

**Date: 20080422**

**Docket: A-239-07**

**Citation: 2008 FCA 151**

**CORAM: NOËL J.A.  
NADON J.A.  
RYER J.A.**

**BETWEEN:**

**MONIKA THIARA (aka MONIKA SAHOTA)**

**Appellant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

Heard at Vancouver, British Columbia, on April 22, 2008.

Judgment delivered from the Bench at Vancouver, British Columbia, on April 22, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on April 22, 2008)**

**NOËL J.A.**

[1] This is an appeal from a decision of Layden-Stevenson J. of the Federal Court denying the application brought by Ms. Thiara from the decision of an immigration officer who concluded that there were insufficient humanitarian and compassionate grounds to warrant an exception from the requirement of applying for a visa from outside Canada in accordance with subsection 11(1) of *the Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA).

[2] This appeal comes before this Court by way of the following certified question:

Does paragraph 3(3)(f) of the *Immigration and Refugee Protection Act* (IRPA), require that an immigration officer, exercising discretion under section 25 of the IRPA, specifically refer to and analyse the international human rights instruments to which Canada is signatory, or is it sufficient if the officer addresses their substance?

[3] The applications judge concluded in effect that substance prevails over form and not too surprisingly, neither party takes issue with the answer that she gave.

[4] Nevertheless, the appellant seizes the occasion to reiterate before us the basic argument which was made before the applications judge *i.e.* that the international human rights instruments which she invoked before the immigration officer did not allow for the conclusion that was reached. According to the appellant, these instruments dictate that the interests of the children must prevail, and since their interest in this case was to remain in Canada, the Applications Judge had no choice but to intervene (Appellant's memorandum, paras. 45-70 and 77-92).

[5] The Applications Judge in her reasons summarized this argument as follows (at para. 31):

In essence, Ms. Thiara's position is: if the officer had construed the best interests of the children in a manner compliant with the international instruments cited in her H & C submissions, the officer would have had to conclude that Ms. Thiara's circumstances warranted an exception from the requirement of subsection 11(1) of the IRPA.

[6] The applications judge fully addresses this argument. She notes that the "best interests of the child" is an important factor which must be given substantial weight. However, it is not the only factor, and it is for the immigration officer to determine the weight to be given to the relevant factors (Reasons, para. 33).

[7] We can detect no error in this regard. In particular, we agree with the applications judge (at para. 32) that the decision of this Court in *De Guzman v. Canada* (Minister of Citizenship and Immigration), [2006] 3 F.C.R. 655 does not overrule the prior decision of this Court in *Legault v. Canada* (Minister of Citizenship and Immigration), [2002] 4 F.C. 358 (*Legault*).

[8] Applying *Legault*, we are of the view that the Immigration Officer was authorized - indeed mandated when regard is had to the wording of subsection 25(1) of IRPA - to consider all relevant circumstances, including those surrounding the conduct of the appellant.

[9] For these reasons, the appeal will be dismissed and the certified question answered as follows:

Paragraph 3(3)f of the IRPA does not require that an officer exercising discretion under s.25 of the IRPA specifically refer to and analyse the international human rights instruments to which Canada is a signatory. It is sufficient if the Officer addresses the substance of the issues raised.

"Marc Noël"

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J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-239-07

**STYLE OF CAUSE:** Monika Thiara (aka Monika Sahota)  
v. MCI

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

**DATE OF HEARING:** April 22, 2008

**REASONS FOR JUDGMENT BY:** NOËL J.A.  
NADON J.A.  
RYER J.A.

**DELIVERED FROM THE BENCH BY:** NOËL J.A.

**DATED:** April 22, 2008

**APPEARANCES:**

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Ms. Sandra Weafer FOR THE RESPONDENT

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