Date: 20090127

Docket: IMM-4838-07

Citation: 2009 FC 86

Ottawa, Ontario, January 27, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

YONG GANG LIANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of a Board of the Refugee Protection Division of the Immigration Refugee Board (Board), dated October 26, 2007 (Decision) refusing the Applicant's application to be deemed a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a 36-year-old refugee claimant who is a citizen of the People's Republic of China. He currently resides in Scarborough, Ontario. He claims to be wanted by Chinese authorities for having violated the one-child birth control policy in China.

[3] He married his wife, Dai Xue Zhen, in 1995. They have one son who was born on September 17, 1998. After the birth of their son, an IUD was inserted into the Applicant's wife in November 1998 and she was forced to attend quarterly checkups. In September 2004, despite the IUD, the Applicant's wife became pregnant with their second child.

[4] Since the second child was in violation of China's one-child policy, the Applicant and his wife separately went into hiding at the homes of relatives before his wife's scheduled IUD check-up on October 29, 2004. The local birth control officers began to look for the Applicant and his wife after the wife missed her scheduled IUD check-up.

[5] The officers threatened the Applicant's parents and indicated that either the Applicant or his wife would be sterilized if the wife was found to be pregnant. On November 1, 2004, a notice was left by officials ordering the Applicant's wife to report for her IUD check-up within 15 days. On November 16, 2004, the birth control officers returned and left a second note, ordering either the Applicant or his wife be sterilized.

[6] On November 28, 2004, the wife's whereabouts were discovered by the birth control officers and she was taken to a hospital for an abortion. Since the wife was haemorrhaging, she could not be sterilized. The birth control officers decided to sterilize the Applicant. A notice for the Applicant's sterilization was issued on November 29, 2004. In order to avoid sterilization and other punishment, the Applicant changed his hiding place and went to a distant cousin's home in a very remote area in Guangzhou. He remained in hiding until his family found a smuggler to help him flee to Canada. He arrived in Canada by air at Toronto Pearson International Airport on January 12, 2005.

[7] The Applicant made a refugee claim in Canada at the Etobicoke Canadian Immigration Commission (CIC) on January 18, 2005. He was interviewed at the Etobicoke CIC on January 24, 2005.

[8] His original refugee claim was heard on November 2, 2005 and a negative decision was rendered on November 23, 2005. The Applicant sought a judicial review of this decision before the Federal Court. The Court set aside the November 2005 negative decision on October 31, 2006 on the basis that the Board had engaged in an overly critical assessment of the evidence before it.

[9] Following his successful judicial review application, the Sing Tao Daily newspaper in Toronto publicized the Applicant's name and indicated that he had sought refugee protection because of his fear of forced sterilization in China. The Toronto Sun also published his name and the basis of his claim. This was done without the consent or knowledge of the Applicant or his

counsel. The Applicant only became aware of the publication after he read the article himself. When the Applicant's lawyer was contacted by the Toronto Sun, he refused to discuss the case as it was still pending.

[10] The Applicant feels that the publicity surrounding his claim for refugee protection is an additional risk factor, as country condition documentation concerning the one-child policy in China indicates that Chinese authorities are trying to conceal the continuing practice of forced sterilization and abortion.

[11] The Applicant raised this *sur place* matter of the extra publicity as an additional basis to his claim at the second refugee hearing which took place on October 15, 2007. At this second hearing, the Applicant filed additional documentary evidence, including newspaper articles which connected him to the issue of forced sterilization in China, and documents about Chinese spies in Canada. The Applicant gave oral testimony in connection with his fear of forced sterilization in China. The Board reached a negative decision on the re-determination of the refugee claim, which was received by the Applicant on November 5, 2007.

[12] The Applicant is distressed by the negative decision and takes the position that the Board again engaged in an improper, overly critical assessment of the evidence before it. He also takes particular objection to the Board's view that he contacted the newspapers and initiated the *sur place* basis of his claim.

DECISION UNDER REVIEW

[13] The Board found that the Applicant was neither a Convention refugee nor a person in need of protection. On a balance of probabilities, the Board concluded that the Applicant was not a credible witness in relation to his fear of forced sterilization.

[14] The Applicant also did not disclose any medical documentation for his wife after December 2004. The Board found this significant because the Applicant alleges that his wife would have been sterilized if her medical condition had allowed the surgery to take place. The Applicant's alleged jeopardy is related to his wife's alleged inability to undergo the sterilization surgery. The Board found, on a balance of probabilities, that the Applicant's explanation for not disclosing these documents was not credible. The lack of this medical documentation concerning his wife called into question the alleged inability of his wife to have the sterilization surgery as well as the jeopardy that he claimed to face upon return.

[15] The Board found, based on the documentary evidence, that although there were "mixed messages," the "thrust of both policy and practice in recent years was toward the payment of fines and the elimination of coercion," instead of forced sterilization for unauthorized births in China. The Board found that the Applicant's testimony concerning enforced sterilization contradicted the documentary evidence from both official government documents and independent sources. The Applicant could not provide supporting documentary evidence for his statement that compulsory sterilization took place in his area.

[16] The Board also found unconvincing the Applicant's evidence as to why he and his wife hid separately. Nor could it accept his alleged fear of sterilization from the start of the second pregnancy. The Board found the three birth control notices supplied by the Applicant were not authentic documents and gave them no evidentiary weight.

[17] The Board rejected the *sur place* basis of the claim as not being credible. In addition, the Board found that the press stories alone would not lead to a persecution risk.

[18] The Board concluded by finding that the Applicant had not satisfied the burden of establishing a serious possibility that he would be persecuted, or that he would be personally subjected to a risk to his life or a risk of cruel and unusual treatment or punishment, or a risk of torture by any authority in the People's Republic of China. The Applicant's claim was rejected.

ISSUES

[19] The Applicant raises the following issues:

1. Did the Board commit a reviewable error in its assessment of his claim for refugee protection based on his fear of forced sterilization?
2. Did the Board commit a reviewable error in its assessment of the *sur place* basis of the claim?

STATUTORY PROVISIONS

[20] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
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.
Person in need of protection	**Personne à protéger**
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	**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

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

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(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,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

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) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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) 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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait

as being in need of protection is also a person in need of protection.	partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[21] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review" (*Dunsmuir* at paragraph 44). Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[22] The Supreme Court of Canada in *Dunsmuir* also held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[23] Prior to *Dunsmuir*, the standard of review for the issues raised by the Applicant has been patent unreasonableness: See *Kovacs v. Canada (Minister of Citizenship and Immigration)*, [2006] 2 F.C.R. 455 (F.C.) which cites *Harb v. Canada (Minister of Citizenship and Immigration)* (2003), 238 F.T.R. 194 at paragraph 14.

[24] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issues raised in this case is reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47). Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

Credibility

[25] The Applicant submits that the Board made several reviewable errors in its negative assessment of his credibility. When a refugee claimant swears to the truth of certain allegations, a presumption of truthfulness is created unless there are valid reasons for rebuttal: *Permaul v. Canada (Minister of Employment and Immigration)*, [1983] F.C.J. No. 1082 (F.C.A.) and *Armson v. Canada (Minister of Employment and Immigration*), [1989] F.C.J. No. 800 (F.C.A.).

[26] The Applicant takes issue with the Board's conclusion that "the determinative issue with regard to this claim is the credibility of the claimant's Personal Information Form narrative and oral

testimony concerning his pursuit by family planning officials in order to perform a forced abortion. I find, on a balance of probabilities that the claimant is not a credible witness in this regard." The Applicant submits that there are no material inconsistencies or contradictions cited by the Board in its reasons to support such a negative credibility assessment. The Applicant's evidence was consistent from his first statement in January 2005 through to his re-determination hearing in October 2007.

[27] The Applicant cites Justice Gibson of this Court, who overturned the Board's original decision against the Applicant. He notes that Justice Gibson did not find his allegations to be implausible or inconsistent with evidence relating to the coercive enforcement of the one-child policy by local Chinese authorities. Justice Gibson found that the Board had been over-vigilant and had engaged in a microscopic examination of the evidence.

[28] The Applicant submits that the negative Decision on the re-determination of his claim is again based on an over-vigilant and hypercritical examination of his evidence. The Board selectively relied upon an unbalanced review of the country condition evidence in order to find the Applicant's story not to be credible.

Documentary Evidence

[29] The Applicant submits that the Board also committed a reviewable error in failing to properly address the documentary evidence. The Board was dismissive of the country condition

documents which indicated that local officials in China still resort to the practice of forced abortion and forced sterilization in order to meet China's one-child policy. The Applicant goes on to rely on several passages from the documentary evidence that he says support his position.

[30] The Applicant notes that the Board acknowledged "mixed messages" from the documentary evidence. He argues, however, that the Board brushed aside the material supporting his claim of fear of forced sterilization in China. He submits that the Board's reasons indicate that it engaged in a selective review of the documentary evidence before it, which is unfair and improper: *Yu v. Canada (Minister of Citizenship and Immigration)* 2005 FC 794 (*Yu*).

[31] The Applicant argues that there was credible documentary evidence before the Board to support his claim. Prior to the end of the hearing, Applicant's counsel also asked for an opportunity to provide additional documentation on the subject of forced sterilization and abortion in Guangdong province, but the Board stated that it was not necessary. The Applicant submits that he was mislead by the Board into believing that the Board was satisfied, on a balance of probabilities, that the country condition evidence did not undermine his credibility. As a result of the Board saying it was not necessary, the Applicant did not produce further evidence to corroborate the ongoing practice of forced sterilization and abortion by local family planning authorities throughout China.

[32] The Applicant submits that the Board has no specialized knowledge regarding country condition documents. The Board simply engaged in speculation about what should or should not

have been within the content of the sterilization notices presented by the Applicant. Given the lack of specialized knowledge, and the fact that there was no comparable evidence before the Board, its assessment of the sterilization notices was flawed.

[33] The Board stated that "[c]ountry documents note that fraudulent documents are easily obtained in China. I give these documents no evidentiary weight." The Applicant points out that this Court has held that the Board should not speculate on the mental processes and efficiency of the Chinese authorities: *Chen v. Canada (Minister of Employment and Immigration),* [1993] F.C.J. No. 996 (F.C.A.). *Jiang v. Canada (Minister of Citizenship and Immigration),* 2006 FC 499 is instructive on this point:

> **11** Because counterfeit documents were readily available, one may speculate that the documents in question were counterfeit, but that is not enough to serve as an evidentiary basis for a proper inference. As Mr. Justice von Finckenstein said in *Chima v. Canada (Minister of Citizenship and Immigration),* [2004] F.C.J. No. 255, 2004 FC 224:
>
> > The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. As the Respondent noted evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

***Sur Place* Part of Claim**

[34] The Applicant submits that the Board also committed reviewable errors with respect to its handling of the *sur place* aspects of his claim. The publication in the Sing Tao Daily Newspaper of the Applicant's name puts him at risk of punishment and mistreatment by the Chinese authorities. Country condition evidence indicates that abortion and sterilization remain forced practices in China

even though the government tries to conceal this fact. There was also evidence before the Board that Chinese citizens have been severely punished and mistreated for exposing or resisting these practices.

[35] The Applicant says that the distinction made by the Board between people who have exposed or resisted the one-child policy practices in China and the Applicant, who is not a well-known dissident and who made statements only in Canada, is unfair.

[36] He submits that the Board ignored the relevant and credible evidence before it that there are Chinese spies in Canada who monitor the activities of Chinese citizens living here. Therefore, there is an increased likelihood that the publication of the Applicant's name and his claim of being threatened with forced sterilization would come to the attention of the Chinese authorities.

[37] The Applicant says that the Board did not fairly or carefully assess his claim because of its suspicion that the Applicant contacted the Sing Tao Daily Newspaper. The Applicant submits that there was no evidence before the Board to support that suspicion. The *sur place* claim was in no way designed to bolster the Applicant's original claim. The Applicant had no idea that a *sur place* claim would be raised by his counsel because of the publication of the Applicant's claim for refugee protection by the Sing Tao Daily newspaper.

[38] The Applicant submits that the Board's unsupported suspicion that he may have reported his story to the newspaper in an effort to bolster his claim taints and undermines the Board's assessment of the *sur place* basis of his claim.

Conclusions

[39] The Applicant concludes by stating that the Board committed several reviewable errors in its assessment of his claim for refugee protection and that, for a second time, the Board engaged in an overly critical assessment of the evidence.

[40] He further submits that, since there was documentary evidence before the Board that was consistent with his allegations, the Board should not have found his allegations implausible or inconsistent with country conditions in China. The Applicant points out that his complaint is not about the weighing of the country evidence; it is about the Board's handling of the "mixed messages" in the country documentation.

[41] The Applicant cites and relies upon *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 for the proposition that where country documents conflict, the Board ought to give the benefit of the doubt to the Applicant. The Applicant states that the Board's selective use of the conflicting country documentation to discredit him was improper, particularly in light of the principle of the presumption of truthfulness.

[42] The Applicant claims that the Board dealt with the credible information he presented in its reasons by acknowledging there were “mixed messages,” from the documentary evidence and brushing the Applicant’s supporting material aside. A selective review and analysis of the country documentation is unfair and improper: *Yu*. The more evidence is not mentioned specifically or analyzed in a Board’s reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact without regard to the evidence.: *Bains v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 497.

The Respondent

Credibility

[43] The Respondent points out that this claim was *de novo*.

[44] The Respondent cites and relies upon *Shen v. Canada (Minister of Citizenship and Immigration)* 2007 FC 1001 (*Shen)* at paragraphs 1-14 to rebut the Applicant’s position that the Board should have believed him because there were no material inconsistencies in his testimony.

Documentary Evidence

[45] The Respondent submits that the Board weighed the evidence before it and acknowledged the use of coercive tactics by birth control officials in parts of China. However, the documents did not support the Applicant’s allegation that someone from outside of Beijing would be subjected to

forced sterilization as a punishment for his wife's second pregnancy, even if his wife had undergone a forced abortion and her health condition would not allow her to be sterilized.

[46] The Respondent states that, when assessing evidence, Board members are "masters in their own house" and it is open to them to decide what weight to give. As well, the Board is entitled to rely on and prefer documentary evidence to that of a claimant: *Zvonov v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1089 (F.C.T.D.) and *Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.).

[47] The Respondent says that the Applicant's position amounts to a disagreement with the Board's conclusion. This conclusion, however, was open to the Board to make on the evidence before it, and as such it is not a basis for this Court's intervention: *Brar v. Canada (Minister of Employment and Immigration)*, [1986] F.C.J. No. 346 (F.C.A.).

[48] The Respondent points out that the Applicant presented three letters, purportedly from the family planning authorities. The Board noted a number of concerns regarding the letters, including the dates and the addressees. The Board concluded that these letters were not authentic, which conclusion was open to the Board.

[49] The Respondent says that the Applicant did not present evidence to corroborate his wife's health condition. The Board did not suggest that corroborative evidence was required, or that the Applicant's evidence had been rejected for lack of corroboration. However, the Board found it

would have been reasonable to expect corroboration in a situation where corroboration was available. This does not raise a reviewable error: *Ortiz Juarez v. Canada (Minister of Citizenship and Immigration)* 2006 FC 288 and *Uppal v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1142.

Sur Place **Part of Claim**

[50] The Respondent submits that the documents relied upon by the Applicant in relation to the severe punishment of those who oppose the birth control policy in China both refer to the same individual (Chen Guanchen,) who publicly exposed a campaign of forced abortions in Shandong. The treatment of one man in a different region of China who publicly opposed the enforcement of the policy within his region is not necessarily relevant to the Applicant's situation. The Board relied on documentation regarding the return of failed asylum seekers to China and organizations designed to assist them in this regard.

[51] The Respondent points out that while the Applicant suggests the Board made a veiled negative credibility finding regarding whether he notified the press himself, the identity of the person who notified the press was not important to the Decision. The Board relied on the information in the country documentation regarding what happens to those in the Applicant's circumstances. The Respondent notes that one of the documents the Applicant relies upon speaks of a couple in China who are appealing a decision of a local court absolving the local planning authorities of wrongdoing in a forced abortion. The couple has made their case known to the public

in China, but there is no suggestion that they are experiencing problems as a result. Therefore, the Applicant has failed to identify any error in this regard.

ANALYSIS

[52] As the Decision makes clear, the determinative issue in this case was credibility. The Applicant alleged that he would be subject to forced sterilization in China simply because his wife had become pregnant with a second child and she could not be sterilized, even though the child had been aborted.

[53] The Applicant faults the Board for not specifically referring to documents and information that gave credibility to his account of what he faces if returned to China.

[54] As the Board noted, the documentary evidence on forced sterilization contains “mixed messages.” Hence, the Board had to weigh that evidence and reach a conclusion. It also had to take into account the Applicant’s account of what he knew personally about forced sterilization for men in his area. Based upon the documentation before it, I cannot say that the Board was unreasonable in its conclusion that the Applicant would not face sterilization if returned to China.

[55] Of course, it is possible to disagree with the conclusions that the Board reached on these issues, but I cannot say that the Decision was unreasonable and fell outside the range of possible acceptable outcomes that are defensible on the facts and the law regarding the Board’s credibility

findings. A decision in favour of the Applicant would, in my view, also have been reasonable. But that does not make the Board's Decision unreasonable.

[56] The Applicant also failed to provide a convincing explanation for the lack of documentation related to his wife's condition. The Board found the letters produced by the Applicant to be inauthentic because of anomalies and inconsistencies, not simply because fraudulent documents are easily obtained in China. In my view, the Board's reasons for rejecting the Applicant's documentation, particularly the chronological inconsistency, did not involve an overly microscopic examination and cannot be said to be unreasonable.

[57] In the end, the Applicant's allegations that there were no inconsistencies in his claim and that the Board made a selective use of the documentation are not borne out by the facts; the Applicant is asking the Court to re-weigh the evidence and come to a different conclusion from the one reached by the Board. However, the role of the Court is not to determine whether or not it agrees with the Board's assessment, but rather to determine whether its Decision is reasonable. See *Shen v. Canada (Minister of Citizenship and Immigration)* 2007 FC 1001 at paragraph 8.

[58] My review of the Decision discloses that the Board considered the Applicant's evidence and the country documentation and concluded that it could not accept his allegations that he would face forced sterilization if returned to China. The Board was entitled to come to this conclusion. It was not an unreasonable conclusion and the Court cannot interfere with it.

[59] As regards the Applicant's *sur place* claim, because the Board could not accept his allegations concerning forced sterilization, it could not accept that he was being pursued by Chinese authorities. The publications referred to were local in nature, and the Applicant just did not have the profile to attract attention if he returned to China.

[60] Once again, it is possible to disagree with the Board's conclusions on this issue, but they were not unreasonable and fall within a range of possible, acceptable outcomes that are defensible on the facts of this case and the law.

[61] The Board's comment that "it is reasonable to have some doubt regarding whether the claimant contacted the *Singtao* paper and initiate the *sur place* issue" is not the basis for the Board's rejection of the *sur place* claim. The Board relied upon the country documentation and the Applicant's lack of profile. The Court cannot interfere with the Board's conclusions on this point.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This Application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4838-07
STYLE OF CAUSE:	YONG GANG LIANG v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 3,2008
REASONS FOR JUDGMENT:	RUSSELL J.
DATED:	**January 27, 2009**

APPEARANCES:

MARK ROSENBLATT	FOR THE APPLICANT
NED DJORDJEVIC	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MARK ROSENBLATT TORONTO, ONTARIO	FOR THE APPLICANT
JOHN H.SIMS,Q.C. DEPUTY ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT