Federal Court  Cour fédérale

Date: 20190524

Docket: IMM-4245-18

Citation: 2019 FC 736

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 24, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

FATIH SOLMAZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Fatih Solmaz [Mr. Solmaz], the applicant, is challenging, by way of judicial review, a decision dated August 7, 2018, by the Immigration Appeal Division [IAD] in which the IAD confirmed that Mr. Solmaz is inadmissible on grounds of serious criminality under

paragraph 36(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and refused to stay a removal order issued against the applicant on February 12, 2013. For the following reasons, I am granting the application for judicial review.

II. Relevant Facts

[2] The relevant facts are simple and largely undisputed. The facts admitted into evidence before the IAD are complex, some are disputed by Mr. Solmaz and, generally, the evidence admitted is highly prejudicial to Mr. Solmaz. I will do my best to be fair in my assessment of the facts by the IAD since it is not my role to reassess the facts (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339, 2009 SCC 12, at para 61).

[3] Mr. Solmaz is a 37-year-old Turkish citizen. He has a daughter of Canadian citizenship with his ex-spouse. He is also the father of a newborn with his current wife. He became a permanent resident of Canada in March 2005. He has thus resided in Canada for the past thirteen (13) years. On December 18, 2008, a court found Mr. Solmaz guilty of possession of one gram of cocaine for the purpose of trafficking. This criminal offence is punishable by life imprisonment under paragraph 5(3)(*a*) of the *Controlled Drugs and Substances Act*, SC 1996, c 19. Mr. Solmaz served six-months in pre-trial custody and was subject to a 12-month probation order with a mandatory firearms prohibition order. More than four years after his conviction, on February 12, 2013, the Immigration Division issued a removal order to Mr. Solmaz under paragraph 45(d) of the IRPA, finding that he is inadmissible on the grounds of serious criminality under paragraph 36(1)(*a*) of the IRPA. Mr. Solmaz appealed this order to the IAD. I note here that the sole report prepared under subsection 44(1) and referred by the Minister under

subsection 44(2) makes reference only to paragraph 36(1)(*a*). Paragraph 37(1)(*a*) of the IRPA was not mentioned anywhere in this report, and there was no other report to that effect.

[4] Before the IAD, Mr. Solmaz did not dispute the legal validity of the removal order served pursuant to paragraph 36(1)(*a*). However, he asked the IAD to exercise its discretion under paragraph 67(1)(*c*) and subsection 68(1) of the IRPA to find that there are humanitarian and compassionate grounds that would warrant special relief. Four years and 7 months had elapsed since the removal order of February 12, 2013, before Mr. Solmaz was called for a first hearing before the IAD on September 13, 2017. Following several adjournments, the IAD dismissed the appeal on August 7, 2018, more than ten years after the commission of the offence for which he is inadmissible to Canada. On September 25, 2018, a pre-removal risk assessment (PRRA) officer stayed the removal order pursuant to section 232 of the *Immigration and Refugee Protection Regulations*, SOR 2002-227.

[5] On October 1, 2018, Mr. Solmaz married Salwa Haddadi, and at the time of the hearing before this Court, the couple was awaiting the birth of their child.

III. Decision under Judicial Review

[6] In its decision, the IAD considered the list of non-exhaustive factors set out in *Ribic v Canada (Minister of Employment and Immigration),* [1985] IABD No 4, as endorsed in *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 SCR 84 to determine whether to exercise its discretion. The factors in question are the following: 1) the seriousness of the offence or offences leading to the removal order; 2) the possibility of rehabilitation; 3) the

length of time the appellant has spent in Canada and the degree to which the appellant is established in Canada; 4) the impact that the appellant's removal from Canada would have on his family; 5) the support available to the appellant not only within the family but also within the community; and 6) the degree of hardship that the appellant would face in the country to which he would likely be removed. After considering each of these factors, the IAD concluded that there was no need to exercise its discretion in this case. Given that I consider the IAD's approach to the issue of rehabilitation to be unreasonable, it is my intention to limit my comments to this aspect of its analysis. Therefore, my analysis will also be limited to this issue.

A. *Possibility of Rehabilitation*

[7] With respect to the second criterion, the possibility of rehabilitation, the IAD concluded that the possibility of rehabilitation was low given the seriousness of the offence, the lack of remorse, the multiple interactions between the applicant and the police, and his association with or participation in a criminal organization.

[8] The IAD drew a negative inference that the applicant did not bear his share of the responsibility for the offence that led to his conviction. Indeed, he tried to blame his ex-girlfriend, saying it was possible that the drugs had belonged to her. According to the IAD, such an assertion made him less credible, after having expressed remorse.

[9] The IAD also considered the applicant's criminal record, which includes several criminal charges for which he was not convicted. These charges include, among others, a charge of conjugal violence against his ex-wife, episodes of violence involving a knife and a firearm, and a

fit of jealousy that led the applicant to threaten the family of his ex-wife and the family of his ex-wife's fiancé. When the applicant had the opportunity to explain those past events, he maintained that he did not remember some of them, and when he did remember the other events, his answers were vague. The IAD found a lack of credibility on the part of the applicant, arguing that some of those events would be hard to forget.

[10] As well, the IAD found, in various parts of its decision, that Mr. Solmaz was either a member of or had ties to a criminal organization as defined in paragraph 37(1)(*a*) of the IRPA. In one part of its decision, the IAD concluded that Mr. Solmaz was the head of this Turkish/Kurdish criminal organization in Montréal. The IAD determined that the organization to which Mr. Solmaz belonged had certain characteristics of a criminal organization, namely, an established structure, a leader, a territory, persons in key positions, and lucrative activities.

[11] In addition, the IAD found an inconsistency that affected the applicant's credibility and supported the department's contention that Mr. Solmaz was involved in a criminal organization. Indeed, the IAD concluded that Mr. Solmaz's lifestyle was inconsistent with his reported income, his salary being relatively low and his lifestyle relatively lavish. While he reported relatively low income between 2006 and 2015, where in some years he even had no income at all, in 2011, he bought a $360,000 home with a $230,000 mortgage. He also bought a luxury car and enjoyed three to four trips abroad each year. When confronted with this paradox, the applicant replied that he had asked for more hours of work from his employer. He added that he had won a large sum at the casino, but he did not file any corroborating documents to this effect. According to the IAD, the lack of evidence supporting his remarks undermined his credibility.

IV. Relevant Provisions

[12] Section 33, paragraphs 36(1)(*a*), 37(1)(*a*), 45(d) and 67(1)(*c*), and subsections 44(1), 44(2), and 68(1) of the IRPA are the relevant provisions and are set out in the Schedule attached to this decision.

V. Issue

[13] Although the parties frame the issue in different ways, I am of the view that there is only one issue to be dealt with by the Court: Was the IAD unreasonable in its handling of the appeal, first, by admitting into evidence charges for which Mr. Solmaz was not convicted or which were withdrawn; and, second, by admitting evidence of Mr. Solmaz's involvement in a criminal organization, in the absence of a report under subsection 44(1) or a referral under subsection 44(2) on the basis of paragraph 37(1)(*a*)?

VI. Analysis

A. *Standard of Review*

[14] The state of the law regarding the IAD's discretionary powers under the IRPA, in particular at paragraph 67(1)(*c*) and subsection 68(1) of the IRPA, is clear and unequivocal. When this Court reviews an IAD decision regarding the exercise of the IAD's discretion under the IRPA, reasonableness is the appropriate standard of review (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339, 2009 SCC 12, at paras 58 and 60; *Chieu v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 84, 2002 SCC 3, at para 66). Thus, as

established by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47 [*Dunsmuir*], where the standard of reasonableness is required, the Court on judicial review must show a high degree of deference. Under this standard of review, the Court can interfere only if there is a lack of transparency or intelligibility or if the decision does not fall within "the range of acceptable and rational solutions" (*Dunsmuir* at para 47).

B. *Is the Decision of the IAD Unreasonable in the Circumstances?*

[15] Mr. Solmaz argues that, in its analysis of rehabilitation, the IAD erroneously relied on several counts for which he was acquitted or which were withdrawn. Indeed, Mr. Solmaz contends that the case law prohibits the IAD from referring to offences for which he has not been convicted or which were withdrawn. He argues that simply invoking those past facts is a reviewable error.

[16] The respondent, on the other hand, argues that rehabilitation means the risk of further criminal activity is assessed to be improbable (*Thamber v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 177, at para 16). He also claims that in assessing the risk of further criminal activity, the IAD legitimately took into consideration other charges withdrawn or allegations for which Mr. Solmaz was not convicted. The respondent's position is that the consideration of these charges, which have not resulted in convictions, is broad.

[17] The starting point for my analysis is section 33 of the IRPA, which reads as follows:

> **33** The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise

> provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

[18] In section 33, Parliament provides us with a rule for interpreting sections 34, 35, 36 and 37. The key words in this section are "unless otherwise provided". A cursory study of sections 34, 35, 36 and 37 reveals that the words "having been convicted" are not mentioned in sections 34, 35 and 37. For these three sections, the burden to be satisfied is that of reasonable grounds to believe that the facts have occurred, are occurring or may occur. In light of the reading of paragraph 36(1)(*a*), in order to raise serious criminality under paragraph 36(1)(*a*), there must have been a conviction. In Canada, a criminal conviction entails a burden of proof that differs from reasonable grounds to believe. Therefore, paragraph 36(1)(*a*) is the "unless otherwise provided" contemplated by section 33. In reaching this conclusion, I rely on the exception in section 33, as well as on the maxim of statutory interpretation *expressio unius est exclusio alterius*, which is frequently used for purposes of statutory interpretation. This maxim means to express one thing is to exclude another (see: *Law Society of British Columbia v Trinity Western University*, [2018] 2 SCR 293, 2018 SCC 32, at para 282; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654, 2011 SCC 61, at para 65). The "reasonable grounds" burden was expressly excluded from paragraph 36(1)(a), but included in sections 34, 35, and 37, as well as in paragraph 36(1)(*c*). For the interpretation of paragraph 36(1)(*c*), see paragraph 36(3)(*d*).

[19] Once paragraph 36(1)(a) applies, and when the requirements are met, can the Minister use other troubles with the law as evidence of alleged serious criminality? The case law of the Federal Court seems clear on this point. I note, for example, the following observations:

"[R]eliance on the withdrawn charge, in and of itself, is a reversible error" (*Hutchinson v Canada (Citizenship and Immigration)*, 2018 FC 441, at para 24); Justice de Montigny, in *Balan v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 691 at para 21, argues that charges that are withdrawn or for which there have been no convictions cannot be relied upon as "evidence of criminality or to impugn the Applicant's credibility or character"; and in *McAlpin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422 at para 7, Chief Justice Crampton supports the position that "interactions with the law that do not result in convictions cannot be relied upon to support a finding of criminal history".

[20] Even before the Immigration and Refugee Board of Canada, Immigration Appeal Division, a similar logic is applied to the consideration of the *Ribic* factors. In *Jones v Canada (Public Safety and Emergency Preparedness)*, 2009 CanLII 86857 (CA IRB) at para 14, the Member states:

> In the course of the hearing, reference was also made to other charges against the appellant that have been withdrawn. The appellant did not admit his culpability with respect to any of these charges and counsel for the Minister confirmed that as they had been withdrawn, no weight should be given to them. I agree and these charges were not a factor in my deliberations.

[21] The respondent argues that the Federal Court of Appeal takes a contrary position in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, [2007] 3 FCR 198, 2006 FCA 326 at para 50, where it states that:

> The jurisprudence of this Court indicates that evidence surrounding withdrawn or dismissed charges can be taken into consideration at an immigration hearing. However, such charges cannot be used, in and of themselves, as evidence of an individual's criminality . . . .

[22] The *Sittampalam* decision can be distinguished from the facts in this case in several respects. First, Mr. Sittampalam was the subject of a report pursuant to paragraph 27(1)(*a*) [as am. by SC 1992, c 49, s 16(F)] of *the Immigration Act*, RSC 1985, c I-2 (repealed) (the former Act) and another pursuant to paragraph 27(1)(*d*) of the former Act. Paragraph 27(1)(*d*) of the former Act is the equivalent of paragraph 36(1)(*a*) of the current IRPA dealing with serious criminality, whereas paragraph 27(1)(*a*) of the former Act dealt with organized crime, which is the equivalent of paragraph 37(1)(*a*) of the current IRPA. In *Sittampalam*, there were two reports, one for criminality and one for organized crime.

[23] In addition, let us not forget that evidence of a conviction was not necessary in the circumstances of *Sittampalam* with respect to the second report, paragraph 27(1)(*a*). Section 37 of the current IRPA does not include such a requirement. In *Sittampalam*, paragraph 50 is under the heading "Evidence of Organized Criminal Activity". Evidence of withdrawn or rejected charges was relevant for the purposes of analyzing participation in a gang or criminal organization. This is consistent with the wording of section 33 of the IRPA. Charges not proved beyond a reasonable doubt can be used to establish the necessary elements of sections 34, 35 and 37 and even paragraph 36(1)(*c*). I do not read *Sittampalam* as saying that facts underlying charges that have been withdrawn, or of which a person has not been convicted, can be used when considering a report based only on paragraph 36(1)(*a*) of the IRPA.

[24] There is another decision of the Federal Court of Appeal that deserves consideration in my analysis. In *Balathavarajan v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 340, the IAD had confirmed the applicant's deportation. The case was limited solely to the issue

of criminality under paragraph 27(1)(*d*) of the former Act. On appeal, the applicant challenged the IAD's use of the evidence regarding his involvement in gangs and aspects of his criminal record to examine his capacity for "rehabilitation". The Court of Appeal concluded that this evidence was validly considered by the IAD because it was not admitted for the "basis of a further finding of inadmissibility".

[25] I consider it very difficult to reconcile the observations of the Federal Court of Appeal in *Balathavarajan* with the case law of the Federal Court. It is impossible to distinguish *Balathavarajan* as I did with *Sittampalam.* The only distinction is that *Balathavarajan* was decided under the former Act, before section 33 of the IRPA was enacted. Section 33 appears to create an exception that imposes a different interpretation of paragraph 36(1)(*a*) in relation to the other sections, namely, 34, 35 and 37. Despite these observations, the result of my analysis remains the same, given the instruction in *Balathavarajan* that the IAD should not try to find other grounds of inadmissibility.

[26] In light of these judgments, I examined the IAD's use of the charges withdrawn or dismissed in the circumstances of this case, where there was only one section 44 report and referral, pursuant to paragraph 36(1)(*a*). I quote the following excerpts from the IAD decision:

> [22] It seems that the removal order offence is the only one for which the appellant was convicted. However, that conviction is not the appellant's only experience with the criminal justice system. The Minister submitted many pieces of evidence that support several criminal charges for which he was not convicted. The appellant has had multiple interactions with the police through the years.
>
> [23] On June 6, 2007, the appellant was involved in an incident with his ex-wife. The Minister's evidence includes police reports of the incident that occurred at the appellant's residence and that

> specifically include his ex-wife's deposition indicating that the appellant physically assaulted her and that she feared him. It also states that a neighbour, who called 911, heard screams coming from the apartment and saw signs of violence on the complainant. Similarly, . . . the ex-wife's father . . . saw signs of violence on his daughter, . . . [and] the police officer also found several signs of physical violence . . . . The appellant was charged with assault, but the complaint was withdrawn on February 23, 2009. When confronted with the evidence, the appellant denied any violent behaviour on his part . . . . The appellant is not credible.
>
> [24] In September 2007, the appellant was involved in another incident with his ex-wife and her parents. The Minister's evidence includes the report of the police, who took the depositions of the three individuals involved and the three statements. A butcher's knife used by the appellant to attack the complainants was seized according to a report to a justice of the peace . . . . The appellant did not have reasonable explanations to provide, even though the statements of the three witnesses, taken contemporaneously with the incidents, are detailed and consistent on many aspects. The appellant is not credible.
>
> [25] On January 31, 2008, the police intervened again in an incident, this time involving the appellant and his father-in-law, who is also his uncle. The Minister's evidence includes the report of the police, who took the deposition. It describes that the incident was in a bar as part of an intra-familial conflict . . . . According to the appellant, the story was a complete fabrication. He did not have a reasonable explanation as to why the victim would have fabricated that entire story for the police . . . .
>
> [26] Another incident involving the appellant and his ex-wife as well as members of her family occurred in April 2010. The police report indicates the depositions of two people, the ex-wife and her father, and their statements are attached . . . . On February 22, 2011, the appellant was acquitted of three counts of uttering death threats to his ex-wife and her family members . . . . He did not provide his version of the facts or even any reasonable explanation whatsoever in response to the detailed victim statements. The appellant is not credible.

[27] Mr. Solmaz was not convicted of an offence with respect to the four incidents listed in paragraphs 23 to 26 of the IAD decision. It should be noted that three of the four incidents

mentioned above precede the conviction for possession of cocaine that motivated the notice of removal. In my opinion, the IAD used these four incidents to satisfy itself of Mr. Solmaz's serious criminality and to demonstrate that he is not credible and lacks a moral compass. Moreover, contrary to the teachings of the Federal Court of Appeal in *Balathavarajan*, in my opinion, the IAD tried to incorporate four other grounds of criminality to supplant the inadmissibility.

[28] In this case, in relying on the charges that were withdrawn and of which Mr. Solmaz was not convicted, the IAD conducted itself contrary to the IRPA and did not comply with current case law. The decision is therefore in my opinion unintelligible and unreasonable.

[29] I will now turn briefly to the question of the alleged involvement of Mr. Solmaz in a criminal organization. The Minister called two police officers from Montréal's police service to demonstrate that Mr. Solmaz was part of a criminal organization in the greater Montréal area. Specifically, the claim is that Mr. Solmaz was a member of a Turkish/Kurdish criminal organization that sold drugs and committed other crimes in support of the Kurdistan Workers' Party (PKK). This subject took up several days of hearings before the IAD and generated several hundred pages of testimony and documents. Mr. Solmaz denied any involvement in a criminal organization.

[30] I will not comment on the merits of the Minister's claims or the findings of the IAD. Also, since Mr. Solmaz is not saying that his right to procedural fairness has been breached, I will not comment on this topic. I will only address the question that arises from the Federal Court

of Appeal's comments in *Balathavarajan.* In light of my observations in paragraphs 10 and 11, above, and the wording of the IAD decision, it is evident to me that the IAD, in the absence of a report under paragraph 44(1) and a referral under subsection 44(2), pursuant to paragraph 37(1)(*a*), was creating new grounds for inadmissibility, that is, that the applicant is a member of a criminal organization.

[31] I am of the opinion that the decision is unreasonable simply because the IAD tried to create four new grounds of inadmissibility under paragraph 36(1)(a) and another ground of inadmissibility based on paragraph 37(1)(*a*) in the absence of a section 44 report or referral. On this last point, I repeat that the Minister in *Sittampalam* had prepared two reports citing different grounds for inadmissibility. Also, in *Thanaratnam v Canada (Minister of Citizenship and Immigration)* [2004] 3 FCR 301, the Minister had included two reasons, namely, criminality and being a member of a criminal organization, in one report. See also the decision *Demaria v Canada (Citizenship and Immigration)*, 2019 FC 489, where two section 44 reports were prepared to justify the removal order against the applicant in that case.

[32] Moreover, in the absence of a report and a referral under section 44 of the IRPA, pursuant to paragraph 37(1)(*a*), the IAD appears to have assumed that it had jurisdiction to address the issue of Mr. Solmaz's involvement in a criminal organization. This jurisdiction arose, apparently, because Mr. Solmaz had requested special relief based on humanitarian considerations: see subsections 63(2) and 68(1) of the IRPA. I consider this presumption on the part of the IAD to demonstrate a lack of transparency towards Mr. Solmaz. I am of the opinion that if a permanent resident is not facing inadmissibility on a specific ground, this ground should not be raised

against him or her for the first time before the IAD. If the IAD has jurisdiction to extend the scope of its inquiry to other grounds of inadmissibility each time an appellant raises humanitarian and compassionate considerations, appellants will always be diving into the unknown when they seek special relief.

[33] For all of these reasons, I conclude that the process was not transparent or intelligible and that the decision was not within the reasonable possibilities, as instructed by *Dunsmuir*.

VII. Conclusion

[34] The IAD's decision of August 7, 2018, is unreasonable. In the circumstances, I am of the opinion that the application for judicial review should be allowed, first, because of the divergence between the case law of the Federal Court and the Federal Court of Appeal, and second, based on the precedent established by the Federal Court of Appeal that prohibits the IAD from searching for new grounds of inadmissibility other than the grounds listed in the report and the referral under section 44 of the IRPA. In light of these observations, I find that the following questions should be certified for consideration by the Federal Court of Appeal:

1. Can the IAD consider the facts underlying criminal allegations for which the inadmissible individual was not convicted when exercising its discretion under paragraph 67(1)(*c*) and subsection 68(1) of the IRPA?

2. Can the IAD consider facts that demonstrate that the appellant is a member of a criminal organization in application of paragraph 37(1)(*a*) of the IRPA when exercising its discretion pursuant to paragraph 67(1)(*c*) and subsection 68(1) of the

IRPA, if the only report and referral under section 44 of the IRPA is based only on serious criminality pursuant to paragraph 36(1)(*a*) of the IRPA?

JUDGMENT in IMM-4245-18

THE COURT ORDERS AND ADJUDGES that Mr. Solmaz's application for judicial review is allowed and orders that his application for special relief be referred to another IAD member for redetermination. In addition, I certify the following questions for consideration by the Federal Court of Appeal:

1. Can the IAD consider the facts underlying criminal allegations for which the inadmissible individual was not convicted when exercising its discretion under paragraph 67(1)(*c*) and subsection 68(1) of the IRPA?

2. Can the IAD consider facts that demonstrate that the appellant is a member of a criminal organization in application of paragraph 37(1)(*a*) of the IRPA when exercising its discretion pursuant to paragraph 67(1)(*c*) and subsection 68(1) of the IRPA, if the only report and referral under section 44 of the IRPA is based only on serious criminality pursuant to paragraph 36(1)(*a*) of the IRPA?

"B. Richard Bell"
Judge

APPENDIX

Immigration and Refugee Protection Act, S.C. 2001, c. 27	***Loi sur l'immigration et la protection des réfugiés***, L.C. 2001, ch. 27
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	**33** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
Serious criminality	**Grande criminalité**
36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36 (1)** Emportent interdiction de territoire pour grande criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	**a)** être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
Organized criminality	**Activités de criminalité organisée**
37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	**37 (1)** Emportent interdiction de territoire pour criminalité organisée les faits suivants :
(a) being a member of an	**a)** être membre d'une

organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or

organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;

Preparation of report

44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

Rapport d'interdiction de territoire

44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

Referral or removal order

44 (2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they

Suivi

44 (2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les

have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.

circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

Decision

45 The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the following decisions:

Décision

45 Après avoir procédé à une enquête, la Section de l'immigration rend telle des décisions suivantes :

[...]

[...]

(d) make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.

d) prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire.

Appeal allowed

67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

Fondement de l'appel

67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

[...]

[...]

(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

Removal order stayed

68(1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Sursis

68(1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4245-18
STYLE OF CAUSE:	FATIH SOLMAZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	FEBRUARY 20, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	BELL J.
DATED:	MAY 24, 2019

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