Federal Court		Cour fédérale

Date: 20100615

Docket: IMM-6634-09

Citation: 2010 FC 647

Ottawa, Ontario, June 15, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Applicants

and

HAMID REZA PANAHI-DARGAHLOO

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 (the Act), for judicial review of a decision of the Immigration

Division of the Immigration and Refugee Board (the Board) ordering the respondent released from detention on certain terms and conditions.

[2] The applicant requests that the decision of the Board be set aside.

Background

[3] The respondent is a citizen of Iran who arrived in Canada in 1998. He was found to be a Convention refugee in 1999. His application for permanent resident status received in 1999 was refused in 2002 because of criminal convictions.

[4] The respondent has amassed several criminal convictions, nineteen in all, beginning in 2000, and has been detained by the Canadian Border Services Agency (CBSA) intermittently between July 2004 and June 2007 and continuously since July of 2007. A deportation order was issued against him in March of 2004 pursuant to paragraph 36(1)(a) of the Act by reason of serious criminality.

[5] The history of the respondent's criminal offences is as follows:

- November 15, 2000: Convicted of theft under $5,000 and received a suspended sentence and prohibition for one year.
- May 22, 2001: Convicted of:
    - impaired driving and received a $600 fine, six months probation and prohibited to drive for one year;

- two counts of theft under $5,000;
- two counts of failure to attend Court;
- assault;
- failure to comply with probation order; and
- theft over $5,000 and was sentenced to one day concurrently for each charge and time served 128 days.

- December 5, 2002: Convicted of theft under $5,000 and received a suspended sentence plus 18 months of probation and two days pre-sentence custody.
- February 9, 2004: Convicted of failure to comply with recognizance and failure to comply with a probation order and sentenced to 42 days in custody and two years probation.
- May 27, 2004: Convicted of:
  - impaired driving (driving over 80 MGS);
  - threatening bodily harm and received 60 days in jail;
  - possession of stolen property over $5,000;
  - theft;
  - possession of stolen property under $5,000, failure to comply with recognizance and assault.
- August 29, 2005: Convicted of robbery and use of a firearm during the commission of an offence and was sentenced to six months in jail.
- November 1, 2006: Convicted of theft at a liquor store.

[6] By way of an explanation for his conduct, respondent's counsel submitted to the Board that the respondent was physically and mentally abused by his father and as a result, has become a cocaine addict and an alcoholic.

[7] The history of his immigration detentions is as follows:

- July 13, 2004: Detained based on a warrant for his arrest. Released after eight days on July 21, 2004.
- 2004: Request for a danger opinion from the Minister was initiated.
- December 29, 2005: Detained.
- March 27, 2006: Released when his sister posted bond and the Toronto Bail Program offered supervision.
- November 2, 2006: Detained. Note: After serving his sentence for the November 1, 2006 theft above, he became subject to detention under the Act. The above conviction also violated the terms of the release order from his previous detention.
- May 25, 2007: Released on a $10,000 bond and with other conditions.
- June 15, 2007: Taken back into custody after bondsperson withdrew supervision.

[8] On December 13, 2006, the Minister's delegate signed a danger opinion pursuant to paragraph 115(2)(a) of the Act, allowing the Minister to enforce the 2004 deportation order notwithstanding his status as a protected person. The only impediment to removal was the issuance of a travel document. Despite many discussions with officials from the Iranian Embassy during 2007, no travel document was obtained. Iranian officials indicated that Iranian law prohibits the return of nationals by force. CBSA officials apparently accepted this position. The respondent did

not wish to be returned to Iran and what is more, felt he would be at risk if he returned. Therefore, he has refused to sign a document indicating he wishes to return to Iran.

[9] For the respondent's detention review conducted on December 11, 2009, a new bondsperson was proposed. Continued detention after previous reviews by the Board had been on the basis that the respondent poses a danger to the public as understood by paragraph 58(1)(a) of the Act. These conclusions were supported by the respondent's 2001 and 2004 assault charges, his 2005 armed robbery charge and the 2006 danger opinion as well as the impaired driving charges.

[10] The respondent sought judicial review of an October 2008 detention decision which, besides finding the respondent a danger to the public, found that the respondent was responsible for his own detention by failing to sign a document stating that he wished to return to Iran. In *Panahi-Dargahlloo v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1114, [2009] F.C.J. No. 1670 (QL), Mr. Justice Mandamin set aside the detention decision because the length of the respondent's detention, his status as a Convention refugee and his substantial compliance with CBSA had not been adequately considered.

The Board's Decision

[11] The Board concluded that with the right measures in place, the respondent would not pose a danger to the public. The charges and the danger opinion were all at least three years in the past. Even though the respondent had demonstrated a lack of rehabilitation evidenced by subsequent

charges, the latest offence was also three years ago. The circumstances related to the respondent's past dangerous conduct related to a period when he was working in night clubs and abusing cocaine and alcohol. Since that time, he has availed himself of psychiatric treatment and substance abuse programs. The degree to which these programs have been effective has not yet been tested in the community.

[12] The Board's conclusion on the respondent's risk of flight primarily turned on the respondent's demonstrated willingness to comply with the CBSA removal process in 2007. The Board considered that his refusal to state that he wished to return to Iran was partly justified by his status as a refugee and his well founded fear of persecution. The Board also considered the respondent's assurances to the new bondsperson that he would obey immigration instructions, but overall concluded that he was a flight risk was within the meaning prescribed in paragraph 58(1)(b) of the Act.

[13] In considering alternatives to detention, the Board considered the Ministers' submission that the respondent's release in May of 2007 had been on the strength of a misrepresentation regarding the respondent's relationship with the bondsperson. Since the CBSA had elected not to press charges against the respondent under the Act for the misrepresentation, nor had it disclosed all of its information regarding the matter, the Board would not conclude that there had been a misrepresentation. The Board also considered that the respondent had complied with the release order accompanying his last release and the two and a half years which had elapsed since then. Finally, the Board considered the adequacy of a new bondsperson for the respondent and the

adequacy of the quantum of the bond ($5,000) given the bondsperson's modest financial means. The Board's conclusion was that the respondent should be released with conditions that he attend substance abuse treatment and enroll in Alcoholics Anonymous.

Issues

[14] The issues are as follows:

1. What is the standard of review?
2. Was the Ministers' counsel denied procedural fairness in the hearing?
3. Was the Board's ultimate decision unreasonable?

Applicants' Written Submissions

[15] Parties in a Board proceeding have a right to be heard. Procedural rights are enhanced in more judicial like decisions such as these. The Board in its reasons mentioned three treatment programs for the respondent, but did not see that the prospect of these programs was raised at the hearing, preventing the Ministers' counsel from making submissions with respect to their appropriateness. Given the opportunity, counsel would have submitted that some of the programs had not worked in the past.

[16] The applicants also submit that there was no notice that the misrepresentation at the May 2007 release hearing would be challenged. The issue was not discussed at the hearing, yet the Board found that the Ministers had not met the burden of proving the alleged misrepresentation. Had the

Board member indicated his difficulty with the matter, the Ministers had evidence they could have submitted.

[17] Finally, the applicants submit that it was unfair for the Board not to give notice that it would be considering and questioning the strength of the danger opinion. In previous reviews, including one by the same member, it had not been in question.

[18] The decision does not meet the standard of reasonableness says the applicants. The Board determined that the respondent was a flight risk because of his refusal to sign the voluntary return document and because the new bondsperson did not give assurances that she could get him to appear for removal. Yet the Board determined that he should be released to her. Given his continued refusal to sign the document, it is clear that on a balance of probabilities, removal will not occur. The respondent has chosen to frustrate removal at a point in time when he has no right to remain in Canada.

[19] The applicants also say that the Board proceeded on the basis that there had been many new developments in the respondent's case. In reality, the respondent's conversion to Christianity, his treatment programs and his length of time in custody had all been considered in his previous review which had denied his release. The only change in December of 2009 was a new bondsperson and the fact that his length of detention was one month longer, yet the Board came to radically different conclusions with acknowledging the previous reasons.

Respondent's Written Submissions

[20] The respondent submits that the decision, read as a whole, is reasonable. The decision also conforms with this Court's direction in *Panahi-Dargahlloo* above. While the applicants disagree with the decision, that is not a basis for judicial intervention. The Board did not ignore evidence of previous non-compliance with past orders, but reasonably found that the new evidence of rehabilitation, the length of detention and the new bondsperson outweighed other factors.

[21] Specifically, it was not unreasonable for the Board to find that the new bondsperson was suitable despite her inability to guarantee the respondent's appearance for removal. The test for suitability is not 100% assurance.

[22] Moreover, the respondent's status as a protected person was legitimately factored by the Board. It gives him a legitimate reason not to sign a document saying that he is voluntarily returning to Iran. The implication of the applicants' argument is that indefinite detention is reasonable even though that is contrary to section 7 of the Charter. Overall, the decision was not radically different from previous decisions. It only differed in a few areas which were thoroughly explained.

[23] The respondent submits that there was no breach of procedural fairness. The mentioned treatment programs should not have been a surprise to the applicants. The Salvation Army program has been proposed in many detention reviews and in a previous review regarding the respondent.

[24] Nor was there a breach of fairness in the Board's conclusion that the Ministers had not proven the alleged misrepresentation. The Ministers' counsel has made submissions about the alleged misrepresentation since June of 2007, but has never provided sufficient evidence in support. Yet, never in that time has an adjudicator concluded that a misrepresentation occurred. Rather, they have just noted the allegation, perhaps because it had not been an important issue. It was open to the Board to find that the applicants had not discharged their burden.

Analysis and Decision

[25] **Issue 1**

What is the standard of review?

While the standard of review for most questions of law is correctness, the standard of review for questions of fact and for questions of mixed fact and law is reasonableness as set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, [2008] S.C.J. No. 9 (QL). The parties agree that the ultimate decision of the Board is subject to review against the standard of reasonableness.

[26] The standard of review on the question of a breach of procedural fairness is correctness.

[27] **Issue 2**

Was the Ministers' counsel denied procedural fairness in the hearing?

It is trite that although the components of the duty of fairness will vary with the context, one of the most basic elements of natural justice is the right to be heard and to know the case one has to meet (see *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, [1999] S.C.J. No. 39 (QL), *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38, [2008] 2 S.C.R. 326).

[28] Regardless of the level of procedural fairness determined by assessing the factors in *Baker* above, the duty of fairness owed to the Ministers' counsel in the context of a detention review hearing clearly included the right of the Ministers' counsel to have notice of and make submissions on all material aspects of the decision. Whether the Ministers were indeed prevented from meaningful participation and submissions on the factors the Ministers raised is within this Court's expertise to determine.

[29] The applicants' first complaint is that while treatment programs for the respondent were referred to generally during the hearing, the applicants were not advised of the specific programs the Board eventually required the respondent to attend in the release order.

[30] The Board began the hearing by discussing the new bondsperson and what had been gleaned at her interview. This new bondsperson constituted the primary aspect of the respondent's alternative to a detention proposal.

[31] Next, the Ministers' counsel presented her submissions. With respect to the respondent's proposal, she did not discuss specific rehabilitation programs, only mentioning that previous release orders for the respondent had had components of rehabilitation:

> …or both release orders had components of rehabilitation, however they have not had favourable influences on his behaviour as he finds himself in detention once again due to his non-compliance.

[32] Accordingly, the Ministers' submissions with respect to the respondent's proposal focused on the non-suitability of the new bondsperson and not on specific treatment programs since none had been suggested. As she stated later with respect to the amount of the proposed bond:

> Therefore, the Minister feels that this amount does not offset concerns, but of course there is also the concern that there's no component being proposed today to address substance abuse issues, or to address the need for rehabilitation.

[33] Next, the respondent's counsel presented and discussed the rehabilitation programs the respondent had participated in while in jail, namely AA and psychiatric therapy. With respect to rehabilitation programs upon release, counsel made the following submission:

> He has actually spoken to several agencies about intake with respect to his continued alcohol treatment, and many of those programs are out programs where he would actually have to sign up with them after he has been released. Several have refused to actually do intakes for inmates, but this Alcoholics Anonymous is a program that Mr. Panahi-Dargahloo is committed to, and is ready to follow through on – on his release.

And later:

> I am proposing today that a condition of his release be that within a certain period of time, and maybe days or may be a week or two period, after his release that he shows evidence of being involved or signed up with a comprehensive alcohol treatment program and AA group.

[34] When given the chance to reply on this matter, the Ministers' counsel stated:

> Counsel does indicate that Mr. Panahi-Dargahloo has an alcohol and drug addiction, and he realizes that he will always have this. This further substantiates the Minister's concern that this will be an ongoing problem for him, and the Minister's view is that the requirement that he enrol simply in an alcohol program, of which he have [sic] no details of what his requirements would be; how he'd be tested; how often he would have to go; whether it's an in-treatment, and those sorts of things, and nothing to address the drug addiction that counsel has brought up. That is lacking in the alternative and that is a concern to the Minister as according to counsel that motivates much of his criminality.

[35] The order for release added as conditions that the respondent enroll in the Salvation Army's Turning Point program within two weeks, provide proof of enrollment and to remain in good standing, then to enroll in the Harbour Light program and remain in good standing there until completion.

[36] In the Board's reasons, it was mentioned that these two programs were considered as conditions in the respondent's May 2007 release and that the Board who had released the respondent had been under the reasonable view that danger to the public and flight risk could be adequately offset by means of a supervisory bondsperson and community substance abuse treatment.

[37] In my view, the Ministers' counsel was offered a meaningful opportunity to present submissions on the issue of rehabilitation programs.

[38] As Mr. Justice Mandamin noted in *Panahi-Dargahlloo* above, at paragraph 25, citing *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, 2004 FCA 4, [2004] 3 F.C.R. 572, detention reviews are not *de novo* hearings nor are they without regard to the previous hearings. Conclusions made at previous detention reviews become part of the overall record before the current decision maker. Moreover, they remain part of the record, even if not mentioned at the most previous review.

[39] As such, the Ministers' counsel should not have been completely surprised by the Salvation Army's Turning Point program followed by the Harbour Lights program. These programs were put forth and discussed in his April 2008, April 2007, December 2006 and November 2006 review hearings.

[40] To the extent that the Ministers' counsel was able to voice her objections to the suitability and potential for success of unspecified rehabilitation programs, she was given a meaningful opportunity to be heard.

[41] If the Ministers had requested the specifics of the rehabilitation program being considered in order to make submissions on it, the Board may be required to offer the Ministers that opportunity. That did not occur here.

[42] The Board requires procedural flexibility in its decision making process. It need not provide court-like fairness procedures. In the circumstances, the Board was entitled to hear the Ministers' reservations about the success of rehabilitation programs in general. It did so. If, as was the case, the Board ends up concluding that other factors outweigh those concerns, the Board has sufficient authority and flexibility to fine tune proposals for alternatives to detention with details, unless the Ministers bring to the Board's attention some reason why the Ministers ought to have the opportunity to make submissions on those details.

[43] The applicants' second complaint is that the Board, in its reasons, held that the Ministers had not met the burden of proof with respect to the allegations that the respondent had made a misrepresentation. The matter was only briefly mentioned by the applicants at the hearing, apparently under the belief that it need not be proved.

[44] In my view, there was no breach of procedural fairness here. As noted, the record from all previous detention reviews constitutes the starting point for each new detention review. No previous detention review decision had validated the allegation against the respondent or found that it was meritorious. The CBSA had long since abandoned its pursuit of charges against the respondent for the incident and the allegation remained on the record as simply that; an allegation. Therefore, the

Ministers could not be under any reasonable assumption that its burden of proving the misrepresentation had been met.

[45] As it turned out, when the Board made its decision, the fact that the allegation had not been proved was something that it mentioned. The Board was entitled to do this simply by consulting the record and was not required to give notice and call another hearing with respect to the matter.

[46] The Ministers appear to be arguing that if the adjudicator finds evidence in support of a submission lacking, then he or she has an obligation to stop the proceedings in order to give counsel an opportunity to provide better evidence. There is absolutely no authority for this submission.

[47] Finally, the applicants complain that the Board in its reasons, seemed to question the strength or validity of the danger opinion, yet did not provoke discussion of the matter at the hearing.

[48] Again, I do not find that this amounted to a breach of procedural fairness. Of course, the danger opinion was valid and as it had not been challenged by the respondent by way of judicial review, must stand. I do not read the Board's reasons as questioning the validity of the danger opinion. The Board merely noted that the opinion itself had not been disclosed to him and that in any event, the period of time in which it had been rendered was a time in which the respondent had been abusing drugs and alcohol. This was contrasted with the respondent's current state of rehabilitation. I would not allow judicial review on this ground.

[49] **<u>Issue 3</u>**

Was the Board's ultimate decision unreasonable?

In *Dunsmuir* above, the Supreme Court of Canada stated as follows, concerning the role of a court on judicial review at paragraph 47:

> Reasonableness is 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.

[50] And in *Canada (Citizenship and Immigration) v. Khosa* 2009 SCC 12 at paragraph 59, the Court stated:

> Reasonableness is a single standard that takes its colour from the context. One of the objectives of *Dunsmuir* was to liberate judicial review courts from what came to be seen as undue complexity and formalism. Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not

> open to a reviewing court to substitute its own view of a preferable outcome.

[51] It is obvious from this jurisprudence that this Court, on review, is not to substitute its own views if the tribunal's decision falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[52] I am of the view that the adjudicator's decision in this matter fell within the range of possible, acceptable outcomes based on the facts and the law of the case. I would note that the Board is to be afforded significant deference with respect to its factual findings.

[53] I will proceed by dealing with each of the alleged errors which the applicants say render the decision unreasonable.

[54] The applicants say it was unreasonable for the Board to conclude that there was only a reasonable chance that removal will not be affected, given the respondent's refusal to sign the necessary document.

[55] On reading the decision, it is clear that the Board understood the stalemate facing the CBSA, namely, Iranian officials insistence that the respondent sign a document indicating that his return was voluntary and the respondent's refusal to sign the document. So long as the stalemate continues, there is no chance that removal to Iran can be affected. The decision, however, contemplated that

even if the travel document stalemate was overcome, there remained a possibility that the respondent would not cooperate and that the bondsperson could not guarantee he would appear for removal. This was not an unreasonable conclusion.

[56] Second, the applicants say the Board ignored the evidence of non-compliance with past release orders. The Board did mention that the respondent's arrest in September of 2006 was a contravention of the release order. However, in paragraph 11, the Board followed that by stating:

> This is indicative of lack of rehabilitation up to that point. Since that time, he has availed himself of psychiatric treatment, alcohol abuse programs and religious counselling.

[57] This was not a mischaracterization of the events. The respondent had been ordered to undertake treatment in his 2006 release, but had not done so. Thus, it was fair for the Board to comment later that the degree to which these programs have proven effective to rehabilitation has not yet been tested in the community.

[58] The applicants rely on my decision in *Canada (Minister of Citizenship and Immigration) v. Kamil*, 2002 FCT 381. I would point out that that decision dealt with a person who refused to sign an application for his travel document. In the present case, the respondent has signed his application for a travel document to Iran but the Iranian government will not give him the travel document unless he signs a paper stating that he will voluntarily return to Iran. As well, the period of detention for the applicant in *Kamil* was four months, while here the respondent was in detention for about 37 months according to the Board's decision.

[59] Section 248 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 states:

248. If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release:	248. S'il est constaté qu'il existe des motifs de détention, les critères ci-après doivent être pris en compte avant qu'une décision ne soit prise quant à la détention ou la mise en liberté :
(a) the reason for detention;	a) le motif de la détention;
(b) the length of time in detention;	b) la durée de la détention;
(c) whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;	c) l'existence d'éléments permettant l'évaluation de la durée probable de la détention et, dans l'affirmative, cette période de temps;
(d) any unexplained delays or unexplained lack of diligence caused by the Department or the person concerned; and	d) les retards inexpliqués ou le manque inexpliqué de diligence de la part du ministère ou de l'intéressé;
(e) the existence of alternatives to detention.	e) l'existence de solutions de rechange à la détention.

[60] The Board's decision reads in part as follows at paragraph 17:

> It is a statement of his willingness to comply with Canadian law, not that he would prefer not to return. Although I am of the view that his conduct engages Regulation 248(d) on the grounds that his lack of diligence has not been adequately explained, I give less weight to his non-compliance in this case than I would if he were not a protected person and the issue were one of a travel document, not willingness to return, given his well-founded fear of persecution. Although his explanation mitigates somewhat, it is not a complete answer. The Respondent has not been cooperative and has not acted diligently in facilitating his removal. He is not entitled to circumvent Canadian

> legal processes because he disagrees with the result. However, the fact that he has been otherwise cooperative and refuses to sign a document agreeing to return to persecution lessens the public policy rationale for lengthy detention for the purpose of encouraging compliance with a lawful Removal Order. This view is consistent with Justice Mandamin's statement that length of detention must be considered in the light of a number of factors, including the fact that he is a Convention refugee.

[61] In *Panahi-Dargahloo* above, Mr. Justice Mandamin stated as follows at paragraph 47:

> Section 248 adds the length of detention as a consideration after determining the likelihood the detainee will appear for removal. The length of the Applicant's detention has to be considered against other factors besides his refusal to sign the letter required by Iranian authorities. This would include his status as a Convention refugee, the fact he reported to Immigration Officials during his last release, the passage of time since his last criminal conviction, whether or not the Applicant had an opportunity to receive rehabilitative treatment for his addictions while in the GTEC and the fact he has support in his rehabilitation proposal.

I agree with the statements of Mr. Justice Mandamin.

[62] A review of the Board's decision does not satisfy me that the Board used the respondent's length of detention as a factor to justify his release from detention. The Board member determined that this factor did not favour the respondent but went on to weigh the other factors against this negative factor and came to the conclusion that those other factors outweighed the negative subsection 248(d) finding so as to allow his release from detention. The Board member took into consideration the existence of a supervisory bondsperson and the treatment the respondent undertook while in detention. I can find nothing unreasonable in the Board member's assessment.

[63] As a result, the application for judicial review must be dismissed.

[64] The applicants submitted the following proposed serious question of general importance for my consideration for certification:

> When a Convention Refugee with a Danger Opinion refuses to cooperate in obtaining a travel document to effect removal, does the continued detention, which is subject to a regular and meaningful detention review process, remain lawful?

[65] I am not prepared to certify this question as it would not be determinative of this case. The Board member made no finding with regard to the lawfulness of the respondent's detention.

JUDGMENT

[66] **IT IS ORDERED that** the application for judicial review is dismissed.

"John A. O'Keefe"
Judge

ANNEX

<u>Relevant Statutory Provisions</u>

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

57.(1) Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention.	57.(1) La section contrôle les motifs justifiant le maintien en détention dans les quarante-huit heures suivant le début de celle-ci, ou dans les meilleurs délais par la suite.
(2) At least once during the seven days following the review under subsection (1), and at least once during each 30-day period following each previous review, the Immigration Division must review the reasons for the continued detention.	(2) Par la suite, il y a un nouveau contrôle de ces motifs au moins une fois dans les sept jours suivant le premier contrôle, puis au moins tous les trente jours suivant le contrôle précédent.
(3) In a review under subsection (1) or (2), an officer shall bring the permanent resident or the foreign national before the Immigration Division or to a place specified by it.	(3) L'agent amène le résident permanent ou l'étranger devant la section ou au lieu précisé par celle-ci.
58.(1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that	58.(1) La section prononce la mise en liberté du résident permanent ou de l'étranger, sauf sur preuve, compte tenu des critères réglementaires, de tel des faits suivants :
(a) they are a danger to the public;	a) le résident permanent ou l'étranger constitue un danger pour la sécurité publique;
(b) they are unlikely to appear for examination, an	b) le résident permanent ou l'étranger se soustraira

admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);	vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);
(c) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human or international rights; or (d) the Minister is of the opinion that the identity of the foreign national has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity.	c) le ministre prend les mesures voulues pour enquêter sur les motifs raisonnables de soupçonner que le résident permanent ou l'étranger est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux; d) dans le cas où le ministre estime que l'identité de l'étranger n'a pas été prouvée mais peut l'être, soit l'étranger n'a pas raisonnablement coopéré en fournissant au ministre des renseignements utiles à cette fin, soit ce dernier fait des efforts valables pour établir l'identité de l'étranger.
(2) The Immigration Division may order the detention of a permanent resident or a foreign national if it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order and that the permanent resident or the foreign national is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.	(2) La section peut ordonner la mise en détention du résident permanent ou de l'étranger sur preuve qu'il fait l'objet d'un contrôle, d'une enquête ou d'une mesure de renvoi et soit qu'il constitue un danger pour la sécurité publique, soit qu'il se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi.

(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.	(3) Lorsqu'elle ordonne la mise en liberté d'un résident permanent ou d'un étranger, la section peut imposer les conditions qu'elle estime nécessaires, notamment la remise d'une garantie d'exécution.

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

244. For the purposes of Division 6 of Part 1 of the Act, the factors set out in this Part shall be taken into consideration when assessing whether a person	244. Pour l'application de la section 6 de la partie 1 de la Loi, les critères prévus à la présente partie doivent être pris en compte lors de l'appréciation :
(a) is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2) of the Act;	a) du risque que l'intéressé se soustraie vraisemblablement au contrôle, à l'enquête, au renvoi ou à une procédure pouvant mener à la prise, par le ministre, d'une mesure de renvoi en vertu du paragraphe 44(2) de la Loi;
(b) is a danger to the public; or	b) du danger que constitue l'intéressé pour la sécurité publique;
(c) is a foreign national whose identity has not been established.	c) de la question de savoir si l'intéressé est un étranger dont l'identité n'a pas été prouvée.
245. For the purposes of paragraph 244(a), the factors are the following:	245. Pour l'application de l'alinéa 244a), les critères sont les suivants :
(a) being a fugitive from justice in a foreign jurisdiction in relation to an offence that, if	a) la qualité de fugitif à l'égard de la justice d'un pays étranger quant à une infraction qui, si

committed in Canada, would constitute an offence under an Act of Parliament;	elle était commise au Canada, constituerait une infraction à une loi fédérale;
(b) voluntary compliance with any previous departure order;	b) le fait de s'être conformé librement à une mesure d'interdiction de séjour;
(c) voluntary compliance with any previously required appearance at an immigration or criminal proceeding;	c) le fait de s'être conformé librement à l'obligation de comparaître lors d'une instance en immigration ou d'une instance criminelle;
(d) previous compliance with any conditions imposed in respect of entry, release or a stay of removal;	d) le fait de s'être conformé aux conditions imposées à l'égard de son entrée, de sa mise en liberté ou du sursis à son renvoi;
(e) any previous avoidance of examination or escape from custody, or any previous attempt to do so;	e) le fait de s'être dérobé au contrôle ou de s'être évadé d'un lieu de détention, ou toute tentative à cet égard;
(f) involvement with a people smuggling or trafficking in persons operation that would likely lead the person to not appear for a measure referred to in paragraph 244(a) or to be vulnerable to being influenced or coerced by an organization involved in such an operation to not appear for such a measure; and	f) l'implication dans des opérations de passage de clandestins ou de trafic de personnes qui mènerait vraisemblablement l'intéressé à se soustraire aux mesures visées à l'alinéa 244a) ou le rendrait susceptible d'être incité ou forcé de s'y soustraire par une organisation se livrant à de telles opérations;
(g) the existence of strong ties to a community in Canada.	g) l'appartenance réelle à une collectivité au Canada.
246. For the purposes of paragraph 244(b), the factors are the following:	246. Pour l'application de l'alinéa 244b), les critères sont les suivants :

(a) the fact that the person constitutes, in the opinion of the Minister, a danger to the public in Canada or a danger to the security of Canada under paragraph 101(2)(b), subparagraph 113(d)(i) or (ii) or paragraph 115(2)(a) or (b) of the Act;	a) le fait que l'intéressé constitue, de l'avis du ministre aux termes de l'alinéa 101(2)b), des sous-alinéas 113d)(i) ou (ii) ou des alinéas 115(2)a) ou b) de la Loi, un danger pour le public au Canada ou pour la sécurité du Canada;
(b) association with a criminal organization within the meaning of subsection 121(2) of the Act;	b) l'association à une organisation criminelle au sens du paragraphe 121(2) de la Loi;
(c) engagement in people smuggling or trafficking in persons;	c) le fait de s'être livré au passage de clandestins ou le trafic de personnes;
(d) conviction in Canada under an Act of Parliament for	d) la déclaration de culpabilité au Canada, en vertu d'une loi fédérale, quant à l'une des infractions suivantes :
(i) a sexual offence, or	(i) infraction d'ordre sexuel,
(ii) an offence involving violence or weapons;	(ii) infraction commise avec violence ou des armes;
(e) conviction for an offence in Canada under any of the following provisions of the Controlled Drugs and Substances Act, namely,	e) la déclaration de culpabilité au Canada quant à une infraction visée à l'une des dispositions suivantes de la Loi réglementant certaines drogues et autres substances:
(i) section 5 (trafficking),	(i) article 5 (trafic),
(ii) section 6 (importing and exporting), and	(ii) article 6 (importation et exportation),
(iii) section 7 (production);	(iii) article 7 (production);

(f) conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament for

(i) a sexual offence, or

(ii) an offence involving violence or weapons; and

(g) conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under any of the following provisions of the Controlled Drugs and Substances Act, namely,

(i) section 5 (trafficking),

(ii) section 6 (importing and exporting), and

(iii) section 7 (production).

247.(1) For the purposes of paragraph 244(c), the factors are the following:

(a) the foreign national's cooperation in providing evidence of their identity, or assisting the Department in obtaining evidence of their identity, in providing the date and place of their birth as well as the names of their mother and father or providing detailed information on the itinerary

f) la déclaration de culpabilité ou la mise en accusation à l'étranger, quant à l'une des infractions suivantes qui, si elle était commise au Canada, constituerait une infraction à une loi fédérale :

(i) infraction d'ordre sexuel,

(ii) infraction commise avec violence ou des armes;

g) la déclaration de culpabilité ou la mise en accusation à l'étranger de l'une des infractions suivantes qui, si elle était commise au Canada, constituerait une infraction à l'une des dispositions suivantes de la Loi réglementant certaines drogues et autres substances:

(i) article 5 (trafic),

(ii) article 6 (importation et exportation),

(iii) article 7 (production).

247.(1) Pour l'application de l'alinéa 244c), les critères sont les suivants :

a) la collaboration de l'intéressé, à savoir s'il a justifié de son identité, s'il a aidé le ministère à obtenir cette justification, s'il a communiqué des renseignements détaillés sur son itinéraire, sur ses date et lieu de naissance et sur le nom de ses parents ou s'il a rempli une demande de titres de

they followed in travelling to Canada or in completing an application for a travel document;

voyage;

(b) in the case of a foreign national who makes a claim for refugee protection, the possibility of obtaining identity documents or information without divulging personal information to government officials of their country of nationality or, if there is no country of nationality, their country of former habitual residence;

b) dans le cas du demandeur d’asile, la possibilité d’obtenir des renseignements sur son identité sans avoir à divulguer de renseignements personnels aux représentants du gouvernement du pays dont il a la nationalité ou, s’il n’a pas de nationalité, du pays de sa résidence habituelle;

(c) the destruction of identity or travel documents, or the use of fraudulent documents in order to mislead the Department, and the circumstances under which the foreign national acted;

c) la destruction, par l’étranger, de ses pièces d’identité ou de ses titres de voyage, ou l’utilisation de documents frauduleux afin de tromper le ministère, et les circonstances dans lesquelles il s’est livré à ces agissements;

(d) the provision of contradictory information with respect to identity at the time of an application to the Department; and

d) la communication, par l’étranger, de renseignements contradictoires quant à son identité pendant le traitement d’une demande le concernant par le ministère;

(e) the existence of documents that contradict information provided by the foreign national with respect to their identity.

e) l’existence de documents contredisant les renseignements fournis par l’étranger quant à son identité.

(2) Consideration of the factors set out in paragraph (1)(a) shall not have an adverse impact with respect to minor children referred to in section 249.

(2) La prise en considération du critère prévu à l’alinéa (1)a) ne peut avoir d’incidence défavorable à l’égard des mineurs visés à l’article 249.

248. If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release:	248. S'il est constaté qu'il existe des motifs de détention, les critères ci-après doivent être pris en compte avant qu'une décision ne soit prise quant à la détention ou la mise en liberté :
(a) the reason for detention;	a) le motif de la détention;
(b) the length of time in detention;	b) la durée de la détention;
(c) whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;	c) l'existence d'éléments permettant l'évaluation de la durée probable de la détention et, dans l'affirmative, cette période de temps;
(d) any unexplained delays or unexplained lack of diligence caused by the Department or the person concerned; and	d) les retards inexpliqués ou le manque inexpliqué de diligence de la part du ministère ou de l'intéressé;
(e) the existence of alternatives to detention.	e) l'existence de solutions de rechange à la détention.

FEDERAL COURT

SOLICITORS OF RECORD

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