Date: 20080214

Docket: IMM-955-07

Citation: 2008 FC 189

Toronto, Ontario, February 14, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

JADWIGA PALKA and
PAULA PALKA

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision by a PRRA officer (the officer), dated January 26, 2007, rejecting the applicants' Pre-Removal Risk Assessment (PRRA) application.

[2] The applicants requested that the decision be set aside and the matter referred back to a newly constituted panel of the Board for redetermination.

Background

[3] Jadwiga Palka (the principal applicant) and her daughter, Paula Palka (the minor applicant) are citizens of Poland. They arrived in Canada on April 28, 1999 and applied for refugee protection. Their refugee applications were based on the mother's claims that she was a member of a particular social group – woman subject to spousal abuse. In a decision dated April 10, 2001, the Refugee Division of the Immigration and Refugee Board found that the applicants were not Convention refugees, nor were they persons in need of protection. The Refugee Division found critical parts of the principal applicant's story to be implausible and ultimately concluded that her fear was not well-founded. The applicants applied for a PRRA on September 5, 2006. In a decision dated January 26, 2007, the officer determined that the applicants would not be subject to risk of torture, risk to life or risk of cruel and unusual punishment if returned to Poland. This is the judicial review of the officer's decision.

PRRA Officer's Decision

[4] The officer began the decision by reviewing the Refugee Division's decision to reject the applicants' claims for refugee status. The officer noted that the Refugee Division had found the principal claimant not credible with respect to the allegations of spousal abuse and the reasons why she was unable to return to Poland. The officer stated that the Refugee Division was not persuaded on a balance of probabilities that she had suffered the abuse alleged. The officer also noted that the Refugee Division drew negative inferences respecting her credibility and found that she had

embellished the evidence to advance her claim. The officer appears to have given deference to the Refugee Division's finding that the adult applicant was not a credible or trustworthy witness.

[5] The officer then proceeded to analyze the risk allegations. The officer noted the applicants' submission that the agent of persecution, the principal applicant's husband and the minor applicant's father, had not ceased efforts to find the two and had pressured family members for information on their whereabouts. The officer reviewed four letters from family members and friends of the applicants. The officer made the following allocations of weight to each individual letter:

- With regards to a letter from Mrs. Palka's Agata, a friend of the applicants, the officer stated that the letter was worthy of little weight because the author did not disclose her last name, where she encountered the husband, or when the letter was written.
- With regards to a letter from Ms. Janina Surdej, a former neighbour of the applicants, the officer again stated that without knowing the date on which the letter was composed or mailed, it was impossible to determine the currency of the information and thus accorded it little weight.
- With regards to a letter from Ms. Anna Wilk, an acquaintance of the applicants, the officer found that the letter was self-serving evidence, produced for the purpose of bolstering the applicants' claims for protection and therefore gave it little weight.
- With regards to a letter from Mrs. Palka's sister, Beata, the officer noted that the letter did not indicate, as the principal applicant had indicated, that her husband had stated that he

> would kill her if she returned to Poland. The officer also noted that Beata was not a disinterested party in the outcome of the present application.

[6] The officer stated that the letters failed to address certain aspects of the Refugee Division's credibility findings and that with respect to credibility, significant deference was owed to the Refugee Division as it had the benefit of hearing the principal applicant's sworn testimony. The officer's final conclusion on the issue of risk was that the officer was not satisfied that the evidence was sufficient to overcome the credibility findings of the Refugee Division.

[7] As to the availability of state protection, the officer stated that even if the officer fully accepted the alleged risk, the applicants had failed to rebut the presumption of state protection. The officer considered the documentary evidence submitted by the applicants on domestic violence as a serious problem in Poland. The officer reproduced certain relevant sections from these documents. The officer then considered the political, judicial and police systems in Poland, noting that Poland was a democracy in effective control of its territory and security forces. The officer went on to consider the 2005 US Department of State Country Report of Human Rights Practices for Poland dated March 8, 2006 (the US DOS Country Report). The officer reproduced a lengthy section of the report dealing with domestic violence against women and included statistics of reported cases, and prosecutions. The officer accepted that "there continue[d] to be a number of shortcomings in the protective services offered to both victims of domestic violence and child abuse in Poland", but noted that the Polish Government did not condone violence against women or children and that efforts to address these problems were "making a difference". The officer considered the principal

applicant's submissions that she had reported the incidents of abuse to local police on several occasions, but noted that she had not provided any evidence as to what measures she had taken to complain about the lack of response from local police. In conclusion, the officer found that the applicants had failed to rebut the presumption of state protection. The officer found that the applicants would not, on a balance of probabilities, be personally subject to a risk to their lives or risk of cruel and unusual treatment or punishment if they were to return to Poland.

Issues

[8] The applicants submitted the following issues for consideration:

1. Whether the PRRA officer failed to evince a contextual application to the issue of state protection;
2. Whether the PRRA officer breached the principles of natural justice by failing to disclose the extrinsic evidence to the applicants (or their counsel) for comment and response; and
3. Whether the PRRA officer breached the principles of natural justice by failing to provide the applicants with a hearing to address the credibility concerns that were raised in the PRRA application.

[9] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the officer err in the analysis of state protection?

3. Did the officer breach procedural fairness by failing to provide the applicants with a hearing to address credibility concerns?

Applicants' Submissions

[10] The applicants submitted that the officer used an incorrect legal test in assessing state protection and that this error is reviewable on a standard of correctness (*Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982). The applicants submitted that when assessing whether or not a state has made 'serious efforts' to protect its citizens, the law requires a contextual analysis that is cognizant not only of the legislative framework in place, but also addresses the actual capacity and effectiveness of the state's policing bodies (*Garcia v. Minister of Citizenship and Immigration*, [2007] F.C.J. No. 118). The quantity and quality of evidence required to rebut the presumption of state protection is 'some clear and convincing evidence' (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). The applicants submitted that in providing evidence of the failures of Polish authorities to effectively respond to requests from women for protection against abuse, they satisfied the evidentiary requirement of 'some' evidence to rebut the presumption of state protection. The applicants submitted that in failing to engage in a contextual analysis of state protection, the officer erred.

[11] The applicants also submitted that the officer erred in rendering a credibility determination without an oral hearing. Specifically, the applicants submitted that in finding that the applicants had not rebutted the credibility inferences rendered by the Refugee Division, the officer was required to

grant the applicants an oral hearing. The applicants submitted that subsection 113(b) of IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) requires that an oral hearing be conducted where credibility is a determinative issue. Where the conditions prescribed in section 167 of the Regulations are present, it is a breach of procedural fairness not to hold an oral hearing (*Zokai v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1103).

Respondent's Submissions

[12] The respondent submitted that the appropriate standard of review for questions of fact is generally patent unreasonableness (*Kim v. Canada* (*Minister of Citizenship and Immigration),* [2005] F.C.J. No. 540 (T.D.)). PRRA decisions are discretionary and unless an error of law can be demonstrated, there is no basis for overturning such decisions; the Court should not enter into the re-weighing of evidence. The respondent submitted that none of the inferences drawn by the officer from the documentary evidence were so completely unreasonable that they warrant judicial intervention (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.)).

[13] With regards to state protection, the respondent submitted that the applicants' argument that *Ward* above amended the decision in *Canada (Minister of Employment and Immigration v. Villafranca)* (1992), 18 Imm. L.R. 130 (F.C.A.) such that state protection must be perfect is not substantiated by the jurisprudence. Adequate state protection, though imperfect, suffices

(*Villafranca* above, *Valdez v. Canada (Minister of Citizenship and Immigration)* 2005 FC 683, *Urgel v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1777, *Velazquez v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 934, *Kadenko v. Canada (Solicitor General)* (1996), 143 D.L.R. (4th) 532 (F.C.A.), leave to appeal to S.C.C. refused). The respondent submitted that the officer relied upon the documentary evidence showing that Poland is a democracy with an independent judiciary and civil authority in place; moreover, the evidence indicated that the Polish government does not condone violence against women or children both of which are prohibited by law. The respondent also submitted that the officer noted imperfections in the system and the fact that authorities' efforts were hampered where violence and abuse go unreported by the victims. The respondent submitted that the officer then proceeded to consider the effectiveness of the laws and government policies noting that reporting had increased due to increased police awareness, media campaigns and the efforts of non-governmental organizations. The respondent submitted that the officer assessed the evidence adduced before the officer in light of the heavy onus upon the applicants to establish clear and convincing evidence of the state's inability to protect.

[14] As to the applicants' submission that an oral hearing was required, the respondent submitted that PRRA applications are usually decided on the basis of written submissions and only in exceptional cases are hearings required. The respondent agreed that the requirements for an oral hearing are set out in section 167 of the Regulations, but submitted that the in the present case, not all the requirements were met. Specifically, the respondent submitted that the officer's credibility determinations were not central to the decision (as required by subsection 167(b)) because the

application was not denied on the basis of credibility, but yet on the existence of state protection. Moreover, the officer found that the applicants had not established the objective basis of their application and thus no hearing was required (*Allel v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 533).

Analysis and Decision

[15] **Issue 1**

What is the appropriate standard of review?

Failure to apply a meaningful contextual application of the law on state protection to the facts of a case is an error of law reviewable on a standard of correctness (*Garcia* above at paragraph 28). The PRRA officer's finding with regards to state protection is fact specific and is reviewable on a standard of patent unreasonableness (*Kim* above).

[16] For questions of procedural fairness, no pragmatic and functional analysis is required; they are reviewable on a standard of correctness (*Demirovic v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284 at paragraph 5).

[17] With regards to the question of an oral hearing, the requirements for an oral hearing during a PRRA application are set out in section 167 of the Regulations; the proper interpretation and application of this section is a question of law reviewable on a standard of correctness (*Demirovic* above).

[18] **Issue 2**

Did the officer err in the analysis of state protection?

Recently, in *Garcia* above, Justice Campbell of this Court engaged in a very thorough review of the jurisprudence on state protection. I do not wish to repeat this analysis, but I do find it necessary to highlight a few sections relevant to the present case. At paragraphs 10 to 16, Justice Campbell elaborated on the decision in *Villafranca* above, noting that the analysis of state protection required not only a consideration of the "serious efforts" of the state to address the risk in question, but also a review of these efforts on an "operational level". That is to say, that it is insufficient for the officer to consider the state's efforts such as legislative initiatives, public inquiries into the issue and so forth; the officer is required to consider the actual operation of these initiatives and their effectiveness in addressing the problem.

[19] In *Garcia* above, Justice Campbell went on at paragraphs 18 to 20 to address the decision in *Ward* above and its impact on *Villafranca* above:

> In my opinion, *Ward* amends the decision in *Villafranca* in a particularly important respect. *Ward* makes a clear statement on the quantity and quality of the evidence which a claimant must produce to rebut the presumption of state protection, that is, a claimant is only required to provide some clear and convincing evidence. Therefore, in my opinion, the statement in *Villafranca* that "it is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation" cannot any longer be applied as a point of law. Thus, evidence of the failure of state authorities to effectively respond to requests from women for protection from violent sexual predators, exclusive to all other evidence, can be found to constitute some clear and convincing evidence that rebuts the presumption of state protection. Whether this finding is made depends on the quality of the evidence produced in the judgement of the decision-maker involved.

[20] The applicants submitted that the officer erred in law in failing to apply a contextual analysis of state protection and that the applicants had satisfied the evidential burden set out in *Ward* above, to rebut the presumption of state protection. The respondent submitted that the officer in fact did apply a contextual analysis of state protection as required and that the applicants are really taking issue with the officer's ultimate finding on state protection.

[21] Having reviewed the officer's decision, I am of the view that there was no failure to apply a contextual approach to the analysis of state protection in the present case. The officer considered the "serious efforts" of the Polish government as documented in the US DOS Country Report including the "blue card" record keeping system (which documents incidents of spousal abuse), media campaigns, criminal laws against domestic violence and rape, a newly approved national program on counteracting domestic violence and efforts by NGOs. The officer then went on to consider evidence as to the effectiveness of such efforts at pages 10 and 11 of the decision:

> This evidence indicates that, whereas NGOs such as the Women's Rights Center had observed a rather serious pattern of police reluctance to intervene in cases of domestic violence when it participated in publishing a report on domestic violence in Poland in 2002, it was reported to be indicating that police reluctance was only an "occasional" problem in 2005, and occurred "…particularly when the perpetrator was a member of the police force and when victims were unwilling to cooperate. Despite the high amount of unreported domestic violence which appears to still exist in Poland, an increase in the number of domestic violence cases has been attributed to "…heightened police awareness, particularly in urban areas, as a result of media campaigns and NGO efforts". In 2005, police in Poland conducted 22,652 investigations into incidents of domestic violence and forwarded 21,843 cases for indictments to prosecutors.

[22] This is not a case where the officer simply stated state initiatives to address the problem and then failed to conduct any further analysis. In my opinion, the above passage supports the finding that the officer conducted a contextual analysis of the state protection available for victims of domestic violence in Poland.

[23] The applicants also submitted that they had satisfied the evidential burden established in *Ward* above, to rebut the presumption of state protection. The applicants submitted that the two documents referenced in the written representation portion of their PRRA application constitute "some clear and convincing evidence" needed to rebut the presumption of state protection. The documents in question are a press release from the World Organization Against Torture entitled *Poland: Concern About Violence Women* dated November 13, 2002 and a report from the Minnesota Advocates for Human Rights, Women's Rights Center entitled *Domestic Violence in Poland* dated July 2002.

[24] The officer considered both reports at pages 8 and 9 of the decision. However, at page 10 of the decision, the officer stated:

> I give greater weight to the evidence from the US State Department, as it is more recent and appears to reflect that circumstances in Poland have improved since the NGO report cited above was published in 2002.

[25] The officer gave consideration to the evidence provided by the applicants, but found more recent evidence more convincing. The officer was entitled to do so. It is not for this Court to reweigh the evidence before the officer. In my opinion, the officer applied the correct law on state protection and made a final finding on state protection that is in no way patently unreasonable.

[26] **Issue 3**

Did the officer breach procedural fairness by failing to provide the applicants with a hearing to address credibility concerns?

The applicants submitted that the officer breached procedural fairness by failing to conduct an oral hearing to address credibility concerns. The respondent submitted that the officer correctly applied section 167 of the Regulations and therefore no hearing was required.

[27] The requirements for an oral hearing are set out in section 167 of the Regulations, which reads as follows:

> 167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:
>
> (a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;
>
> (b) whether the evidence is central to the decision with respect to the application for protection; and
>
> (c) whether the evidence, if accepted, would justify allowing the application for protection.

[28] The criteria contained in the above section are understood to be cumulative (*Kim v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 452 (T.D.) at paragraph 6).

[29] In my opinion, the requirement in subsection 167(c) is not met in the present case. The officer found that that there existed adequate state protection in Poland to protect the applicants. Therefore, even if the evidence provided by the principal applicant was found to be credible and was accepted, the application for protection would have failed regardless because of the officer’s

finding on state protection. As such, I find that the officer correctly applied section 167 of the Regulations and thus, there was no need for an oral hearing under subsection 113(b).

[30] The application for judicial review is therefore dismissed.

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

JUDGMENT

IT IS ORDERED that the application for judicial review is dismissed.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c.27:

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,	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) 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	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) 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.	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	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) to a danger, believed on substantial grounds to exist, of torture within the meaning of	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au

Article 1 of the Convention Against Torture; or

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.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d’une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

112.(1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations,

112.(1) La personne se trouvant au Canada et qui n’est pas visée au paragraphe 115(1) peut, conformément aux règlements,

apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

(2) Despite subsection (1), a person may not apply for protection if

(2) Elle n’est pas admise à demander la protection dans les cas suivants:

(a) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;

a) elle est visée par un arrêté introductif d’instance pris au titre de l’article 15 de la Loi sur l’extradition;

(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;

b) sa demande d’asile a été jugée irrecevable au titre de l’alinéa 101(1)e);

(c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or

c) si elle n’a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n’a pas expiré;

(d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d’asile ou de protection, soit à un prononcé d’irrecevabilité, de désistement ou de retrait de sa demande d’asile.

(3) Refugee protection may not result from an application for protection if the person

(3) L’asile ne peut être conféré au demandeur dans les cas suivants:

(a) is determined to be inadmissible on grounds of

a) il est interdit de territoire pour raison de sécurité ou pour

security, violating human or international rights or organized criminality;	atteinte aux droits humains ou internationaux ou criminalité organisée;
(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;	b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or (d) is named in a certificate referred to in subsection 77(1).	c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés; d) il est nommé au certificat visé au paragraphe 77(1).
113. Consideration of an application for protection shall be as follows:	113.Il est disposé de la demande comme il suit:
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
(b) a hearing may be held if the Minister, on the basis of	b) une audience peut être tenue si le ministre l'estime requis

prescribed factors, is of the opinion that a hearing is required;

compte tenu des facteurs réglementaires;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part:

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

114.(1) A decision to allow the application for protection has

114.(1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.

(a) in the case of an applicant

not described in subsection 112(3), the effect of conferring refugee protection; and

(b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

(2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(d) and the regulations, the grounds on which the application was allowed and may cancel the stay.

(2) Le ministre peut révoquer le sursis s'il estime, après examen, sur la base de l'alinéa 113d) et conformément aux règlements, des motifs qui l'ont justifié, que les circonstances l'ayant amené ont changé.

(3) If the Minister is of the opinion that a decision to allow an application for protection was obtained as a result of directly or indirectly misrepresenting or withholding material facts on a relevant matter, the Minister may vacate the decision.

(3) Le ministre peut annuler la décision ayant accordé la demande de protection s'il estime qu'elle découle de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

(4) If a decision is vacated under subsection (3), it is nullified and the application for protection is deemed to have been rejected.

(4) La décision portant annulation emporte nullité de la décision initiale et la demande de protection est réputée avoir été rejetée.

The *Immigration and Refugee Protection Regulations*, SOR/2002-227:

167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise:
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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