the applicant applied for an exemption from permanent resident visa requirements based on humanitarian and compassionate (H&C) grounds. On September 27, 2005, an evaluation in light of the December 26, 2004 tsunami affecting Sri Lanka was conducted and found not to apply to the applicant. Humanitarian and compassionate grounds for a visa exemption for the applicant were rejected on December 14, 2007. On March 11, 2008, the Court stayed the applicant's removal to Sri Lanka pending the judicial review of the PRRA decision dated December 14, 2007.

[6] The applicant is married with three daughters; one of the daughters and his wife live in the Vanni region of Sri Lanka, another daughter is in Germany and the third daughter has been a

Canadian citizen since 2005. The applicant alleges that his wife has been displaced in and around Jaffna, Sri Lanka. The applicant farmed in this region before coming to Canada.

[7] The applicant's initial claim for refugee protection was based on his need for protection as a Tamil male. He alleged that his daughters were targeted by the Liberation Tigers of Tamil Eelam (LTTE) and his family's involvement resisting the LTTE ultimately put them in danger with the Sri Lankan government and its security forces. The allegations made by the applicant were not found to be credible by the Immigration and Refugee Board (IRB).

PRRA Officer's Decision

[8] The officer received the PRRA application on November 14, 2006 and further submissions from applicant's counsel up to June 2007. After considering the documentation, the officer gave the following reasons for refusal of the application.

[9] First, the officer stated the risks identified by the applicant: the applicant's fear that his stay in Canada makes him even more vulnerable to extortion by the LTTE and the applicant's fear of facing detention, torture, sexual harassment and death at the hands of the Singhalese army because they suspect him of supporting the LTTE.

[10] The officer also acknowledges that the applicant recognizes as a risk the "emergency situation" in Sri Lanka that has led to abuses on the part of authorities who will not protect him

because he belongs to the Tamil minority but is Christian. Finally, the applicant alleges that given his age and physical condition he cannot live in security in any part of the country.

[11] The officer then articulated the background information of the applicant as she understood the facts. It was stated that when the Indian Peace Keeping Force (IPKF) left the country, the Tamil Tigers began to harass the applicant's daughters after 1990 to finance the LTTE group. In 1995, the family left for Mankulam in the Vanni region because the Singhalese army was advancing on Jaffna. The Tamil Tigers harassed his daughters to enlist, but the applicant and his wife resisted and returned to Kopay in 2000.

[12] The officer went on to state that the army suspected one of the applicant's daughters of having ties to the Tamil Tigers and periodically detained her. The soldiers allegedly arrested the applicant from time to time for questioning and then would subsequently release him. In February 2002, the applicant was released at the village chief's and priest's behest after the army allegedly discovered weapons on the farm of the applicant. Subsequently, it was alleged that his wife was hit by members of the military who were looking for him. Immediately afterwards, the applicant went to Colombo and left the country with the help of a smuggler.

[13] The officer also mentions that the applicant's family was not affected by the December 26, 2004 tsunami that devastated the coast of Sri Lanka, including the Jaffna region, in north Kopay where the applicant is from.

[14] The officer found that the applicant submitted new evidence with his PRRA application and HC-1 application. The new evidence consisted of documents from the US Department of State Human Rights Practices, Human Rights Watch, WebAmnesty, and UNHCR, and articles from the Sri Lankan press, Journal de Montreal, The Gazette and the tamilnet.com website. The officer evaluated these documents as well as other more up-to-date documents that were not detailed in order to understand the current risks in Sri Lanka.

[15] The officer then reviewed the elements necessary for finding that a risk existed for the applicant under the Act and from the 1951 *Convention related to the Status of Refugees* and Article 1 of the *Convention Against Torture*.

[16] The officer stated that she attached importance to the IRB's reasons for denying protection in rendering her own decision and pointed to contradictions the panel found in the applicant's statements and how these inconsistencies were found to undermine his credibility.

[17] The officer found that the applicant reiterated the same risks in his PRRA application as were alleged before the IRB but added that there was new evidence that the current situation in his country was unstable and dangerous and this was evaluated to find whether this would put the applicant's life and safety at risk if he returned.

[18] The officer stated that the salient issue before her was the applicant's personal profile and the situation of the country, and not the evidence already judged by the IRB. It was stated that the

applicant was an elderly man who could no longer work on his farm because of internal politics in Sri Lanka. Although the officer acknowledged that the applicant belonged to the minority group in Sri Lanka, she did not feel that he would be of interest to either the LTTE or the Singhalese authorities because of his age and lack of involvement in political parties or groups.

[19] Further, the officer rejected the idea that the applicant would be targeted because he had been in Canada as a refugee claimant and because he was Tamil. The officer stated that "[t]he Canadian government does not disclose information on refugee claimants" and given the fact that the applicant does not have any money, "he is not likely to be targeted by the Tamil Tigers".

[20] The officer then reviewed the situation in Sri Lanka including its multi-ethnic make-up. It was stated that the LTTE believe that Tamils are discriminated against by the Singhalese majority and goes on to summarize the violent conflict between the two groups particularly since 1983. The officer writes that the general situation deteriorated in the past two years from when the RPD decision was written.

[21] The officer specifically addressed the Report of the High Commissioner for Refugees dated December 2006. According to the reading of the report by the officer, individuals targeted for extortion by the LTTE are business people and those with large incomes. The officer states that the report also confirms that the conflict is located in the north and east of the country which the applicant does not have to go to upon returning to Sri Lanka.

[22] The officer states, however, that she consulted more up-to-date sources than the report. Specifically, the officer mentions a September 2007 report by the Norwegian Refugee Council – (IDMC) (Internal Displacement Monitoring Centre) which locates displaced civilians in the east and north of the country. The officer goes on to state that in the Colombo region, there are no displaced persons and there is an office of the High Commissioner for Refugees. The officer concludes that the applicant could live in security in Colombo or in the regions under the control of the Singhalese authorities. The officer goes on to state that, the same report states that several Tamils who were arrested in Colombo and returned by bus to the north of the country were returned following a decision of the Supreme Court.

[23] The officer also looks at the process upon returning to Sri Lanka and states that there is a process in place for Tamils returning to Sri Lanka: foreign nationals are questioned upon their return and once their identity is confirmed, and they are found not to have a criminal record, they are released.

[24] In conclusion, the officer finds that the applicant "has not presented sufficient evidence to prove that he would be personally targeted on his return, that he would be unable to avail himself of protection or that there is no internal flight alternative in Sri Lanka". As a result, the officer said "there exists no more than a mere possibility that the applicant would be persecuted on his return to his country" and "no serious grounds to believe that the applicant would be subject to torture, a threat to his life or a risk of cruel and unusual treatment of punishment on his return to Sri Lanka."

Issues

[25] The applicants submitted the following issues for consideration:

1. What is the standard of review?

2. Did the officer correctly understand the law as to the consideration of PRRA with new evidence?

3. Did the officer correctly understand and address her mind to the fear that was identified by the applicant and considered the documentary evidence in relation to that fear?

4. Did the PRRA officer fail to consider and to give due significance of the Department of Foreign Affairs and International Trade (DFAIT) to the applicant?

5. Did the officer apply the wrong standard of proof in the context of the section 96 analysis?

6. Did the officer fail to consider the applicant's membership in a social group in accordance with sections 10.1 and 10.2 of the PRRA Manual?

[26] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the officer err in the evaluation of the documentary evidence?

3. Did the officer err in the evaluation of evidence that would be considered new in a PRRA application?

4. Did the officer apply the correct standard in her section 96 and section 97 analyses?

Applicant's Submissions

[27] The applicant first addresses the principle behind a PRRA analysis and the principle of non-refoulment. The principle holds that persons should not be removed from Canada to a country where they face serious risks in accordance with Canadian laws and Canada's commitment under international law.

[28] The applicant submits that he is at risk of extortion by the LTTE and other militant groups if he returns to Sri Lanka and this was "clearly established" in the documentary sources consulted by the officer.

[29] The applicant also claims that the officer failed to consider and analyse the risk of extortion faced by the applicant as a father of two expatriates and as a person who has lived in Canada since April 2002. By omitting these facts from her written decisions, the officer made an error in law.

[30] The applicant cites a number of other decisions where officer's decisions are found to be in error when they fail to adequately address the evidence on whether or not Colombo is a safe haven from extortion from Tamils when returning from abroad and particularly cases involving Sri Lankan elderly Tamils with children living abroad (see *Supiramaniam v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1525, *Supiramanian* v. *Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 374, *Kandiah v. Canada (Solicitor General)*, [2005] F.C.J. No. 1307, *Anthonoimuthu* v. *Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 162).

[31] The applicant also raises the issue of whether extortion is considered within the purview of "persecution" with a "nexus to a Convention refugee ground". The applicant cites decisions to support that view including *Vygthilingam v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 970.

[32] In *Narany v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 194, the applicant points out that Deputy Justice Frenette is critical of a decision where the officer seems "alive to the fact" that membership in a group can be considered a personal risk but then does not consider the membership of the applicant in the group of Tamils returning to Sri Lanka considered to be wealthy. In *Narany* above, the officer's omission to do this was a reviewable error.

[33] The applicant submits that the evidence regarding extortion of Tamils returning to Sri Lanka with children living abroad was ultimately never considered as it was a central issue to the application. Further, the applicant argues that the officer did accept the fears identified by the applicant but found that they were not personal and not objectively identifiable.

[34] The applicant argues that the officer dismissed the documentary evidence and particularly the UNHCR December 2006 report in a "flimsy manner". Further, the more up-to-date sources that the officer consulted does not contradict the position of the UNHCR December 2006 report as suggested by the officer.

[35] The applicant argues that the case *Sinnasamy v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 77 dealt with similar errors when interpreting the UNHCR Report December 2006 at paragraphs 32 and 33 and found that the officer applied a very selective reading of the document. Specifically, *Sinnasamy* above, took issue with the officer's conclusion that the applicant did not fit the profile of Tamils who are specifically targeted. The officer's finding came into criticism where the officer does not address the part of the document which states that "[a]ll asylum claims of Tamils from the North or East should be favourably considered" and "[w]here individual acts of harassment do not in and of themselves constitute persecution, taken together they may cumulatively amount to a serious violation of human rights and therefore be persecutory".

[36] Further in the document it also states that "[…] there is no realistic internal flight alternative given the reach of the LTTE and the inability of the authorities to provide assured protection" and in relation to Tamils from the north or east such as the applicant, the report stated that "[n]o Tamils from the North or East should be returned forcibly until there is significant improvement in the security situation in Sri Lanka". The applicant concurs with the *Sinnasamy* above assessment that for the officer to proceed with a decision without addressing the relevance of these statements in the report is an error of law. As in *Sinnasamy* above, from *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at paragraph 17, the burden of an explanation increase with the relevance of the documentary evidence towards the applicant's claims.

[37] The applicant's final submission is that the PRRA officer failed to consider the official travel warning issued by DFAIT. The applicant submits that in *Narany above*, a removal order was

stayed based on this report. The applicant states that the officer was in error in not considering this report at all.

Respondent's Submissions

[38] The respondent begins submissions by stating that both the *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 and *Council of Canadians with Disabilities v. Via Rail Canada Inc.*, [2007] 1 S.C.R. 650 decisions are important decisions that establish a deferential regard by the courts in the process of reviewing decisions on a reasonableness standard and that in this case, the decision taken as a whole, is sustainable with this level of scrutiny. The respondent argues that while the applicant may disagree with the decision made by the officer, the method and regard in which it was made, was not in error.

[39] The respondent argues that the officer did everything required under the Act in assessing the PRRA. The respondent argues that every document submitted was considered by the officer including the December 2006 UNHCR Report which was of particular concern to the applicant. The respondent counters that each of the potential risks brought up in the report were not found to apply to the applicant. The officer found that the risk of extortion was indicated as applying to wealthy people of which the applicant is not. The other risk was in sending back individuals to the north and east of Sri Lanka and there was no indication that the applicant would have to go back to these areas and could remain in Colombo.

[40] Further, the officer indicated that she relied upon more up-to-date documentary evidence than the evidence provided by the applicant supporting the finding that the applicant would not be targeted for persecution or harm.

[41] In any case, the respondent submits that the documentary evidence does not demonstrate that Tamil civilians in Colombo are extorted by the LTTE "on either a small or large scale" and that extortion by the LTTE is "only prevalent in areas controlled by the LTTE".

[42] The respondent disagrees with the applicant that the officer was in error in how she regarded the evidence and states that it is open to the officer to choose to rely on some evidence and not others if it is conflicting (see *Stelco Inc. v. British Steel Canada Inc*., [2000] 3 F.C. 282, *Tawfik v. Canada*, [1993] F.C.J. No. 835 and *Arunachalam v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1091). As well, the respondent submits that the inferences drawn by the officer were not "so completely unreasonable" that they warrant judicial intervention in this case (see *Aguebor v. Minister of Employment and Immigration)*, [1993] F.C.J. No. 732).

[43] The respondent does not agree that the risks articulated in the DFAIT travel document indicate a personalized risk of harm or persecution either as a member of a particular social group under section 96 or as an individual under section 97 of the Act.

[44] The respondent submits that the applicant is engaging in a miniscule dissection of the officer's decision in order to argue that the officer applied the wrong standard of proof for section

96 and contends that the officer's statements went to the sufficiency of evidence provided not to the legal test. It is the objective evidence that the officer was concerned with, not whether the applicant's subjective fears were well-founded (see *Hamid v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1546). Insofar as the officer's application of section 97 of the Act, the respondent submits that this section clearly requires a personalized risk. In the decision of *Cetinkaya v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1113, it was found that while there may be a general situation in Turkey with respect to members of the PKK, the applicant must show that as one of those members he is personally facing persecution and that there must be a link between "the applicant's activities and the persecution feared". The officer determined that there was not a serious possibility that the applicant would be at personal risk which is consistent with the jurisprudence and reasonable on review.

Analysis and Decision

[45] **Issue 1**

What is the appropriate standard of review?

The applicant has raised a number of issues with respect to the PRRA decision that all warrant a reasonableness standard of review. Before the instructive administrative law case of *Dunsmuir* above, found that a PRRA office's decision generally should be assessed on a standard of reasonableness *simpliciter* (see *Figurado v. Canada (Solicitor General)*, [2005] F.C.J. No. 458). This standard was collapsed to the standard of reasonableness by *Dunsmuir* above, and subsequent cases have continued to adopt reasonableness as the correct standard (see *Christopher v. Canada*

(Minister of Citizenship and Immigration), [2008] F.C.J. No. 1199). This is in accordance with *Dunsmuir* above, which instructs that when a similar type of decision has been established to have a particular standard of review, reliance can be paid on that standard in subsequent reviews. As in *Christopher* above, this review of the PRRA officer's decision involves questions of fact and questions of law. The facts presented are particular to the applicant's situation and what has been presented in the documentary evidence. Questions of law and fact arise when these facts are applied to the governing statutory sections of the Act. This analysis must be reasonable and in accordance with the immigration laws in our country. What is a reasonable regard to all the evidence is discussed in many cases including *Ramanathan v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1064 and *Erdogu v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 546.

[46] At paragraph 47 of *Dunsmuir* above, reasonableness has been articulated as:

> [47] …a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. 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.

[47] **Issue 2**

Did the officer err in the evaluation of the documentary evidence?

The officer found in part as follows at page 9 of the applicant's record:

> The applicant is an elderly farmer who could no longer work on his farm because of internal politics in Sri Lanka. He belongs to the Tamil minority and is Catholic. I am of the opinion that he is of little interest to the Singhalese authorities and the Tamil Tigers, given his age and his lack of involvement in political parties or groups.

And at page 10 of the applicant's record:

> The applicant submitted in evidence a December 2006 report on the position of the High Commissioner for Refugees on Sri Lanka. This one-year-old report states that the individuals targeted by the Tigers for extortion are business people and those with large incomes. Moreover, it confirms that the conflict is located in the north and east of the country. Nothing indicates that the applicant will have to go to these regions. In addition, I have consulted more up-to-date sources.

[48] I have reviewed the documentation referred to by the officer which included the response to information requests (LKA102038.E). The following is contained in the request:

> Persons returning from abroad
>
> Person returning from abroad may also be subject to extortion (Sri Lanka 27 Nov. 2006; Hotham Mission Oct. 2006, 49). According to the Hotham Mission report, in some instances, returnees have been pressured into paying immigration officials to be able to pass through the airport without incident (ibid.). The report also indicates that, across Sri Lanka, wealthy businessmen are being kidnapped for ransom and that "people returning from overseas may be a target, as it will be assumed that they have money" (ibid.).

[49] The officer made no mention in the decision that people returning from overseas may be a target as they are perceived to have money. While I agree that the officer does not have to refer to every piece of evidence in the decision, the jurisprudence also makes it clear that the officer must refer to and deal with evidence that goes to the issue raised by the applicant. As the officer did not reference this evidence, I am of the view that the decision is unreasonable.

[50] Because of my finding on this issue, I need not deal with the remaining issues.

[51] The application for judicial review is therefore allowed and the matter is referred to another officer for redetermination.

[52] The applicant requested costs in her further memorandum of fact and law. I do not believe that the facts of this case are such so as to justify an award of costs.

[53] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[54] **IT IS ORDERED that** the application for judicial review is allowed and the matter is referred to a different officer for redetermination.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in these sections.

The *Immigration and Refugee Protection Act*, S.C. 2001, c.27:

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.
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	a) soit au risque, s'il y a des motifs sérieux de le croire,

torture within the meaning of Article 1 of the Convention Against Torture; or

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.

(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.

(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.

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

98. La personne visée aux sections E ou F de l'article premier de la Convention sur

Convention refugee or a person in need of protection.

les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

112.(1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

112.(1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

(2) Despite subsection (1), a person may not apply for protection if

(2) Elle n'est pas admise à demander la protection dans les cas suivants :

(a) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;

a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la Loi sur l'extradition;

(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;

b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);

(c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or

c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas expiré;

(d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was

d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

rejected.

(3) Refugee protection may not result from an application for protection if the person

(3) L’asile ne peut être conféré au demandeur dans les cas suivants :

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d’au moins deux ans ou pour toute déclaration de culpabilité à l’extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d’un emprisonnement maximal d’au moins dix ans;

(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

c) il a été débouté de sa demande d’asile au titre de la section F de l’article premier de la Convention sur les réfugiés;

(d) is named in a certificate referred to in subsection 77(1).

d) il est nommé au certificat visé au paragraphe 77(1).

113. Consideration of an application for protection shall be as follows:

113. Il est disposé de la demande comme il suit :

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the

a) le demandeur d’asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n’étaient

rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

114.(1) A decision to allow the application for protection has

114.(1) La décision accordant la demande de protection a pour

effet de conférer l’asile au demandeur; toutefois, elle a pour effet, s’agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.

(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and

(b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

(2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(d) and the regulations, the grounds on which the application was allowed and may cancel the stay.

(2) Le ministre peut révoquer le sursis s’il estime, après examen, sur la base de l’alinéa 113d) et conformément aux règlements, des motifs qui l’ont justifié, que les circonstances l’ayant amené ont changé.

(3) If the Minister is of the opinion that a decision to allow an application for protection was obtained as a result of directly or indirectly misrepresenting or withholding material facts on a relevant matter, the Minister may vacate the decision.

(3) Le ministre peut annuler la décision ayant accordé la demande de protection s’il estime qu’elle découle de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

(4) If a decision is vacated under subsection (3), it is nullified and the application for protection is deemed to have been rejected.	(4) La décision portant annulation emporte nullité de la décision initiale et la demande de protection est réputée avoir été rejetée.

The *Immigration and Refugee Protection Regulations*, SOR/2002-227:

161.(2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.	161.(2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113a) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

FEDERAL COURT

SOLICITORS OF RECORD

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