Date: 20090226

Docket: IMM-3238-08

Citation: 2009 FC 208

Ottawa, Ontario, February 26, 2009

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SOFIA REMOLINA DE TORRES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[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 pre-removal risk assessment (PRRA) officer (the officer), dated May 30, 2008 rejecting the applicant's PRRA application.

[2] The applicant requests that the decision be set aside pursuant to subsection 18(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 and the matter referred back to a newly constituted panel of the Board for redetermination.

Background

[3] Sofia Remolina de Torres (the applicant) is an 81-year-old citizen of Columbia born November 24, 1927. In June 2006, the applicant arrived in Canada and claimed refugee status in Canada. However, the application proceeded to a pre-removal risk assessment (PRRA) because the applicant and her husband were found not to be Convention refugees or persons in need of protection by Canada on October 7, 2003, after filing a claim in 2001. In 2004, the applicant returned to Columbia after the death of her husband in Canada.

[4] In September 2006, the applicant's daughter, Elizabeth Remolina de Torres came to Canada and claimed refugee status which was accepted in 2007. The applicant submitted documentation during the PRRA application alleging that another daughter of the applicant, Maria Teresa Remolina de Torres, was also persecuted by the Armed Revolutionary Forces of Colombia (FARC) in Columbia. The applicant and her daughters allege that they received several threatening phone calls from FARC which caused them to relocate in Bogota.

[5] The applicant's initial refugee claim was based on the alleged persecution by guerrillas of FARC. The applicant alleged that she had been threatened because of her involvement in an

evangelical Christian church in Columbia. The Board found that "the husband gave vague and confusing responses to questions from the Board and did not believe that threatening phone calls had been made to their home in Bogota".

PRRA Officer's Decision

[6] The officer received the PRRA application on November 14, 2006 and further submissions from the applicant's counsel up to June 2007. After considering the documentation, the officer gave the following reasons for his refusal on the application.

[7] First, the officer found that the applicant restated the same material circumstances that had been presented before the Immigration and Refugee Board in her earlier claim. Second, the officer found that the Personal Information Form (PIF) of the applicant's daughter, Elizabeth Remolina de Torres (Elizabeth) , did not contain any new risk developments that were personal to the applicant and originating since the Board's decision in 2003. Third, the officer found that the documentation provided by the applicant were not new developments since the Board's decision in 2003 for the applicant's refugee claim including (a) a complaint written by the applicant's daughter, Maria Teresa Remolina de Torres (Maria Teresa) to the Attorney General's Office in Bogota on July 7, 2006 and an acknowledgement sent back by the Attorney General's Office on July 31, 2006 stating that an investigation had been commenced, (b) a letter written by Maria Teresa to the Ministry of the Interior and of Justice on September 4, 2006 , and (c) a letter written by the Local Ombudsman's Office of Suba on October 12, 2006 acknowledging a sworn statement by Maria Teresa and that the

document is valid for emergency medical attention. Finally, the officer did not find documentation submitted related to the applicant's religious affiliations and persecution as well as current reports on country conditions in Columbia during the PRRA application to be sufficient objective evidence that conditions had changed in Colombia since the date of the Board's decision.

[8] The officer also noted that he was not privy to the specific details of the daughter Elizabeth's claim and the evidence presented to the Board but that Elizabeth 's PIF as well as the Board's decision on her case that he did have access to, did not present evidence that would overcome the Board's decision in 2003 on the applicant's case for refugee protection (PRRA Notes to File by Officer McLean, pages 3 to 5).

Issues

[9] The applicant submitted the following issues for consideration:

1. What is the appropriate standard of review?
2. Did the officer err in finding that the applicant had not presented new evidence?
3. Did the officer provide sufficient reasons for his conclusions that the evidence did not overcome the Board's negative findings?

Applicant's Submissions

[10] The applicant acknowledges that a negative refugee determination by the Board must be respected by a PRRA officer, unless there is new evidence that would have changed the original outcome of the Board hearing. The applicant refers to the Federal Court of Appeal decision in *Raza v. Canada (M.C.I.)*, [2007] F.C.J. No. 1632 on the correct interpretation of subsection 113(a) of the Act. Specifically, the applicant refers to Madame Justice Sharlow's opinion that "Paragraph 113(a) asks a number of questions, some expressly and some by necessary implication, about the proposed new evidence" including whether the evidence tendered is credible, whether it is relevant, whether it is new and whether it is material (*Raza* above). The question of the "newness" of the evidence is enunciated in this summary. Madame Justice Sharlow questions at paragraph 13 of *Raza* above, whether the evidence tendered in a PRRA application is new in the sense that it is capable of:

(a) proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD, or

(b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or

(c) contradicting a finding of fact by the RPD (including a credibility finding)?

If not, the evidence need not be considered.

[11] The applicant states that evidence is not considered new because it arises since the Board hearing but that it must relate to ". . . new developments, either in country conditions or in the

applicant's personal situation . . ." (Mr. Justice de Montigny in *Elezi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 240 (Can. LII), [2007] F.C.J. No. 357 at paragraph 27).

[12] The applicant alleges that she experienced further persecution after the negative Board decision in 2003 and that the officer erroneously found that this evidence was not new and was in error in not giving reasons for this finding.

[13] The applicant argues that evidence must be qualified and that it is an error for a PRRA officer not to assess evidence just because it has been before the Board already (applicant's memorandum of argument, paragraph 17). Madam Justice Tremblay-Lamer suggests in *Elezi v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 562, that "…where new evidence is admitted that contradicts the Board's previous findings of fact, the evidence cannot be discounted solely because it contradicts its prior conclusions, rather the capacity of the new evidence to temper those findings for the purposes of the present PRRA analysis must be evaluated".

[14] The applicant argues that unlike the refugee protection claim in 2003, the PRRA application had no major inconsistencies and that the evidence she submitted was new, namely, the updated country documentation and the circumstances that had happened to her and her daughters after the applicant returned to Canada in 2004. The applicant submits that the officer did not assess the credibility of the new evidence which was open to him.

[15] The applicant submits that the description of the threats are consistent with the documentation about how FARC operates and that the targeting of the applicant is corroborated by documentation by Colombian authorities.

[16] The applicant claims that the PRRA officer's assessment of her risk of torture or to her life under the section is unreasonable. They point to documentary evidence since the refugee refusal in 2003, that the FARC target religious leaders and practitioners for political or financial rather than religious reasons and that kidnappings and extortions are a common method of getting money and political support. The applicant contends that any denial of extortion requests carries with it a threat of torture and death and refusal to pay is considered an indication of political opposition (see UNHCR Report, page 26 from PRRA application, page 10).

[17] The applicant argues that her personal risk also exists by extension of her family ties and her gender as was put forward in the UNHCR Report of 2006 (the Report). The Report states that the "risk involved in kidnappings and extortion is not limited to the victim" but rather "the entire family of the victim is also at risk" (PRRA application, page 12). Therefore, the applicant submits there were "clearly" new developments, *Raza* above, and that the officer's decision ran afoul of the prohibition in *Elezi* above, which states that new evidence should not be discounted solely because it contradicted prior conclusions of the Board.

[18] The applicant submits that the officer committed a reviewable error when he made adverse findings regarding the materiality of the evidence and that in any case, it did not overcome the findings of the Board (applicant's memorandum of argument, paragraphs 29 and 30).

[19] The applicant submits that the circumstances of the applicant's daughter, Elizabeth were material to the PRRA application of the applicant. The applicant argues that the daughter's claim was "indistinguishable" from the applicant's in that she also was an evangelical Christian incurring persection by FARC. The evidence was that the family had been involved in this church targeted by FARC and that these factors made it "incumbent on the officer to engage in an adequate analysis of the materiality of the evidence . . ." (applicant's memorandum of argument, paragraph 31).

Respondent's Submissions

[20] The respondent submits that contrary to what the applicant alleges, the officer in the PRRA decision did not state that the evidence which post-dated the Board's decision was not new. Further, the respondent disagrees that the officer did not evaluate whether this new evidence rebutted the conclusions of the Board. The respondent submits that ultimately the applicant is asking the PRRA officer to reweigh the evidence and substitute her decision for that of the Board faced with the same evidence of the same nature five years ago.

[21] The respondent in its submissions rely on the decision of the Board on the refugee claim in 2003. The respondent reminds the Court that the Board found that the applicant's family in

Columbia did not receive threatening calls based on the applicant's oral evidence during the refugee hearing and had stated that nothing had happened in Columbia while she was in Canada that made her fearful of returning. The respondent also wishes to remind the Court that the Board rejected the claims that the applicant or her husband (who was alive at the time) were leaders in the church community.

[22] The respondent then turns to the positive outcome of the applicant's daughter Elizabeth's refugee claim in Canada. The respondent notes that the reasons and evidence in this claim were not included in the applicant's PRRA application and was not available as evidence for the officer to evaluate in making his decision.

[23] The respondent also submits that the officer's decision based on the evidence sent by another daughter of the applicant's, Maria Teresa, and the documentary evidence on country conditions did not prove that the applicant was at risk. The officer found that the country conditions had not changed since the decision in 2003. The actions of FARC in Columbian society remain the same problem as it was in 2003 when the initial refugee claim was denied. And the officer rightly found that the documentation of Maria Teresa did not prove a personal risk to the applicant.

[24] The respondent argues that the evaluation of evidence by the officer was a determination of fact that warrants deference and that a decision of the officer should only be substituted when the applicant proves that the officer's decision was based on an error made in a perverse or capricious manner in accordance with paragraph 18(4)(d) of the *Federal Courts Act*.

[25] The respondent argues that the applicant's "attack" on several aspects of the decision indicates that the decision was comprehensive.

[26] The respondent argues that even if the Court does not regard the decision as comprehensive in length, the Federal Court of Appeal has stated that it is inappropriate to require detailed reasons by officers (see *Ozdemir v. Canada (Minister of Citizenship and Immigration)*, [2001], F.C.J. No. 1646 and *Ragupathy v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 654) and that as long as significant and probative evidence was assessed, the Court should not interfere (*Ozdemir* above).

[27] The respondent argues that the applicant's documentary evidence from her daughter in Columbia and the evidence of her daughter who had just received refugee protection in Canada was of insufficient detail and specificity, in other words, probative value and the officer's analysis was more than sufficient.

[28] The respondent argues that the applicant was not entitled to an interview because credibility was not at issue. The respondent submits that the lack of first hand evidence from the applicant did not demonstrate an entitlement to an interview instead of providing "her own narrative" that may have warranted one.

<u>Analysis and Decision</u>

[29] **<u>Issue 1</u>**

<u>What is the appropriate standard of review?</u>

Last year, the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 clarified the approach and standards to be applied to decision in the review of administrative decisions.

[30] The approach involves determining whether jurisprudence has already found the standard of review to be applied in similar circumstances. The issues submitted by the applicant involve not only a review of the facts put forward in the documentation but also how those facts should be regarded in accordance with federal legislation under both the *Federal Courts Act* and IRPA. Since *Dunsmuir* above, there have already been numerous decisions on what standard to apply to questions of mixed facts and law for a PRRA decision including *Ramanathan v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1064 and *Erdogu v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 546 which state a consensus towards the standard of reasonableness. Therefore, the issues put forward by the applicant are reviewable on a standard of reasonableness.

[31] At paragraph 47 of *Dunsmuir* above, reasonableness has been articulated as:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result.

> Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[32] **Issue 2**

Did the officer err in finding that the applicant had not presented new evidence?

Salient to the issues in a PRRA application are whether the applicant adduced evidence that is "new". The newness of the evidence does not necessarily mean that it has never been put before immigration authorities before, and accordingly, it does not necessarily mean that evidence put forward is new just because it has never been seen before. The word new in the context of a PRRA analysis has a legal meaning. The Federal Court of Appeal recently pronounced on the meaning of new evidence in *Raza* above:

> As I read paragraph 113(*a*), it is based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD. Paragraph 113(*a*) asks a number of questions, some expressly and some by necessary implication, about the proposed new evidence. I summarize those questions as follows:
>
> 1. Credibility: Is the evidence credible, considering its source and the circumstances in which it came into existence? If not, the evidence need not be considered.

> 2. Relevance: Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving a fact that is relevant to the claim for protection? If not, the evidence need not be considered.
>
> 3. Newness: Is the evidence new in the sense that it is capable of:
>
> (a) proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD, or
>
> (b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or
>
> (c) contradicting a finding of fact by the RPD (including a credibility finding)?
>
> If not, the evidence need not be considered.
>
> 4. Materiality: Is the evidence material, in the sense that the refugee claim probably would have succeeded if the evidence had been made available to the RPD? If not, the evidence need not be considered.
>
> 5. Express statutory conditions:
>
> (a) If the evidence is capable of proving only an event that occurred or circumstances that arose prior to the RPD hearing, then has the applicant established either that the evidence was not reasonably available to him or her for presentation at the RPD hearing, or that he or she could not reasonably have been expected in the circumstances to have presented the evidence at the RPD hearing? If not, the evidence need not be considered.
>
> (b) If the evidence is capable of proving an event that occurred or circumstances that arose after the RPD hearing, then the evidence must be considered (unless it is rejected because it is not credible, not relevant, not new or not material).

The burden of proof in proving the newness of the evidence and its materiality lies with the applicant (see *Mahdi v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1438).

[33] The applicant presented a copy of the order which found her daughter who came to Canada in September 2006, to be a Convention refugee. A copy of her daughter Elizabeth's PIF was before the PRRA officer. It is not unreasonable to state that her daughter's successful refugee claim would be based on the information in the PIF.

[34] There was information in the PIF that the applicant's daughter Elizabeth received threatening phone calls from FARC after her mother's return to Columbia. The applicant's other daughter also received threatening phone calls and in July 2006, she made a complaint to the Fiscalia and in September 2006, she approached the human rights directorate of the Minister of Interior and Justice.

[35] In my view, the applicant can rely on evidence concerning her daughters and evidence that her daughter Elizabeth gave about her in Elizabeth's PIF.

[36] Although the officer marked an "X" in the box for new evidence (applicant's record page 8), he has not treated the evidence as new evidence in his assessment.

[37] The officer did not find this evidence not to be credible.

[38] I am of the view that the new evidence contained in her daughter's PIF is relevant in that it is capable of proving facts relevant to the claim for protection. The evidence that she was involved in the church and that she received threatening phone calls from FARC are relevant in this sense.

[39] I also am of the opinion that the additional evidence presented by the applicant is new in the sense that it goes to proving the current state of affairs in Columbia and events that occurred or circumstances that arose after the hearing of the Refugee Protection Division (RPD).

[40] The new evidence must also be material in the sense that the refugee claim would probably have succeeded if the evidence had been before the RPD.

[41] The officer made no analysis of the materiality of new evidence. This, the officer is required to do. The officer's decision at pages 9 and 10 read in part as follows:

> The applicant is restating materially the same circumstances which she articulated before the Immigration and Refugee Board. In addition, I have been presented with the Personal Information Form (PIF) of her daughter, Elizabeth and the decision of the Immigration and Refugee Board which accepted Elizabeth as a Convention refugee on 17 April 2007. I do not find that Elizabeth's PIF contains evidence of new risk developments which are personal to the applicant and which have arisen since the date of the Board's decision. Similarly, I do not find the Board's decision with respect to Elizabeth to be evidence of new risk developments which are personal to the applicant and which have arisen since the date of the Board's decision. I am not privy to the specific details and evidence presented to the Board by Elizabeth nor do I have the Board's reasoning, with respect to its findings, before me. Moreover, I do not find that the information pertaining to Elizabeth overcomes the Board's findings with respect to the applicant.

[42] As noted above, the officer found that while there was information before him that was not before the Refugee Board in 2003, the evidence was wanting for detail and specificity personal to the applicant which undermined its materiality. The officer mentioned that he was only provided with the knowledge that the daughter's claim had been accepted and the daughter's PIF which explained the daughter's personal circumstances upon fleeing Columbia. As well, he found that the documentation from Maria Teresa, the other daughter who remains in Columbia, was lacking in materiality as they were nothing beyond complaints and acknowledgements from Columbian authorities of the complaints and again, even if it was, it was not personal to the applicant but to the daughter.

[43] There was other evidence, however, that suggests that this evidence was more material than at first glance. The documentation provided to the officer on recent country conditions suggests that more weight be given to the daughter's letters. The officer addressed each of the documents from the applicant including articles from Reachout Trust, UNHCR, U.S. Department of State and two decisions of the IRB, however, he did not find anything that added materiality to the evidence. The UNHCR Report states that, the "risk involved in kidnappings and extortion is not limited to the victim," but rather "the entire family of the victim is also at risk".

[44] I am of the view that it was not reasonable not to do an assessment or analysis of the additional evidence to determine whether or not it was material in the sense outlined in *Raza* above. As a result, the application for judicial review must be allowed and the matter remitted to a different officer for redetermination.

[45] As a result of my findings on this issue, I need not deal with the remaining issue.

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

JUDGMENT

[47] **IT IS ORDERED that** the application for judicial review is allowed and the matter is referred to a different officer for redetermination.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

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.
98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person	98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la

in need of protection.

qualité de réfugié ni de personne à protéger.

. . .

. . .

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

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

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.

application for protection was rejected.

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

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(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;

(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).

113. Consideration of an application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new

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

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

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) 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. Il est disposé de la demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus

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;	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 prescribed factors, is of the opinion that a hearing is required;	b) une audience peut être tenue si le ministre l'estime requis 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

(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.

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.

(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

(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.

the decision.

(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 Act Regulations*, SOR/2002-227:

161(2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.	161(2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113a) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

FEDERAL COURT

SOLICITORS OF RECORD

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