Federal Court  Cour fédérale

Date: 20120517

Docket: IMM-949-11

Citation: 2012 FC 580

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 17, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

BUROU JEANTY DUFOUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, (R-7) being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11 (Charter), does not give licence to abandon responsibilities with respect to the community. No liberty is limitless. Every freedom comes with a responsibility.

[2] The Charter, by its simple presence, confirms that human beings are born free; however, with their liberty comes responsibility.

[3] The great wise man Sri Aurobindo once said [TRANSLATION] "law is the child of freedom". In the same way that parents are responsible for their children, the adherence to responsibilities is safeguarded by the implementation of legislation by which responsibilities are assumed.

[4] Since his arrival in Canada, the applicant has accumulated serious convictions, namely, assault with a weapon and breaking and entering with intent. Those crimes put the Canadian population at risk. The intent of subsection 68(4) of the *Immigration and Refugee Protection Act*, 2001, c 27 (IRPA), is to protect the public against criminals, such as the applicant, who failed to take advantage of the second chance they were given.

[5] The Court agrees with the respondent's arguments that declaring subsection 68(4) of the IRPA unconstitutional would constitutionalize the right of appeal, the grounds of appeal and the continuation of the appeal (or the continuation of the stay of the removal order). However, the Supreme Court has repeatedly noted that the right of appeal is not a principle of fundamental justice or a requirement of the rule of law (*Charkaoui v Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 SCR 350 at paragraphs 133-137 (*Charkaoui*); *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 SCR 539 at paragraph 47 (*Medovarski*); *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711 (*Chiarelli*)).

II. Introduction

[6] The applicant approached this Court because the Canada Border Services Agency (CBSA), acting on behalf of the Minister, issued a notice of cancellation by operation of law of the stay of the removal order that he was the subject of. The applicant submits, in support of his application, that that process, which occurred without him having the opportunity to respond to the allegations, even if his deportation was underway, was unconstitutional. The constitutional validity of the "automatic" cancellation of the stay of the removal under subsection 68(4) of the IRPA is therefore at the basis of the arguments submitted by the applicant.

[7] First, it is important to point out that the objectives of the IRPA were enumerated in *Ramnanan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 404 (*Ramnanan*):

> I. Overview
>
> [1] The objectives of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), enumerated in section 3 are two-fold: paragraphs (*a*) to (*g*) contain objectives aimed at facilitating immigration and family reunification; whereas, paragraphs (*h*) and (*l*) aim to protect the health, safety and security of the Canadian society.
>
> [2] In drafting the new immigration legislation, Parliament decided the tipping point had been reached and it intended, for the sake of the security of Canadian society, to restrict access to Canada for persons inadmissible on grounds of criminality, serious criminality and to those who engage in violence, terrorism or violations of international and human rights. [The intention of Parliament in that regard materializes in various provisions, for example, in s. 64, ss. 68(4), s. 196 and s. 197 of the IRPA. (*Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539; *Martin v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 60.)]
>
> [3] The new legislation in question reflects a policy decision as is clearly interpreted with a quote from the House of Commons Standing Committee on Citizenship and Immigration, Evidence, May 8, 2001, cited by the Rt. Hon. Beverley

McLachlin, Chief Justice of Canada, in the unanimous *Medovarski* judgment (reference therein is made to paragraphs 9 to 12 inclusively).

[4] It is recognized that the *Medovarski* judgment was revisited in the unanimous *Charkaoui v. Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350, decision, at paragraphs 16 and 17.

[5] In a Pre-Removal Risk Assessment (PRRA), for example, it is incumbent to take into account:

> [16] … that "[t]he most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in Canada". The Court added: "Thus the deportation of a non-citizen in itself cannot implicate the liberty and security interests protected by s. 7" (*Medovarski*, at para. 46 (emphasis added)).
>
> [17] *Medovarski* thus does not stand for the proposition that proceedings related to deportation in the immigration context are immune from s. 7 scrutiny. While the deportation of a non-citizen in the immigration context may not in itself engage s. 7 of the Charter, some features associated with deportation, such as detention in the course of the certificate process or the prospect of deportation to torture, may do so."

(*Charkaoui* . . .).

III. Judicial procedure

[8] This is a judicial procedure by which the applicant is asking this Court to have subsection 68(4) of the IRPA declared constitutionally invalid and of no force and effect. The applicant also contests the CBSA decision that, as of January 26, 2011, cancelled the stay of the removal order issued against him.

IV. Facts

[9] The applicant, Burou Jeanty Dufour, was born on June 5, 1987, in Haiti, where he lived until he arrived in Canada on June 22, 2002. The applicant was adopted by Joseph Dufour on October 7, 2002. Once he arrived in Canada, the applicant went to live in Chicoutimi with his

adoptive father. He became a permanent resident of Canada on February 4, 2004. In January 2007, the applicant decided to live on his own in Québec to pursue his studies. It was at that time that the applicant started to get involved in some serious trouble.

[10] On October 12, 2007, the applicant was convicted of obstructing justice, as described in subsection 139(2) of the *Criminal Code*, LRC, 1985, c C-46 (Respondent's Record (RR) at page 16).

[11] On October 15, 2008, he was convicted of assault with a weapon or causing bodily harm as described in paragraph 267(*a*) of the *Criminal Code* (RR at page 15).

[12] On November 4, 2008, an officer issued a report stating that Mr. Dufour was inadmissible to Canada on grounds of serious criminality (RR at page 20 *et seq*).

[13] On March 12, 2009, the Immigration Division (ID) found that Mr. Dufour was inadmissible on grounds of serious criminality and ordered that he be deported (RR at page 28 *et seq*); a removal order was therefore issued against him (RR at page 32).

[14] On April 16, 2010, the Immigration Appeal Division (IAD) ordered the stay of the removal order for five years and imposed certain conditions on Mr. Dufour, which are set out in the decision (RR at page 34 *et seq*).

[15] On December 16, 2010, Mr. Dufour pleaded guilty and was convicted of conspiracy and breaking and entering with intent in a place other than a dwelling-house, offences set out in paragraphs 465(01)(*c*) and 348(01)(*b*)(*e*) of the *Criminal Code* (Applicant's Record at pages 101 to 109). He was sentenced, in case 150-01-031501-100 in Chicoutimi, Quebec, to a total of 120 days in prison followed by 24 months of probation.

[16] Further to the applicant's conviction for those offences, which are punishable by imprisonment for a term not exceeding ten years and which therefore result in inadmissibility on grounds of serious criminality, the Minister sent the IAD, on January 13, 2011, a notice of cancellation by operation of law of the stay of the removal order pursuant to subsection 68(4) of the IRPA (Tribunal Record (TR) at pages 5-6).

[17] On January 26, 2011, the IAD found that the stay was cancelled by operation of law and that the appeal was terminated (TR at page 1 *et seq*).

V. Decision under review

[18] In support of a notice of cancellation by operation of law of the stay of a removal order issued by the CBSA, the IAD reproduced subsection 68(4) and paragraph 36(1)(*a*) of the IRPA in its decision and reiterated the reasons issued in the Minister's notice dated January 13, 2011, which were sent to Mr. Dufour:

> [4] In a letter dated January 13, 2011, the Minister's Counsel submitted a notice of cancellation by operation of law of the stay of the removal order in accordance with subsection 68(4) of the Act.
>
> [5] The Minister alleged essentially that, on December 16, 2010, the appellant was convicted of the offence stipulated in paragraph 348(1)(*b*)(*e*) of the *Criminal*

> *Code*, namely, breaking and entering with intent in a place other than a dwelling-house. The offence was committed on or around November 16, 2010, and is punishable by imprisonment for a term not exceeding ten years.
>
> . . .
>
> [8] After the stay of the removal order was granted, the appellant was convicted of another offence involving serious criminality as indicated in subsection 36(1) of the Act. The stay is automatically cancelled by operation of law and the appeal is terminated.
>
> [9] The appeal is terminated by operation of law.

[19] The stay of the removal order was previously granted by the IAD following an appeal by Mr. Dufour pursuant to subsection 63(3) of the IRPA. The IAD then applied the cancellation by operation of law, set out in subsection 68(4) of the IRPA, of the stay of the removal order because of the applicant's conviction on December 16, 2010.

VI. Issue

[20] Did the IAD err in law in that subsection 68(4) of the IRPA is constitutionally invalid because it violates sections 7, 12 and 15 of the *Constitution Act, 1982*?

VII. Relevant statutory provisions

[21] As the central argument of the present judicial review, the applicant contests the constitutionality of subsection 68(4) of the IRPA:

Termination and cancellation	**Classement et annulation**
(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of	(4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est révoqué de plein droit si le résident permanent ou

serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.	l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.

[22] Paragraph 36(1)(*a*) of the IRPA, to which subsection 68(4) of the IRPA refers, reads as follows:

Serious criminality	**Grande criminalité**
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;

VIII. Position of the parties

[23] The applicant first raises subsection 57(1) of the *Federal Courts Act*, RS (1985), c F-7, to point out that the Federal Court has jurisdiction to invalidate, render inapplicable or render inoperable an Act of Parliament or the legislature of a province, or regulations made under such an Act, if its constitutional validity is in question, to the extent that notice has been served on the Attorney General of Canada and the attorney general of each province, a step the applicant took in his Notice of Constitutional Question.

[24] In support of his application, Mr. Dufour argues that subsection 68(4) is contrary to sections 7, 12 and 15 of the Charter. He submits that he is the father of a Canadian child, he has plans for the future, he enrolled in masonry training at the École des métiers de la construction de Montréal and he wishes to reintegrate back into Canadian society. The applicant maintains that the decision against him failed to consider his general situation, his age, his family relationships in Canada, the presence or absence of people that could welcome him in his country of origin and the likelihood of him reintegrating himself into his country of origin. According to the applicant, subsection 68(4) of the IRPA absolutely denies an individual's right to be heard because, once the notice is issued, the appeal is terminated and the person finds him- or herself faced with a *fait accompli*. He cites *Németh v Canada (Justice)*, 2010 SCC 56, [2010] 3 SCR 281 in support of his argument.

[25] In reply, the applicant noted that he contests the constitutional validity of the cancellation "by operation of law" of the stay of the removal in subsection 68(4) of the IRPA, that is, without a hearing at which Mr. Dufour would have been able to appear to show his evidence and explain the subsequent conviction, which finds its basis in the *audi alteram partem* rule. He submits that *Ramnanan* did not completely close the door to the argument that subsection 68(4) of the IRPA is unconstitutional (at paragraph 56). He also maintains that he will be separated from his family and removed to Haiti, where his life and physical safety will be in danger. In that sense, according to him, he received a second sentence.

[26] The respondent alleges that the purpose of the cancellation by operation of law of subsection 68(4) of the IRPA is not to punish Mr. Dufour, but to allow for the removal of an individual who

did not comply with the conditions of a stay. The respondent also notes that the applicant does not challenge the application of the law in his case, but, rather, only the constitutionality of the law. He argues that the applicant's arguments must overcome several pitfalls: first, the applicant has no absolute right to enter or to remain in Canada, a right reserved for Canadian citizens; second, the courts, namely the Supreme Court, rejected his arguments and humanitarian and compassionate grounds are only relevant in the context of an application filed to that effect. According to the respondent, the evidence and the arguments made by the applicant do not enable the Court to disregard settled law that permits Parliament to restrict the right of appeal as it sees fit.

IX. Standard of review

[27] Pursuant to *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 62, (also, *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 53), the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question:

> [23] The standard of review for the decision of the IAD in interpreting the relevant provisions of the IRPA, is correctness. (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 417, para. 23; *Carbonaro v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 102, paras. 19-21; *Bautista v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 30, para. 9; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 4 F.C.R. 48 (F.C.A.), aff'd [2005] S.C.R. 539, para. 18; *Ferri v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1580, para. 14.)

(*Ramnanan*).

Preliminary issue

[28] On January 26, 2011, the IAD noted Mr. Dufour's conviction, confirmed that he was inadmissible on grounds of serious criminality a second time and terminated his appeal. In his

application, Mr. Dufour submits that the CBSA decision (the notice from the Minister that was sent to him on January 13, 2011) to cancel the stay of a removal order should be set aside. However, the respondent notes that the applicant does not challenge the reasons given by the IAD on January 26, 2011, contrary to settled law (Respondent's Memorandum at page 6). According to Mr. Dufour's reply, it would seem that he does not contest the IAD's reasons, but rather the fact that the matter was referred to the IAD without him having the opportunity to reply to the allegations. However, as noted by the respondent, the application for leave and judicial review dated January 28, 2011, refers to the IAD file (MA9-03801).

X. Analysis

[29] The applicant submits that subsection 68(4) of the IRPA generates the type of situation in which an individual such as himself, who has lived close to ten years in Canada since he was very young, would be forced to return to his country of citizenship even though his family is in Canada, even though he was educated in the Canadian school system and even though his future plans include Canada. According to the applicant, all of this constitutes a violation of the right to security of the person, both physical and psychological.

[30] Mr. Dufour's arguments are not entirely new. In *Ramnanan*, the Federal Court found that subsection 68(4) did not violate the right of permanent residents to life, liberty and security of the person protected by section 7 of the Charter.

[31] In the context of other IRPA provisions, or the former *Immigration Act*, RSC 1985, c I-2, which restrict or restricted the right of appeal of permanent residents convicted of criminal offences, the applicant's other arguments were also rejected (*Chiarelli*; *Medovarski*).

[32] Similarly, it must be noted that the panel agreed to the suggestion that the removal order be stayed for five years. In other words, the applicant was given every opportunity to rehabilitate himself according to Canadian laws. In ordering the stay of the removal order in its decision dated April 16, 2010, the IAD stated the following:

> [14] The appellant's testimony showed that he does not fully acknowledge responsibility for the crimes he committed, even though he was convicted. The appellant testified that he has learned from his mistakes. The appellant is a young man and comes across as sincere when he says that he has good intentions. He has an opportunity to make a life for himself in Canada, and the panel hopes that the removal order that was issued will be a lesson and that he will stay on the right path.

[33] The list of the stay conditions included the following condition: "Not commit any criminal offences." (TR at page 22).

The mechanism of the IRPA

[34] When the CBSA finds that a permanent resident is inadmissible, an officer prepares a report setting out the relevant facts that led him or her to draw such an inference. That officer transmits it to the officer who will exercise the jurisdiction delegated by the Minister in similar circumstances (at subsection 44(1) of the IRPA). If the delegate is of the opinion that the report is well-founded, the delegate may refer the report to the ID (at subsection 44(2) of the IRPA) who will carry out an admissibility hearing (section 45 of the IRPA). When the ID also finds that the report is well-founded, it issues the removal order.

[35] In this case, the ID found that Mr. Dufour was inadmissible on grounds of serious criminality (at subsection 36(1) of the IRPA) and ordered that he be deported. Because Mr. Dufour was not sentenced to at least two years imprisonment, he was able to appeal to the IAD, a court of competent jurisdiction in such circumstances (at subsection 63(3) of the IRPA).

[36] At the conclusion of the appeal hearing, the IAD has three options: allow the appeal, order the stay of the removal order or dismiss the appeal (sections 66-69 of the IRPA). If it orders the stay, it is accompanied by prescribed conditions (section 251 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR)) and conditions that it considers necessary under the circumstances (at subsection 68(2) of the IRPA). In this case, the IAD stayed Mr. Dufour's removal order for five years with other conditions.

[37] A permanent resident who complies with the terms of the "second chance" he or she is thus given may request the cancellation of the removal order (at subsection 68(3) of the IRPA). However, when, during the stay, the permanent resident who is inadmissible on grounds of serious criminality or criminality is convicted of another offence involving serious criminality, the stay is cancelled by operation of law and the appeal is terminated (at subsection 68(4) of the IRPA).

[38] Regarding subsection 68(4) of the IRPA, the Minister sends the IAD and the permanent resident a notice of cancellation of the stay in which he provides the details of the conviction and the offence, the federal statutory provision that creates the offence and the sentence imposed if the offence is not punishable by a maximum term of imprisonment of at least 10 years (*Immigration*

Appeal Division Rules, SOR/2002-230 at subsections 27(1) and (2)). The IAD's decision and the notice are distinct.

[39] In this case, because Mr. Dufour was convicted of another offence involving serious criminality, the Minister transmitted a notice of cancellation by operation of law of the stay order that was granted to him by the IAD. On January 26, 2011, the IAD noted Mr. Dufour's conviction, confirmed that he was inadmissible on grounds of serious criminality a second time and terminated his appeal.

Intent of the IRPA

[40] By adopting the provisions of the IRPA, one of Parliament's objectives was to facilitate the removal of permanent residents who are engaged in serious criminality. In *Medovarski*, the Supreme Court pointed out that this intent is clear:

> 9 The *IRPA* enacted a series of provisions intended to facilitate the removal of permanent residents who have engaged in serious criminality. This intent is reflected in the objectives of the *IRPA*, the provisions of the *IRPA* governing permanent residents and the legislative hearings preceding the enactment of the *IRPA*.
>
> 10 The objectives as expressed in the *IRPA* indicate an intent to prioritize security. This objective is given effect by preventing the entry of applicants with criminal records, by removing applicants with such records from Canada, and by emphasizing the obligation of permanent residents to behave lawfully while in Canada. This marks a change from the focus in the predecessor statute, which emphasized the successful integration of applicants more than security: e.g., see s. 3(1)(*i*) of the *IRPA* versus s. 3(*j*) of the former Act; s. 3(1)(*e*) of the *IRPA* versus s. 3(*d*) of the former Act; s. 3(1)(*h*) of the *IRPA* versus s. 3(*i*) of the former Act. Viewed collectively, the objectives of the *IRPA* and its provisions concerning permanent residents, communicate a strong desire to treat criminals and security threats less leniently than under the former Act.
>
> 11 In keeping with these objectives, the *IRPA* creates a new scheme whereby persons sentenced to more than six months in prison are inadmissible: *IRPA*, s. 36(1)(*a*). If they have been sentenced to a prison term of more than two years then

> they are denied a right to appeal their removal order: *IRPA*, s. 64. Provisions allowing judicial review mitigate the finality of these provisions, as do appeals under humanitarian and compassionate grounds and pre-removal risk assessments. However, the Act is clear: a prison term of over six months will bar entry to Canada; a prison term of over two years bans an appeal.
>
> 12 In introducing the *IRPA*, the Minister emphasized that the purpose of provisions such as s. 64 was to remove the right to appeal by serious criminals. She voiced the concern that "those who pose a security risk to Canada be removed from our country as quickly as possible" (Standing Committee on Citizenship and Immigration, *Evidence*, May 8, 2001). [Emphasis added.]

[41] Thus, subsection 68(4) of the IRPA is not intended to punish permanent residents, but to protect the public by restricting access to permanent residents who are inadmissible on grounds of serious criminality and allow the prompt removal of those who do not embrace the opportunity given to them to reform during the stay of the removal order (*Singh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 417, [2006] 3 FCR 70, at paragraph 41; also, *Ramnanan*).

[42] Since coming to Canada, Mr. Dufour has accumulated serious convictions, namely, assault with a weapon and breaking and entering with intent. Those crimes put the Canadian population at risk. Subsection 68(4) of the IRPA is indeed intended to protect the public against criminals, such as Mr. Dufour, who failed to take advantage of the second chance given to them.

Subsection 68(4) is constitutional and consistent with the Charter

[43] The Court agrees with the respondent's arguments that declaring subsection 68(4) of the IRPA unconstitutional would constitutionalize the right of appeal, the grounds of appeal and the continuation of appeals (or the continuation of the stay of the removal order). However, the Supreme Court has consistently stated that the right of appeal is not a principle of fundamental

justice or a rule of law requirement (*Charkaoui* at paragraphs 133-137; *Medovarski* at paragraph 47; *Chiarelli*).

[44] The applicant submitted that the automatic cancellation of the stay, by operation of law and without him having had the opportunity to explain the reasons for his conviction and the context in which it occurred, constitutes a violation of his constitutional guarantees (Reply to the Respondent's Memorandum at page 7). However, the applicant provided no reason or explanation for the context of his conviction to the court, much less the panel.

[45] For these same reasons, humanitarian and compassionate considerations (paragraph 67(1)(*c*) of the IRPA) only constitute a ground of appeal if Parliament has so decided. By adopting subsection 68(4) of the IRPA, it intended for appeals to be terminated based solely on an inadmissibility finding, without examination of other issues (*Bautista v Canada (Minister of Citizenship and Immigration)*, 2006 FC 30 at paragraph 16). The Charter does not require that humanitarian and compassionate considerations be incorporated into each and every provision of the IRPA.

[46] For those reasons, subsection 68(4) of the IRPA is consistent with section 7 of the Charter. It also does not constitute a sentence or cruel and unusual treatment and is not contrary to section 12 of the Charter. With respect to section 15 of the Charter, only Canadian citizens have the constitutional right to enter, remain in and leave Canada. A provision like subsection 68(4) of the IRPA, which restricts the right of permanent residents to remain in Canada in a manner that is not

imposed on citizens, cannot therefore, by that fact alone, constitute a violation of the right to equality enshrined in section 15 of the Charter.

XI. Conclusion

[47] The applicant has a relatively long criminal record. He did not comply with his obligations as a permanent resident, and did not take the second chance that was offered to him by the IAD. All of the applicant's arguments regarding the constitutionality of subsection 68(4) of the IRPA have also already been dismissed by this Court and courts of superior jurisdiction. As a result, the applicant's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS the dismissal of the applicant's application for judicial review.

No serious question of general importance for certification.

Obiter:

This case has already been adjourned at the request of the two parties, with the explicit agreement of the Minister, because of the issue of the citizenship of children adopted by Canadians. This is still an issue. It is now the subject of a separate judicial review proceeding, which the undersigned is not seized of. Furthermore, there is an underlying factor of humanitarian and compassionate considerations given that the individual was adopted as a child by a Canadian couple.

It is important for this proceeding to respond directly to only the issues in this case rather than to rule directly (or even indirectly, or unconsciously) on elements or factors that will come into play (in due course) eventually in a different forum where those factors will be considered (to not mitigate what should be determined by this Court in this case).

"Michel M.J. Shore"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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