Federal Court  Cour fédérale

Date: 20100104

Docket: IMM-2171-09

Citation: 2010 FC 3

Ottawa, Ontario, January 4, 2010

Present: The Honourable Mr. Justice de Montigny

BETWEEN:

ANTOINE EL MORR

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a negative decision of the pre-removal risk assessment (hereafter "PRRA") officer Éric Therriault, made under subsection 112(3) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (hereafter the "Act"). The officer rejected the PRRA application, considering that the risk identified by the applicant was not personalized to him. The applicant is a permanent resident who is inadmissible on grounds of serious criminality under paragraph 36(1)(*a*) of the Act.

[2] After having carefully reviewed the file submitted by the applicant, I find that nothing in the PRRA officer's decision warrants this Court's intervention.

I. Facts

[3] The applicant is a permanent resident in Canada with Lebanese citizenship. Before arriving in Canada in the 1980s, he was a member of the Lebanese Forces (hereafter the "LF").

[4] At this point, it is useful to briefly present the LF. This movement played an important role in the Lebanese civil war, when its Christian militias resisted the Muslim militias and Syrian interference. At the end of the war, it reinvented itself as a political party opposing Syrian influence but was banned from 1994 to 2005. Today, the LF is part of the coalition that won the June 2009 legislative elections.

[5] On July 1, 1987, the applicant fled the civil war in Lebanon and claimed refugee status on arriving in Canada. Although the Immigration and Refugee Board (hereafter "IRB") did not expressly determine him to be a refugee, he benefitted from a simplified procedure that allowed him to obtain, on July 27, 1991, permanent resident status as an admissible person whose refugee claim was determined to have a credible basis by the IRB.

[6] The applicant alleges that, in 1994, he was tried *in absentia* in Lebanon on a false murder charge. He was convicted and sentenced to eight years' imprisonment. He also claims that other false charges were brought against him by the pro-Syrian regime in place in the 1990s.

[7] On April 25, 2007, in Montréal, the applicant was convicted of fraud and various other violent criminal offences and sentenced to four years' imprisonment.

[8] On August 12, 2008, following a hearing before the IRB, the applicant was determined to be inadmissible under paragraph 36(1)(*a*) of the Act. On the same day, a deportation order was made against him.

[9] On March 6, 2009, the applicant availed himself of the opportunity to present a PRRA application.

[10] In a decision dated March 25, 2009, the PRRA officer rejected the application. This is an application for judicial review of the officer's decision.

II. Impugned decision

[11] The PRRA decision was made under subsection 112(3) of the Act, as the applicant was inadmissible on grounds of serious criminality under paragraph 36(1)(*a*) of the Act. Thus, only the factors set out in section 97 of the Act and whether the applicant would be a danger to the public may be considered, as required by paragraph 113(*d*) of the Act. In his PRRA application,

the applicant alleged that there would be a risk to his life, or a danger of torture and a risk of cruel punishment or treatment if he were to return to Lebanon. He fears that he would be imprisoned and tortured if he were to return to Lebanon, by reason of his membership in the LF and his alleged conviction *in absentia*.

[12] The PRRA officer also rejected the applicant's claim that he would be personally targeted because of his membership in the LF during the 1980s. The documents submitted by the applicant reveal a tense and violent situation among the various movements in Lebanese society. They also indicate that politically active public figures, politicians or leaders of movements such as the LF may be in greater danger of being targeted than the general population. However, in the officer's view, nothing showed that the applicant was visible enough himself to be targeted for attacks or violent acts.

[13] The officer did not attach any weight to the allegation that the applicant was convicted of murder *in absentia* in 1994. The only documentary evidence submitted by the applicant to establish the conviction is a letter allegedly faxed to him by the LF movement. The PRRA officer wrote the following regarding that letter:

> [TRANSLATION]
> With respect to the applicant's allegations that he was convicted of murder *in absentia* in 1994, he submits a letter faxed to him by the LF movement stating that he was sentenced to death on June 23, 1991. Notwithstanding the fact that there is a contradiction between the date of the conviction and that of the sentence, I attach very little probative value to this document. Even though it bears the initialism "FL", there is no date, and it is impossible to know who signed it. In addition, although it has been documented that FL members have been falsely accused under the Syrian regime,

> the recent information reveals that this is no longer the case since the withdrawal of Syrian troops in 2005.

[14] The officer further explained, in summarizing LF's background, that the era of the campaign of terror led by occupying Syrian forces against LF supporters had ended in 2005. The leader of the movement, Mr. Geagea, who had been incarcerated since 1994, was even released in 2005. The officer also mentioned that, indeed, the LF had become a political party whose members had run in the June 2009 legislative elections. (The PRRA decision, rendered in March, preceded the June election victory of the coalition that included the LF.)

[15] In concluding, the officer recognized that the applicant had likely had a basis for fleeing Lebanon in the 1980s to seek refuge in Canada but that the situation had changed since then, rendering nonexistent the risk to which he would be subjected on removal.

III. Issue

[16] Following the hearing, three issues raised by the parties deserve to be addressed:

1) Did the PRRA breach procedural fairness in not calling the applicant to a hearing under paragraph 113(*b*) of the Act, given the officer's doubts regarding the letter from the LF?

2) Did the PRRA officer err in law in analyzing the applicant's PRRA solely on the basis of the factors set out in section 97 of the Act rather than under section 96 as well?

3) Was the PRRA officer's decision reasonable in light of the evidence in the file?

IV. Relevant legislation

[17] The following provisions are relevant to this application for judicial review.

Provision from the *Immigration and Refugee Protection Act*, S. C. 2001, c. 27

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants:
(*a*) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed; . . .	a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé; […]
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 Article 1 of the Convention Against Torture; or	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

(*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.

(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.

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).

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.

(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) 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). […]
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: […]
(*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;
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 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;	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 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.

Provision from 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: (*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;	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) 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.

Provision from the *Regulations Respecting the Designation of a Refugee Claimants Designated Class and Certain Exemptions That Apply to That Class*, SOR/90-40

3. (1) Subject to subsection (2), the Refugee Claimants Designated Class is hereby designated for the purposes of subsection 6(2) of the Act as a class the admission of members of which would be in accordance with Canada's humanitarian tradition with respect to the displaced and the persecuted, and shall consist of those persons who	3. (1) Sous réserve du paragraphe (2), conformément à la tradition humanitaire suivie par le Canada à l'égard des personnes déplacées ou persécutées, la catégorie admissible de demandeurs du statut de réfugié est établie pour l'application du paragraphe 6(2) de la Loi et est constituée des personnes, à la fois:
. . .	[…]
(b) signified, before January 1, 1989, an intention to make a claim to be a Convention refugee	b) qui ont manifesté, avant le 1er janvier 1989, leur intention de revendiquer le statut de réfugié au sens de la Convention qui, selon le cas:
(*i*) to an immigration officer, who recorded that intention before that date, or to a person acting on behalf of an immigration officer, who an immigration officer is satisfied recorded that intention before that date,	(i) a été communiquée à un agent d'immigration qui l'a consignée avant cette date ou à une personne agissant au nom d'un agent d'immigration, laquelle a, de l'avis d'un agent d'immigration, consigné cette intention avant cette date,
. . .	

	[…]
(*c*) have been determined to have a credible basis for their claim to be a Convention refugee pursuant to (*i*) subsection 46.01(6) or (7) of the Act, or (*ii*) subsection 43(1) of an Act to amend the Immigration Act and to amend other acts thereof, R.S., c. 28 (4th Supp.).	c) dont la revendication a un minimum de fondement selon ce qui a été conclu ou déterminé conformément ; (i) soit aux paragraphes 46.01(6) ou (7) de la Loi, (ii) soit au paragraphe 43(1) de la Loi modifiant la Loi sur l'immigration et d'autres lois en conséquence, L.R., CH. 28 (4e suppl.).

V. Analysis

A. Procedural fairness

[18] At the hearing, the applicant argued that there had been a breach of procedural fairness owing to the PRRA officer's failure to call the applicant to a hearing prior to rendering his decision. The applicant claims that the officer erred in rejecting the letter from the LF without first meeting with the applicant. In the applicant's view, the officer's doubts as to the date, signature and content of the letter were comparable to a question of credibility. As such, a hearing would be required under paragraph 113(*b*) of the Act and the prescribed factors of section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (hereafter the "Regulations").

[19] In addition, the applicant submits that the officer could not disregard the letter, as he needed only to contact the LF to dispel his doubts as to its provenance and date. Moreover, the applicant insists that the officer was familiar with the LF Web site, where he could have checked the signatories' titles. In the opinion of counsel for the applicant, the failure to make these

inquiries was all the more serious since the applicant was incarcerated and had difficulty obtaining documents or clarifications himself.

[20] First, it is important to note that this argument had not been raised by counsel for the applicant in his written submissions. This omission alone would be enough to dispose of this argument, as one party cannot take its opponent by surprise at a hearing. Such practice must be discouraged; even assuming that the argument may be considered, introducing it in this late manner can only diminish its weight.

[21] At this stage, it is important to point out that the standard of review for a breach of procedural fairness is correctness: *Latifi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388, [2006] F.C.J. No. 1738, at para. 31; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392.

[22] Here, the applicant's arguments cannot prevail, for several reasons. First, the applicant bears the burden of establishing the risks to which he would be personally subjected if removed: *Pareja v. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2008 CF 1333, [2008] A.C.F. no 1705, at para. 26. In addition, the officer has no obligation to confront the applicant with the insufficiencies in the evidence: *Lupsa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 311, [2007] F.C.J. No. 434, at paras. 13-14. An applicant's incarceration in no way shifts this burden, especially when the applicant has been, as in this case, continually represented by counsel.

[23] As regards the obligation to hold a hearing, the applicant's argument is without merit. Only if all the factors set out in section 167 of the Regulations are present does holding a hearing under paragraph 113(*b*) become an option. As Justice Michael L. Phelan wrote in *Tekie v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 27, [2005] F.C.J. No. 39, at para. 16: "In my view, section 167 becomes operative where credibility is an issue which could result in a negative PRRA decision. The intent of the provision is to allow an Applicant to face any credibility concern which may be put in issue".

[24] However, in this case, the letter in question does not concern the applicant's credibility. Although the assessment of the probative value of certain documents may sometimes have an impact on an applicant's credibility (see for example *Komahe v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1521, [2006] F.C.J. No. 1909, at para. 38), these two concepts seem to me nonetheless to be distinct. The probative value, or even the authenticity, of a document corroborating an applicant's narrative and provided by the applicant is clearly related to the applicant's credibility. However, such is not the case when the probative value of a document from a third party is called into question for reasons that have nothing to do with its content.

[25] Here, the officer attached little weight to the letter from the LF essentially for reasons related to its form, not because of any contradictions or doubts he had as to its content. Indeed, the officer seems to believe that an undated letter that is not legibly signed in one of the official languages is not enough to establish the applicant's personalized risk as a former LF member in

Lebanon today, even assuming that the applicant actually was convicted for murder *in absentia* in the 1990s. In this regard, the Court previously wrote in *Latifi*, above, at para. 48:

> I agree with the Respondent that the distinction between "sufficiency" of evidence and "credibility" is crucial in this case and that the distinction is well recognized in the relevant jurisprudence.
>
> See also: *Iboude v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1316, [2005] F.C.J. No. 1595, at para. 14.

[26] Moreover, even if the letter could be considered to be evidence relating to the applicant's credibility, the other factors set out in paragraphs 167(*b*) and (*c*) of the Regulations are not present in this case. A careful reading of the officer's decision reveals that the letter does not seem to have been a key factor in his assessment of the risk. In his determination, the officer mainly relied on other documentary evidence that did not indicate any risk for a little-known member of the LF such as the applicant, given the change in circumstances in Lebanon, in particular as regards the legitimacy of the LF. Viewed this way, the acceptance of the letter and of the applicant's conviction would not affect the PRRA officer's conclusion.

[27] Lastly, I note the recent decision of my colleague Justice Elizabeth J. Heneghan in *Arias v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1207, [2009] F.C.J. No. 1500. In that decision, my colleague distanced herself from the dominant tide in case law requiring that a hearing be automatic and mandatory the moment that all the factors set out in section 167 of the Regulations are present. On this point, she stated the following:

> **19** The language of subsection 113(b) makes it clear, in my opinion, that the availability of an oral hearing in the PRRA context lies solely in the discretion of the Respondent, having

> regard to the "prescribed factors" that are identified in section 167 of the Regulations. The fact that those prescribed factors exist in a given case does not lead to the inevitable conclusion that an oral hearing must be held. In this regard, I respectfully depart from the approach taken in the decision of *Tekie v. Canada (Minister of Citizenship and Immigration)*, 50 Imm. L.R. (3d) 306 (F.C.).

[28] I do not need to rule on this issue here. I will simply take the liberty of saying that, if this submission were to be accepted, the PRRA officer's decision in this case would be even more difficult to challenge, insofar as it would require evidence that he did not reasonably exercise his discretion, and no attempt was even made to submit such evidence. In any event, and for all of the reasons given above, the applicant's argument on the obligation to hold a hearing must be rejected.

B. Error of law

[29] Counsel for the applicant also raised a number of errors of law that the officer allegedly made, errors relating to his jurisdiction to assess the PRRA as he did. To the extent that the alleged errors are serious enough to put in issue the officer's jurisdiction, I am willing to consider that they must be reviewed according to the standard of correctness: *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540, at para. 15; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 59.

[30] In his memorandum, counsel for the applicant claimed that the applicant had been determined to be a refugee in 1991. Consequently, he argues, the applicant should have benefitted from the principle of non-refoulement according to subsection 115(1) of the Act, and

should have been subject to a decision of the Minister under paragraph 115(2)(*a*) of the Act rather than a PRRA application.

[31] At the hearing, counsel for the applicant acknowledged that his client had not been formally determined to be a refugee in 1991. This admission seems entirely justified. Even though the applicant had claimed refugee status in July 1987, the IRB never declared him to be a refugee. In fact, the former *Immigration Act*, R.S.C. 1985, c. I-2, provided for the creation through regulations of classes of admissible persons in accordance with Canada's humanitarian tradition. These designated classes of persons could obtain permanent resident status through a simplified procedure, after being granted landing. In 1990, a designated class was created by the *Refugee Claimants Designated Class Regulations*, SOR/90-40, from which the applicant benefitted, since it was determined that his claim for refugee status had a credible basis. However, persons who had been admitted to designated classes similar to that of the applicant were later determined not to be refugees: *Quintanilla v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 726, [2006] F.C.J. No. 923, at para. 16 ; *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540, at paras. 39-44.

[33] Moreover, a reading of the Act leaves no doubt as to the factors to be considered in assessing the applicant's PRRA. The applicant was inadmissible on grounds of serious criminality under paragraph 36(1)(*a*) of the Act. As such, he is a person described in paragraph 112(3)(*b*) of the Act. Accordingly, his PRRA application may be assessed only in

relation to the factors in section 97, as expressly stated in paragraph 113(*d*). Here, the officer did exactly that, thereby adhering to the existing legislative scheme.

C. Reasonableness of the decision as regards the evidence

[32] Thus, the remaining issue is the applicant's arguments concerning the officer's assessment of the evidence and the risks. Quite clearly, the Court must show deference when reviewing this aspect of a PRRA decision, since such matters fall squarely within the officer's jurisdiction. It is therefore the standard of reasonableness that applies here: *Roberto v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 180, [2009] F.C.J. No. 212, at para. 13.

[33] Counsel for the applicant submits that the officer did not really analyze the personalized risk to which the applicant might be subjected. He claims, among other things, that the officer failed to make a serious assessment of the risk related to the applicant's membership in the LF. Since arriving in Canada, the applicant has consistently maintained that he is a member of the LF. Moreover, even though he never specified that he was an eminent member of the movement, that is not to say that such is not the case. Counsel for the applicant also contends that the officer's conclusion is unreasonable given the evidence of Syria's continuing omnipresence and the danger still faced by prominent LF members, as evidenced by their wide-scale immigration to countries such as the United States, Canada and Australia.

[34] I cannot accept these arguments. The officer's decision is reasonable and based on both the evidence submitted to him by the applicant and the documentation available to him. To begin

with, the applicant submitted no objective evidence to the PRRA officer in support of his claims that the Lebanese government today is [TRANSLATION] “a puppet controlled by the Syrians” and that many LF members fear returning to Lebanon because of their membership in the movement. The officer was therefore justified in disregarding these elements.

[35] In addition, the officer thoroughly reviewed the documentary evidence and presented an extremely compelling analysis of the political and social context in Lebanon. The officer aptly summarized the LF’s background and current situation, before assessing the personalized risk faced by the applicant. When the evidence indicates unequivocally that the LF became a political party following the withdrawal of Syrian troops, that its leader was even released from prison, and that it is part of the “March 14” coalition that ran in the June 2009 elections, it is difficult to find that it was unreasonable for the officer to conclude that the applicant is no longer at risk by reason of his membership in the LF during the 1980s. That conclusion is all the more justified because nothing in the evidence shows that the applicant was—and, more importantly, still is—a leading member of the LF, thus increasing his risk of being targeted for attacks.

[36] In short, the officer did not base his decision on an erroneous finding of fact that he made in a perverse or capricious manner or without regard for the material before him, to quote section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The Court can therefore not substitute its assessment of the evidence for that of the PRRA officer.

[37] For all of the above reasons, this application for judicial review must therefore be dismissed. The parties did not propose a question for certification, and no question arises on this record.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Yves de Montigny"
Judge

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT

SOLICITORS OF RECORD

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