Federal Court  Cour fédérale

Date: 20120125

Docket: IMM-3613-11

Citation: 2012 FC 97

Ottawa, Ontario, January 25, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

DAHIR SHIRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated April 18, 2011, wherein the applicant was determined to be neither a Convention refugee within the meaning of section 96 of the Act nor a person in need of protection as defined in subsection 97(1) of the Act. This conclusion was based on the Board's finding that the applicant was excluded from refugee protection under

section 98 of the Act as a result of his previous criminal convictions for drug use in the United States (US).

[2] The applicant requests that the Board's decision be set aside and the matter be referred back for re-determination.

Background

[3] The applicant, Dahir Shire, also known as Mohamud Abdulla Farah, is a citizen of Somalia. He is a member of the minority clan Hamar Weyne. His grandmother and some distant cousins are his sole remaining family in Somalia.

[4] In the late 1990's when he was a child, the applicant and his family (including six other siblings) fled Somalia for Kenya to escape the escalating civil war in their country. After living in a refugee neighbourhood for approximately two years, the applicant and his family were determined to be Convention refugees by the United Nations High Commissioner for Refugees (UNHCR). In 2001, they were resettled in the US state of Minnesota.

[5] In Minnesota, the family lived in a marginalized neighbourhood with high rates of crime, drug dealing and drug use. In attempting to cope with his new life, the applicant turned to drugs and was subsequently charged and convicted on numerous occasions, including:

December 5, 2006: Applicant made a guilty plea to charges of controlled substance crime in the 3rd degree involving crack cocaine;

February 5, 2007: Applicant sentenced for controlled substance crime in the 2nd and 3rd degrees. The 2nd degree sentence was stayed and the applicant was placed on probation with strict terms and conditions including a $100,000 bond;

May 14, 2008: Applicant re-sentenced to 21 months and 27 months for violation of February 2007 probation order;

February 19, 2010: Applicant charged with 3rd degree sale of cocaine on May 29, 2009 and 5th degree possession of cocaine on February 17, 2010; and

July 8, 2010: Applicant charged with a controlled substance crime in the 1st degree. Applicant was to appear in Court on August 6, 2011 for an Omnibus hearing.

[6] Due to the applicant's criminal convictions, the US government began proceedings to remove his permanent resident status. In fear of being deported back to Somalia, the applicant fled to Canada on August 6, 2010.

[7] On August 9, 2010, a warrant was issued by a Minnesota court for the applicant's failure to appear in court there. A warrant for his arrest was later issued on November 15, 2010 for his failure to comply with the conditions of release.

[8] The crimes for which the applicant has been convicted and charged in the US are equivalent to possession and trafficking under subsections 4(1) and 5(1) of the *Canadian Controlled Drugs and*

Substances Act, SC 1996, c 19 (the CDSA). The maximum penalties for possession and trafficking of cocaine are seven years and life imprisonment, respectively (Schedule 1 of the CDSA).

[9] In Canada, the applicant filed a claim for refugee protection on or about August 9, 2010. His refugee claim is grounded on his fear of al-Shabaab, a jihad insurgency group and other rival groups fighting for control of Somalia. The applicant is particularly concerned of al-Shabaab's alleged target of foreigners and returnees. In his claim for refugee protection, the applicant stated that his father and two of his brothers had been killed by al-Shabaab.

[10] On September 3, 2010, the applicant was the subject of a section 44 Report for criminality and was detained as a danger to the public and a flight risk. Another section 44 Report in November 2010 alleged inadmissibility for serious criminality.

[11] In January 2011, the Board received a notice of intent to intervene in the hearing of the applicant's claim from the respondent. The notice stated that the respondent had reason to believe that the applicant may be excludable from refugee protection pursuant to section 98 of the Act and article 1F(b) of the *United Nations Convention relating to the Status of Refugees*, July 28, 1951, [1969] Can TS No 6 (the UN Convention).

[12] The hearing of the applicant's refugee claim was held on March 2, 2011.

Board's Decision

[13] The Board released its decision on April 18, 2011.

[14] The Board first acknowledged that the applicant was who he claimed to be and that he was a Somali citizen.

[15] After listing the applicant's criminal history in the US, as alleged by the respondent, the Board outlined the applicant's responses to questions on his criminal history.

[16] The applicant admitted that there were charges pending against him and that he had been arrested on July 7, 2006. He also admitted to the allegations in the Rochester Police Department event report, namely that whilst being a car passenger he had given a person that entered the car an orange substance, which was not his, in exchange for $100. He denied being a crack dealer, but admitted that he would participate as a "mule" in transactions to obtain drugs to feed his addiction.

[17] With regards to the more recent events, the applicant indicated that he was on parole when he was arrested on February 19, 2010. At that time, drugs were found in the motel room that he was in, but they were not on his person. The applicant denied participating in the alleged sale on May 28, 2009.

[18] After outlining the positions of the parties, the Board described the applicable burden and standard of proof. The Board acknowledged that the respondent bore the onus of proving that there

were serious reasons for considering that the applicant had committed an excludable crime. The standard of proof was greater than suspicion or conjecture, but less than proof on a balance of probabilities.

[19] The Board noted that the applicant:

1. Admitted to being convicted of controlled substance crimes;
2. Did not deny handing over crack cocaine in exchange for money; and
3. Did not allege that he was coerced into making a guilty plea.

[20] Although the applicant asserted that the pending charges were without foundation, the Board found them to be part of a pattern that was consistent with the applicant's drug addiction. The Board therefore found serious reasons for considering that the applicant had been in possession of and had trafficked crack cocaine on more than one occasion.

[21] Turning to the seriousness of the crimes committed, the Board referred to the UNHCR *Handbook on Criteria for Determining Refugee Status* definition of a serious crime as capital crimes or very grave punishable acts. Lesser offences punishable by moderate sentences were deemed inadequate grounds for exclusion. The Board also referred to jurisprudence that has developed on this issue and acknowledged that a serious crime would require a maximum of ten years imprisonment or more. However, the Board acknowledged that the inquiry also required an examination of all the relevant surrounding circumstances. For further guidance, the Board turned to academic authorities that have described serious crimes as: truly abhorrent wrongs; crimes against physical integrity, life and liberty; crimes in the most serious category of offences; and crimes of a

more trivial kind perpetuated in such a manner or in such circumstances that its very wickedness makes the perpetrator liable to a penalty more severe than the average punishment for such crimes.

[22] Finally, the Board referred to the Federal Court of Appeal's recent decision of *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404, [2008] FCJ No 1740, in which the Court held that article 1F(b) still applied where an applicant, prior to coming to Canada, had already served the sentence for the serious crime that he had been convicted for abroad. The Board also reiterated the established jurisprudence on the purpose of article 1F(b). The Board then explained that it did not view the applicant as having finished his sentence as there were sufficient grounds on which to believe that he had violated some of the terms of his probation.

[23] The Board found that there was credible evidence on which to find that the applicant had travelled to Canada to avoid prosecution in the US. Although he claimed to have fled to avoid being forcibly returned to Somalia, his fear was directly tied to the pending prosecution, and this was precisely the type of situation that article 1F(b) sought to address.

[24] The Board acknowledged the hardships faced by the applicant and his family as refugees from Somalia and newcomers in the US. However, the Board highlighted the fact that the applicant not only used, but also trafficked in crack cocaine and continued to do so after being convicted. The Board found that the applicant's repeated participation in the trafficking of cocaine was a serious crime.

[25] For these reasons, the Board found that the applicant was excluded from refugee protection by way of section 98 of the Act. As such, he did not qualify as a Convention refugee.

[26] Although the Board noted that there was no need to further consider the applicant's claim, it made some other observations for the record. The Board acknowledged that there had been no effective government in Somalia since 1991 and the situation in the country was extremely unstable. Further, having spent the last decade in North America, the Board found that the applicant would be a clear target for al-Shabaab if returned to Somalia. Therefore, should the applicant seek other forms of protection in Canada, the Board urged that these observations be taken into consideration.

Issues

[27] The applicant submits the following point at issue:

Did the Board err in failing to provide adequate analysis for its determination that the applicant was excluded pursuant to article 1F(b)?

[28] I would phrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in its assessment of the article 1F(b) exclusion?
3. Were the Board's reasons adequate?

Applicant's Written Submissions

[29] The applicant submits that the Board erred in both its analysis of article 1F(b) of the UN Convention and by providing inadequate reasons to support its decision.

[30] The applicant submits that the standard of review of decisions under section 98 of the IRPA is reasonableness.

[31] The applicant submits that in conducting an article 1F(b) analysis, the Board must engage all of the following factors in its analysis: elements of the crime; mode of prosecution; penalty prescribed; facts; and mitigating and aggravating circumstances underlying the conviction.

[32] The applicant submits that the Board erred in not engaging all of these factors.

[33] The choice of the mode of prosecution is relevant to the assessment of the seriousness of the crime where the penalties prescribed for summary conviction offences and for indictable offences differ substantially. Therefore, the Board should have considered the quantity of drugs in question.

[34] Further, the Board did not articulate its weighing process for the limited factors that it did consider. It was therefore unclear why the Board deemed some factors more persuasive than others.

[35] For these reasons, the applicant submits that the Board's analysis pursuant to article 1F(b) of the UN Convention is clearly deficient.

[36] The applicant also submits that there was a critical break in the chain of reasoning between the Board's analysis of article 1F(b) and its conclusion. The Board was unreasonably vague in merely concluding that the applicant committed a serious non-political crime without further discussing the parties' allegations on this point. The Board's decision was also unclear as to which specific allegation was sufficiently serious to justify the application of the exclusion clause, or why the presumption of seriousness was not rebutted by reference to the above factors or the applicant's testimony.

Respondent's Written Submissions

[37] The respondent submits that the Board is a specialized tribunal and an expert in its field. This Court should therefore not substitute its view on matters of fact that the Board, having regard to its specialized knowledge and the evidence before it, has considered.

[38] The respondent submits that "a serious non-political crime", as used in article 1F(b) of the UN Convention has the same meaning as "serious criminality" in section 36 of the Act.

[39] The respondent submits that it bears the onus of establishing serious reasons for considering that the applicant has committed a serious non-political crime outside Canada prior to his admission as a refugee. However, once convictions for possession and trafficking cocaine are established, the onus shifts to the applicant to rebut the presumption that these offences are serious. The respondent submits that the applicant failed to rebut this presumption because he:

1. Agreed that he was not coerced into pleading guilty to the crimes;

2. Acknowledged being known as “KC” – a known drug dealer;

3. Acknowledged being on parole when he participated in at least some of the events that gave rise to the February 2010 charges;

4. Acknowledged that he failed to appear to answer outstanding charges; and

5. Failed to rebut the presumption that the offences were serious or that he had committed them.

[40] The respondent submits that the Board adequately considered all relevant facts in making its determination under article 1F(b). The offences that the applicant was charged with and convicted for were all indictable offences, as evidenced by the length of the maximum sentences for these offences under Canadian law:

Possession of cocaine = seven years imprisonment

Possession of cocaine for the purpose of trafficking = life imprisonment

Trafficking in cocaine = life imprisonment

[41] The respondent also submits that the Board adequately considered the elements of the offences in examining their equivalence in Canada. The Board considered the applicant’s submissions that the current charges are without foundation. However, in the context of the total evidence, including the applicant’s admission that he worked as a “mule” for drug dealers to feed his addiction, the Board came to a reasonable finding. Further, the fact that the applicant’s sentence in 2007 was not harsh was not determinative of the seriousness of the crimes committed. A lenient sentence cannot be considered in isolation when assessing the seriousness of the crime.

[42] In response to the applicant's submissions that the objective in subsection 3(2) of the Act demands a restrictive interpretation of article 1F(b) that includes attention to international obligations towards refugees and human rights, the respondent submits that this same objective also requires promotion of international and Canadian security. As the crimes for which the applicant was convicted or charged are recognized as very serious and potentially damaging to the public, and as there were insufficient mitigating factors presented, the respondent submits that the exclusion of the applicant was not unreasonable. The applicant's risk in Somalia is not a factor that should be balanced as a mitigating circumstance. The respondent submits that the applicant has failed to identify the mitigating factors that the Board failed to consider. The mitigating factors that the applicant did raise were insufficient in light of the seriousness of his offences, his non-compliance with his probation and his failure to appear in court.

[43] The Board also correctly examined the crimes in the context of Canadian criminal legislation. The respondent submits that an article 1F(b) analysis only requires the existence of serious reasons for considering that the applicant committed a serious non-political crime. There is no requirement that the applicant be prosecuted in the jurisdiction where the crimes were committed. Further, although the offences that the applicant was initially convicted and sentenced for involved smaller quantities of cocaine, the outstanding offences involved a minimum of 25 grams; offences that are treated more seriously in the US due to the larger quantities. The jurisprudence provides that a board's consideration of the quantity of a drug is reasonable.

[44] Finally, the respondent submits that the Board's reasons should be read as a whole. In so doing, the reasons clearly show that the Board understood both the facts of the applicant's claim and

the issues around exclusion and also conducted an adequate analysis of the evidence. Further, the reasons met the judicial standard of adequacy. It was not necessary for the Board to specifically refer to all the relevant factors when the reasons clearly showed that they were considered.

Applicant's Written Reply

[45] In reply, the applicant submits that both jurisprudence and academic commentary have established that the exclusion clause in section 98 of the Act requires a restrictive interpretation. The applicant refers to *Pushpanatan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, in which it submits the Supreme Court of Canada held that the human rights character of the UN Convention, as confirmed in section 3 of the Act, ought to inform any interpretation of individual provisions. In considering this human rights purpose, section 98 should be applied restrictively. A restrictive interpretation of article 1F(b) requires a meaningful analysis rather than casual application of all the *Jayasekera* factors.

Analysis and Decision

[46] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[47] It is established jurisprudence that the determination of exclusion under article 1F of the UN Convention is a question of mixed fact and law that involves some discretion. The appropriate standard of review is therefore reasonableness (see *Médina v Canada (Minister of Citizenship and Immigration)*, 2006 FC 62, [2006] FCJ No 86 at paragraph 9).

[48] In reviewing the Board's decision on the standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraph 59). As the Supreme Court held in *Khosa* above, "it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence." (at paragraph 59).

[49] Conversely, the adequacy of a Board's reasons is a matter of procedural fairness and natural justice and the appropriate standard of review is correctness (see *Guerrero v Canada (Minister of Citizenship and Immigration)*, 2010 FC 384, [2010] FCJ No 448 at paragraph 19). No deference is owed to the Board on this issue (see *Dunsmuir* above, at paragraph 50).

[50] **Issue 2**

Did the Board err in its assessment of the article 1F(b) exclusion?

Three conditions must be met to engage the article 1F(b) exclusion (see *Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178, [2003] FCJ No 565 at paragraph 134):

1. There must be a crime;
2. The crime must be a non-political one; and
3. The crime must be serious.

[51] In this case, there is evidence that the applicant has committed crimes in the US. The fact that he already served a sentence for some of these crimes does not render article 1F(b) inapplicable (see *Jayasekara* above, at paragraph 57). The crimes that the applicant was convicted for were non-political drug offences.

[52] The main issue is therefore whether the applicant's crimes were serious. In *Jayasekara* above, the Federal Court of Appeal reviewed various international standards for determining the gravity of a crime but then noted that "[w]hile regard should be had to international standards, the perspective of the receiving state or nation cannot be ignored in determining the seriousness of the crime" (at paragraph 43).

[53] Canadian courts have viewed drug trafficking as a serious crime within the ambit of article 1F(b) (see *Pushpanatan* above, at paragraph 73; and *Delisle v Canada (Department of Citizenship and Immigration)*, 2002 FCT 737, [2002] FCJ No 977 at paragraph 13). In *Jayasekara* above, the Federal Court of Appeal acknowledged that there is "no doubt that Parliament considers the trafficking of opium as a serious crime" (at paragraph 53). Cocaine is listed in the same schedule of the CDSA as opium and it is therefore reasonable to extend the Federal Court of Appeal's finding on the seriousness of trafficking in opium to trafficking in cocaine. As such, there is a strong presumption of seriousness attached to the drug trafficking crimes committed by the applicant.

However, this presumption may be rebutted by reference to the following factors (see *Jayasekara* above, at paragraph 44):

Elements of the crime;

Mode of prosecution;

Penalty prescribed;

Facts; and

Mitigating and aggravating circumstances underlying the conviction.

[54] In this case, the applicant submits that the Board erred in its analysis by not evaluating all of these *Jayasekara* factors. However, reasons for a board's decision must be read as a whole. As explained by Madam Justice Anne MacTavish in *Farkhondehfall v Canada (Minister of Citizenship and Immigration)*, 2010 FC 471, [2010] FCJ No 974 at paragraph 28:

> In determining whether a decision is reasonable, the reviewing court must pay attention to the reasons offered by the decision-maker, or which could have been offered in support of a decision. To the extent that a Tribunal may not fully explain certain aspects of its decision, the reviewing Court may consult evidence referred to by the Tribunal in order to flesh out its reasons: …

[55] Turning to the decision itself, the Board first summarized the events that transpired after the applicant's departure from Somalia, including his turn to drugs in the US and his subsequent departure to Canada to avoid being deported to Somalia where he feared the al-Shabaab. With respect to the applicant's criminal history in the US, the Board enumerated the respondent's evidence on this issue and then highlighted the applicant's own admissions, namely that:

He was not a crack dealer;

He was a crack addict and would participate as a “mule” for an established drug dealer in exchange for drugs for himself;

He was arrested in 2006 for having given an individual an orange substance, which was not his, in exchange for $100 whilst being a passenger in a car;

He did not allege that he was coerced into making a guilty plea;

Drug charges were pending against him in the US;

He denied participating in the alleged sale that occurred in May 2009; and

In February 2010, when he was on parole, drugs were found in the motel room that he was in (but not on his person) and he was arrested.

[56] In response to the applicant’s allegations that the pending charges were without foundation, the Board found that “they are part of a pattern that is consistent with the [applicant’s] admitted drug addiction” (decision at paragraph 18).

[57] The Board then evaluated the seriousness of the applicant’s crimes. It first noted the reference to a maximum term of imprisonment of ten years or more made by Mr. Justice Robertson in *Chan v Canada (Minister of Citizenship and Immigration)* (CA), [2000] 4 FC 390, [2000] FCJ No 1180 (at paragraph 9). The Board acknowledged the respondent’s submissions regarding the maximum terms of imprisonment for the Canadian equivalents of the applicant’s crimes; seven years and life. However, the Board noted that its assessment could not end there and therefore referred to academics authorities for further guidance. It also acknowledged the ruling by the Federal Court of Appeal in *Jayasekara* above, on the effect of already having served a sentence.

[58] With regards to the evidence, the Board found that the applicant had not finished his sentence as there were credible grounds for finding that he had violated some of the terms of his probation, specifically, using drugs and being in contact with persons who use and/or sell illegal drugs. There was also credible evidence on which to find that the applicant had entered Canada to avoid prosecution in the US, a situation that the Board acknowledged article 1F(b) was specifically intended to address (see *Zrig* above, at paragraphs 118 and 119). The Board could have analyzed this issue a little further as the applicant's intention in fleeing to Canada was not solely to avoid prosecution, but more broadly prosecution that would lead to his return to Somalia. However, I do not find that this failure alone renders the Board's decision unreasonable. As mentioned above, the decision must be read and assessed as a whole.

[59] Finally, the Board acknowledged the adjustment challenges, essentially aggravating factors, that the applicant would have faced as a member of a large refugee family newly arrived to the US and living in a community with high crime. However, the Board referred back to the evidence that the applicant not only used, but knowingly and repeatedly participated in the trafficking of a dangerous substance. The Board found that this repeated participation in drug trafficking was a serious crime.

[60] Turning back to the factors described by the Federal Court of Appeal in *Jayasekara* above, it is evident that the Board considered the elements of the applicant's crimes, including both the respondent's evidence from the US authorities on the applicant's offences and the applicant's own allegations. The mode of prosecution and associated penalty were acknowledged in the Board's assessment of the applicant's completion of his sentence, including the prison term and the

subsequent probation with attached terms and conditions. The facts, including aggravating factors, were also clearly outlined by the Board in its decision. These included the applicant's troublesome adolescence which was linked to his refugee status and life in a marginalized neighbourhood. Although the Board noted these challenges, it found that the applicant's repeated participation in drug-related offences had the effect of reducing the corresponding weight of these circumstances.

[61] In summary, I find that the decision, when read as a whole, shows that the Board did evaluate and weigh all five *Jayasekara* factors in assessing the seriousness of the applicant's crimes in the US. The substance was present in the reasons (see *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2002] FCJ No 1687 at paragraph 3). This Court must show deference to the Board's weighing of the evidence (see *Khosa* above, at paragraph 59). I find that the Board's decision is reasonable and is transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir*, above at paragraph 47).

[62] **Issue 3**

Were the Board's reasons adequate?

An administrative tribunal's written reasons are intended to inform the affected individual of the underlying rationale for the decision. Therefore, reasons must be proper, adequate and intelligible and include considerations of the parties' substantial points of argument (see *Syed v Canada (Minister of Employment and Immigration)*, 83 FTR 283, [1994] FCJ No 1331 at paragraph 8; and *Via Rail Canada Inc v Lemonde*, [2001] 2 FC 25, [2000] FCJ No 1685 at paragraph 22). As

explained by Mr. Justice Donald Rennie in *Ganem v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1147, [2011] FCJ No 1404 at paragraph 45:

> … Decision makers must state their findings of fact, the evidence on which those findings were based, address the major points at issue, and describe the reasoning process the decision maker followed.

[63] However, reasons need not be perfect; they must be examined in the full context of the decision and in the particular circumstances of the particular case (see *Guerrero* above, at paragraph 30). It is not necessary that all relevant factors be discussed in detail. Of greatest importance is that the reasons serve the purpose and function for which they are required (see *Ganem* above, at paragraph 47).

[64] I find that the Board's reasons were adequate in this case. As judicially required, the Board clearly laid out its findings of fact, listed the evidence it relied upon, and addressed the major points at issue, most notably the seriousness of the applicant's crimes. The Board then pointed to jurisprudence and other sources for guidance on making its determination on this issue. The Board's reasoning process is intelligible and adequate for informing others of the underlying rationale for its decision.

[65] For these collective reasons, I would dismiss the judicial review.

[66] A final comment should be made regarding the risk that the applicant would face if returned to Somalia. As stated by the Board, Somalia has been without effective government for two decades. Violence is rampant and more populous clans pray upon smaller ones, such as the

applicant's. The applicant has little remaining family in Somalia and his father and two of his brothers have been killed by al-Shabaab. Having lived abroad for over a decade, the applicant would likely face severe difficulties if returned. However, the practical effect of section 98 of the Act is that the applicant cannot obtain refugee protection (*Jayasekara* above, at paragraph 2). Permanent resident status is also not available to him (*Jayasekara* above, at paragraph 3). It is therefore recommended that the hardship of being returned, coupled with the lack of other available protection, be carefully considered in the review of any future immigration applications made by the applicant.

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

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 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;
(b) having been convicted of an offence outside Canada 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; or	b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
(c) committing an act outside Canada that is an offence in the place where it was committed and 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) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.
(2) A foreign national is inadmissible on grounds of criminality for	(2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;	a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits;
(b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under	b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une

an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;

loi fédérale punissable par mise en accusation ou de deux infractions qui ne découlent pas des mêmes faits et qui, commises au Canada, constitueraient des infractions à des lois fédérales;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation;

(d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

d) commettre, à son entrée au Canada, une infraction qui constitue une infraction à une loi fédérale précisée par règlement.

(3) The following provisions govern subsections (1) and (2):

(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :

(a) an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;

a) l'infraction punissable par mise en accusation ou par procédure sommaire est assimilée à l'infraction punissable par mise en accusation, indépendamment du mode de poursuite effectivement retenu;

(b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;

b) la déclaration de culpabilité n'emporte pas interdiction de territoire en cas de verdict d'acquittement rendu en dernier ressort ou de réhabilitation — sauf cas de révocation ou de nullité — au titre de la *Loi sur le casier judiciaire*;

(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;

c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;

(d) a determination of whether a permanent resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and

d) la preuve du fait visé à l'alinéa (1)c) est, s'agissant du résident permanent, fondée sur la prépondérance des probabilités;

(e) inadmissibility under subsections (1) and (2) may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence for which the permanent resident or foreign national is found guilty under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985 or the *Youth Criminal Justice Act*.

e) l'interdiction de territoire ne peut être fondée sur une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ni sur une infraction dont le résident permanent ou l'étranger est déclaré coupable sous le régime de la *Loi sur les jeunes contrevenants*, chapitre Y-1 des Lois révisées du Canada (1985), ou de la *Loi sur le système de justice pénale pour les adolescents*.

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

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 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) 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.
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 in need of protection.	98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

Controlled Drugs and Substances Act, SC 1996, c 19

4. (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.	4. (1) Sauf dans les cas autorisés aux termes des règlements, la possession de toute substance inscrite aux annexes I, II ou III est interdite.
5. (1) No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.	5. (1) Il est interdit de faire le trafic de toute substance inscrite aux annexes I, II, III ou IV ou de toute substance présentée ou tenue pour telle par le trafiquant.
2. Coca (Erythroxylon), its preparations, derivatives, alkaloids and salts, including:	2. Coca (érythroxylone), ainsi que ses préparations, dérivés, alcaloïdes et sels, notamment :
(1) Coca leaves	(1) feuilles de coca

(2) Cocaine (benzoylmethylecgonine)	(2) cocaïne (ester méthylique de la benzoylecgonine)
(3) Ecgonine (3–hydroxy–2–tropane carboxylic acid)	(3) ecgonine (acide hydroxy–3 tropane–2 carboxylique)

United Nations Convention relating to the Status of Refugees, July 28, 1951, [1969] Can TS No 6

Article 1. . . . F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: . . . (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	Article 1. . . . F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser : . . . b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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