Federal Court  Cour fédérale

Date: 20161122

Dockets: IMM-2566-15
IMM-2567-15
IMM-2909-15

Citation: 2016 FC 1287

Ottawa, Ontario, November 22, 2016

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

ALEXANDER LERONA APOLINARIO

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant brings three applications under subsection 72(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for judicial review of three related decisions which ultimately led to his deportation to the Philippines. By order of Mr. Justice Diner dated December 15, 2015, they were heard together.

[2] For the reasons that follow, these applications are dismissed.

II. Background Facts

[3] The Applicant is a citizen of the Philippines. At all material times, he was a permanent resident of Canada, having been sponsored by his wife Rosita Apolonario in 1998. The Applicant and his wife have two Canadian-born children, one of whom suffers from Angelman syndrome, a congenital disorder treated with expensive medication.

[4] In April 2014, the Applicant was convicted of sexual interference with a thirteen year old boy with learning disabilities. He met the boy at the hospital where he worked as a health care aid. There were multiple incidents over a period of about two years. The Applicant was convicted on September 30, 2014, and sentenced to 15 months imprisonment followed by probation for two years and compulsory completion of sexual offender counselling. In addition, he received a ten year ban on working with children under the age of 16 or being in locations where they would be present. The Applicant also lost his job at the hospital.

[5] The criminal conviction and sentence ultimately led to the Applicant's deportation in August 2015.

III. The Decisions under Review

A. *Report of Inadmissibility – IMM-2567-15*

[6] The first decision, to report the Applicant as being inadmissible to Canada for serious criminality, was made by a Canada Border Services Agency Officer [Officer] on November 12, 2014 pursuant to subsection 44(1) of the *IRPA*.

[7] The Officer interviewed the Applicant in person on October 2, 2014. He asked the Applicant to provide him with an opportunity to explain why he would not reoffend. When asked to explain his behaviour the Applicant said:

> I don't have any explanation. If I'm given another chance to live a normal life, I'm going to be good for the rest of my life.

He concluded the interview by saying:

> Give me a chance. I want to spend the rest of my life with my family and my kids.

[8] On October 31, 2014, the Officer wrote to the Applicant to advise him that he might be inadmissible to Canada for serious criminality. He invited the Applicant to make written submissions by November 15, 2014, as to why a review of the circumstances of his case should not be caused.

[9] On November 7, 2014, counsel who had represented the Applicant at the criminal trial made extensive written submissions to the Officer. He reviewed two tests which were referred to in the pre-sentence report in determining that the Applicant was a low risk to reoffend. He critiqued the tests, calling one of them "junk science." He noted that despite the tests - which he characterized as "the most biased testing available", the presentence report found the Applicant was deemed a low risk to reoffend. It is in a category which is higher than "no risk" or "very low risk" but lower than "high risk" or "very high risk". Counsel provided the personal history of the Applicant, whom he said had never been unemployed for longer than a few weeks and who came to Canada when he was 21 years old. He reviewed that the Applicant was married with two children, one of whom has Angelman syndrome, a congenital disorder treated with expensive medication. He noted that if the Applicant was removed from Canada his family would suffer significant hardship without his financial support. He reviewed the establishment

of the Applicant in Canada who was involved with his church and in the local Filipino community.

[10] On November 12, 2014, the Officer reported the Applicant as a person who was inadmissible to Canada under subsection 44(1) for serious criminality, as defined at paragraph 36(1)(a) of the *IRPA*. That same day, the Officer prepared a "Subsection 44(1) and 55 Highlights – Inland Cases" report [Highlights Report], to which were appended just over two typed pages of "section 44 Remarks". The Officer stated that he had considered: (1) his interview of the Applicant, (2) the reasons for sentencing, (3) the pre-sentence report, (4) the Winnipeg Police Service occurrence report, (5) the conviction certificate and (6) the Applicant's submissions. Each of those documents was attached to the Highlights Report.

[11] The Officer noted that the pre-sentence report indicated the Applicant was a low risk to reoffend but also that he had not received sexual offender treatment. The Officer indicated he considered the best interests of the Applicant's disabled son, whose care had imposed a financial burden on the Applicant's wife during his incarceration. The Officer found that the Applicant's wife had already been shouldering the financial burden while the Applicant was unemployed and incarcerated. He also took into consideration that public health care was available to meet basic medical needs.

[12] The Officer noted the Applicant initially denied he committed the offence and said the child was lying. However, he eventually admitted his offence to the Officer when confronted with a police report that detailed he had admitted it in a video statement. As the Applicant had denied committing the offence he was not eligible for sexual offender treatment. The Officer

felt that the Applicant showed no remorse but seemed embarrassed by his incarceration. The Officer's conclusion was:

> Subject has committed a serious offence and received a significant sentence. He as an adult preyed upon a vulnerable minor with learning difficulties over an extended period of time. Based on the review of the police report, he knew he was committing an offence which is why he paid the victim money to remain quiet. From reviewing the information on file, the abuse would have gone on unabated had the victim not gone to the authorities. As per noted in the pre-sentence report, it is a concern that subject could re-enter the community without sex offender treatment because he continues to deny the offense he was convicted of. There is no guarantee that subject will not reoffend in future. For the protection of the public, specifically children, it is recommended that a removal order be sought.

[13] The Highlights Report was not received by the Applicant prior to or as part of the disclosure received in the Admissibility Hearing. It was received by his current counsel by letter dated July 22, 2015 as part of the reasons for decision in connection with the application for leave and judicial review of the Minister's Delegate's referral to the ID in IMM-2566-15.

B. *Referral to Admissibility Hearing – IMM-2566-15*

[14] The second decision was made by the Minister's Delegate on April 9, 2015. The Minister's Delegate adopted the Officer's section 44 Remarks as their reasons and referred the Applicant for an admissibility hearing pursuant to subsection 44(2) of the *IRPA*. The Minister's Delegate added a handwritten note that says:

> Agree w/officer. Serious offence prolonged premeditated attempts to hide offence vulnerable victim.

C. *Deportation Order – IMM-2909-15*

[15] The final decision, to deport the Applicant, was rendered by the Immigration Division [ID] of the Immigration and Refugee Board of Canada on June 5, 2015, pursuant to paragraph

45(d) of the *IRPA* after finding the Applicant was a person described in subparagraph 36(1)(a) of the *IRPA*.

[16] After the final decision, the Applicant applied for a pre-removal risk assessment. It was refused on July 23, 2015. That decision is not under review here.

[17] On August 4, 2015, shortly after his statutory release from prison, the Applicant was removed to the Philippines.

IV. **Legislative Provisions**

[18] The various decisions rely upon sections 36(1)(a), 44(1), 44(2) and 45(d) of the *IRPA* which are attached as an Annex to these reasons for judgment.

[19] Briefly, subparagraph 36(1)(a) provides that a permanent resident is inadmissible to Canada for serious criminality as defined therein; subsection 44(1) permits an officer to prepare a report as to inadmissibility setting out the relevant facts and transmit it to the Minister. Subsection 44(2) empowers the Minister to refer the matter to the ID for an admissibility hearing or, in some instances, make a removal order. Paragraph 45(d) provides that at the conclusion of admissibility hearing the ID shall make one of a variety of orders, including, as was done in this case, removal of a permanent resident who is inadmissible.

V. **Issues**

[20] The Applicant submits the same issues arise in all three decisions under review. They fall into two broad categories. One concerns the amount of scope or degree of consideration of various factors which should be applied, such as best interests of the Applicant’s family and in

particular his disabled child. The other category concerns whether there was a breach of procedural fairness when the subsection 44(1) "Highlights Report" was not delivered to the Applicant (i) before the decision to refer him to an admissibility hearing or (ii) before the admissibility hearing was held.

[21] The Respondent denies there is any need to consider the scope of discretion as it does not arise on the facts of this case: the Officer and the Minister's Delegate each referred to the personal circumstances of the Applicant and his children. The Respondent says there is a question of whether procedural fairness requires disclosure of the subsection 44(1) report and the Highlights Report before the subsection 44(2) decision to refer the report for an admissibility hearing. The Respondent denies that in this case the Applicant had a right to receive the Highlights Report as he never asked for additional reasons or for the Highlights Report.

[22] After reviewing the submissions, I have determined the following are the issues:

i. Was the referral made by the Minister's Delegate procedurally fair?

ii. Was the ID Admissibility Hearing Procedurally Fair?

iii. Were the appropriate factors considered by the Officer and the Minister's Delegate in arriving at their respective decisions?

iv. Did the ID err in arriving at its decision?

VI. **Standard of Review**

[23] Questions of procedural fairness are normally reviewable on the correctness standard: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. There is no reason to depart from that standard in this case.

[24] Whether the appropriate factors were considered is a question to be reviewed on the reasonableness standard: *Richter v Canada (Minister of Citizenship and Immigration)*, 2008 FC 806 at para 9. The reasonableness of each decision will be determined by examining whether it falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" as stipulated in *Dunsmuir v New Brunswick* 2009 SCC 9 [*Dunsmuir*] at paragraph 47. Reasonableness requires deference be given to the administrative decision-maker but "[i]t does not mean that courts are subservient to the determinations of decision makers, or that courts must show blind reverence to their interpretations, or that they may be content to pay lip service to the concept of reasonableness review while in fact imposing their own view": *Dunsmuir* at para 48.

VII. **Submissions and Analysis**

A. *Procedural Fairness*

(1) Was the referral made by the Minister's Delegate procedurally fair?

[25] The Applicant does not allege that the Officer in arriving at the subsection 44(1) Report followed a procedurally unfair process. He argues that procedural fairness required that the Highlights Report prepared by the Officer be disclosed to the Applicant prior to the subsection 44(2) decision by the Minister's Delegate to refer him to an admissibility hearing. The Applicant says the non-disclosure was particularly prejudicial as it contained the Officer's analysis. He first received the Highlights Report only as part of the Certified Tribunal Record in the judicial review applications.

[26] The Applicant acknowledges that *Chand v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 548 at paragraph 26 [*Chand*] suggests that non-disclosure prior to the

s. 44(2) referral does not breach procedural fairness. However, he submits that section 11.3 of Operational Manual ENF 5 creates a legitimate expectation that Officers will provide a copy of their subsection 44(1) report to the person concerned before it is reviewed by the Minister's Delegate.

[27] With respect to whether the Applicant had a legitimate expectation of receiving the Highlights Report, section 11.3 of ENF 5 instructs, in the section entitled "Writing 44(1) Reports", that after the report is written "wherever possible, an officer who writes a report must also provide a copy of that report to the person concerned". I note however that ENF 5 makes a clear distinction between a subsection 44(1) report which is referred to as an A44(1) report and "the officer's disposition recommendation and rationale" which is the Highlights Report, usually referred to in the manuals by the form number IMM 5084B. There is no requirement in ENF 5 to forward IMM 5084B to the person concerned. Only the A44(1) report is to be forwarded, wherever possible. As a result no legitimate expectation to receive the Highlights Report arises from the enforcement manual provision.

[28] The Respondent says the subsection 44(1) report was provided to the Applicant and that is enough. This accords with ENF 5. The Respondent agrees that the Highlights Report does provide the reasons for writing the subsection 44(1) report. However, the Respondent calls these "additional reasons" and says it is a trite principle of administrative law that as the Applicant never requested the Highlights Report prior to the admissibility hearing he cannot now complain that it was not received. The Respondent relies upon the decisions in *Tran v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 1078 [*Tran*] and *Hernandez v Canada (Minister of Public Safety and Emergency Preparedness)* 2007 FC 725 for this proposition.

[29] I agree with the Respondent that the jurisprudence has established that without a request by the Applicant for additional reasons there was no obligation on the Respondent to provide the Highlights Report. I note the Applicant refers to *Chand* as "suggesting" there was no breach of procedural fairness. With respect, in my view, *Chand* does not just suggest; it is very clear. Mr. Justice Zinn specifically states at paragraph 26 that the report from the Officer to the Minister's Delegate is an administrative process and there is no error of law in the failure to disclose it prior to the subsection 44(2) review or in the Minister's Delegate relying upon it in making the referral. In that respect his reasons align with the decision by the Court of Appeal in *Kindler v MacDonald*, [1987] 3 FC 34 as quoted by Madam Justice Snider in *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 429 at paragraph 52 [*Hernandez 2005*].

[30] In *Hernandez 2005* Madam Justice Snider, after a thorough review of the legislation and jurisprudence, determined that the level of procedural fairness owed to an Applicant under subsection 44(1) and (2) decisions is more relaxed and the procedures adopted by the Respondent should be respected. Those procedures, as set out in Enforcement Manuals ENF 5 and ENF 6, were that the affected person has a right to make submissions (either orally or in writing) and to obtain a copy of the report as it would allow the person to decide whether to seek judicial review of the Officer's report. As previously stated, the report in question in the procedures established by the Respondent is the subsection 44(1) Report, not the Highlights Report.

[31] Here the Applicant received the subsection 44(1) report which indicated the serious criminality charge that affected his subsection 44(1) admissibility; he was interviewed by the

Officer at which time he was advised that the purpose of the interview was to provide him with the opportunity to state why he should not be reported under the Act and why the Officer should not seek a referral for an admissibility hearing. Counsel for the Applicant then provided written submissions prior to the subsection 44(1) report.

[32] The Minister's Delegate received from the Officer all the materials, including the Highlights Report/Section 44 Remarks. The Minister's Delegate noted the Applicant was guilty of serious criminality and that a vulnerable person was the victim and was satisfied that it was appropriate to refer the Applicant to an admissibility hearing.

[33] Based on the legislative provisions, the existing jurisprudence referred to above, the fact of the interview of the Applicant, the submissions his counsel made, the delivery of the subsection 44(1) report to the Applicant which was followed by the Minister's Delegate's review as required under the legislation it is my view that the subsection 44(1) and (2) steps taken in this case were procedurally fair.

(2) Was the ID Admissibility Hearing Procedurally Fair?

[34] The issue at this stage is, again, whether the Highlights Report had to be disclosed to the Applicant prior to the admissibility hearing. The Applicant relies again on the ENF 5 reference. He also notes that in *Chand*, the Court distinguished between non-disclosure prior to the referral versus prior to the admissibility hearing and says that by implication the reasons support a finding of procedural unfairness at this stage if the highlights report is not disclosed to the Applicant.

[35] The Respondent submits that under section 45 the ID has no discretion to examine the validity of the referral once the facts underlying inadmissibility are established. Importantly, at the admissibility hearing, counsel for the Applicant admitted each of the elements of the Applicant's serious criminality. As a result, even if there had been any doubt, the ID had no choice but to deport the Applicant, according to the Respondent.

[36] The Respondent's position is supported in *Hernandez 2005*, where Madam Justice Snider said at paragraph 47, "the only power to prevent the applicant's removal rested with the immigration officer and the Minister's delegate. Only if either one or the other of these two officials had decided not to take further action would the applicant be able to avoid the issuance of a removal order under paragraph 45(d)." It is also suggested by the mandatory wording found in paragraph 45(d) that the ID shall make one of several different orders.

[37] On these facts I am of the view that no disclosure of the Highlights Report was required before the hearing by the ID. The facts of this case are very similar to those outlined by Mr. Justice Mosley in *Tran* where the Highlights Report was also only received after the judicial review applications were filed. The Applicant there, as here, never requested the Highlights Report or additional reasons.

[38] The jurisprudence establishes that an Applicant is only entitled to be advised of the case to be met and given the opportunity to make submissions, both of which occurred in this case at the subsection 44(1) stage. Counsel for the Applicant made submissions to the Officer addressing his criminal charges, his conviction, his pre-sentence report and his personal history including his "likelihood to reoffend criminally in any fashion". Those submissions, as well as the documents from his criminal trial, conviction and sentencing, were all before each of the

three decision-makers. The contents of the documents were well known to the Applicant as he either supplied them or already had them in his possession. Given the foregoing and in light of the duty of fairness being limited in scope, in my view there is no procedural unfairness on the facts of this case: *Hernandez 2005* at para 72; *Tran* at paras 16, 21-22; *Chand* at paras 24-25.

B. *Were the Appropriate Factors Considered by the Officer and the Minister's Delegate?*

[39] The Applicant urges me to find the Officer and Minister's Delegate failed to conduct a sufficient humanitarian and compassionate analysis (H&C) and, relying on the decision in *Kanthasamy* he argued the best interest of his disabled child were not appropriately considered.

[40] Counsel for the Applicant argues that H&C factors must be considered as it is unfair that permanent residents in the position of the Applicant have fewer rights than foreign nationals. His argument is that when the legislation was amended to remove the appeal to the Immigration Appeal Division discretion was provided to an Officer and to the Minister's Delegate instead of the appeal. He points to remarks made by the Assistant Deputy Minister, Policy and Program Development, Citizenship and Immigration Canada, [ADM] as quoted in *Hernandez* 2005, that in exercising the discretion not to write a report "all the factors have been considered, after all the individual circumstances of the permanent resident have been considered" and the Minister's Delegate would again consider all the circumstances. He says this therefore introduces H&C factors as a consideration. Counsel also alleges that as the Applicant was found in the pre-sentence report to be at low-risk of re-offending he does not fall into the category of "very serious criminal situations" which was mentioned by the ADM as being applicable to those who would be deported.

[41] The Applicant urges me to find that the Officer did not adequately consider "H&C factors". He submits the Officer looked at the offence and only paid lip service to the other factors and the Minister's Delegate's handwritten notes on the Highlights Report show the Minister's Delegate looked exclusively at the offence. He says the best interests of his disabled son should have been considered under the *Kanthasamy* approach and this was not done.

[42] The Respondent emphasizes this is not a section 25 H&C situation where equitable relief may be granted in cases of personal hardship. The removal of an appeal right in cases of serious criminality simply reduces the number of ways H&C relief can be accessed but they are available after an inadmissibility finding. In this case, the Applicant availed himself of a Pre-Removal Risk Assessment The Respondent also says that in an inadmissibility hearing there is a difference between H&C factors and H&C-like factors as set out in ENF 5 and ENF 6.

[43] In *Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126 [*Cha*], the Federal Court of Appeal held the Minister's Delegate has virtually no discretion under subsection 44(2) once the underlying facts of inadmissibility have been established. The Court of Appeal held that subsection 44(2) applies to all grounds of inadmissibility and, as a result of the diverse areas covered, coupled with the complexity of the facts at issue under each ground, the scope of the discretion may end up varying. Mr. Justice Décary on behalf of the Court found that "[t]he purpose of section 36 is clear: non-citizens who commit certain types of criminal offences inside and outside Canada are not to enter, or remain, in Canada": *Cha* paras 21, 26.

[44] The Applicant seeks to distinguish *Cha* on the basis that it involved removal of a foreign national, not a permanent resident, and the Court of Appeal expressly stated that it took no

position approving or disapproving of the jurisprudence in this Court that considered the level of discretion available in subsection 44(1) and (2) matters. However, *Cha* was recently considered and applied by Mr. Justice de Montigny (as he then was) in *Balan v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 691 [*Balan*] when dealing with a permanent resident. Mr. Justice de Montigny noted paragraphs 35 and 37 of *Cha* outlining that under sections 36 and 44 of the *IRPA* an immigration officer or a Minister's delegate in making findings of inadmissibility does not have "any room to manoeuvre" and, it was not their function to deal with matters described in either section 25 (H&C considerations) or section 112 (Pre-Removal Risk Assessment).

[45] Mr. Justice de Montigny concluded that the reasoning in *Cha* applied with equal force to permanent residents. He found at paragraph 26 that:

> . . . it is probably safe to say that the Minister's discretion is relatively narrow under section 44, if only because paragraph 36(1)(a) does not call for much judgment. That section is met as soon as a permanent resident or foreign national has . . . been convicted in Canada of an offence . . . for which a term of imprisonment of more than six months has been imposed.

[46] The Applicant invites me to delve into the issue of the scope of the discretion enjoyed by the Officer and the Minister's Delegate to consider the personal circumstances of the Applicant and his family. I find it is unnecessary to do so as they were considered by the Officer and addressed in his section 44 Remarks which were adopted by the Minister's Delegate. I agree with the analysis by Mr. Justice de Montigny in *Balan*. There is no dispute that an inadmissibility hearing is not conducted under section 25 of the *IRPA* as stated in *Cha.* I am not prepared to find that *Kanthasamy*, a decision under section 25 of the *IRPA*, applies to impose the rigorous analysis of the best interest of child set out there onto a section 44 inadmissibility

decision, particularly given the limited discretion of the Officer and Minister's Delegate as established in *Cha* and *Balan.* Other avenues for consideration of H&C grounds exist for the Applicant after he is declared inadmissible.

[47] Turning to the factors established in ENF 5 and ENF 6 and considered in the section 44 Remarks, the Officer notes that at his interview the Applicant denied the offence and said the victim was lying. When he was confronted with the police report showing that he admitted responsibility in a video statement he then admitted it. The Officer also noted that even after confronted with the facts the Applicant was "less than convincing that he took responsibility for his actions". He was concerned that the Applicant had committed a serious offence and received a significant sentence. He was very concerned that the Applicant had not undergone sex offender treatment. After detailing his considerations he recommended removal to protect the public, specifically children.

[48] The Officer addressed the Applicant's low risk to reoffend noting a comprehensive assessment could not be completed as the Applicant denied the offence and, while he would benefit from sexual offender counselling, he could not receive it due to such denial. The Officer considered that the Applicant had been living away from his family by court order and there was no evidence the mother was unable to cope financially even though the Applicant was unemployed. He considered the disabled son's needs could be met by Manitoba's socialized health care system and his basic needs would be met. The Minister's Delegate agreed with the Officer's assessment. When deciding whether to recommend an admissibility hearing, the Minister's Delegate has the discretion, not the obligation, to consider the factors set out in ENF 6: *Faci v. Canada (Public Safety and Emergency Preparedness)*, 2011 FC 693 at para 63.

[49] While the Applicant takes issue with the s 44 Remarks and the decisions of the Officer and the Minister's Delegate my review of the subsection 44(1) and (2) reports and the supporting documentation, including all the documents from the criminal court and the submissions made at that time on behalf of the Applicant indicates the relevant factors were considered and the serious criminality was weighed. That the Applicant disagrees with the result does not mean the decisions were unreasonable, it simply means the Applicant would have weighed the factors differently. It is not my role to re-weigh the evidence.

[50] I am comfortable in finding that any limited level of discretion possessed by the Officer and the Minister's Delegate was properly and reasonably exercised by each of them. Their decisions follow the statutory provisions and, on these facts, I find they fall within the range of possible, acceptable outcomes defensible on the law and facts. The section 44 decisions under review are, accordingly, reasonable.

C. *Did the ID Err in Arriving at its Decision?*

[51] As I have found both the s 44(1) Report and s 44(2) Referral have been procedurally fair and are reasonable it follows that those decisions are valid. There is no dispute that under paragraph 45(d) of the *IRPA* the ID has no discretion. The wording is mandatory as long as the applicable criteria are met. In this case, it appears from the Applicant's record that he admitted he was a permanent resident of Canada, that he was convicted of a criminal offence and sentenced to a term of more than six months imprisonment. Once these criteria are met, the *IRPA* stipulates that ID shall make the Order. Even without the Applicant's admissions, the evidence before the ID from the referral by the Minister's Delegate confirms each of these elements.

[52] Accordingly, the decision of the ID is well founded and is reasonable.

VIII. **Proposed Questions for Certification**

[53] Mr. Matas on behalf of the Applicant submitted four questions for certification, each of which has two parts, for a total of eight questions. The first six questions were the same as those certified in *Hernandez 2005*. The first four of those deal with the scope of discretion of an officer or delegate. As the answer would not be dispositive of an appeal in this case, I decline to certify them. The last two of the six deal with the duty of fairness owed by each of an officer and delegate in considering whether to prepare a report or make a referral. Any answer would not be dispositive of an appeal in this case.

[54] The seventh question is the one which was posed by Mr. Justice Barnes in *Sharma v. Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1315 which has progressed on appeal where presumably an answer will be given by the Court of Appeal. It is therefore unnecessary to certify this question.

[55] The eighth question was the one posed by Mr. Justice Hughes in *Hernandez 2007* which was not answered as the appeal was discontinued. I decline to certify it as I agree with the Respondent that the answer to the question in this case turns on the specific facts under the existing case law so it is not a question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. These applications are dismissed.

2. No serious question of general importance is certified.

"E. Susan Elliott"
Judge

ANNEX

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;
(…)	(…)
Preparation of report	**Rapport d'interdiction de territoire**
44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.
Referral or removal order	*Suivi*
(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.	(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.
Decision	**Décision**
45 The Immigration Division, at the	45 Après avoir procédé à une

conclusion of an admissibility hearing, shall make one of the following decisions:

(…)

(d) make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.

enquête, la Section de l'immigration rend telle des décisions suivantes :

(…)

d) prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2566-15, IMM-2567-15 AND IMM-2909-15
STYLE OF CAUSE:	ALEXANDER LERONA APOLINARIO v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	FEBRUARY 15, 2016
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	NOVEMBER 22, 2016

APPEARANCES:

David Matas	FOR THE APPLICANT
Brendan Friesen	FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas Barrister and Solicitor Winnipeg, Manitoba	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT