Federal Court  Cour fédérale

Date: 20120207

Docket: IMM-3799-11

Citation: 2012 FC 162

Ottawa, Ontario, February 7, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

NASRULLAH ZAZAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) and paragraph 72(2)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of a director, case determination of the Case Management Branch of Citizenship and Immigration Canada (the officer), dated May 27, 2011, wherein the applicant's permanent residence application was refused (the decision). This conclusion was based on the officer's finding that there were insufficient humanitarian and compassionate (H&C) grounds to warrant an exception allowing the applicant's permanent residence application to be made from within Canada.

[2] The applicant requests that the officer's decision be set aside and the application be referred back to Citizenship and Immigration Canada (CIC) for redetermination by a different officer.

Background

[3] The applicant, Nasrullah Zazai, is a citizen of Afghanistan. In 2002, he married a Canadian permanent resident. The couple have three Canadian born children, with a fourth expected in February 2012. The applicant has no remaining family in Afghanistan.

[4] The applicant came to Canada as a stowaway on November 17, 1993 at the age of 25. In February 1994, he filed a refugee claim in which he claimed he had been a member of Khadamat-e Etela'at-e Dawlati (KHAD) for five years. KHAD, Afghanistan's intelligence agency, has committed crimes against humanity. The applicant claimed that while he was a KHAD member, he reported on the activities of suspected Mujahedin members and rose through the ranks from lieutenant to captain. Aside from his own statements, no other evidence was submitted to corroborate his membership in KHAD.

[5] Based on his claimed membership in KHAD, the Convention Refugee Determination Division (CRDD, the former Refugee Protection Division) dismissed the applicant's refugee claim in August 1995 pursuant to article 1F(a) of the *United Nations Convention Relating to the Status of Refugees*.

[6] On January 5, 1996, the applicant applied for leave for judicial refugee of the decision on his refugee claim. This application was denied in December 1996. The same year, the applicant applied for landing as a post-determination refugee claimant in Canada (PDRCC) after a PDRCC officer found he would be at risk if returned to Afghanistan. This application was denied in February 2001 due to his inadmissibility.

[7] In 2000, a section 27 report (former section 44 report) was prepared against the applicant. Following the admissibility hearings, the applicant was deemed inadmissible. A deportation order was issued against him on January 17, 2002. The applicant sought leave for judicial review of the inadmissibility decision. It was granted on May 21, 2003. However, the respondent appealed this decision to the Federal Court of Appeal, who allowed the appeal on March 4, 2004. On re-determination, the applicant's leave for judicial review was denied. Concurrently, the trial judge certified a question on whether complicity was included in the definition of "crime against humanity" in the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24. In *Zazai v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 303, [2005] FCJ No 1567, the Federal Court of Appeal answered this question affirmatively (at paragraph 27).

[8] In July 2003, the applicant filed an application for permanent residence on H&C grounds. This application was refused on April 25, 2004. Leave for judicial review of this decision was denied.

[9] In May 2006, the applicant applied for permanent residence based on H&C grounds. This application included a request that his marriage and eligibility under the spousal policy be

considered. In this application, the applicant also stated that his previous claims of KHAD membership were false. He allegedly made these misrepresentations based on advice from his cousin. The applicant claimed that rather than being a KHAD member, he had been a university student in Afghanistan with no political ties.

[10] Upon request, additional submissions were filed in March 2009 in support of the H&C application. In these submissions, the applicant explained that it was not a viable option for his children to live in Afghanistan given the political and human rights situation there. Further, the applicant's wife could not return to Afghanistan as she had fled that country to avoid a forced marriage with Jan Khan, a dangerous and powerful warlord with connections throughout the country. Jan Khan was aware of the couple's marriage and allegedly wished to avenge the applicant's wife for the embarrassment she caused him in rejecting his proposal.

[11] After reviewing the March 2009 submissions, the officer decided that a temporary resident permit (TRP) might be warranted. Subsequently, on February 3, 2010, a three year TRP was issued to the applicant. A two year extension was also authorized in advance. The current expiry date of the applicant's TRP is February 3, 2015.

[12] In May 2011, Canada Border Services Agency (CBSA) ordered the applicant to report to the Greater Toronto Enforcement Centre. CBSA ordered that the applicant call the office monthly and report in person every three months.

[13] Finally, the applicant also submitted a pre-removal risk assessment (PRRA) application in June 2006. No determination has yet been made on this application.

Officer's Decision

[14] In a letter dated May 27, 2011, the applicant was notified that his H&C application was denied. The reasons for denying the applicant's H&C application were outlined in a departmental memorandum written by the officer on May 18, 2011. These reasons form part of the decision.

[15] The officer first summarized the applicant's background including his arrival to Canada and the various stages of his immigration applications.

[16] The officer then considered the basis for the applicant's inadmissibility, namely, his membership in KHAD as described in his original Personal Information Form (PIF). The officer cited observations made by the CRDD in its decision of August 1995 and noted that the adjudicator in the subsequent admissibility hearings had found the evidence provided to the CRDD more credible than testimonies given at the hearings (i.e., testimonies by individuals who had known the applicant at the University of Kabul and had not known him to be a member of KHAD). Although the inadmissibility decision remains valid following litigation, the officer found that the applicant raised the same argument in his March 2009 submissions, namely that his membership with KHAD had been a fabrication. Nevertheless, the officer noted that decisions made pursuant to article 1F(a) are binding on subsequent decision-makers. The officer found no new evidence that credibly

disputed the original findings and was therefore satisfied that the applicant remained inadmissible pursuant to the Act.

[17] The officer then sought to balance her inadmissibility finding against H&C factors. The officer identified the following favourable H&C considerations:

> Length of time in Canada (since 1993);
>
> Married to a Canadian citizen since 2002;
>
> Father of three Canadian-born children;
>
> Employed as a contract driver for Pizza Pizza;
>
> Home owner;
>
> Sole source of income for his family;
>
> Clean civil and criminal record;
>
> Integral family member; and
>
> Possible permanent separation from his family should he be deported.

[18] However, the officer noted that the risks to the applicant should he be removed were not currently relevant due to his valid TRP. Further, should his TRP be removed in the future, the applicant would be offered a restricted PRRA prior to his removal.

[19] Based on this assessment, the officer found that the best interests of the applicant's children were the most compelling H&C considerations in this case. His establishment was also a positive consideration.

[20] The officer then identified two negative considerations. First, the officer gave significant weight to the fact that the applicant had belonged to KHAD, a limited brutal purpose organization, for five years. In support, the officer relied on excerpts from the 2005 Federal Court of Appeal decision in *Zazai* above (at paragraphs 25 and 26). Second, the officer gave weight to the Government of Canada's commitment not to provide a safe haven for those who have committed crimes against humanity.

[21] Based on these collective considerations, the officer concluded that an exemption for the purposes of permanent residency in Canada was not warranted in the particular circumstances of this case.

Issues

[22] The applicant submits the following points at issue:

1. What is the standard of review?

2. Did the officer err in law in her assessment of the best interests of the applicant's children and the hardship the applicant would face if he were removed to Afghanistan because she was required to assess those factors within the context of the H&C application, notwithstanding the existence of the TRP, and she failed to do so?

3. Did the officer fetter her discretion with respect to the balancing of the applicant's inadmissibility with the many H&C factors warranting an exemption from his inadmissibility?

4. Did the officer err in law in her assessment of the establishment of the applicant?

[23] I would phrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the officer conduct an inadequate analysis of the best interests of the children?
3. Did the officer err in weighing the applicant's inadmissibility against the positive H&C factors?
4. Did the officer err in assessing the applicant's degree of establishment in Canada?

Applicant's Written Submissions

[24] The applicant submits that the standard of review for decisions made on H&C applications under subsection 25(1) of the Act is reasonableness.

[25] The applicant submits that the best interests of the children are highly relevant to an H&C application. However, in this case, the officer declined to consider this issue due to the fact that the applicant held a TRP; therefore, the risk of separation from his children and the hardship associated with removal were remote and irrelevant to the balancing exercise.

[26] Contrary to the officer's finding, the applicant submits that his status is tenuous and provisional as a TRP can be cancelled at any time. Furthermore, if he waits until the TRP expires before making another H&C application, his application would not be considered prior to removal and a pending H&C application would not necessarily stay his removal. The applicant submits that it is an error to decline to exercise jurisdiction and refuse to consider issues that are raised and

relevant to the determination, particularly the best interests of the children and the hardship that the applicant would face if returned.

[27] The applicant submits that the decision also fails to mention the benefits to the children of having their father remain in Canada on a permanent basis, the children's need for emotional stability and the hardship they would endure if separated from their father. It also does not delve into the hardship that the applicant would face without permanent residence status, namely, the inability of the applicant to come and go from Canada and to acquire citizenship.

[28] The applicant also submits that the officer erred in law by being unduly influenced by the findings of the CRDD and the Immigration Division on the applicant's membership with KHAN. In this way, the officer fettered her discretion and placed undue weight on this factor to the exclusion of all others. The applicant submits that if the officer has the discretion to balance an applicant's inadmissibility with positive H&C considerations, it must be possible for the discretion to be exercised positively despite the existence of inadmissibility. In this case, there was a wealth of positive H&C factors including the fact that the applicant:

Had resided in Canada almost two decades;

Had an excellent civil record;

Was gainfully employed;

Was the sole support for his family;

Was a contributing member of society;

Would suffer great hardship if returned;

Was the father of three children with a fourth on the way; and

His deportation would likely result in permanent separation from his family.

[29] The sole negative factor was his former claim of membership in the KHAN.

[30] As the best interests of the children clearly mitigated in favour of the applicant, the officer was required to provide cogent reasons why the other factors favoured a negative determination.

[31] Finally, the applicant submits that the officer erred in making an inadequate assessment of his establishment. Without a proper assessment of establishment, a proper determination could not be made on whether he would suffer hardship if required to apply for permanent residence from abroad.

Respondent's Written Submissions

[32] The respondent agrees that the appropriate standard of review on H&C decisions is reasonableness. However, this standard does not entail minute scrutiny of the decision but rather limits this Court to quashing decisions that were not reasonable based on the surrounding circumstances and applicable law. In this case, the reasonableness of the officer's decision must be considered in light of the exceptional and discretionary nature of H&C relief, the serious grounds of the applicant's inadmissibility and the facilitation of the applicant's presence in Canada by way of a five year TRP. Collectively, these factors weigh against the granting of H&C relief in this case.

[33] The respondent submits that the fact that the applicant holds a valid TRP is significant as it grants him the right to stay in Canada, removes the risk of separation from his children, alleviates the challenges involved in family relocation and allows him to continue enjoying the benefits of establishment in Canada. The TRP is also substantial relief on the H&C request. The reasonableness of the H&C decision should therefore be assessed in light of this TRP.

[34] The respondent submits that the officer did not fail to consider the best interests of the children. The officer noted that the applicant had three Canadian born children, was an involved father and that the children's well-being would be affected if their father was deported or if the family relocated to Afghanistan. On this basis, the officer determined that the best interests of the children should be given great weight as there were compelling considerations. However, the potential hardship arising from potential separation is a speculative risk as the applicant holds a five year TRP. The respondent submits that the officer cannot assess this type of wholly speculative H&C factor. Rather, the real issue is whether the children would suffer undue hardship if the applicant is not granted permanent residence status, not whether he must leave Canada.

[35] The respondent submits that *Brar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 691, [2011] FCJ No 891, a case relied on by the applicant, is factually distinguishable from the case at bar. Contrary to the status held by the applicant in this case, the applicant in *Brar* above, only had a stay of removal. The possibility of removal is much more remote in this case and the officer was not required to consider speculative potential occurrences. In addition, unlike *Brar* above, the officer in this case did not discount the best interests of the children but noted that they would weigh heavily in favour of H&C relief. Further, if the applicant were to lose his TRP, he

would not immediately be removed as a decision to pursue removal would be required and he would first be offered a PRRA assessment.

[36] The respondent questions the proposition enunciated in *Brar* above. The respondent submits that there is no support in Canadian or international law for the proposition that a best interest of the children assessment must be conducted prior to removal of a parent from Canada. In addition, requiring officers to consider potential hardships that might arise in any event of a foreign national's future status invites them to engage in improper speculation.

[37] The respondent also submits that the possibility of the TRP being cancelled is speculative. As it was issued for an extended period of time on account of strong and continuing considerations of the best interests of the children, there is no serious risk of it being cancelled. The respondent submits that the applicant has not established that his TRP is tenuous. Having no evidence before it on the tenuous nature of the TRP, the officer cannot be faulted for not considering it.

[38] Further, as it has been determined that the applicant faced a well-founded fear in Afghanistan, he would be afforded a PRAA assessment prior to any future removal (subsection 112(1) of the Act). Further, the passage of over five years since his last PRRA application, coupled with the changing conditions in Afghanistan, make a PRRA invitation almost a certainty. The applicant could also request a deferral of removal based on best interests of the children considerations.

[39] The respondent submits that the officer cannot be faulted for not explicitly mentioning the benefits to the children of having their father in Canada, their need for emotional stability or their hardship should he leave. These issues were all presumptively accepted by the officer's finding that the best interests of the children was the most compelling factor warranting H&C relief. Similarly, the officer is not at fault for not considering the effect of a lack of permanent residence status on the applicant's ability to travel abroad and obtain Canadian citizenship. These factors do not justify granting H&C relief. In addition, the TRP allows the applicant to leave and re-enter Canada.

[40] The respondent submits that the officer did not err in not assessing the hardship that he might face if removed to Afghanistan. Given the TRP, this hardship was too remote. Further, should his removal be contemplated at a later time, the risk he would face in Afghanistan would be assessed on a PRRA.

[41] The respondent also submits that the officer did not fetter her discretion. Determinations of the CRDD and the Immigration Division continue to apply unless they are overturned on judicial review. The officer was entitled to give these findings of inadmissibility significant weight in assessing the merits of the H&C application. These inadmissibility findings are key to the purposes of the Act. Further, the officer did not treat the applicant's inadmissibility as determinative but considered it and all the other factors against the backdrop of the applicant's TRP. Although the officer appreciated that the inadmissibility finding could be overcome on H&C grounds, she reasonably found that such relief was not warranted.

[42] In summary, the respondent submits that the officer appreciated that the inadmissibility finding could be overcome on H&C grounds but reasonably found that H&C relief was not warranted in this case.

[43] The respondent also submits that there are three reasons why the applicant cannot complain about the adequacy of the officer's reasons:

1. There was no evidence that the respondent requested better reasons, a prerequisite for advancing an argument on deficient reasons;

2. The applicant did not establish that the officer rationally failed to meet the judicial standard for sufficient reasons; and

3. The applicant's argument was based on him being entitled to H&C relief thereby requiring the officer to explain why relief was not granted. This is not the exercise for an exceptional and discretionary remedy.

[44] Finally, the respondent submits that the officer's decision was not dismissive or lacking in its assessment of the applicant's establishment. Rather, the officer carefully noted the relevant factors and concluded that the applicant's establishment was a positive factor favouring H&C relief. The impact of the TRP on establishment must also be considered. The TRP allows the applicant to remain in Canada and enjoy the establishment he has attained. It was therefore reasonable for the officer to find that the applicant's establishment did not tip the scales in favour of H&C relief.

Applicant's Reply

[45] In reply, the applicant submits that the reasonableness standard requires a determination of whether the officer's decision contained an intelligible and transparent assessment of the H&C considerations.

[46] The applicant submits that the officer failed to provide an assessment of why his inadmissibility outweighed the best interests of the children. The officer erred by not explaining why the applicant did not meet the requirements for permanent residency in Canada when he met the requirement for a TRP with an automatic extension. Further, by merely focusing on the TRP, the officer erred by not properly considering and assessing the best interests of the children. The officer also failed by not considering the fact that the TRP may be cancelled at any time and the resultant effect on the applicant's children both of an unexpected cancellation and a possible looming cancellation.

[47] Finally, the applicant submits that the possibility of his removal is equal to the possibility faced by the applicant in *Brar* above. In fact, the applicant's status in this case is far more tenuous because he is not protected by a finding of risk of torture, which would permit him to make submissions before removal.

Analysis and Decision

[48] **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).

[49] The parties agree that assessments of an officer's decision on an application for permanent residence from within Canada on H&C grounds is reviewable on a standard of reasonableness (see *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2009] FCJ No 713 at paragraph 18; *Adams v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1193, [2009] FCJ No 1489 at paragraph 14; and *De Leiva v Canada (Minister of Citizenship and Immigration)*, 2010 FC 717, [2010] FCJ No 868 at paragraph 13).

[50] In reviewing the officer's decision on the standard of reasonableness, the Court should not intervene unless the officer 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).

[51] **Issue 2**

Did the officer conduct an inadequate analysis of the best interests of the children?

Extensive jurisprudence has developed on the assessment of the best interests of children under subsection 25(1) of the Act. Decisions have been deemed unreasonable where the interests of children are minimized in a manner inconsistent with Canada's H&C tradition (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraphs 73 and 75). It is not sufficient to merely state that the interests have been taken into account or to simply refer to the children's interests or to the relationships with the children involved (see *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 FC 555 at paragraph 32). The children's interests must be well identified and must be defined and examined with a great deal of attention (see *Hawthorne* above, at paragraph 32; and *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] FCJ No 457 at paragraphs 12 and 31).

[52] The best interest analysis requires officers to demonstrate that they are alert, alive and sensitive to the best interests of the children. In *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165, [2008] FCJ No 211, Mr. Justice Douglas Campbell described the meaning of being alert as demonstrating "an awareness of the child's best interests by noting the ways in which those interests are implicated" (at paragraph 9). Being "alive" to a child's best interests means demonstrating that the officer understands the perspective of each of the participants in a given fact scenario, including the child if this can reasonably be determined (see *Kolosovs* above, at paragraph 11). Finally, being "sensitive" means clearly articulating the child's suffering that would result from a negative decision and whether, together with a consideration of other factors, that suffering warrants H&C relief (see *Kolosovs* above, at paragraph 12).

[53] Although an important factor, there is no *prima facie* presumption that the children's interests should prevail over other considerations (see *Legault* above, at paragraph 13; and *Okoloubu v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 326, [2008] FCJ No 1495 at paragraph 48). It is up to the officer to determine what weight to give the interests of the affected children (see *Sinniah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1285, [2011] FCJ No 1568 at paragraph 57).

[54] In this case, the officer acknowledged the applicant's three minor children and the fact that the applicant was the sole source of income for his family. The officer also noted that the applicant was an integral part of his family's life and involved in his children's well-being. Based on these observations, the officer found that the most compelling H&C considerations were the best interests of the applicant's children and these justified him remaining in Canada. However, as a five year TRP had been authorized for the applicant, the officer found that he was not currently in any danger of being removed. Therefore, these particular circumstances did not warrant the granting of an exemption under subsection 25(1) of the Act.

[55] The applicant submits that the officer erred in not considering the precarious nature of a TRP, namely that it can be cancelled at any time. In addition, the applicant submits that the officer erred by not mentioning the benefits to the children of having their father remain in Canada on a permanent basis, the children's need for emotional stability and the hardship they would endure if separated from their father.

[56] In support of his argument, the applicant refers to the recent decision in *Brar* above. In *Brar*, the applicant had been convicted for evading U.S. immigration laws and a Canadian deportation order was therefore issued for him. This order was later stayed due to a PRRA officer's finding that the applicant would be at risk of torture and there would be a risk to life and cruel and unusual treatment and punishment if he were returned to India. Similar to the applicant in this case, the applicant in *Brar* above, was married and was the main supporter of his three minor children in Canada. However, as the *Brar* applicant's deportation order had been stayed, the officer found that a negative decision on his H&C application would not effect his removal from Canada. Therefore, the officer discounted the need to fully examine the best interests of the children.

[57] On review, this Court found that the officer in *Brar* above, had ignored the fact that the stay could be lifted in the future, thereby rendering the applicant's status in Canada contingent and provisional. The Court held at paragraph 48 that the officer:

> […] should have considered and explained how the interests of the children would be addressed prior to any removal, or whether it is in the best interests of the children that their father should continue to have a contingent status in Canada and be subject to removal if the Respondent decides that conditions in India present no further risk. […]

The officer's failure to do so was deemed a reviewable error.

[58] The Court in *Brar* above, also considered how the officer had dealt with the existence of other options should the applicant's stay be cancelled. The Court noted that (at paragraph 50):

> […] Does the Minister's Delegate assume that, prior to any future removal, the Applicant will have the benefit of a further H&C assessment that will examine hardship issues? It is by no means clear

> to me whether this assumption lies behind the Decision. The Respondent may well seek to remove the Applicant prior to any such agency application being made or considered, which would mean that the Applicant could find himself outside of Canada even though there has been no decision that has fully addressed the best interests of his children or unusual, disproportionate and undeserved hardship. I would be less concerned about the Minister's Delegate's decision to discount these factors at present if she had explained how and when they will be considered prior to any removal in the future. [emphasis added]

[59] In this case, the officer did explicitly state that "[s]hould Mr. Zazai's TRP not be renewed in the future he would be offered a restricted [PRRA] prior to his removal". However, as described in *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 177, [2010] FCJ No 838, PRRA assessments differ from H&C assessments. In assessing PRRA applications, officers must consider new, credible, relevant and material evidence of facts that might have affected the outcome of the applicant's refugee claim hearing if this evidence had been presented and thereby assess the risk against the country of removal (at paragraph 25). Conversely, when assessing H&C applications, officers must "have regard to public policy considerations and humanitarian grounds, including family-related interests" (at paragraph 26). Compared to PRRA assessments, H&C assessments are a lower threshold and are not limited to specific parameters of persecution.

[60] Due to these differences between the two processes, the officer's reliance in this case on a future PRRA assessment, and a "restricted" one at that, does not show how the best interests of the children would be considered prior to removal. Further, although the officer clearly stated that the best interests of the children were the most compelling H&C considerations in this case, her limited discussion on these interests does not meet the standard of examining them in great detail (see *Hawthorne* above, at paragraph 32). The existence of a TRP that can be cancelled at any time (as

stated at 5.17 in CIC's Operational Manual IP1 – Temporary Resident Permits), does not remove the requirement to consider these interests thoroughly and carefully. The tenuous nature of the applicant's status under the TRP is accentuated by the recent CBSA orders imposed on him.

[61] In summary, although it was up to the officer to determine what weight to grant the best interests of the children, I do not find that she conducted an adequate analysis of these interests before proceeding with the balancing exercise. The officer's reliance on a future restricted PRRA does not guarantee that these interests would be addressed prior to a future removal that remains a possibility due to the impermanent nature of TRPs (see *Brar* above, at paragraph 48).

[62] Because the officer made a reviewable error, the decision of the officer must be set aside and the matter is referred to a different officer for redetermination.

[63] Because of my finding on Issue 2, I need not deal with the remaining issues.

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

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the officer is set aside and the matter is referred to a different officer for redetermination.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001 c 27

25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	25. (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3799-11
STYLE OF CAUSE:	NASRULLAH ZAZAI - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 16, 2012
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	February 7, 2012

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