Federal Court  Cour fédérale

Date: 20111110

Docket: IMM-1443-11

Citation: 2011 FC 1296

Ottawa, Ontario, November 10, 2011

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

NAZIH CHARIF HAMAM
GHADA YEHYA ISSA
MOHAMMAD ALI HAMAM
SARA NAZIH HAMAM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Nazih Charif Hamam and his family apply for judicial review of the Immigration Officer's decision dated January 18, 2011, refusing their applications for permanent residence processed from within Canada on humanitarian and compassionate (H&C) grounds.

[2] The Applicants are a family with four children. The father Nazih Charif Hamam (the "Father") and mother Ghada Yehya Issa (the "Mother") are both citizens of Lebanon. The two

oldest children are citizens of the United States and the two youngest children are Canadian citizens. They currently live in London, Ontario.

[3] The Officer addressed the three H&C grounds claimed by the Applicants.

1. Risk of returning to Lebanon
2. Establishment in Canada, and
3. The best interests of the children.

[4] The Officer concluded in respect to each of these grounds that the Applicants had not satisfied the burden of proving they would face unusual, undeserved or disproportionate hardship if their H&C application was not accepted.

[5] The Applicants submit the Officer erred by assessing the Applicants' personal risk rather than the degree of hardship arising on return to Lebanon, failed to give adequate reasons for concluding the Applicants have not demonstrated sufficient establishment in Canada such that their removal would constitute unusual, undeserved or disproportionate hardship and applying the wrong test for the best interests of the children involved.

[6] I have concluded the application for judicial review should be granted for the reasons that follow.

Background

[7] The Applicants came to Canada in January 2005 after a failed claim for asylum in the United States. Their claim for refugee status in Canada was also unsuccessful.

[8] In 2009, the Applicants submitted an inland application for permanent residence on the following H&C grounds:

1. risk of returning to Lebanon,
2. establishment in Canada, and
3. the best interests of the children.

[9] The application was forwarded to the Montreal Pre-Removal Risk Assessment (PRRA) Office in October, 2010. An update to the file was provided by the Applicants in November, 2010. The Officer reviewed the Applicants' file. She denied their H&C application giving reasons for the decision in a letter dated January 18, 2011.

Decision under Review

[10] The reasons for decision were written in French. However, a translated copy of the decision (by the Translation Bureau) is included within the Certified Tribunal Record (CTR). For the purposes of this decision, I will refer to the English translation. The Officer's reasons address the three H&C grounds claimed by the Applicants.

Risk on returning to Lebanon

[11] The Officer starts by briefly summarizing the allegations made by the Father in his refugee protection claim before the Refugee Protection Division (RPD). The Officer notes the RPD determined that the Applicants had not established the alleged risks and were neither convention refugees nor persons in need of protection. The Officer also noted the Federal Court dismissed their application for leave for judicial review of the RPD's decision.

[12] The Officer specifically states that her role was not to overturn the RPD's determinations as the Officer was neither sitting in appeal of nor reviewing the RPD's decisions. The Officer observes that in the current application, the Applicants repeated the allegations they made before the RPD and filed the evidence submitted to the RPD, the RPD's reasons, the Father's PIF, and other documentation. The Officer notes that the additional documentation did not confirm that the Applicants would be exposed to personal risks, but that it was consistent with the documentary sources the Officer had consulted. The Officer found that these sources indicated that although the security situation in Lebanon remained a cause for concern, the government and the armed forces continued to fulfill their roles.

[13] The Officer concludes by stating that the onus was on the Applicants to demonstrate a connection between the latent crisis situation in Lebanon and their personal risk and that the Applicants had failed to do so.

Establishment in Canada

[14] The Officer begins by noting that the Applicants arrived in Canada on January 5, 2005. The Officer then goes on to discuss the Applicants' English ability. The Officer notes that the Father stated he speaks English and the Mother speaks, reads and writes English; however, the Officer found no independent assessment documents were submitted to confirm any effort made to learn or know the language. The Officer was of the opinion the Father's functioning in English is very likely limited.

[15] The Officer notes the Father runs his own business as a carpet layer and that notices of assessment indicate a taxable income of about $14,000 over the previous three years. The Officer notes the same amount is shown on the Mother's notices for 2008 and 2009. The Officer acknowledges that as the mother of young children, the Officer can understand it having been more difficult for her to enter the job market. However, the Officer notes that while her IMM 5001 form states that she does not plan to work in the future, the Mother apparently accepted a full-time job to teach Arabic in London in 2010.

[16] The Officer notes the Applicants' file contains a bank statement estimating the Father's assets at over $40,000 and numerous letters and attestations from his business contacts touting his professionalism. The Officer notes that this is a positive aspect in the application.

[17] The Officer then lists some of the documentation submitted to demonstrate the Applicants' establishment in Canada including:

- A petition signed by 121 persons showing that the applicants have contributed substantially to the Muslim community and London, Ontario, as a whole;
- Attestations from three Muslim organizations, including two schools, confirming this favourable opinion;
- Approximately 30 letters of support from relatives and friends illustrating the merits and virtues of each of the Applicants.

The Officer notes that these are all positive aspects.

[18] Before making her conclusions on establishment, the Officer quotes from a decision of Justice Blanchard in *Uddin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 937, 116 ACWS (3d) 930 [*Uddin*], which defines the contours of analysis for the test for determining whether an applicant has demonstrated a sufficient degree of establishment in Canada such that their removal would constitute an unusual, undeserved or disproportionate hardship.

[19] The Officer then concludes by stating that the Applicants will inevitably experience hardship if they return to Lebanon after such a long absence if required to apply from Lebanon for a permanent resident visa. However, the Officer concludes that this hardship would not be unusual, undeserved or disproportionate.

The best interests of the children

[20] The Officer considered the best interests of the four children, two born in the United states and two in Canada, who were respectively nine, six, five and three years of age. The Officer acknowledged it was her duty to be alert, alive and sensitive to the interest of these children.

[21] The Officer notes there is no doubt that these children were very attached to their three Canadian uncles and other relatives, including, in particular, their cousins. The Officer states that the Father and Mother have an even greater number of siblings in Lebanon and that no reason had been advanced that the children would not benefit from contact with their Lebanese close relatives whom they had not yet met.

[22] The Officer comments on the Father and Mother's assertions that the children speak little or no Arabic and cannot read or write in that language at all. The Officer finds these assertions confusing as the evidence appears to show that the Mother had given Arabic lessons to children on a volunteer basis. The Officer also notes the oldest child's school report card emphasized his excellent academic performance in Arabic. The Officer therefore did not rely on the Father and Mother's statements with regard to the impact that the children's leaving would have on their education.

[23] The Officer notes nothing is specifically mentioned about the children's health, particular needs or vital interests or the challenges they would face.

[24] The Officer concluded the best interests of the children analysis by stating that the onus was on the Applicants to meet the burden of proving that there would be unusual, undeserved or disproportionate hardship in the event they returned to Lebanon and that the Applicants had failed to do so.

Relevant Legislation

[25] The *Immigration and Refugee Protection Act*, SC 2001, c 27 provides:

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
…	…
25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into	25. (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

account the best
interests of a child directly
affected.

Issues

[26] I consider the issues in this case to be:

1. Did the Officer err in her assessment of risk or hardship?

2. Were the Officer's reasons in her assessment of the Applicants' establishment in Canada inadequate?

3. Did the Officer err in her assessment of the best interests of the children?

Standard of Review

[27] The appropriate standard of review for a decision on H&C grounds is reasonableness: *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1404, 60 Imm LR (3d) 27 [*Ramirez*] at para 30. Given the discretion an Immigration Officer has in a H&C application, a heavy burden rests on the Applicants to satisfy the Court that the decision under section 25 requires the intervention of the Court: *Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 386, [2010] FCJ no 583 (QL) (TD) at para 25.

[28] Errors of law and breaches of procedural fairness should be reviewed on a standard of correctness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 47-50.

Analysis

[29] The Applicants allege errors by the Officer in her assessment under all three H&C grounds. The Applicants submit the Officer erred by failing to assess their new allegation of risk from Hezbollah and also by requiring personalized risk to the Applicants rather than assessing risk informed by hardship on removal to Lebanon. The Applicants also submit the Officer failed to provide adequate reasons as to why the hardship they would experience if required to return to Lebanon, despite their acknowledged establishment in Canada, did not give rise to unusual or undeserving and disproportionate hardship. Finally, the Applicants submit the Officer erred in applying the test of undeserved hardship in considering the best interests of the children.

Risk

[30] The Applicants submitted the Officer made two errors in her assessment of risk: the first is that the Officer failed to consider new evidence submitted by the Applicants that demonstrated fear of returning because of the presence of Hezbollah in the portion of Lebanon from which the Applicants are originally from; and the second is that the Officer applied the incorrect legal test for assessing risk in the context of an H&C application.

[31] The Respondent argues the Officer was responsive to the submissions and evidence before her and that the Applicants essentially attempted to reargue their entire refugee claim in their H&C application. The Respondent submits the Applicants have an obligation to identify specific incidents

or threats that they say give rise to unusual undeserving hardship and support them with evidence. This, the Respondent submits, the Applicants did not do.

[32] The Officer stated that her role was not to overturn the RPD's determination. She noted that the Applicants filed the evidence submitted to the RPD, the RPD reasons, and other material. The Applications submitted they feared return to Lebanon for the same reasons as they advanced in their refugee claim, but also because of risks posed by Hezbollah who were hostile to western culture. The Applicants submit that the Officer analyzed their first allegation in her reasons but ultimately rejected the Applicants' submissions by noting that her role was not to overturn the RPD's determination.

[33] The Applicants said their H&C application also contained allegations of risk that were not before the RPD which the Officer failed to expressly acknowledge. The Applicants' submissions and documentary evidence made in support of the H&C application indicated that the Applicants, in addition to the risk set out in their failed refugee claim, feared to return to Lebanon due to the presence of Hezbollah in the area the Applicants are originally from. The Applicants stated in reply they provided a number of articles highlighting the presence of Hezbollah in Lebanon to support their claim.

[34] The Applicants claim that the Officer completely failed to address the risk posed by Hezbollah. The Applicants argue that the Officer "specifically indicated that the 'only' risks brought forward were those advanced at the RPD," and since the second ground of risk was not before the RPD, the Officer must have failed to consider it. The Applicants rely on the following paragraphs

from *Tariq v Canada (Minister of Citizenship and Immigration)*, 2005 FC 404, 44 Imm LR (3d) 256 [*Tariq*], to show that this was a reviewable error:

> [20] The respondent submits that the Board is presumed to have considered all of the evidence before it, and that I should therefore interpret the Board's statement that the applicant had provided "no evidence" that they would be targeted by Sunni extremists if they were to return to Pakistan to mean that there was no such evidence that the Board found to be persuasive.
>
> [21] I do not accept this submission. It is true that a tribunal will ordinarily be presumed to have considered all of the evidence before it, even if no reference is specifically made to any given piece of evidence in the tribunal's decision. That is not, however, the situation that we have here. This is not a case where the Board omitted to mention evidence. What we have here is a clear assertion by the Board that there was no evidence before it on a particular point when there was indeed just such evidence.
>
> [22] In my view, this leads to the inescapable inference that the evidence was overlooked by the Board.

[35] After a careful review of the Officer's decision, I am unable to conclude that the Officer specifically indicated that she "only" took into account the evidence and claims that were before the RPD.

[36] The Officer begins her assessment of risk by setting out the original allegations of fear put before the RPD and the history of the Father's refugee claim. The Officer states that it was not her role to overturn the RPD's determinations. The Officer then states:

> In this application for a visa exemption, the applicants repeated the allegations they made before the RPD. They filed the evidence that was submitted to the RPD, the RPD's reasons, the principal

> applicant's PIF, fifteen articles and general documents on the human rights situation in Lebanon and an attestation from a Muslim aid organization, which echoes Ms. Issa's statements regarding the risks she ascribes to her husband's problems with the Syrian services and the security situation arising from the conflict with Israel. (Emphasis added).

[37] While it is true that the Officer's reasons do not mention the Applicants' specific allegation of risk from Hezbollah, the Officer did take into account the evidence that was not before the RPD. The Officer acknowledged the Applicants' submission of "fifteen articles and general documents on the human rights situation in Lebanon and an attestation from a Muslim aid organization." The inference can be made that these documents were not part of the evidence before the RPD. Had they been it would have been unnecessary for the Officer to mention them specifically.

[38] The situation in this case is not the same as in *Tariq*. The Officer did not claim that the only evidence she considered was that which had already been before the RPD. While it would have been preferable the Officer make specific mention of the second allegation made by the Applicants, it appears the Officer did at least acknowledge the evidence submitted on the risk from Hezbollah.

[39] I conclude that the presumption that the Officer considered all the evidence remains in this case and that the Officer did consider the evidence of the Applicants' fear of returning to Lebanon because of the presence of Hezbollah. No reviewable error was made by the Officer on this point.

[40] The Applicants also submit the Officer misapplied the legal test from a PRRA analysis into this H&C application. The Applicants argue there is a clear difference between how an applicant's claims of 'risk' in a PRRA should be treated, as opposed to 'risk' alleged in an H&C application.

The Applicants submit a PRRA requires a decision maker to assess whether an applicant would be personally subjected to torture or to a risk to life or cruel and unusual punishment. On the other hand, the Applicants submit an H&C application requires whether the applicant would face "unusual, undeserved or disproportionate hardship".

[41] The jurisprudence sets out that the risk in an H&C application is that of hardship which is different from the risk to be considered in a PRRA application. As Justice Montigny stated in *Ramirez*, "[i]t is beyond dispute that the concept of 'hardship' in an H&C application and the 'risk' contemplated in a PRRA are not equivalent and must be assessed according to a different standard."

[42] In *Dharamraj v Canada (Minister of Citizenship and Immigration)*, 2006 FC 674, 294 FTR 156, Justice O'Keefe stated:

> [24] There is no dispute that there is a higher burden on the applicants to establish risk for the purposes of a PRRA than there is for H & C purposes. Consequently, there may be circumstances where risk would be relevant for an H & C application but not for a PRRA application.
>
> [25] In the present case, the officer merely adopted the assessment of risk made by the IRB and the PRRA officer without further analysis for the purposes of the H & C application. In my opinion, the officer made an unreasonable decision because she did not consider the risk factors in the context of the H & C application.

[43] This appears to be the same situation as the case at bar. In this case, the Officer appears to have confused the duty given to her in this case which is to assess the Applicants' allegation of risk

under the context of an H&C application, not a PRRA. The Officer's error is clear from the following passage from her decision:

> This set of documents does not confirm that the applicants will be exposed to personal risks, but it is consistent with the documentary sources I consulted. These sources indicate that although the security situation in Lebanon remains a cause for concern, the government and the armed forces continue to fulfill their riles. In particular, the attacks and assassinations more specifically targeted anti-Syrian figures or persons having a political profile. The onus was on the applicants to demonstrate a connection between the latent crisis situation in Lebanon and their personal risk. They failed to do so. With regard to the first ground, I am therefore of the opinion that they would not face unusual and undeserved or disproportionate hardship in the event that they return to Lebanon to apply for permanent residence. [Emphasis added].

[44] It is clear the Officer required the Applicants to demonstrate personal risk and found that the Applicants were unable to do so. However, this was the wrong legal test for an H&C application. The Officer does not express any appreciation that the test for hardship in an H&C context is different from the test for personalized risk in a PRRA assessment.

[45] The Officer's statement that the Applicants would not face unusual and undeserved or disproportionate hardship follows the Officer's analysis with respect to personalized risk. The analysis is unreasonable as the wrong test was employed and it is not saved by reverting to a recitation of the proper H&C test in conclusion.

[46] I conclude the Officer applied the incorrect legal test for assessing risk in an H&C application. This is a reviewable error.

Establishment in Canada

[47] The Applicants submit that the Officer identifies numerous positive factors about the Applicants' establishment in Canada but then concludes, without reasons, that the hardship they would experience if they return to Lebanon would not constitute unusual, undeserved or disproportionate hardship were they to return to Lebanon to apply for permanent residence.

[48] The Applicants rely on Justice Mactavish's analysis in *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 [*Adu*], where she held:

> [14] In my view, these 'reasons' are not really reasons at all, essentially consisting of a review of the facts and the statement of a conclusion, without any analysis to back it up. That is, the officer simply reviewed the positive factors militating in favour of granting the application, concluding that, in her view, theses factors were not sufficient to justify the granting of an exemption, without any explanation as to why that is. This is not sufficient, as it leaves the applicants in the unenviable position of not knowing why their application was rejected.
>
> …
>
> [20] In contrast, in this case, the officer reviewed the evidence of establishment in Canada offered by the applicants in support of their applications, and then simply stated her conclusion that this was not enough. We know from the officer's reasons that she did not think that the applicants would suffer unusual, undeserved or disproportionate harm if they were required to apply for permanent residence from abroad. What we do not know from her reasons is why she came to that conclusion.
>
> [21] As a consequence, it is impossible to subject the officer's reasoning to a 'somewhat probing' analysis.

[49] In this case, the Officer found that the Applicants were established in Canada. This is evident from the reasons where the Officer stated that the Applicants "have contributed substantially to the Muslim community and to the community in London, Ontario as a whole", that "the applicants have close ties with numerous people in London", and that "their efforts convey a willingness to integrate that is directed primarily towards their own community in this city".

[50] The Respondent submits that the Officer's decision regarding the Applicants' establishment in Canada was reasonable. The Respondent argues the Applicants have failed to show how their evidence of establishment in the community creates hardship on return to Lebanon that rises to the level of unusual, undeserved, or disproportionate.

[51] The Respondent points out that the Officer's reasons refer to the *Uddin* case as having informed her analysis, in particular the included quote from *Irmie v Canada (Minister of Citizenship and Immigration)* (2000), 10 Imm LR (3d) 206, [2000] FCJ no 1906 (FCTD), which stated:

> I return to my observation that the evidence suggests that the applicants would be a welcome addition to the Canadian community. Unfortunately, that is not the test. To make it the test is to make the H & C process an ex post facto screening device which supplants the screening process contained in the *Immigration Act* and *Regulations*. This 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 would be allowed to stay. The H & C process is not designed to eliminate hardship; it is designed to provide relief from unusual, undeserved or disproportionate hardship. There is no doubt that the refusal of an applicants' H & C application will cause hardship but, given the circumstances of the applicants' presence in Canada and the state of the record, it is not unusual, undeserved or disproportionate hardship.
> . . .

[52] In *Raudales v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 385, 121 ACWS (3d) 932 at paragraph 19, Justice Dawson, now of the Federal Court of Appeal, held that since establishment is a relevant factor to consider when assessing an application on H&C grounds, in the absence of a proper assessment of establishment in Canada, a proper determination cannot be made as to whether an applicant would suffer hardship if required to apply for permanent residence abroad.

[53] The Applicants, as a family, were well established in Canada. This was evident where the Officer stated that the Applicants "have contributed substantially to the Muslim community and to the community in London, Ontario as a whole", that "the applicants have close ties with numerous people in London", and that "their efforts convey a willingness to integrate that is directed primarily towards their own community in this city".

[54] The situation in the case at bar is strikingly similar to the case before Justice Mactavish in *Adu*. The only significant difference is the Officer's reliance on *Uddin* to the effect that the H&C process is not designed to eliminate hardship, but rather is designed to provide relief from unusual, undeserved or disproportionate hardship. However, *Uddin* does not stand for the proposition that positive evidence of establishment is not a significant factor to be considered and weighed in analysis.

[55] The Officer was correct in relying on *Uddin* as the appropriate legal framework in which to ground her analysis. The problem is that the Officer listed the Applicants' positive establishment

evidence, failed to conduct any analysis, and simply concluded that the hardship the Applicants would face would not be unusual, undeserved or disproportionate.

[56] I agree with the Applicants that the Officer simply provided her conclusion without providing reasons as to why she made the conclusion she did. This is also a reviewable error.

Best Interests of the Children

[57] The Applicants submit that the Officer only dealt with two concerns regarding the best interests of the children:

1. the children would be losing their close relationship with their extended family in Canada, and
2. the children's education would suffer due to their alleged difficulty with the Arabic language.

[58] The Applicant submits that the Officer erred in not considering the best interests of a disabled nephew who had formed a close relationship with the Applicants. The Applicants further submit that the Officer again erred by applying the wrong approach to the best interests of the child analysis by finding the Applicants have not discharged the onus to prove there would be unusual, undeserved or disproportionate hardship in the event they returned to Lebanon to apply for permanent residence in Canada. They say the best interest of a child analysis does not engage a question of finding underserved hardship.

[59] The Respondent submits that the Officer noted the Applicants' children would suffer dislocation if they had to travel to Lebanon with their parents, but also found that they would likely have significant family support in Lebanon. The Respondent interprets the Officer's conclusion that the interest of the children did not establish that the family would face unusual, undeserved or disproportionate hardship if they have to live in Lebanon. This, the Respondent submits, was a correct application of the H&C test.

[60] This Court's decision in *Kolosovs v Canada (Minister of Citizenship and Immigration),* 2008 FC 165, 323 FTR 181, sets out some of the factors to be taken into account when assessing the children's best interests.

[61] Upon a review of the Officer's decision, it does appear that the Officer was alert, alive and sensitive to the interests of the children. The Officer took into account the factors put forward by the Applicants such as the children's age, their level of dependency on the Father and Mother, and their establishment in Canada.

[62] While the Applicants submit that the Officer did not take into account the best interests of the nephew who has special needs and is close to the Applicants, the evidence does not, in my view, establish a level of bonding or dependency that requires the Officer to include that relationship in the H&C consideration of the best interests of the child.

[63] The only issue I believe that would require a closer look is whether the Officer erred by incorporating the "unusual and undeserved hardship" threshold standards into the assessment of the

best interest of the child. As Justice Barnes stated in *Arulraj v Canada (Minister of Citizenship and Immigration)*, 2006 FC 529, 148 ACWS (3d) 305, at paragraph 14:

> … The similar terms found in the IP5 Guidelines of "unusual", "undeserved" or "disproportionate" are used in the context of considering an applicant's H & C interests in staying in Canada and not having to apply for landing from abroad. It is an error to incorporate such threshold standards into the exercise that aspect of the H & C discretion which requires that the interests of the children be weighed.

[64] The Officer's wording is unclear. The Officer said the onus was on the Applicants to meet the burden of proving there would be unusual, underserved or disproportionate hardship in the event of return to Lebanon. The Officer both concludes the paragraph on the best interests of the children and ends the overall analysis at this point. It is unclear whether the Officer makes the statement about hardship as her conclusion in the analysis of the best interests of the children or as her overall conclusion.

[65] Given that the Officer's decision is an English translation from French, I do not think it wise to decide this issue on the material and submissions before me. As I have already found that the Officer's decision should be set aside, I need not decide this question.

Conclusion

[66] The application for judicial review is granted. The matter is referred back for redetermination by a different decision maker.

[67] No question of general importance is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The matter is referred back for redetermination by a different decision maker.

2. No serious question of general importance is certified.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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