Federal Court  Cour fédérale

Date: 20091016

Docket: IMM-1190-09

Citation: 2009 FC 1054

Ottawa, Ontario, October 16, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GHEORCHE CALIN LUPSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The only issue before the Court is the judicial review of the decision rejecting the applicant's application for permanent residence based on humanitarian and compassionate (H&C) considerations.

[2] The issue here is whether the Minister's Delegate who rendered the H&C decision committed a reviewable error in the exercise of her discretion in light of the evidence before her when she rendered her decision.

[3] Globally, the applicant's arguments are that the Minister's Delegate should have given more weight to certain factors and less to others.

[4] The Court cannot lightly interfere with the manner in which an immigration officer exercises his or her discretion and it is not for the Court to re-weigh the relevant fact-driven factors of the case. This remains entirely within the expertise of the immigration officer:

> "As for the applicants' arguments that the officer improperly weighted certain pieces of evidence, I would reaffirm that, as was pointed out in the *Agot v. Canada, supra*, decision, the weighing of relevant factors is not the function of a court reviewing the exercise of ministerial discretion. Therefore, as long as the totality of the evidence was properly examined, the question of weight remains entirely within the expertise of the immigration officer.
>
> . . .
>
> Once again, I want to reiterate the fact that this Court cannot lightly interfere with the discretion given to immigration officers. The H & C decision was a fact driven analysis, requiring the weighing of many factors. I find that the immigration officer considered all of the relevant and appropriate factors from a humanitarian and compassionate perspective, and did not commit any errors which would justify this Court's interference."

(As specified in *Lee v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 413, [2005] F.C.J. No. 507 (QL), at paragraphs 10 and 13, by Justice Pierre Blais.)

(See also *Agot v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 436, [2003] F.C.J. No. 607 (QL), at paragraph 8, in which Justice Carolyn Layden-Stevenson reviewed several principles regarding applications based on humanitarian and compassionate grounds, including the one stating that this Court must not re-assess the factors in an application for judicial review of a discretionary decision.)
[Emphasis added.]

(*Herrada v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1003, 157 A.C.W.S. (3d) 412)

[5] Moreover, the Supreme Court of Canada pointed out quite recently that decisions by administrative agencies on factual issues require deference and that it is not "the function of the reviewing court to reweigh the evidence" (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at paragraph 61). It is for this reason that this Court is in agreement with the respondent's arguments.

II. Preliminary comments

Reference to evidence subsequent to the impugned decision

[6] At paragraphs 55 to 63 of his supplementary memorandum, the applicant referred to medical reports he submitted in the context of his motion to stay his removal order. These medical reports are obviously subsequent to the decision rendered by the Minister's Delegate on January 12, 2009. More specifically, the applicant wrote the following in his supplementary memorandum:

> [TRANSLATION]
> 55. The medical reports submitted later in April and May 2009, as the respondent admitted in his correspondence filed with the registry and dated May 1, 2009, do not cite any recent developments regarding Mr. Lupsa's medical condition…. [Emphasis added.]

[7] In his supplementary memorandum, the applicant himself acknowledged that these medical reports were late:

> [TRANSLATION]
> 63. In short, our submissions are that, with respect to the applicant's medical condition, the medical reports filed during the stay hearing, even though late,

> **merely confirm that the applicant's situation since 2005 has stayed the same and are indicative of the precarious medical situation** of the applicant. . . . [Emphasis added.]

[8] The applicant cannot rely on this new evidence, which was not before the Minister's Delegate when she rendered her decision, to demonstrate the existence of any error.

[9] The courts have consistently held that an applicant cannot, in a judicial review, rely on evidence that was not before the administrative decision-maker.

[10] In *Yansane v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1213, [2008] F.C.J. No. 1558 (QL), at paragraph 38, the applicant attempted to raise, in a judicial review, additional evidence that he had produced in support of his stay application.

[11] In *Isomi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1394, 157 A.C.W.S. (3d) 807, Justice Simon Noël wrote the following:

> [6] In its case law, this Court has clearly established that, on judicial review, the Court may only examine the evidence that was adduced before the initial decision-maker (*Lemiecha (Litigation Guardian) v. Canada (Minister of Citizenship and Immigration)* (1993), 72 F.T.R. 49 at paragraph 4; *Wood v. Canada (A.G.)*(2001), 199 F.T.R. 133 at paragraph 34; *Han v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 432 at paragraph 11). In *Gallardo v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 45 at paragraphs 8 and 9, a case concerning a claim for refugee protection based on humanitarian and compassionate considerations, Mr. Justice Kelen wrote:
>
> > "The Court cannot consider this information in making its decision. It is trite law that judicial review of a decision should proceed only on the basis of the evidence before the decision-maker.

> The Court cannot weigh new evidence and substitute its decision for that of the immigration officer. The Court does not decide H&C applications. The Court judicially reviews such decisions to ensure they are made in accordance with the law." [Emphasis added.]

[12] Furthermore, in *Zolotareva v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1274, 241 F.T.R. 289, Justice Luc Martineau wrote the following with regard to the judicial review of a decision by a pre-removal risk assessment (PRRA) officer:

> [36] It is unfortunate that the psychologist's report was not available to the PRRA Officer at the time of the determination. Considering that the psychologist's opinion was not presented before the decision maker who refused her application, the applicant cannot rely on this new evidence. This Court has recognized on numerous occasions that the judicial review of a decision has to be made in light of the evidence that was submitted before the decision maker: see *Noor v. Canada (Human Resource Development)*, [2000] F.C.J. No. 574 at para. 6 (C.A.) (QL); *Rodbom v. Canada (Minister of Employment and Immigration)*, [1999] F.C.J. No. 636 (C.A.) (QL); *Bara v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 992 at para. 12 (T.D.) (QL); *Khchinat v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 954 at para. 18 (T.D.) (QL); *LGS Group Inc. v. Canada (Attorney General)*, [1995] 3 F.C. 474 at 495 (T.D.); *Quintero v. Canada (Minister of Citizenship and Immigration)*, (1995) 90 F.T.R. 251 at paras. 30-33; *Franz v. Canada (Minister of Employment and Immigration)*, [1994] 80 F.T.R. 79; *Asafov v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 713. [Emphasis added.]

[13] Even if the applicant claimed, at paragraph 62 of his supplementary memorandum, that these [TRANSLATION] "medical reports were obtained due to pressure put on the hospital authorities (as appears in our letter dated April 24, 2009), given the respondent's attempts to minimize before the Court the exact nature of the medical condition and the irreparable harm from which the applicant would suffer if deported", this new evidence, which was not produced before the Minister's Delegate, cannot be relied on after the decision by the Minister's Delegate.

Questioning a previous decision

[14] As the decision now under judicial review is the decision rejecting the applicant's H&C application, this Court must confine its analysis to this decision.

[15] At paragraph 72 of his supplementary memorandum, the applicant claimed that [TRANSLATION] "[t]here is no doubt that the **IRB's abandonment** in September 1996 **was irregular** . . .".

[16] The case at bar is certainly not the appropriate forum for questioning the merits of the decision rendered by the Immigration and Refugee Board (IRB) thirteen years ago:

> **Background and Circumstances of the Case:**
> Mr. Lupsa, a Romanian national, entered Canada as a stowaway on August 27, 1992 from Belgium. Upon arrival at the port of Montreal he claimed refugee status. On April 23, 1993 his application for refugee status was rejected by the IRB. Mr. Lupsa applied for a judicial review of the IRB decision which was granted in February 1994. A new IRB hearing was scheduled for September 20, 1996, however Mr. Lupsa failed to attend and the application was declared abandoned.
>
> On March 2000 Mr. Lupsa's Post-Determination of Refugee Claimants application for Permanent Residents was refused due to medical inadmissibility. On December 19, 2000 the Federal Court quashed the refusal decision and asked that the application be reviewed by a different officer and requested that Mr. Lupsa's spouse submit a sponsorship application in his favour. This new application was refused in January 2004 as Mr. Lupsa had become criminally inadmissible for serious criminality.
>
> In July 2005 Mr. Lupsa submitted a Pre-Removal Risk Assessment (PRRA) application which was refused in February 2006. In May 2006 he submitted an application for Permanent Residence based on Humanitarian and Compassionate grounds (the subject of the present decision). Mr. Lupsa also submitted a second PRRA application on October 30, 2007 based on new evidence.
>
> . . .

Criminal Inadmissibility:

According to the Canadian Police Information Centre (CPIC) and the case summary on his file, Mr. Lupsa has the following criminal record:

a. On February 14, 2000 Mr. Lupsa was charged with uttering threats, contrary to s. 264.1 of the *Criminal Code*. On June 19, 2000 he was acquitted with 1 year probation.
b. On October 8, 2002 Mr. Lupsa was arrested by the RCMP in Montreal and charged with conspiracy to export and traffic ecstasy along with his wife Sabina Andrea Aldea, contray to section 465 (1)c) of the *Criminal Code* and contrary to section 6(1) and 3(b)1) of the *Controlled Drugs and Substances Act*. On October 10, 2003 Mr. Lupsa was convicted of these charges and sentenced to 2 years less a day conditional sentence and two years probation with a mandatory prohibition from possessing firearms (order under section 109 of the *Criminal Code*).
c. On October 10, 2003 Mr. Lupsa was charged with trafficking a Schedule II substance contrary to section 5(1)(3)(b)(i) of the *Controlled Drugs and Substance Act*. These charges were later withdrawn.
d. On November 30, 2005 Mr. Lupsa was convicted of fraudulently using a credit card contrary to section 342(1)c)(f) of the *Criminal Code*. He sentenced to a fine of $200 and probation for 2 years.
e. On December 22, 2005 Mr. Lupsa was arrested by police in Cornwall, Ontario along with two other co-accused and charged with 6 offences under section 342(3) and 342.01 of the *Criminal Code*: 5 for the unauthorized use of credit cards and one for possession of instruments used in the fabrication of credit cards. On April 24, 2006 Mr. Lupsa was convicted of possession of instruments for forging or falsifying credit cards contrary to section 342.01 of the *Criminal Code* and was sentenced to 1 day in jail (in addition to the 8 months of pre-sentence custody) and probation for 12 months.

Nature of Criminality:

Mr. Lupsa's criminal record shows a pattern of criminal activity over a period of several years. This is not a case of someone who has taken one criminal "misstep" and then rehabilitated himself, rather it shows sustained disrespect for Canadian laws. It also demonstrates that Mr. Lupsa's chosen associates, most notably his wife, are also criminally inclined.

In IRB member Michel Beauchemin's 2006 decision, he wrote:

> Danger pour le public, je vais commencer par cela. La dernière condamnation est pour un événement quand même relativement sérieux, possession d'outillage électronique dans le but de fabriquer des fausses cartes de crédit, ce qui laisse généralement soupçonner un lien quant à

> l'appartenance à une organisation criminelle organisée... si je prends cette condamnation, conjuguée avec la précédente, qui elle avait eu lieu suite à un complot dans le but d'importer des stupéfiants ici au Canada, là oui, je pense que la barrière, la clôture à savoir déterminer est-ce que le danger est immense ou non, a été franchie.... Votre avocat indique que les crimes n'ont pas été commis contre des individus, qu'il n'y a pas de violence impliquée. Je suis en désaccord avec elle, il est possible que de votre côté vous soyez un homme très doux, très calme, très gentil qui n'a jamais fait de mal à une mouche, mais la nature des activités dans lesquelles vous vous êtes impliqué, elle est très sérieuse. Lorsqu'on parle de complot pour importation de substances interdites, on parle souvent de groupes organisés encore une fois qui procèdent à des luttes de territoire de façon très violente, on en a des exemples dans la presse très récemment du côté de Toronto... Donc, il est faux de prétendre que votre criminalité ne comporte aucune violence, au contraire, pour moi, elle comporte beaucoup de violence.

Mr. Lupsa's Counsel submits that 'les infractions criminelles ont été commises lors de périodes où un emploi normal était impossible dû aux problèmes médicaux graves reliés l'incapacité des reins à fonctionner, à une nécessité constate d'attention médicale pour fins de dialyse et au manque constant d'argent pour subvenir aux nécessités de la vie... Il ressort de la nature même des infractions qu'elles sont commises pour des motifs économiques et non due à une propension criminelle pour la violence.'

In my opinion, Mr. Lupsa's Counsel's argument is not sound. If poverty and ill health excused law breaking, all poor people and people with disabilities which prevent them from working would become criminals — which, of course, is not the case.

Risk of recidivism:

In IRB member Yves Dumoulin's 2006 decision, he wrote:

> En juillet 2005, il y a des conditions qui ont été imposes et plus particulièrement de garder la paix,c e qui voulait dire de ne pas se retrouver dans d'autres problèmes d'ordre criminel et Monsieur s'est retrouvé devant d'autres problèmes d'ordre criminel et Monsieur s'est retrouvé devant d'autres problèmes d'ordre criminel, donc cet élément devrait être pris en considération... Donc, en elles-mêmes, les deux condamnations sont importantes et la deuxième, en ce qui concerne, est encore plus importante puisque l'événement a eu lieu alors que Monsieur était toujours sous probation du fait de sa première condamnation. Donc, dans le contexte, je me dois de reconnaître qu'il y a ici un danger pour le public aussi.

> In effet Mr. Lupsa's criminal and immigration history demonstrates that despite the inducements to remain crime free (immigration sanctions and judicial punishments) Mr. Lupsa continued to pursue criminal activity.
>
> In November 2008, Mr. Lupsa's probation officer wrote : 'En 2006, Monsieur a été déclaré coupable d'une accusation de fraude et condamné à une journée de détention suivie d'une probation avec surveillance d'une durée d'un an. Monsieur a toujours nié sa culpabilité dans ce délit ». This demonstrates that Mr. Lupsa has not yet acknowledged his wrongdoing much less felt any remorse for his crime.
>
> Mr. Lupsa's Counsel has stated that Mr. Lupsa's probation officer found him 'conscientisé et mobilisé. Il reconnaissait l'inexactitude de son comportement comme il était et est stable dans les différentes sphères de sa vie. On ajoutait même que les conséquences de ses gestes avaient eu un effet dissuasif pour lui.' However, this statement is simply not supported by the actual letter from Mr. Lupsa's probation officer.
>
> I find little on file to indicate that Mr. Lupsa has come to terms with his convictions or has any plan for remaining crime free.

(Departmental Memorandum, dated January 12, 2009, pages 1-5)

III. Analysis

Children's best interests

[17] The applicant is attempting to demonstrate that the assessment by the Minister's Delegate of his children's best interests was erroneous and superficial. In particular, he criticizes the Minister's Delegate for not carrying out any analysis of his children's best interests, for minimizing these interests and for not exploring the evidence submitted to her.

[18] However, the applicant appears to have completely forgotten that he bears the burden of proof. As was recalled by this Court in *Liniewska v. Canada (Minister of Citizenship and*

Immigration), 2006 FC 591, 152 A.C.W.S. (3d) 500, the applicant has the onus of providing evidence regarding the adverse effects on his children if he were forced to leave Canada:

> [20] The applicant has the onus of providing evidence regarding the adverse effects on the children if she were forced to leave. The immigration officer has an obligation to take that evidence into consideration. It is not sufficient for the applicant to simply state that the officer did not take the children's best interests into consideration, she must establish that the officer did not take into consideration the evidence bearing on the best interests of the children. . . .
> [Emphasis added.]

(Also: *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 F.C.R. 635 (F.C.A.))

[19] In this case, the applicant clearly did not meet his burden of proof.

[20] The respondent is asking the Court to carefully read the applicant's submissions regarding his children's best interests (Exhibit P-1, Submissions of November 26, 2008, pages 19-20). A reading of these submissions unequivocally shows that the applicant did not provide concrete evidence demonstrating the adverse effects on his children if he were to leave Canada.

[21] The applicant primarily declared in his written submissions that he

> [TRANSLATION]
> . . . had a positive influence on his children . . . has always been able to give emotional and financial support to his eldest son and spouse, and now to the child born in 2008 . . .
>
> . . . is convinced that he has the ability to see to the normal development of his children in Canada . . .
>
> . . . is very involved in the daily lives of his two children, he helps his eldest son, Robert, do his homework, he gives his youngest baths, he takes the children to the

> park and takes Robert to school-related activities, and encourages him in his favourite sport, soccer. . . .

(Exhibit P-1, Submissions of November 26, 2008, pages 19-20)

[22] In *Naidu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1103, 151 A.C.W.S. (3d) 501, concerning a PRRA application, this Court wrote the following with respect to the burden to be met regarding the child's best interests:

> [17] Notwithstanding the differing views on this issue, the authorities make it clear that an applicant must present sufficient evidence to engage the humanitarian and compassionate discretion. In this case, Mr. Naidu manifestly failed to meet that burden. It is not sufficient to state that a child's interests will be affected by a deportation because it will rarely be otherwise. What is required is clear and convincing evidence of the likely effect of a deportation upon an affected child. This would typically include evidence of unique personal or economic vulnerabilities or bonds between the parent and child or, where the child is also leaving Canada, evidence of resulting and material disadvantage or risk to the child.
>
> [18] Here, the PRRA Officer had nothing to go on beyond "the bare recital of basic information" (see *Alabadleh* at paragraph 18). It is not the obligation of a PRRA Officer to make further inquires or to essentially make the case for an applicant. This point has been conclusively determined in *Alabadleh*, above, and in *Owusu v. Canada (Minister of Citizenship and Immigration)* [2004] F.C.J. No. 158, 2004 F.C.A. 38, where Justice Evans held at paragraph 8. . . . [Emphasis added.]

[23] It is clear that the applicant's general allegations regarding his daily involvement in his children's lives and his emotional and financial support did not constitute clear and convincing evidence of the likely effect his leaving Canada would have on his two children.

[24] In her overall finding, the Minister's Delegate wrote that "[t]he most compelling Humanitarian and Compassionate consideration in this case are Mr. Lupsa's two sons." She added that she is "mindful that their young lives will be affected by this decision." However, the Minister's

Delegate weighed this factor with the applicant's inadmissibility to Canada for serious criminality. She gave more weight to the applicant's inadmissibility to Canada for serious criminality than to the children's best interests (Decision by the Minister's Delegate at page 8).

[25] The children's best interests could not outweigh the applicant's inadmissibility to Canada for serious criminality.

[26] In this regard, there are two important elements in the Federal Court of Appeal's decision in *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 F.C. 358. First, it is up to the officer to determine the appropriate weight to be accorded to the interests of the children. Second, the presence of children does not lead to a certain result:

> [11] In *Suresh*, the Supreme Court clearly indicates that *Baker* did not depart from the traditional view that the weighing of relevant factors is the responsibility of the Minister or his delegate. It is certain, with *Baker*, that the interests of the children are one factor that an immigration officer must examine with a great deal of attention. It is equally certain, with *Suresh*, that it is up to the immigration officer to determine the appropriate weight to be accorded to this factor in the circumstances of the case. It is not the role of the courts to reexamine the weight given to the different factors by the officers.
>
> [12] In short, the immigration officer must be "alert, alive and sensitive" (*Baker*, para. 75) to the interests of the children, but once she has well identified and defined this factor, it is up to her to determine what weight, in her view, it must be given in the circumstances. The presence of children, contrary to the conclusion of Justice Nadon, does not call for a certain result. It is not because the interests of the children favour the fact that a parent residing illegally in Canada should remain in Canada (which, as justly stated by Justice Nadon, will generally be the case), that the Minister must exercise his discretion in favour of said parent. Parliament has not decided, as of yet, that the presence of children in Canada constitutes in itself an impediment to any "refoulement" of a parent illegally residing in Canada (see *Langner v. Minister of Employment and Immigration* (1995), 184 N.R. 230 (F.C.A.), leave to appeal refused, SCC 24740, August 17, 1995). [Emphasis added.]

[27] The applicant is criticizing the Minister's Delegate for raising the possibility that the entire family could move to Romania without analyzing the impact and the difficulties the children could experience.

[28] The way in which the Minister's Delegate dealt with the possibility of the family moving shows that this element did not impact the weight she gave the children's best interests in relation to the applicant's inadmissibility to Canada for serious criminality. It is apparent from the decision that the Minister's Delegate considered that the children would be separated from their father when she considered their interests.

[29] The applicant has misunderstood the decision when he claims that, in analyzing his children's best interests, the Minister's Delegate was concerned mainly with his criminal record, which resulted in only a four-month absence from the life of his child, Robert.

[30] The Minister's Delegate made no reference to the applicant's criminal past in analyzing the children's best interests as such. Instead, the Minister's Delegate weighed the children's best interests, which, it should be remembered, are not determinative of the issue (*Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 F.C. 555 at paragraph 2), in relation to the applicant's inadmissibility for serious criminality.

[31] However, the respondent would like to point out that the Minister's Delegate was under no obligation to request additional information because the onus was on the applicant (*Owusu v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 94, 228 F.T.R. 19 at paragraph 25).

[32] In short, the Minister's Delegate examined the children's best interests in light of the evidence provided, weighed it in relation to the other factors in the record, more specifically in relation to the applicant's inadmissibility to Canada for serious criminality, and arrived at a decision that is reasonable under the circumstances.

Inadmissibility for serious criminality

[33] The applicant is dissecting the evidence to demonstrate that the Minister's Delegate purportedly committed errors in assessing his criminal record.

[34] With his allegations, the applicant is attempting to minimize the significance of his criminal record. He is suggesting an interpretation of the evidence that would be favourable to him without demonstrating that the Minister's Delegate committed any unreasonable error in assessing his criminal record.

[35] The first error mentioned by the applicant is that the Minister's Delegate apparently insinuated that, on October 10, 2003, another trafficking charge was laid, when this was allegedly not the case. What the Minister's Delegate noted on this date is that the applicant was convicted and

sentenced to two years less a day conditional sentence and that the trafficking charge laid on this date was later withdrawn (Decision by the Minister's Delegate at page 2).

[36] Regardless of whether the Minister's Delegate incorrectly or correctly wrote that on October 10, 2003, the applicant was charged with trafficking, the point is that she considered that these charges were later withdrawn.

[37] Moreover, the applicant is criticizing the Minister's Delegate for not considering that he had pleaded guilty at the first opportunity.

[38] It is clear that the simple fact that the applicant pleaded guilty in no way minimized the importance and seriousness of the crimes committed. On the contrary, this actually confirmed the applicant's guilt. Thus, the fact that the Minister's Delegate did not specifically note in her decision that the applicant had pleaded guilty certainly does not constitute an error. This was not important evidence.

[39] The applicant also contends that the Minister's Delegate did not appear to have noticed that five charges had been dismissed by the Court and that he had been convicted of only one charge. This submission is directly contradicted by the decision of the Minister's Delegate, in which she acknowledged that six charges were filed against him and noted the charge for which he was convicted:

> a. On December 22, 2005 Mr. Lupsa was arrested by police in Cornwall, Ontario along with two other co-accused and charged with 6 offences under

> section 342(3) and 342.01 of the *Criminal Code*: 5 for the unauthorized use of credit cards and one for possession of instruments used in the fabrication of credit cards. On April 24, 2006 Mr. Lupsa was convicted of possession of instruments for forging or falsifying credit cards contrary to section 342.01 of the *Criminal Code* and was sentenced to 1 day in jail (in addition to the 8 months of pre-sentence custody) and probation for 12 months.

(Decision by the Minister's Delegate at page 3)

[40] The applicant is criticizing the Minister's Delegate for having calculated, in the above excerpt, that he had spent more time in pre-sentence custody than was actually the case. The Minister's Delegate wrote that he had spent eight months in pre-sentence custody when, according to him, it was a period of four months. Whether it was a period of four or eight months, this changes nothing about the essential fact, which is that the applicant was convicted of a crime and sentenced to imprisonment.

[41] The applicant's submission that the Minister's Delegate found, without evidence, that he had shown no remorse with regard to his December 22, 2005 crime is without merit. The Minister's Delegate arrived at this finding after specifically referring to the probation officer's letter dated November 4, 2008, which mentions that the applicant had always denied his guilt for this offence:

> In November 2008, Mr. Lupsa's probation officer wrote: 'En 2006, Monsieur a été déclaré coupable d'une accusation de fraude et condamné à une journée de détention suivie d'une probation avec surveillance d'une durée d'un an. Monsieur a toujours nié sa culpabilité dans ce délit ». This demonstrates that Mr. Lupsa has not yet acknowledged his wrongdoing much less felt any remorse for his crime.

(Decision by the Minister's Delegate at page 4)

[42] When the applicant challenges the analysis of his criminal record by the Minister's Delegate, he is directly challenging the exercise of her discretion in assessing the evidence before her. In light of the evidence before her, the Minister's Delegate was reasonably entitled to be of the opinion that, in a five–year period, the applicant had created a very serious criminal record.

[43] The applicant is claiming that the Minister's Delegate did not consider relevant evidence, such as the factors with regard to his rehabilitation, the type of offences he committed, the time that had passed since his last offence and the period over which his criminal offences were committed.

[44] The applicant is relying on elements that, according to him, would benefit him. However, he does not state or demonstrate that the elements against him, those on which the Minister's Delegate relied, were unreasonable.

[45] Even if the applicant is suggesting rehabilitation, he is forgetting that the second crime for which he was convicted was committed when he was still under probation for his first sentence, as noted by the IRB member in 2006 (Decision by the Minister's Delegate at page 4, paragraph 3).

[46] As for the type of offence he committed, the Minister's Delegate took this into consideration; she also considered the applicant's submission that the very nature of his offences demonstrated that they had been committed for economic reasons and were not due to a criminal propensity for violence. However, the Minister's Delegate disagreed with the applicant on this point (Decision by the Minister's Delegate at page 4, paragraphs 2 and 3).

[47] The essential fact remains unchallenged: he was convicted of conspiracy to export and traffic ecstasy, the unauthorized use of credit cards and possession of instruments for forging or falsifying credit cards (Decision by the Minister's Delegate at pages 2-3).

[48] In this case, the elements to which the applicant is referring do not demonstrate that the analysis of the evidence by the Minister's Delegate was unreasonable. The applicant is seeking to have the Court reassess the evidence before the Minister's Delegate. This is not the Court's role.

[49] Moreover, contrary to what is argued by the applicant, the Minister's Delegate was justified in referring to the IRB decisions concerning the applicant. These decisions were part of the evidence in the record and the Minister's Delegate was validly entitled to refer to them.

[50] In short, the Minister's Delegate considered that the applicant's criminal background, which resulted in him being declared inadmissible to Canada for serious criminality, was a very important factor.

[51] This reasoning is completely consistent with the case law and Parliament's intention. In *Cha v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126, [2007] 1 F.C.R. 409, the Federal Court of Appeal, relying on the Supreme Court of Canada's decision in *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 S.C.R. 539, stated that Parliament had made it clear that criminality of non-citizens is a major concern:

> [24] Parliament has made it clear that criminality of non-citizens is a major concern. Two of the objectives of the Act are criminality driven:

> — The protection of the health and safety of Canadians and the maintenance of the security of Canadian society (paragraph 3(1)(*h*) of the Act);
>
> — The promotion of international justice and security . . . by the denial of access to Canadian territory to persons who are criminals or security risks (paragraph 3(1)(*i*) of the Act).
>
> The Supreme Court of Canada has recently stated that the objectives stated in the new Act indicate an intent to prioritize security and that this objective is given effect, *inter alia*, by removing applicants with criminal records from Canada. Parliament has demonstrated a strong desire in the new Act to treat criminals less leniently than under the former Act. (*Medovarski*, *supra*, at paragraph 10).

[52] In light of these words, it is difficult to criticize the Minister's Delegate for having attached great weight to the applicant's criminal record. In any event, it must be recalled that the weighing of this factor was entirely within the discretion of the Minister's Delegate.

[53] It is obvious that the applicant's claims are directed at the way in which the Minister's Delegate weighed and interpreted the evidence. However, there is no indication that the Minister's Delegate overlooked evidence that contradicts her finding or that she made unreasonable inferences.

Doctrine of *res judicata*

[54] The applicant argues that the Minister's Delegate committed a *res judicata* error in reassessing the humanitarian and compassionate grounds after an officer had approved his request for a waiver regarding the requirement to obtain a permanent residence visa in January 2004.

[55] This argument by the applicant is without merit.

[56] The H&C decision dated January 15, 2004, to which the applicant is referring, was ultimately rejected at the second stage because of his inadmissibility for serious criminality (Exhibit P-1, tab 24). This negative decision was final and, as a result, has since made it possible for Canadian immigration authorities to start the necessary steps in carrying out the applicant's removal. This is also what is specified in the decision: [TRANSLATION] "Since you are subject to a removal order, we will transfer your file to CIC Hearings and Removals for action."

[57] It must be understood the approval of the H&C application at the first step in 2004 was not a final decision, but rather a type of preliminary and provisional assessment. The fact that humanitarian and compassionate grounds had been acknowledged once at that time certainly did not give the applicant a vested *ad vitam aeternam* right. It was a one-time recognition that applied only to the application affected by the decision. It should not be forgotten that the final decision in this case led to the final and conclusive rejection of the H&C application.

[58] Therefore, if the applicant had wished to have the right to remain in Canada on humanitarian and compassionate grounds, he would have had to have presented a completely new H&C application. This is what the applicant did in 2007. He presented a new H&C application with supporting written submissions and evidence.

[59] The doctrine of *res judicata* clearly did not apply. If we stopped at this doctrine, the Minister's Delegate should have rejected the new H&C application since the H&C application had been rejected in the past.

[60] The Minister's Delegate had to assess the applicant's new H&C application on the basis of its facts and independently of what had been decided five years earlier.

[61] Humanitarian and compassionate considerations have changed over the course of these last five years. The Minister's Delegate could therefore not follow the decision rendered by another officer in the context of another H&C application.

[62] In addition, if the previous H&C application had been rejected at the first step in 2004 and the Minister's Delegate had followed this decision, the applicant would have been the first to be upset about it. He would have claimed that the Minister's Delegate had the duty to review his new H&C application in light of his new submissions. This is what the Minister's Delegate did in this case and she cannot be criticized in this regard.

Sponsorship

[63] The applicant is criticizing the Minister's Delegate for not mentioning in her decision that his H&C application had been accompanied by his spouse's sponsorship. According to him, the Minister's Delegate did not consider this sponsorship.

[64] First, it is worth remembering that, in general, there is a presumption that a panel, such as an officer assessing an H&C application, took all of the evidence in the record into account. Therefore, the fact that an element was not mentioned does not mean that it was disregarded (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL)).

[65] The Minister's Delegate was obviously aware that the applicant's H&C application had been supported by his spouse's sponsorship. However, the Minister's Delegate was not obligated to refer specifically to this sponsorship in her decision.

[66] In *Argot v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 436, 232 F.T.R. 101, this Court specified the following on this point:

> [13] The guidelines next state that a positive sponsorship application **can** be considered as a favourable H&C factor. They do not dictate imperative consideration. While the sponsorship application is obviously relevant and important, the fact remains that an officer is not obliged, by the guidelines, to refer to it as a specific consideration although it is reasonable to assume that it would militate in favour of an applicant. . . . [Emphasis added.]

[67] The fact that the sponsorship of the applicant's spouse could have been a favourable H&C factor is not in question here. Moreover, nothing indicates that the Minister's Delegate did not consider this sponsorship application favourably.

[68] However, the question may be asked as to what impact the sponsorship application had. In this proceeding, the existence of sponsorship in the applicant's case was to some extent one of the various elements used to demonstrate his ties to and his establishment in Canada.

[69] The Minister's Delegate found the applicant's ties to and establishment in Canada in his favour.

[70] The Minister's Delegate therefore did not commit an error in not specifically mentioning the sponsorship, which did not in any way contradict her final conclusion. In fact, as it appears from this final conclusion, she simply did not believe that the positive factors, which could have included the sponsorship, outweighed the inadmissibility for serious criminality (Decision by the Minister's Delegate at page 8).

Degree of establishment

[71] The applicant focuses on various pieces of evidence to demonstrate his degree of establishment in Canada. According to him, the Minister's Delegate did not consider all of the evidence he submitted regarding his degree of establishment.

[72] This submission by the applicant demonstrates a clearly erroneous understanding of the decision by the Minister's Delegate. The applicant does not seem to understand that the Minister's Delegate found his degree of establishment in Canada in his favour.

[73] However, it is well established in the case law that the degree of establishment is an important, but not determinative, factor in an H&C application:

> [29] Counsel for the applicant also claims that the officer erred in assessing the length of time spent in Canada as well as his degree of establishment in Canada. It is clear, however, that as much as time spent in Canada and the establishment in the community are important factors, they are not determinative of the application for permanent residence on H&C grounds. Otherwise, as stated by Justice Blais (then sitting on this Court) in *Lee v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 413, at para. 9, "it would encourage gambling on refugee claims in the belief that if someone can stay in Canada long enough to demonstrate that they are the kind of persons Canada wants, they will be allowed to stay". One must never lose sight of the fact that on an H&C application, the test to be met is whether

> applying for permanent residence from abroad would cause unusual, undeserved or disproportionate hardship: see *Uddin v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 937; *Mann v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 567.

(*Jakhu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 159, [2009] F.C.J. No. 203 (QL))

[74] In this proceeding, the Minister's Delegate clearly took the applicant's degree of establishment in Canada into account, but weighed this factor with the other factors in the record, as she was entitled to do.

[75] More specifically, in this record, the applicant's positive factors, including his degree of establishment, were balanced against his inadmissibility for serious criminality. The Minister's Delegate found the following in this regard:

> Therefore, I do not find that the humanitarian and compassionate considerations in this case outweigh Mr. Lupsa's inadmissibility for serious criminality. The positive factors in this case simply do not counterbalance these grim facts sufficiently to weigh in favour of granting an exemption. [Emphasis added.]

(Decision by the Minister's Delegate at page 8)

[76] Even if the applicant disagrees with the weighing of the evidence by the Minister's Delegate, it is not up to the Court to substitute itself for her in this regard.

Procedural fairness

[77] The applicant argues that the Minister's Delegate did not demonstrate procedural fairness in his case given the time she took to render her decision. More specifically, he is criticizing the

Minister's Delegate for taking only three weeks to expand on her reasons after receiving the documents he sent her. The applicant is suggesting that the Minister's Delegate should have waited longer before rendering her decision considering his inability to obtain a new medical report before the deadline.

[78] This argument by the applicant is without merit.

[79] First, it should be noted that the applicant filed his H&C application in March 2007. In the submissions attached to this application, the applicant cited, in particular, as humanitarian and compassionate considerations, his medical situation. Therefore, the applicant should have expected that the Minister's Delegate called upon to decide his H&C application would ask him to submit evidence to establish his current medical situation.

[80] It appears from the reasons of the H&C decision that the Minister's Delegate requested a recent statement of the applicant's medical condition on October 3, 2008.

[81] Close to two months after the Minister's Delegate requested the update, counsel for the applicant forwarded submissions dated November 26, 2008. In these submissions, counsel for the applicant stated that she had not been able to obtain an update on the applicant's medical situation given the deadline set and the doctor's busy schedule.

> [TRANSLATION]
> . . . Unfortunately, despite our request to a new nephrologist, Dr. Dana Baran, at the McGill University Health Centre, for an update on Mr. Lupsa's medical situation in

> October 2008, it seems that responding to such an update request in the time you allotted us **is impossible due to the doctor's busy schedule**.

(Submissions dated November 26, 2008, at page 12, Exhibit P-1)

[82] However, counsel for the applicant did not ask the Minister's Delegate to grant an extension of time. She said only the following:

> [TRANSLATION]
> . . . We will send you the updated medical report from Dr. Baran as soon as we receive it.

(Submissions dated November 26, 2008, at page 13, Exhibit P-1)

[83] The Minister's Delegate rendered her decision on January 12, 2009. Therefore, it was not a three-week period, as the applicant alleges, that passed between the time the applicant provided his submissions and the time the decision was rendered, but rather almost a seven-week period.

[84] During this time, the applicant had the opportunity to send the Minister's Delegate the report detailing his current medical situation, which he did not do.

[85] In total, more than three months passed between the time the Minister's Delegate requested a recent report on the applicant's medical situation and the time she rendered her decision. This is certainly not an unfair amount of time, as the applicant claims.

[86] Under the circumstances of this case, it is obvious that the Minister's Delegate did not breach the principles of procedural fairness by rendering a decision more than three months after requesting that the applicant submit a recent statement on his medical condition.

[87] It is important to note that the applicant was notified of the decision by the Minister's Delegate on March 5, 2009. Until then, nothing prevented the applicant from submitting a recent report on his current medical condition, as requested by the Minister's Delegate. The applicant never attempted to file such a report, or even attempted to follow up with the Minister's Delegate in this regard.

[88] In this proceeding, although the applicant is criticizing the Minister's Delegate for rendering her decision without waiting until he could submit a new medical report, he has never claimed that he would actually have been able to submit a recent report on his medical condition.

[89] Therefore, the applicant's argument is, to some extent, moot, especially regarding the facts in the record showing that he had obtained medical reports from his attending physicians in April and May 2009. It should be noted that these medical reports were submitted during the third hearing regarding his second motion for a stay.

[90] The time in which the applicant obtained medical reports on his current medical condition and the lateness with which the applicant raised his procedural fairness argument does not help his cause, given the context surrounding these reports.

[91] The applicant is suggesting that because the Minister's Delegate allegedly did not act fairly by relying on a general document on the funding of Romania's health system, the document in question is inadequate.

[92] If the applicant believed that the Minister's Delegate erred in referring to such a document, he had to provide evidence to show this, which he did not do in this proceeding. This claim on the part of the applicant should be rejected.

Inadmissibility

[93] Returning to the issue of medical inadmissibility, the applicant is criticizing the analysis conducted by the Minister's Delegate on this issue.

[94] It should be recalled that medical inadmissibility was not determinative in the decision by the Minister's Delegate to reject his H&C application.

[95] It is important to again cite the excerpt in which the Minister's Delegate specified that it was difficult to determine whether he should still be considered medically inadmissible and that she would accord lesser weight to this element in the overall balancing of her decision.

> As Mr. Lupsa has not had a medical exam since his transplant it is unclear if he would still be considered medically inadmissible simply based on the costs of the anti-rejection medications. Consequently, I will accord a lesser weight to Mr. Lupsa's medical inadmissibility in my overall decision and balancing. [Emphasis added.]

(Decision by the Minister's Delegate at page 2)

[96] In reading the final conclusion of the Minister's Delegate, there is no doubt that she did not consider medical inadmissibility in the overall analysis of her decision:

> Therefore, I do not find that the humanitarian and compassionate considerations in this case outweigh Mr. Lupsa's inadmissibility for serious criminality. The positive

> factors in this case simply do not counterbalance these grim facts sufficiently to weigh in favour of granting an exemption. [Emphasis added.]

(Decision by the Minister's Delegate at page 8)

[97] The fact that the Minister's Delegate did not refer to medical inadmissibility in her final decision unequivocally demonstrates that this element was clearly not determinative in her decision.

[98] This had no bearing on the final result reached by the Minister's Delegate. Under such circumstances, it would be pointless to refer the case back to the Minister's Delegate for this reason because the result would be the same (*Yassine v. Canada (Minister of Employment and Immigration)* (1994), 172 N.R. 308, 48 A.C.W.S. (3d) 1434 (F.C.A.)).

Risks of returning to Romania

[99] First, the applicant is criticizing the Minister's Delegate for not analyzing his personalized risk with respect to his particular medical condition.

[100] This criticism is without merit. Subparagraph 97(1)(*b*)(iv) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) excludes the risk caused by the inability of the country of origin to provide adequate health or medical care (*Covarrubias v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365, [2007] 3 F.C.R. 169).

[101] Moreover, the applicant did not raise new arguments regarding the assessment by the Minister's Delegate of the risks of returning to Romania. The applicant, in this case, merely

reiterated the facts and risks as the basis of his application, engaged in conjecture and speculation, and ultimately gave his own interpretation of the evidence.

[102] It is obvious that the applicant would have preferred an assessment of the evidence in his favour. However, he has not demonstrated the existence of an unreasonable error in the analysis of his risks of return by the Minister's Delegate.

[103] It is important to recall that it is up to the Minister's Delegate to assess the evidence. It is certainly not the role of the applicant or of this Court to substitute his or its own interpretation of the evidence for that of the Minister's Delegate.

[104] A reading of the arguments, at paragraphs 14 to 21, dated April 30, 2009, demonstrates unequivocally that it was reasonable for the Minister's Delegate to find as she did regarding the issue of the risk of his return to Romania.

Holding an interview

[105] At paragraph 76(*h*) of his supplementary memorandum, the applicant relied on this Court's decisions in *Pham* and *Hakrama* to support his submission that an interview was necessary in his particular situation (*Pham v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 539, 139 A.C.W.S. (3d) 166; *Hakrama v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 85, 308 F.T.R. 84).

[106] First, it must be noted that in these two decisions, the issue was whether a marriage was genuine, which is not the case here.

[107] In *Hakrama*, above, at paragraph 25, Justice John O'Keefe insisted that "an interview is not always necessary, as the need for an interview will depend upon the facts of each particular case."

[108] Justice O'Keefe's reasoning is consistent with *Baker*, in which the Supreme Court of Canada decided that for a hearing to be fair, an oral interview was not always necessary for an H&C application (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraph 33).

[109] In this proceeding, the applicant has not in any way demonstrated that an interview was necessary in his case. He simply alleges that an interview should have taken place if the authenticity of the documents he submitted was in question.

[110] However, the Minister's Delegate never once mentioned in her decision that she had any doubts as to the authenticity of the documents submitted by the applicant.

[111] The applicant's argument on holding an interview is therefore without merit.

Compelling reasons

[112] Although the applicant has not made any specific argument in this regard, he seemed to suggest, at the very end of his supplementary memorandum, that compelling reasons applied to his case. He relied on *Suleiman v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 F.C.R. 26, 256 F.T.R. 308, to state that his experience alone constitutes "compelling reasons" under subsection 108(4) of the IRPA, even if he does not have grounds to fear new persecutions according to the Minister's Delegate.

[113] This argument has no basis in law.

[114] Paragraph 108(1)(*e*) and subsection 108(4) of the IRPA read as follows:

Rejection	Rejet
108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108.** (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
. . .	[...]
(*e*) the reasons for which the person sought refugee protection have ceased to exist.	*e*) les raisons qui lui ont fait demander l'asile n'existent plus.
. . .	[…]
Exception	Exception
(4) Paragraph (1)(*e*) does not apply to a person who	(4) L'alinéa (1)*e*) ne s'applique pas si le demandeur

establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.	prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[115] Subsection 108(4) does not create an independent avenue for granting refugee protection for "compelling reasons". Instead, it is an exception to the provision on the cessation of refugee protection found at paragraph 108(1)(*e*). Thus, "compelling reasons" can only be cited if it has been decided that the applicant is a refugee or a person in need of protection (*Nadjat v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 302, 288 F.T.R. 265, at paragraphs 36 to 54).

[116] In *Resulaj v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 269, 146 A.C.W.S. (3d) 530, Justice Carolyn Layden-Stevenson mentioned the following with respect to compelling reasons:

> [31] In *Kudar v. Canada (Minister of Citizenship and Immigration)* 2004 FC 648; 130 A.C.W.S. (3d) 1003, I stated that, in cases where there is no finding that at one time the applicant was a Convention refugee (or a person in need of protection), the cessation of protection does not come into play and consequently, the exception allowing compelling reasons arising out of past persecution cannot be triggered. There may also be situations where it can be said that an individual was implicitly found to have previously been a refugee. This is not such a case. Accordingly, subsection 108(4) has no application. [Emphasis added.]

[117] In *Brovina v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 635, 254 F.T.R. 244, Justice Layden-Stevenson wrote the following:

> [5] . . . For the board to embark on a compelling reasons analysis, it must first find that there was a valid refugee (or protected person) claim and that the reasons for the claim have ceased to exist (due to changed country conditions). It is only then that the Board should consider whether the nature of the claimant's experiences in the former country were so appalling that he or she should not be expected to return and put himself or herself under the protection of that state. [Emphasis added.]

[118] In the case at bar, the applicant was not able to satisfy the conditions required by the relevant case law because it was never decided that he was a refugee or a person in need of protection.

[119] The Minister's Delegate never stated that the events the applicant said took place before his departure from Romania made him a refugee or a person in need of protection. In addition, the Minister's Delegate did not find that the applicant no longer met the definition of refugee or person in need of protection because of a change of situation.

[120] The fact that the applicant himself claims that he lived through appalling persecution before leaving Romania in 1992 does not necessarily mean that he met the definition of Convention refugee or person in need of protection.

[121] Moreover, it is important to specify, as Justice James Russell noted in *Nadjat*, above, that *Suleiman*, above, to which the applicant referred, is not applicable to the facts of this case:

> [49] The only issue before Justice Martineau in *Suleiman* was whether, in finding the compelling reasons exception was not applicable in that case, the Board had been too restrictive and had erred "in inferring that the test in *Obstoj*, necessitates that the persecution reach a level to qualify it as 'atrocious' and 'appalling' for the

> 'compelling reasons' exception to apply." In other words, Justice Martineau was dealing with the **level** of past persecutory conduct required in a situation where the Board had accepted past persecution but had refused protection because of change of country conditions.
>
> [50] In my view, there is nothing in *Suleiman* that changes the general jurisprudence of this Court derived from *Hassan* and that requires a finding that the claimant has at some point qualified as a refugee, but the reasons for the claim have ceased to exist. [Emphasis added.]

[122] Obviously, the exception to the compelling reasons described in subsection 108(4) did not apply to the applicant's situation.

IV. Conclusion

[123] In the words of Justice Yves de Montigny in the recent *Jakhu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 159, [2009] F.C.J. No. 203 (QL), at paragraph 30, "[w]hile the applicant's case no doubt attracts sympathy, this is not sufficient to overturn the decision of the H&C officer."

[124] Despite the many arguments presented by the applicant, he has not successfully demonstrated the existence of an unreasonable error in the exercise of discretion by the Minister's Delegate.

[125] The applicant is basically asking the Court to reassess the evidence and reweigh the various factors in his record.

[126] The case law of this Court, of the Federal Court of Appeal and of the Supreme Court of Canada is unanimous that the weighing of relevant factors is the responsibility of the Minister's Delegate:

> [13] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court of Canada ruled that the standard of review for H&C decisions is reasonableness. In arriving at this conclusion, the Court acknowledged that the Minister or her delegate should be entitled to considerable deference in the exercise of discretion.
>
> [14] In *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, at paragraph 37, the Supreme Court of Canada clarified its decision in Baker, above, by stressing that, in H&C applications, it is "the Minister who is obliged to give proper weight to relevant factors and none other."
>
> [15] The Federal Court of Appeal had the opportunity to consider *Suresh*, above, in the context of an H&C matter. The Court held:
>
> > [11] In *Suresh*, the Supreme Court clearly indicates that *Baker* did not depart from the traditional view that the weighing of relevant factors is the responsibility of the Minister or his delegate. It is certain, with *Baker*, that the interests of the children are one factor that an immigration officer must examine with a great deal of attention. It is equally certain, with *Suresh*, that it is up to the immigration officer to determine the appropriate weight to be accorded to this factor in the circumstances of the case. It is not the role of the courts to reexamine the weight given to the different factors by the officers.
>
> (*Legault*, above.) [Emphasis added.]

(*Za'rour v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1281, 321 F.T.R. 120)

[127] This Court pointed out the following in *Gallardo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 554, 157 A.C.W.S. (3d) 821, at paragraph 4: "It is not the role of the Court to re-examine the weight given to the different factors in a decision and, consequently, the Court cannot set aside a decision even if it would have weighed the factors differently (*Legault v. Minister*

of Citizenship and Immigration, 2002 FCA 125, *Williams v. Minister of Citizenship and Immigration*, 2006 FC 1474).” [Emphasis added.]

[128] Thus, even if this Court had assessed the evidence presented to the Minister’s Delegate differently, it is clear that her decision is based on findings of fact that are reasonable and based on the evidence in the record.

[129] The decision by the Minister’s Delegate is obviously very well-founded and does not warrant this Court’s intervention.

[130] Given the foregoing, it is evident that the arguments contained in the applicant’s supplementary memorandum are not such as to persuade this Court that there are valid grounds for allowing the relief he is seeking.

[131] For all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. the application for judicial review be dismissed;

2. no serious question of general importance be certified.

"Michel M.J. Shore"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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