

Federal Court



Cour fédérale

**Date: 20091022**

**Docket: IMM-1930-09**

**Citation: 2009 FC 1075**

**Ottawa, Ontario, October 22, 2009**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Applicant**

**and**

**TIMOTHY ROSHAUN FOX**

**Respondent**

**FURTHER REASONS FOR JUDGMENT AND JUDGMENT**

[1] On October 5, 2009, I issued reasons in this matter. At the request of counsel at the hearing, I agreed to give them an opportunity to review my reasons in order to decide whether to request that I certify questions for consideration in a possible appeal to the Federal Court of Appeal.

[2] On October 13, 2009, counsel for the Respondent requested that I certify the following question:

Does a member of the Immigration Division (“ID”) presiding over an admissibility hearing concerning an allegation of serious criminality for an offence committed in Canada have the jurisdiction to adjourn the hearing for the purpose of providing the person

concerned humanitarian and compassionate relief from the effects of re-incarceration that would ensue pursuant to section 128(5) of the *Corrections and Conditional Release Act* (“CCRA”)?

[3] On October 19, 2009, counsel for the Applicant made submissions opposing the certification of that question.

[4] Pursuant to paragraph 74(d) of the *Immigration and Refugee Protection Act*, I can only certify a question if it is a “serious” one “of general importance”. It is well established that in order for a question to be certified, it must be one which “transcends the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application”. In addition, in order to be certified, the question must also be one that is determinative of the appeal. The certification process is not “to be equated with the reference process established by section 18.3 of the *Federal Courts Act*”. Nor is it to be used as a tool to obtain “declaratory judgments on fine questions which need not be decided in order to dispose of a particular case”: *Canada (Minister of Citizenship and Immigration) v. Liyanagamage* (1994), 176 N.R. 4 (F.C.A.), at para. 4; *Chu v. Canada (Minister of Citizenship and Immigration)* (1996), 116 F.T.R. 68 (F.C.), at para. 2.

[5] I believe it is clear from my reasons that the basis upon which the Minister’s application for judicial review was granted is my finding that a member of the ID presiding over an admissibility hearing concerning an allegation of serious criminality does not have jurisdiction to adjourn the hearing for humanitarian and compassionate considerations. To that extent, I agree with the respondent that the question submitted is dispositive of the matter.

[6] I am also in agreement with the respondent that the proposed question transcends the interests of this specific case and raises issues of general importance. Indeed, counsel for the Minister stated at the hearing that the decision could have a potential impact on a large number of cases before the ID, as there are many individuals in similar circumstances to the respondent. Moreover, there is no case law addressing the jurisdiction of an ID member to consider humanitarian reasons for granting an adjournment request. The only case addressing the discretion of an ID member to adjourn admissibility hearings arose in a different context, i.e. that of an admissibility hearing having been postponed pending the outcome of an appeal of the criminal conviction upon which the allegation of serious criminality was based: *Canada (Minister of Citizenship and Immigration) v. Da Silva*, 1999 CanLII 8825 (F.C.).

[7] In those circumstances, and in spite of my view that neither the *Immigration and Refugee Protection Act* nor the Immigration Division Rules grant a discretion to adjourn a hearing for humanitarian and compassionate reasons, it might be best to seek further clarification from the Court of Appeal and to certify the question proposed by the respondent.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the following question be certified:

Does a member of the Immigration Division (“ID”) presiding over an admissibility hearing concerning an allegation of serious criminality for an offence committed in Canada have the jurisdiction to adjourn the hearing for the purpose of providing the person concerned humanitarian and compassionate relief from the effects of re-incarceration that would ensue pursuant to section 128(5) of the *Corrections and Conditional Release Act* (“CCRA”)?

“Yves de Montigny”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1930-09

**STYLE OF CAUSE:** The Minister of Citizenship and Immigration  
and  
Timothy Roshaun Fox

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** September 23, 2009

**FURTHER REASONS FOR  
JUDGMENT AND  
JUDGMENT:** de Montigny J.

**DATED:** October 22, 2009

**APPEARANCES:**

Ms. Helen Park

FOR THE APPLICANT

Mr. Craig Costantino

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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