Date: 20070208

Docket: IMM-3900-06

Citation: 2007 FC 133

Ottawa, Ontario, the 8th day of February 2007

Present: The Honourable Mr. Justice Shore

BETWEEN:

Augosto Pedro PRIETO VELASCO
Carla Mercedes GUAZZOTTI DEL RISCO
Giancarlo GUERRA GUAZZOTTI
Mauricio Alberto GUERRA GUAZZOTTI

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] In this specific case, following the applicants' account of the facts, which was accepted as credible by the Immigration and Refugee Protection Board (Board) without any doubt being expressed as to credibility:

> [27] In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a **proper analysis of the situation in the country and the particular reasons** why the protection claimant submits that

he is "unable or, because of that risk, unwilling to avail [himself] of the protection" of his country of nationality or habitual residence (paragraphs 96(*a*) and (*b*) and subparagraph 97(1)(*b*)(i) of the Act). The Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act. In this regard, the legislation and procedures which the applicant may use to obtain state protection may reflect the will of the state. However, they do not suffice in themselves to establish the reality of protection unless they are given effect in practice: see *Molnar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 1081, [2003] 2 F.C. 339 (F.C.T.D.); *Mohacsi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 429, [2003] 4 F.C. 771 (F.C.T.D.).

. . .

[31] Whether the issue be the best interest of the democratic state in question and of civil society in general, or the individual interest of the victim or perpetrator of an alleged criminal offence, the payment of a monetary or other benefit of any kind to a police or law officer is illegal. Of course, if corruption is widespread it may ultimately lead to undermining the trust individuals may have in government institutions, including the judicial system. As the Supreme Court has noted, "democracy in any real sense of the word cannot exist without the rule of law" (*Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217, at paragraph 67). Due process of law and equality before the law are the vital strength of any democracy and create a legitimate expectation in individuals that the state will do what is necessary to go after criminals and bring them to justice, and if necessary to stamp out corruption. The independence and impartiality of the judiciary and its components are not negotiable. These are fundamental values in any country which claims to be a true democracy. Therefore, the degree to which a state tolerates corruption in the political or judicial apparatus correspondingly diminishes its degree of democracy. That being said, I do not have to decide here whether the documentary evidence established, as the applicant vigorously claimed, such a degree of corruption that it can be said it was not unreasonable in the circumstances for the applicant not to approach the police of his country before seeking international protection. **Due to its special expertise and its knowledge of the general conditions prevailing in a given country, the Board is in a much better position than this Court to answer such a question. Nevertheless, the Court must still be able to understand the Board's reasoning**.

. . .

[36] . . . **I do not have to decide here whether Mexico is capable of protecting its nationals. I do not have to substitute my judgment for that of the Board and make specific findings of fact on the evidence as a whole. Suffice it to note here that the Board simply chose arbitrarily to disregard or not deal with relevant evidence which could have supported the applicant's**

> **arguments, and in the circumstances this makes its decision reviewable:** see *Tufino v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1690, at paragraphs 2-3; *A.Q. v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 677, at paragraphs 17-18, [2004] F.C.J. No. 834 (F.C.) (QL); *Castro v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1165, at paragraphs 30-34, [2005] F.C.J. No. 1923 (F.C.) (QL).

(In *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, [2006] F.C.J. No. 439 (QL), the words of Mr. Justice Luc J. Martineau properly summarize the state of the law concerning State protection.)

JUDICIAL PROCEEDINGS

[2] This is an application for judicial review of a decision of the Refugee Protection Division dated June 20, 2006, which concluded that the applicants were not Convention refugees (section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27) (Act) or persons in need of protection (section 97 of the Act).

FACTS

No questions were raised concerning the credibility of the claimants, and the following facts emerge from this specific case.

[3] Augusto Pedro Prieto Velasco, his spouse, Carla Mercedes Guazzotti Del Risco (principal applicant), and their two children, Giancarlo and Mauricio Alberto Guerra Guazzotti, are citizens of Peru.

[4] Mr. Velasco and the children based their application on that of the principal applicant, who alleged the following facts.

[5] Ms. Del Risco was a school transport driver in Peru, and her clientele was mainly made up of children from a well-to-do background.

[6] On July 20, 2005, Ms. Del Risco received a call from the Sendero Luminoso (SL), or Shining Path, a well-known terrorist organization in Peru, asking her for information about the parents of a child she transported and who, it seems, was sought by the organization. Ms. Del Risco refused to co-operate with the SL.

[7] On July 21, 2005, Ms. Del Risco received threats by telephone and was asked to supply information about the children of the Tarfur family. The father is a prominent editor of a newspaper in Lima which denounces the activities of the SL.

[8] On the same day, robbers searched the applicants' house and made off with a list containing the addresses of Ms. Del Risco's clients. Mr. Velasco then complained to the police about this incident. The police demanded a bribe to open an investigation into this case. In addition, the police made it clear to the applicants that they themselves could be investigated if they did not meet the officers' demands.

[9] On August 9, 2005, Ms. Del Risco's automobile was intercepted by two motorcyclists. The principal applicant was physically assaulted, and death threats were made against her.

[10] On August 15, 2005, the applicants left Peru and stayed several days at Vive la Casa, an organization which helps refugees in the United States. On August 24, 2005, the applicants entered Canada and claimed refugee protection at the border.

IMPUGNED DECISION

[11] On June 20, 2006, the Board dismissed the applicants' claim for refugee protection. The Board determined that the applicants were not "Convention refugees" under section 96 of the Act or "persons in need of protection" within the meaning of subsection 97(1) of the Act.

[12] The Board was not satisfied that the applicants had exhausted all avenues available to them to obtain State protection in Peru.

ISSUE

[13] Did the Board err in determining that the applicants did not discharge the burden of proving that the Peruvian State could not adequately protect them?

LEGISLATION

[14] Sections 96 and 97 of the Act read as follows:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

STANDARD OF JUDICIAL REVIEW

[15] The standard of judicial review applicable to the determination of the State's ability to ensure the protection of an applicant has been analyzed on several occasions by this Court.

According to one line of thought, this is a question of fact which must be assessed according to the patent unreasonableness standard. (*Nawaz v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1255, [2003] F.C.J. No. 1584 (QL), at paragraph 19; *Ali v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1449, [2004] F.C.J. No. 1755 (QL), at paragraph 9).

[16] According to another line of thought, this question is subject to the reasonableness *simpliciter* standard. (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2005] F.C.J. No. 232 (QL), at paragraph 11; *Danquah v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 832, [2003] F.C.J. No. 1063 (QL), at paragraph 11; *Machedon v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1104, [2004] F.C.J. No. 1331 (QL), at paragraph 70).

[17] In *Chaves*, *supra*, Madam Justice Danièle Tremblay-Lamer, after conducting a pragmatic and functional analysis to determine the applicable standard of review, concluded that this is a question of mixed fact and of law to which the standard of reasonableness *simpliciter* applies. In this case, the Court will adopt this analysis for the purposes of studying the issue in dispute. Accordingly, a decision will be deemed unreasonable if, in the main, it is not supported by any factual or legal reasons that can stand up to a somewhat probing examination. *(Canada (Director of Investigation and Research, Competition Act v. Southam Inc.)*, [1997] 1 S.C.R. 748, [1996] S.C.J. No. 116 (QL), at paragraph 56)

ANALYSIS

[18] The applicants essentially submit that the Board erred on one point in concluding that (1) they did not discharge the burden of showing that the Peruvian State could not adequately protect them.

> **The Board erred in determining that the applicants did not discharge the burden of showing that the Peruvian State could not adequately protect them.**

[19] The applicants submit that the Board did not correctly analyze the matter of State protection, in that they actually did seek the protection of the Peruvian State, but without any success. In addition, the applicants allege that the Board did not take into consideration the documentary evidence which clearly shows that the Peruvian State cannot adequately protect some of its citizens. Finally, they submit that they met their burden of adducing clear and convincing evidence of the State's inability to protect them in their specific circumstances.

[20] Writing on behalf of the Supreme Court of Canada in *Canada* (*Attorney General) v. Ward* [1993] 2 S.C.R. 689, at paragraphs 49, 50 and 52, Mr. Justice Gérard Vincent LaForest stated that, in the absence of a complete breakdown of state apparatus, it should be assumed that the State is capable of protecting its citizens. The danger that this presumption will operate too broadly is tempered by a requirement that clear and convincing proof of the State's inability to protect must be advanced. In order to rebut the presumption of the State's ability to protect its citizens, an applicant may submit to the Board the testimony of similarly situated individuals. The applicant may also rely on documentary evidence on the record or advance testimony of past personal incidents.

[21] In *Avila, supra*, the words of Martineau J. properly summarize the state of the law concerning State protection:

> [27] In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a **proper analysis of the situation in the country and the particular reasons** why the protection claimant submits that he is "unable or, because of that risk, unwilling to avail [himself] of the protection" of his country of nationality or habitual residence (paragraphs 96(*a*) and (*b*) and subparagraph 97(1)(*b*)(i) of the Act). The Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act. In this regard, the legislation and procedures which the applicant may use to obtain state protection may reflect the will of the state. However, they do not suffice in themselves to establish the reality of protection unless they are given effect in practice: see *Molnar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 1081, [2003] 2 F.C. 339 (F.C.T.D.); *Mohacsi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 429, [2003] 4 F.C. 771 (F.C.T.D.).
>
> [28] No state which professes democratic values or asserts its respect for human rights can guarantee the protection of each of its nationals at all times. Therefore, it will not suffice for the applicant to show that his government was not always able to protect persons in his position (*Villafranca, supra*, at paragraph 7). Nonetheless, though government protection does not have to be perfect, some protection must exist the minimum level of which does not have to be determined by the Court. The Board may in the circumstances determine that the protection provided by the state is adequate, with reference to standards defined in international instruments, and what the citizens of a democratic country may legitimately expect in such cases. In my opinion, this is a question of fact which does not have to be answered in absolute terms. **Each case is *sui generis*.** For example, in the case of Mexico, one must look not only at the protection existing at the federal level, but also at the state level. **Before examining the question of protection, the Board must of course be clear as to the nature of the fear of persecution or risk alleged by the applicant.** When, as in this case, the applicant fears the persecution of a person who is not an agent of the state, the Board must *inter alia* examine the motivation of the persecuting agent and his ability to go after the applicant locally or throughout the country, which may raise the question of the existence of internal refuge and its reasonableness (at least in connection with the analysis conducted under section 96 of the Act).
>
> [29] Accordingly, when the government is not the persecuting agent, and even when it is a democratic state, it is still open to an applicant to adduce evidence showing clearly and convincingly that it is unable or does not really wish to protect its nationals in certain types of situation: see *Annan v. Canada (Minister of Citizenship and Immigration*, [1995] 3 F.C. 25 (F.C.T.D.); *Cuffy v. Canada*

(Minister of Citizenship and Immigration), [1996] F.C.J. No. 1316 (F.C.T.D.) (QL); *Elcock v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1438 (F.C.T.D.) (QL); *M.D.H.D. v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 446 (F.C.T.D.) (QL). It should be borne in mind that most countries might be prepared to try to provide protection, although an objective assessment could establish that they are not in fact able to do so in practice. **Further, the fact that the applicant must place his life at risk in seeking ineffective state protection, simply in order to establish such ineffectiveness, seems to be contrary to the purpose of international protection** (*Ward, supra*, at paragraph 48).

[30] At the same time, *Kadenko, supra*, indicates that it cannot be automatically found that a state is unable to protect one of its nationals when he has sought police protection and certain police officers refused to intervene to help him. Once it is established that a country (in that case Israel) has judicial and political institutions capable of protecting its nationals, from the refusal of certain police officers to intervene, it cannot by *ipso facto* inferred that the state is unable to do so. It is on this account that the Federal Court of Appeal mentioned *obiter* that the burden of proof on the claimant is to some extent directly proportional to the "degree of democracy" of the national's country. The degree of democracy is not necessarily the same from one country to another. Therefore, it would be an error of law to adopt a "systemic" approach as to the protection offered to the nationals of a given country. This is what is likely to happen when the reasons for dismissal given by the Board are too general and may apply equally to another country or another claimant (*Renteria et al. v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 160).

[31] Whether the issue be the best interest of the democratic state in question and of civil society in general, or the individual interest of the victim or perpetrator of an alleged criminal offence, the payment of a monetary or other benefit of any kind to a police or law officer is illegal. Of course, if corruption is widespread it may ultimately lead to undermining the trust individuals may have in government institutions, including the judicial system. As the Supreme Court has noted, "democracy in any real sense of the word cannot exist without the rule of law" (*Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217, at paragraph 67). Due process of law and equality before the law are the vital strength of any democracy and create a legitimate expectation in individuals that the state will do what is necessary to go after criminals and bring them to justice, and if necessary to stamp out corruption. The independence and impartiality of the judiciary and its components are not negotiable. These are fundamental values in any country which claims to be a true democracy. Therefore, the degree to which a state tolerates corruption in the political or judicial apparatus correspondingly diminishes its degree of democracy. That being said, I do not have to decide here whether the documentary evidence established, as the applicant vigorously claimed, such a degree of corruption that it can be said it was not unreasonable in the circumstances

for the applicant not to approach the police of his country before seeking international protection. **Due to its special expertise and its knowledge of the general conditions prevailing in a given country, the Board is in a much better position than this Court to answer such a question. Nevertheless, the Court must still be able to understand the Board's reasoning.**

[32] . . . [T]he main flaw of the impugned decision results from a complete lack of analysis of the applicant's personal situation. It is not sufficient for the Board to indicate in its decision that it considered all the documentary evidence. A mere reference in the decision to the National Document Package on Mexico, which contains an impressive number of documents, is not sufficient in the circumstances. The Board's hasty findings and its many omissions in terms of evidence make its decision unreasonable in the circumstances. Further, because of the laconic nature of the reasons for dismissal contained in the decision, it cannot stand up to somewhat probing examination. For example, although the Board held that section 96 of the Act did not apply in the case at bar, it is not clear from reading its reasons that it actually analyzed the personal risk the applicant would face if he were returned to Mexico in terms of each of the specific tests and of the burden of proof applicable under section 97 of the Act: see *Li, supra*; *Kandiah v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 181, [2005] F.C.J. No. 275 (F.C.) (QL).

[33] In assessing the applicant's personal situation, as his credibility was not questioned in the impugned decision, we must accept the particular facts leading to his departure from Mexico (*Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302, at paragraph 5 (F.C.A.)). Therefore, the Board could not simply state that if the claimant's appeal to the police were made in vain, he could have appealed to the CNDH and the CEDH, two organizations concerned with human rights. It is not the role of those organizations to protect the victims of criminal offences; that is the duty of the police: see *Balogh v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 809, at paragraph 44, [2002] F.C.J. No. 1080 (F.C.T.D.) (QL); *N.K. v. Canada (Solicitor General)* (1995), 107 F.T.R. 25, at paragraphs 44-45 (F.C.T.D.).

. . .

[35] The Board's role was to make findings of fact and arrive at a reasonable finding based on the evidence, even if conflicting. In this case, it is clear that the Board completely disregarded relevant evidence. The Board cannot, without giving reasonable grounds, ignore or dismiss the content of a document dealing expressly with state protection in a given region (*Renteria et al., supra*). For example, the document *Mexico: State Protection (December 2003 - March 2005), supra*, though it was filed at the hearing, was not mentioned in the decision. This document, which originates with the Board's Research Directorate, presents an overall and quite detailed view of the protective machinery available in Mexico

> and its dubious effectiveness. Taken in isolation, certain passages from the document appear to show that there is some desire by the present government to improve the situation, while other passages suggest that protective measures are ineffective, at least in certain cases. The same applies to a host of other relevant documents which were part of the National Documentation Package on Mexico that were not considered by the Board. It is clear that in the instant case the Board undertook a superficial, if not highly selective, analysis of the documentary evidence
>
> [36] I do not have to decide here whether Mexico is capable of protecting its nationals. **I do not have to substitute my judgment for that of the Board and make specific findings of fact on the evidence as a whole. Suffice it to note here that the Board simply chose arbitrarily to disregard or not deal with relevant evidence which could have supported the applicant's arguments, and in the circumstances this makes its decision reviewable:** see *Tufino v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1690, at paragraphs 2-3; *A.Q. v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 677, at paragraphs 17-18, [2004] F.C.J. No. 834 (F.C.) (QL); *Castro v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1165, at paragraphs 30-34, [2005] F.C.J. No. 1923 (F.C.) (QL). [Emphasis added]

[22] In the case at bar, in its reasons, the Board failed to present an analysis of the documentary evidence submitted to it. This evidence shows that the SL is a terrorist organization and is still a deadly threat in Peru:

> The terrorist group Shining Path continued to kill civilians as well as military and police officials. There were 60 reported terrorist incidents during the year, the most serious of which occurred in Junin, Huanuco, San Martin, and Ayacucho. During the year members of Shining Path killed 17 policemen, 5 civilians, and 1 judge. For example in July, members of Shining Path killed four civilians, one policeman, and one judge in two separate incidents in Satipo Province and Tocache Province.
>
> . . .
>
> The Shining Path committed kidnappings. In November a group of heavily armed Shining Path members kidnapped 10 employees of a foreign development contractor in Huanuco Department. The abductors later released the employees but threatened to kill them if they returned to the area.

(United States Department of State Report published in March 2006, Applicant's Record, at page 28).

[23] In addition, according to the United States Department of State Report published in March 2006, Peru is a corrupt country:

> Experts noted that the PNP (Peruvian National Police) was undermanned, had problems with professionalism, was often ineffective against common criminal activity, and unable at times to meet its mandated responsibilities, such as witness protection. Corruption and impunity were problems.
>
> . . .
>
> Witness protection remained a significant weakness of the justice system.
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> . . .
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> Corruption remained a major problem, which the government took steps to address.
>
> . . .
>
> Despite these advances, the pace of anticorruption prosecutions remained a concern.

(Applicant's Record, at pages 29, 30, 32 and 33)

[24] In addition, there is ample case law establishing that the Peruvian State does not have the resources to protect some of its citizens against threats or attacks from the SL:

> . . . The 2000 U.S. Department of State Report noted that while progress was being made, the Shining Path posed a "still lethal threat". An article written on the Shining Path in 2000 noted that:
>
> Although the Shining Path's military strength and organizational capacity have been greatly reduced in recent years, it remains a visible force capable of undertaking successful terrorist attacks on public and private infrastructure and assassinating police personnel and civilians. It is unlikely that the Peruvian

> government will be able to completely suppress the group any time soon. This is due largely to the fact that the social and economic conditions that spawned the revolution — including widespread poverty, unemployment, and hopelessness in rural and urban areas — have improved little since the group was founded in the 1960s.

(*Ortiz v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 690, [2004] F.C.J. No. 863 (QL), at paragraph 11; *Pillhuaman v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 748, [2006] F.C.J. No. 944 (QL), at paragraphs 34-36)

[25] Finally, by determining that there was adequate protection in Peru and that the applicants should have complained following the incidents, and by requiring that they exhaust all avenues available to them in their country, the Board rendered an unreasonable decision, because it failed to take into consideration that the applicants' situation worsened once they had complained to the police. In fact, this conclusion is contrary to the principle established by this Court in *Shimokawa v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 445, [2006] F.C.J. No. 555 (QL), at paragraph 21, according to which, " . . . in seeking state protection, refugee claimants are not expected to be courageous or foolhardy. It is only incumbent upon them to seek protection if it is seen as being reasonably forthcoming. If the refugee claimants provide clear and convincing evidence that contacting the authorities would be useless or would make things worse, they are not required to take further steps" (See also: *Ward*, *supra*, at paragraph 28). Therefore, this error warrants intervention by this Court to the extent that this determination could not stand up to a probing examination.

CONCLUSION

[26] For these reasons, the application for judicial review is allowed, and the matter is referred back to a differently constituted panel for rehearing.

ORDER

THE COURT ORDERS that the application for judicial review be allowed and that the matter be referred back to a differently constituted panel for redetermination.

"Michel M.J. Shore"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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