Federal Court  Cour fédérale

Date: 20140818

Docket: IMM-1138-13

Citation: 2014 FC 803

Ottawa, Ontario, August 18, 2014

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

DANIEL NEWMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], the applicant requested an exemption on humanitarian and compassionate (H&C) grounds from his application for permanent residence from outside of Canada. His request was refused. He now applies for judicial review under subsection 72(1) of the Act.

[2] The applicant asks the Court to set aside the refusal and return the matter to another officer for redetermination.

I. Background

[3] The applicant is a citizen of the Czech Republic who has schizophrenia. He claims that his family institutionalized him for his illness in the past and he left the country out of fear. He made unsuccessful refugee claims in Holland, Germany, Norway and Poland before coming to Canada on January 20, 2008.

[4] Here, he made another refugee claim and that too was rejected on July 21, 2010. His request for judicial review failed. He applied for consideration on H&C grounds on October 19, 2010.

II. Decision

[5] By a letter dated December 3, 2012, a senior immigration officer refused the application.

[6] After summarizing the applicant's claims and the Refugee Protection Division's decision, the officer said that there was no evidence that the applicant was ever forcibly institutionalized in the Czech Republic. As well, the officer dismissed counsel's submissions with respect to the applicant's personal circumstances as speculative and unsubstantiated. The officer then observed that subsection 25(1.3) of the Act forbids the consideration of the same factors used in refugee protection and therefore gave the applicant's submissions regarding risk no weight.

[7] The officer then went on to summarize counsel's submissions regarding the applicant's degree of establishment. Although acknowledging that the applicant has made many friends in Canada and has submitted many letters in support of that, the officer was not satisfied that these relationships would be severed if he left Canada since there are other ways to maintain contact with people. Further, the officer was not satisfied that the applicant would be unable to make similar friendships if he returned to the Czech Republic.

[8] Since the applicant had spent four years in Canada, the officer noted that some establishment could be expected but in this case, the applicant had not established himself in any meaningful way. The officer commended the applicant for integrating himself into his community, but did not give any special weight to it because the applicant could not have had a reasonable expectation that he would be allowed to stay in Canada permanently. Although it might be hard to readapt to life in the Czech Republic, the officer found that it would not be an unusual and undeserved or disproportionate hardship. Ultimately, the officer decided that the applicant's personal circumstances were nothing other than what was inherent in being asked to leave after having been here for four years and they did not warrant an exemption.

III. Subsequent History

[9] The applicant also made a pre-removal risk assessment (PRRA) application, which was rejected by the same officer on the same day. That decision is not under review.

IV. Issues

[10] The applicant submits two issues for consideration:

1. Did the officer fail to properly assess the applicant's establishment?
2. Did the officer fetter her discretion by failing to assess the hardship of the applicant's return to the Czech Republic?

[11] The respondent replies that there is only one issue: has the applicant established a reviewable error made by the immigration officer?

[12] For the sake of analytical convenience, I prefer the applicant's separation of the issues and will address them under the following headings:

A. What is the standard of review?

B. Did the officer assess establishment unreasonably?

C. Did the officer misinterpret subsection 25(1.3) of the Act?

V. Applicant's Written Submissions

[13] The applicant submits that reasonableness is the standard of review for the second issue, but correctness is the standard for the third.

[14] The applicant quotes from a number of the letters presented to the officer, including one written by the applicant himself. They describe his activities repairing bikes, learning English,

volunteering, attending church and more. The applicant submits that "the above sounds like the activities of a person who has fully integrated into Canadian society." For that reason, he says that the officer's conclusion that he has not established himself in any meaningful way is contradicted by the evidence and that is enough to warrant setting aside the decision.

[15] In particular, the applicant points out two things. First, he criticizes the officer's conclusion that the applicant could maintain contact with his friends through electronic means. The applicant says this ignores the fact that almost all of the letters showed that the applicant maintained his relationships by physical contact and he points out that the affidavit from Constance Nakatsu said that the applicant would not call her on the telephone because he believed it might be tapped. The applicant infers from this that the officer never read any of the letters.

[16] Second, the applicant argues that the officer unreasonably decided that no amount of establishment would suffice since the applicant had no reasonable expectation of staying in Canada permanently. The applicant says this reasoning is perverse and quotes from a few decisions which support his argument (see *Sebbe v Canada (Minister of Citizenship and Immigration)*, 2012 FC 813 at paragraphs 23 and 24, 414 FTR 268 [*Sebbe*]).

[17] The applicant also argues that the officer's discretion was fettered by refusing to assess the hardship faced by the applicant if he returned to the Czech Republic. In particular, the applicant fears that he will be institutionalized and the applicant again reiterates his submissions that mental health treatment in the Czech Republic is degrading. The applicant claims that the

officer had acknowledged that the applicant had been institutionalized (though not by force) and yet failed to address the hardship he would face if institutionalized upon his return. The applicant says the officer also failed to consider a court document stating that a competency hearing would resume upon the applicant's return to the country.

VI. Respondent's Written Submissions

[18] The respondent emphasizes that H&C grounds applications allow flexibility to deal with cases not otherwise anticipated by the legislation, but are not an alternative immigration stream. The test is whether it would cause unusual and undeserved or disproportionate hardship to make the applicant apply from out of the country.

[19] Here, the respondent notes that the officer considered the risk issue when reviewing the Refugee Protection Division's decision and then concluded that the applicant's concerns were speculative. The respondent submits that the applicant therefore failed the test and did not provide enough evidence to show hardship.

[20] Further, the respondent asserts that establishment is but one of many factors and the ultimate question is hardship. Here, the officer acknowledged that the applicant made friends and established some community, but it simply was not enough to show unusual and undeserved or disproportionate hardship. The weight assigned to this factor should therefore be granted deference.

VII. Applicant's Written Reply

[21] The applicant replied that the officer barely considered risk and only did so through the lens of state protection. This was inappropriate since state protection is irrelevant. Further, the officer did not deal at all with the other hardship factors, especially regarding the inhumanity of mental health treatment in the Czech Republic. Besides, the officer explicitly ignored those issues by saying that consideration was precluded by subsection 25(1.3), which the applicant contends was an error.

[22] As well, the applicant says the case law shows that where establishment is inadequately assessed, the analysis of hardship is necessarily flawed. He says that the officer should not be accorded any deference on the weight given to this factor. Rather, recent case law shows that the Court can intervene if an officer failed to appreciate the level of establishment and the applicant claims that this is not a matter of weight but of proper assessment of the evidence.

VIII. Respondent's Further Written Memorandum

[23] The respondent says that the standard of review is reasonableness for all issues before the Court.

[24] The respondent said the documentary evidence about the treatment of patients with mental illnesses did not establish the applicant would be treated poorly. The officer also did not accept that the applicant had ever lost personal freedom while in the Czech Republic. He has been living on his own for a decade and a half, and has adapted to five new countries over that

time period. The officer reasonably concluded that the hardship of having to return to the Czech Republic would not meet the test required by subsection 25(1) of the Act.

[25] Finally, the respondent reiterates its submissions that the officer understood that the applicant was mildly established, but that establishment is a wide spectrum and the officer deserves deference.

IX. Analysis and Decision

A. *Issue 1 - What is the standard of review?*

[26] Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57, [2008] 1 SCR 190 [*Dunsmuir*]).

[27] For questions of fact or mixed fact and law decided on an H&C grounds application, the standard is reasonableness (see *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at paragraph 18, [2010] 1 FCR 360; *Dunsmuir* at paragraph 53; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 57 to 62, 174 DLR (4th) 193). This means that I should not intervene if the decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (see *Dunsmuir* at paragraph 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59, [2009] 1 SCR 339 [*Khosa*]). As the Supreme Court held in *Khosa* at paragraphs 59 and 61, a court reviewing for

reasonableness cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

[28] For questions of statutory interpretation, the Federal Court of Appeal has said that the application of standard of review only matters if the provision is ambiguous (see *Qin v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 263 at paragraphs 32 to 34, [2013] FCJ No 1264). Here, it could be, so I will assess the standard of review.

[29] In *Toussaint v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 146 at paragraph 29, [2013] 1 FCR 3 [*Toussaint*], leave to appeal to SCC refused, 34336 (November 3, 2011), the Federal Court of Appeal said that the Minister's delegates in these applications are owed no deference on questions of statutory interpretation. Other jurisprudence from this Court confirms that (see *Caliskan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1190 at paragraph 3, [2012] FCJ No 1291; *Guxholli v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1267 at paragraph 17, [2013] FCJ No 1369).

[30] However, in *Diabate v Canada (Minister of Citizenship and Immigration)*, 2013 FC 129 at paragraphs 9 to 17, [2013] FCJ No 124 [*Diabate*], Madam Justice Mary Gleason observed that this sits uncomfortably with Supreme Court jurisprudence that says that reasonableness should be presumed where a decision-maker is interpreting its enabling legislation (*Dunsmuir* at paragraph 54; *Khosa* at paragraph 44). I share Justice Gleason's unease. The analysis in *Toussaint* is summary and does not explain why the presumption of reasonableness was rebutted. Further, in *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013

SCC 36 at paragraph 50, [2013] 2 SCR 559, the Supreme Court of Canada said that reasonableness was the standard when the Minister interpreted a similar discretionary exemption power under subsection 34(2) of the Act.

[31] However, although *Dunsmuir* allows courts to revisit the standard of review when previous analysis was unsatisfactory, it does not override the hierarchy of courts. *Toussaint* remains a binding decision of the Court of Appeal that is directly on point. It was decided after *Dunsmuir* and assumedly considered the presumption. I am also not satisfied that it has been overtaken by later cases. *Agraira* only applied the law from *Dunsmuir*; it did not change it. Arguably, the Supreme Court did strengthen the presumption of reasonableness by questioning the true questions of jurisdiction category in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paragraphs 37 to 42, [2011] 3 SCR 654. However, *Toussaint* did not rely on characterizing the question as one of true jurisdiction, but rather generalized its conclusion to all questions of statutory interpretation. As such, I am bound by it and will apply the correctness standard.

B. *Issue 2 - Did the officer err in assessing establishment?*

[32] At paragraph 15 of his reply memorandum, the applicant argued that the Court may intervene "where the officer failed to appreciate the level of establishment before him". I disagree. In order to do that, I would need to independently evaluate the level of establishment, compare my answer to that given by the officer and set aside the decision if they do not match up. That is correctness review and I would be wrong to do so.

[33] Indeed, the cases relied on by the applicant do not say that I should. The language of "appreciation" is lifted from *El Thaher v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1439 at paragraph 52, [2012] FCJ No 1658, [*El Thaher*], but at paragraph 56, Mr. Justice James Russell clarifies that what was missing in that case was "an analysis of the degree of establishment in this case" [emphasis added]. The Court did not set aside the decision only because it felt that the officer was wrong about the degree of establishment; it set it aside because the officer did not explain his or her conclusions.

[34] No such error was made in this case. Rather, the officer expressly acknowledged that the applicant had made many friends, but discounted that for two reasons. First, there was no evidence that he could not maintain contact through electronic means. Second, there was no evidence that he would be unable to make new friends if he returned to the Czech Republic. As his integration into the community was really the only thing supporting the applicant's claim of establishment, the officer concluded, "I am not satisfied that he has established himself in Canada in any meaningful way." That is an analysis and I understand why the officer came to this conclusion, so the objection from *El Thaher* does not apply.

[35] I also reject the applicant's assertion that the officer did not read the letters submitted by the applicant. The officer expressly acknowledged that many letters of support had been submitted from "friends, support worker, volunteer agencies, churches, company workers, co-workers amongst many others". Decision-makers are presumed to have weighed and considered all the evidence before them (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at paragraph 1, ACF No 598 (FCA)). Although it may be possible to infer

from a failure to specifically mention contrary evidence that it was overlooked, a Court's willingness to do so depends on its importance (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paragraphs 15 to 17, 157 FTR 35).

[36] Here, the evidence to the contrary was not so compelling that it required specific comment. The applicant's argument is all the letters showed that the applicant maintained his relationships through physical contact. That is hardly unusual. Most people do maintain personal contact with their friends when they are geographically close and one would expect such evidence presented to prove establishment. It does not mean that it is the only way they can keep in touch.

[37] That said, the letter from Ms. Nakatsu does suggest that the applicant may distrust telephones and there was also a psychiatric report stating that the applicant believed the Czech secret police had planted a monitoring device in his radio walkman. However, neither says anything about the means of communication identified by the officer in the decision (mail, e-mail, instant messaging and Facebook) and I see no reason to infer that the officer ignored any evidence.

[38] Also, though I agree with the applicant that someone with his illness could be unusually established without having anything other than community support, I see no reason to infer that the officer ignored this possibility. The officer was cognizant of the applicant's illness in other ways and the reasons he gave for minimizing the applicant's level of establishment do not suggest any inappropriate comparison to a person of ordinary health.

[39] As such, the officer's decision that the applicant's establishment was minimal was reasonable.

[40] The applicant also submits that the officer further discounted the applicant's establishment because it was within his control. In particular, he relies on *Sebbe* where Mr. Justice Russel Zinn said the following at paragraph 23:

> The Officer has taken a perverse view of the evidence of establishment forwarded by the applicants. Is every investment, purchase, business established, residence purchased, etc. to be discounted on the basis that it was done knowing that it might have to be given up or left behind? Is the Officer suggesting that it is the preference of Canadians that failed claimants do nothing to succeed and support themselves while in Canada? Is he suggesting that any steps taken to succeed will be worthless, because they knew that they were subject to removal? In my view, the answers to these questions show that it is entirely irrelevant whether the persons knew he or she was subject to removal when they took steps to establish themselves and their families in Canada.

[41] I agree that a person's actual establishment cannot be viewed with less significance because he or she was only able to do so as a result of the refugee process. Arguably, that is inconsistent with *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 FC 358 [*Legault*]. At paragraph 19 of that decision, the Federal Court of Appeal spoke about the predecessor to subsection 25(1) in the old *Immigration Act*, RSC 1985, c I-2, and said that "the Minister is at liberty to take into consideration the fact that the humanitarian and compassionate grounds that a person claims are the result of his own actions." However, the examples given largely dealt with policy reasons and subsection 25(1) was amended in 2010 to delete the reference to "public policy" (*Balanced Refugee Reform Act*, SC 2010, c 8, s 4).

[42] In any event, I do not think there is any real inconsistency. Ultimately, it is still up to the officer to give proper weight to each factor in the overall analysis (see *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraph 37, [2002] 1 SCR 3) and that includes establishment (see *Irimie v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1906 at paragraph 20, 10 Imm LR (3d) 206 [*Irimie*]; *Diabate* at paragraph 29). That weighing can be rationally affected by the choices the applicant has made, particularly when it comes to assessing whether hardship is undeserved. As Mr. Justice J.D. Denis Pelletier said in *Irimie* at paragraph 17, whether a hardship is undeserved "may well vary with the circumstances but in general, one would think that if one assumes a certain risk, the occurrence of the eventuality giving rise to the risk does not create undeserved hardship." Similarly, if a person had no choice in coming to Canada, then that could suggest that the hardship in disturbing his or her establishment is more undeserved than it might otherwise be. *Sebbe* ultimately does not change that.

[43] Here, the officer said the following: "I am not satisfied that the applicant had a reasonable expectation that he would be allowed to remain in Canada permanently and as such, I do not grant significant weight to the applicant's length of time or establishment in Canada." All this means is that the establishment factor did not attract any more weight because of the circumstances surrounding the applicant's stay in Canada than it would otherwise. In my view, this was reasonable.

C. *Issue 3 - Did the officer misinterpret subsection 25(1.3)?*

[44] In *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at paragraph 21, 154 DLR (4th) 193, the Supreme Court of Canada adopted the following approach to the interpretation of legislation:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[45] Subsection 25(1.3) provides as follows:

25. …	25. …
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

[46] The statement in subsection 25(1.3) that the Minister "may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1)" seems clear, but conflicts somewhat with the command that the Minister "must consider elements related to the hardships that affect the foreign national." Claims that a person would be returned to persecution or any of the risks in subsection 97(1) could almost always be relabeled as hardship and thus it is unclear

when subsection 25(1.3) would actually operate to preclude consideration of factors relevant to refugee protection.

[47] This problem was considered in *Caliskan* and there, Mr. Justice Roger Hughes reviewed the circumstances surrounding the adoption of this provision. He observed at paragraph 20 that an application on H&C grounds was essentially "a plea to the executive branch of government for special consideration not otherwise provided in the legislation." Interpreting subsection 25(1.3) in light of that, he concluded at paragraph 22 that the ultimate focus was on hardship and that the use of refugee protection concepts like personalized or generalized risk must be abandoned when considering H&C grounds applications.

[48] I largely agree. Subsection 25(1) exists to grant relief for situations where the ordinary operation of the Act might cause hardship and it should not be used for situations that the Act itself contemplates, like refugee protection. As a corollary, however, if a refugee claim has failed or would fail for reasons related to the limitations of the refugee protection provisions, such as where discrimination does not amount to persecution, then the hardship caused by those conditions must still be considered. Practically, this means that an officer cannot refuse to consider evidence that could speak to hardship only because it could also be relevant to refugee protection. Rather, all the evidence relevant to hardship should be considered and subsection 25(1.3) mainly operates to emphasize that hardship, not the factors from section 96 and subsection 97(1) is the focus.

[49] That supports the applicant's argument that subsection 25(1.3) only precludes analysis of the risk, but not any hardships arising from the risk. However, it is not a complete answer. In particular, I cannot see how an officer could assess the hardship arising from a risk without determining that there is some risk to begin with. After all, if the applicant will not be institutionalized, then no hardship can arise from it.

[50] In that regard, the provision itself restricts consideration only to the "elements related to the hardships that affect the foreign national." This means that not every hardship that a person in the country of origin could conceivably suffer needs to be dealt with. Rather, the applicant must show either that it will probably affect him or, at the very least, that living in conditions where it could happen to him is itself an unusual and undeserved or disproportionate hardship. Indeed, in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2013 FC 802 at paragraph 33, [2013] FCJ No 848, [*Kanthasamy*], Madam Justice Catherine Kane said the same, observing that "the considerations, including adverse country conditions and discrimination, should have a direct and negative impact on the particular applicant."

[51] In this case, the officer decided that the applicant had never been forcibly institutionalized in the Czech Republic and that counsel's comments about the applicant's personal circumstances were speculative and unfounded. Only after that did the officer quote subsection 25(1.3) of the Act and say the following:

> Given that the risk factors raised by the applicant in this application pertain to a fear of persecution, torture, risk to life, or cruel and unusual punishment, I find that the assessment of these factors is beyond the scope of a humanitarian and compassionate application as defined by the IRPA and consequently, I have given them no weight in this assessment.

[52] Strictly speaking, if a person would be institutionalized in the Czech Republic for an illness for which he would not be here, that is a relevant thing to consider even if the institutionalization itself is not persecutory.

[53] However, the applicant bore the onus to show that this purported hardship would affect him (see *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paragraph 8, [2004] 2 FCR 635). In this case, the officer expressly found that the applicant had never been forcibly institutionalized and that the applicant's claims that he might be were speculative and unfounded. Although a competency hearing was adjourned after he left the country, it was reasonable not to attach much weight to that since the applicant has been living on his own for more than a decade and could likely defend himself. The applicant's submissions regarding the country conditions are really just submissions that, generally, the mentally ill are persecuted in institutions in the Czech Republic and the officer did not err by rejecting them. Having already found that the applicant would not be institutionalized, there was no reason to consider whether it would have been a hardship if he was.

[54] The applicant also submitted in his reply that the officer inappropriately considered state protection. However, the officer's only reference to state protection was when summarizing the Refugee Protection Division's decision. It did not factor into the analysis.

[55] All that said, I do think the officer's refusal to consider evidence that could be related to persecution was problematic. The record includes a psychiatric report on the applicant that was prepared by Dr. Levy on January 30, 2008. The doctor observed the following: "His thought

content revealed concerns about the Czech police having planted devices inside his electronic equipment in the Czech Republic. However, he denied any paranoid ideation about his current environment or his current radio walkman." In his affidavit, the applicant says at paragraph 7 that "… psychiatrists in the Czech Republic are not like in Canada. They mistreat patients and force treatment on them, like ECT and mind-numbing medications. I saw this with my own eyes." Similar statements are found in the record, most evidently in the request he made for a legal aid lawyer on April 25, 2011.

[56] Although that fear may not be objectively well-founded, there could be situations where a subjective fear in a person with a mental illness like the applicant's could have serious effects on his or her health. For instance, if the applicant has paranoid ideations about the Czech Republic's government but not Canada's, then his mental health could conceivably deteriorate if forced to return. Similarly, if he fears psychiatrists in the Czech Republic, he may not go to them to renew his medications. That would not trigger refugee protection but it is potentially a hardship that ought to be considered when assessing an H&C grounds application.

[57] Of course, the applicant has not provided any medical or psychiatric reports that predict the effect of returning to the Czech Republic on his mental health. Further, the report from Dr. Levy was dated shortly after the applicant's arrival in Canada, so its continuing validity is questionable. As well, the applicant did not advance this particular argument very strongly before the officer, instead dropping only hints about it when discussing background and then mentioning that "Canada is the first country where Mr. Newman feels welcome and safe." Still, there was evidence that it was problematic, however weak, and the officer dismissed it only

because it was also relevant to a refugee protection analysis. That error resulted from an incorrect interpretation of subsection 25(1.3) and I cannot guess what the officer might have decided had it not been made. For that reason, I would allow the application for judicial review.

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

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is referred to a different officer for redetermination.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**

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) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, 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) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, 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.

…

(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

…

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

…

74. Judicial review is subject to the following provisions:

…

(d) an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.

…

(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

…

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

…

74. Les règles suivantes s'appliquent à la demande de contrôle judiciaire :

…

d) le jugement consécutif au contrôle judiciaire n'est susceptible d'appel en Cour d'appel fédérale que si le juge certifie que l'affaire soulève une question grave de portée générale et énonce celle-ci.

FEDERAL COURT

SOLICITORS OF RECORD

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