

Federal Court



Cour fédérale

**Date: 20120607**

**Docket: IMM-8666-11**

**Citation: 2012 FC 899**

**Vancouver, British Columbia, June 7, 2012**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**B072**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT**

**I have read the materials** filed by the parties and heard brief submissions from the counsel for each of the parties;

**The main** issue in this application is indistinguishable from the issue determined by my colleague Justice Simon Noël on May 15, 2012 in IMM-4761-11 reasons indexed as 2012 FC 569;

**I proposed,** and Counsel agreed, that the most expedient disposition of the matter before me would be for me to dismiss this application and certify the same question as Judge Noël did. I would do so and add that I agree with the disposition made by Judge Noël and his reasons not only on the basis of comity but also on the basis that I am in full agreement with them.

**Counsel for the Applicant** raised two further arguments before me. The first was that the Applicant was in effect, an invitee on Canadian soil, the ship Sun Sea having been escorted into harbour by the Canadian Navy. There is no evidence that the Canadian Navy intercepted the vessel on the high seas, nor is there any evidence that the ship intended to go elsewhere through Canada. The ship intended to land in Canada but was intercepted in Canadian waters it was not an “invitee”

**The second argument** made by the Counsel for the Applicant was that there had to be a finding of criminality before the Applicant could be found to be inadmissible. A plain reading of section 37 (1) (b) of the *Immigration and Refugee Protection Act*. SC 2001, c.27 (IRPA), makes it abundantly clear that no finding of criminality such as that required by subsection 36(1) or (2) of IRPA, is necessary before making a determination under subsection 37(1)(b).

Accordingly I will dismiss this application and certify a question.

**THIS COURT ORDERS AND ADJUDGES THAT:**

1. The application is dismissed
2. The following question is certified

*“For the purposes of para 37 (1)(b) of the IRPA is it appropriate to define the term “people smuggling” by relying on section 117 of the same statute rather than a definition contained in an international instrument to which Canada is signatory?”*

3. No order as to costs

“Roger T. Hughes”

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Judge