Date: 20090611

Docket: IMM-3696-08

Citation: 2009 FC 596

BETWEEN:

BINA MATHURDAS JOGIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision of the pre-removal risk assessment officer (the officer) dated July 30, 2008, wherein the officer decided that an exemption would not be granted for permanent residence on a humanitarian and compassionate (H&C) grounds application.

[2] The applicant requested that the decision be set aside and the matter referred back to a different officer for redetermination.

Background

[3] Bina Mathuradas Jogia (the applicant) is a 62 year old citizen of Tanzania. The applicant made a claim for refugee protection in Canada in December 2003. Her refugee claim was refused by the RPD on January 5, 2005. In February 2005 Citizenship and Immigration Canada received the applicant's first application for permanent residence on H&C grounds. In September 2007, the applicant and her sponsor (her husband at the time) were interviewed. Following the interview, the application for permanent residence was refused in accordance with paragraph 133(1)(e) of the *Immigration and Refugee Protection Regulations* because the applicant's husband had been convicted under the Criminal Code of a threat against the applicant. In February 2008, application for leave was dismissed by the Federal Court. The applicant filed her second application for permanent residence on H&C grounds in March 2008. This is the judicial review of that decision.

[4] The applicant stated that she initially traveled to Canada to visit a friend for "a change of scene". She had been in poor health for some time and had divorced an abusive husband in 1995.

[5] Her identity papers were stolen some time after her arrival. The applicant alleges that she was unable to replace her passport and return home. She felt that she had no choice but to put down roots in Canada. A police report confirmed that she had reported her passport, $900 US in funds and a plane ticket stolen in October 2003. Submissions by the applicant indicate that she wrote to the Tanzanian Consulate but they would not issue a passport and "nobody would help her".

[6] In June 2004, the applicant married Ozwald Pinto, a permanent resident of Canada. She had been living with him but not married until a visit from Mr. Pinto's mother who was disapproving of the arrangement. Soon after the visit, Mr. Pinto convinced the applicant to marry him. Mr. Pinto soon turned mentally and physically abusive. The applicant remained with him because she was fearful that she would be deported, as she was told by her immigration consultant, who was also a friend of her husband.

[7] On July 11, 2006 the applicant's husband was convicted for uttering death threats against the applicant and received a suspended sentence, 28 days in prison and 24 months of probation. The applicant's husband had a history of domestic violence including a charge against a previous wife in 2001.

[8] The applicant submits that she separated from her husband in September 2007.

Officer's Decision

[9] The officer begins by stating that the applicant bears the onus of satisfying a decision maker that applying for permanent residence outside of Canada would be "i) unusual and undeserved or ii) disproportionate".

[10] The officer then summarized the applicant's time in Canada including the theft of her passport and money soon after her arrival at a rooming house.

[11] He then turned to the applicant's relationship with Mr. Pinto. The officer was dissatisfied with the evidence on the applicant's relationship with her husband, and their separation. He stated that there was "very little documentary evidence regarding her relationship with Mr. Pinto". He stated that it was "difficult to assess the nature and duration of the applicant's relationship with Mr. Pinto" without more proof of their time together.

[12] In respect to the applicant's employment history in Canada, the officer states that the documentation is incomplete. The documentation submitted by the applicant indicated the employment in May 2005 with DC Security and in July 2005 the applicant submitted documentation that indicated she was working for Conros Corporation, her former employer. He noted that the applicant had not provided any documentation to confirm her employment with DC Security beyond what was on her application form. He does note, however, that he received the certificate from a four week security officer training program that the applicant received in February 2005.

[13] With regards to the applicant's ties to the community, the officer found that the applicant had not "established herself in Canada to such a degree that returning to Tanzania would constitute an unusual and undeserved or disproportionate hardship". The officer found that the evidence of volunteering in the community was limited. The one letter from the Salvation Army was undated and gave no indication of how long the applicant had been volunteering. Although the applicant submitted that she has "built a loving and supportive community" through her employment, volunteer work, and the training course she completed, the officer stated that she did not "provide

evidence of this “community” *per se*”. However, he goes on to state that “the applicant has resided in Canada for approximately five years and that during that time, she has made some efforts to establish herself and integrate into the community”.

[14] Finally, the officer turned to the issue of whether returning to Tanzania would constitute an unusual and undeserved or disproportionate hardship. The officer found that there was insufficient evidence to suggest that the applicant could not re-establish herself in Tanzania after living there for 57 years. The officer felt that the applicant’s concern of re-establishing herself in Tanzania was unwarranted despite discrimination against women. He stated that the applicant had established herself as a single woman after a divorce. There is no reason, according to the officer, that she could not do this again.

[15] As well, the officer did not accept that there was any potential for harm by the applicant’s ex-husband in Tanzania. He said that the ex-husband had not harmed the applicant since their divorce and that the applicant had been out of touch with him for some time living in Canada.

[16] In conclusion, the crux of the officer’s decision is that there was insufficient evidence put forward by the applicant that she was established in Canada and that she was at risk returning to Tanzania and would not be able to re-establish herself.

Applicant's Submissions

[17] The applicant submits that the officer made findings of fact "without regard to the material before it" as in paragraph 18.1(4)(d) of the *Federal Courts Act*. Specifically, the applicant takes issue with the fact that the officer completely ignored in his decision the psychological report by Dr. Divens outlining the psychological stress that the applicant has endured as a victim of domestic violence in Tanzania and in Canada and the resulting psychological stress the applicant will endure if returned to Tanzania. The applicant states that a "boilerplate" assertion that the officer has considered all the evidence is insufficient given the importance of the evidence in the applicant's claim.

[18] The applicant states that one can only assume that the officer ignored this very important evidence on domestic violence and did not consider it. It was not mentioned in the decision beyond stating that there was one occasion where the police charged the applicant's husband with a resulting conviction. The applicant states that "the immigration officer's burden of explanation increases with the relevance of the evidence in question to the disputed facts". In this case, evidence of domestic violence has been identified in immigration policy as a factor to consider in granting H&C applications. In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 and *Bains v. Canada (Minister of Citizenship and Immigration)* (1993), 63 F.T.R. 312, this Court has held that:

> . . . [t]he more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silent that the agency made an erroneous finding of fact without regard to the evidence.

[19] Jurisprudence, the applicant submits, is in favour of the applicant in regards to the treatment of psychological reports. The applicant points to *Singh v. Canada (Minister of Citizenship and Immigration)* (1995), 30 Imm. L.R. (2d) 226 where Mr. Justice Richard held that failing to mention a relevant and credible psychological report in a refugee claim was an error of law. Although, the applicant acknowledges that other cases such as *Jhutty v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 763 have found that the failure to omit discussion on similar reports does not vitiate a decision, in all of those cases, unlike the decision at bar, the psychological report was at least mentioned.

[20] The applicant then turns to the officer's failure to evaluate the application according to the CIC Manual IP-5 Guidelines (Manual Guidelines) and the Gender Guidelines issued by the chairperson. The Manual Guidelines specifically address situations like the applicant's: abusive situations where an applicant is compelled to remain with a spouse in order to remain in Canada. The applicant submits that the officers are instructed to use "their positive discretionary authority" where the spouse of an abusive situation leaves and no longer has approved sponsorship.

[21] The applicant also submits that the officer's failure to evaluate the application with a view to the Gender Guidelines was a reviewable error. The Gender Guidelines are to adapt decision makers towards interpreting domestic violence as gender related persecution which "case law and academic authority" include as persecution in the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment and Guideline 4 on Refugee Claimants Fearing Gender-Related Persecution.

[22] The applicant does not agree that the officer was not provided with enough information on the abuse. She points to the police report, restraining order, psychological report and the applicant's own submissions that her husband and immigration consultant threatened to deport her. The applicant states that "[t]he immigration officer seems to be more concerned to see a marriage licence than to evaluate the applicant's vulnerability". There is no indication throughout the decision that, "the immigration officer was alive, sensitive, or concerned about the domestic violence faced by the applicant".

[23] The applicant submits that her application fit within the guidelines framed in the Manual Guidelines and the Gender Guidelines.

[24] The last issue the applicant addresses is the manner in which the officer evaluated the application. The applicant states that the immigration officer focused on extrinsic evidence when the application was based on domestic violence policy and establishment in Canada. The marriage certificate was submitted in the first H&C application and if it was so important to the officer, he should have given the applicant the opportunity to provide it. However, the applicant is unclear why this document was so important to the officer.

[25] The applicant states that the officer underestimated the difficulties of a woman her age returning to Tanzania. Her parents have passed away and she will be alone facing the generalized gender discrimination in the country. Specific to her, the applicant also states that it is unduly harsh to relocate to Tanzania after the severe trauma she has endured at the hands of her husband

including harassment after the divorce. And, it is not just the applicant that is concerned about her well-being if removed from Canada: the psychological report states that if returned to Tanzania, her condition will “deteriorate significantly”.

[26] In conclusion, the applicant states that the “officer failed to consider the impact of abuse on the applicant, the length of stay in Canada, her continuous employment, integration into the community and good civil record”.

Respondent’s Submissions

[27] The respondent’s position is that there is not a reviewable error on the issues of weight of evidence and sufficiency of the evidence put forward on H&C grounds.

[28] The respondent cautions that in any review of an H&C application “individual special and additional consideration for an exemption from Canadian immigration laws” must be considered as they are: a special benefit *Vidal v. Canada (Minister of Employment and Immigration)* (1991), 13 Imm. L.R. (2d) 123. H&C applications cannot also be “a back door when the front door has, after all legal remedies have been exhausted, been denied in accordance with Canadian law.” (see *Mayburov* v. *Canada (Minister of Employment and Immigration)*, [2000] F.C.J. No. 953; *Bernard v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1068; *Lee v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 139; *Chau v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 119).

[29] In *Baker v. Canada (Minister of Citizenship and Immigration)* (1999), 174 D.L.R. (4th) 193, the Supreme Court of Canada called for "considerable deference" in the exercise of H&C decisions because of a recognized expertise in immigration matters, the fact specific nature of the inquiry, and the decision makers role in the statutory scheme. Therefore, the respondent submits that H&C applications are discretionary and "guarantee no particular outcome". The courts should not intervene unless the decision was unreasonable or violated principles of procedural fairness. Further, "it is not for the court, but for the officer, to assess what weight should have been given to the relevant factors" (see *Baker* above; *Legault v. Canada (Minister of Citizenship and Immigration),* [2002] F.C.J. No. 457).

[30] The psychological report was not ignored. It was not submitted with the original package of documents, but several months later. In any case, the officer was not required to mention every piece of evidence. If the evidence is not mentioned, it is presumed that it was considered (see *Hassan v. Canada (Minister of Citizenship and Immigration)* (1992), 147 N.R. 317), unless it contradicts other evidence or is very important. The applicant has not established the importance of this report. Further, the officer does not state that the applicant's claims of domestic violence in her marriage were not credible, he does not find them especially important. The respondent states that "marital trauma in Canada is not especially important or relevant to whether she should be given a special exemption from going to Tanzania to properly apply for a visa". The officer appropriately considered employment and community ties in Canada as well as risk of re-establishing in Tanzania.

[31] The CIC Manual was incorrectly cited by the applicant. The Manual actually states that "there is no mandate to use positive discretionary authority".

[32] The Gender Guidelines are also mischaracterized by the applicant. These guidelines are for use by the Refugee Division of the IRB in determining refugee claims and risk of returning to a claimant's home country as opposed to risk related to a husband in Canada.

[33] Finally, the applicant has the onus of putting forward evidence and all necessary documents in an H&C application and there is no duty to seek clarification on information (see *Carreiro v. Canada (Minister of Citizenship and Immigration)* from *Bara v. Canada (Minister of Citizenship and Immigration)*,[1998] F.C.J. No. 992).

Issues

[34] The applicant submitted the following issues for consideration:

1. Did the immigration officer err in law in ignoring the psychological report?

2. Did the immigration officer err in law in failing to evaluate this H&C according to the CIC Manual IP-5 Guidelines, section 13.10, and failing to apply the Gender Guidelines issued by the chairperson?

3. Did the immigration officer err in law in relying on extrinsic and irrelevant factors to refuse the application and in failing to provide the applicant an opportunity to respond to his concerns?

[35] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the officer commit a reviewable error by omitting the psychological report from the decision?

3. Did the officer commit a reviewable error by failing to evaluate the H&C application according to the CIC Manual and Gender Guidelines?

4. Did the officer commit a reviewable error in failing to provide the applicant with an opportunity to respond to his concerns and on relying upon extrinsic and irrelevant factors to refuse the application?

Analysis and Decision

[36] **Issue 1**

What is the appropriate standard of review?

The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 stated that a standard of review analysis does not need to be conducted where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence (see paragraph 62).

[37] The seminal case for H&C applications is *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. In *Baker* above, it was held that the standard of review applicable to an officer's decision of whether or not to grant an exemption based on H&C

considerations was reasonableness *simpliciter* which, *Dunsmuir* above, collapsed to the standard of reasonableness. The Supreme Court stated at paragraph 62:

> . . . I conclude that considerable deference should be accorded to immigration officers exercising the powers conferred by the legislation, given the fact-specific nature of the inquiry, its role within the statutory scheme as an exception, the fact that the decision-maker is the Minister, and the considerable discretion evidenced by the statutory language. Yet the absence of a privative clause, the explicit contemplation of judicial review by the Federal Court – Trial Division and the Federal Court of Appeal in certain circumstances, and the individual rather than polycentric nature of the decision, also suggest that the standard should not be as deferential as "patent unreasonableness". I conclude, weighing all these factors, that the appropriate standard of review is reasonableness *simpliciter*.

[38] Since *Dunsmuir* above, other H&C applications have adopted reasonableness "[g]iven the discretionary nature of a humanitarian and compassionate decision and its factual intensity . . ." (see *Zambrano* v. *Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 601).

[39] However, the applicant has raised issues that are question of law: namely whether the officer correctly applied the H&C criteria of unusual and undeserved or disproportionate hardship. Cases pre- and post-Dunsmuir have held that questions of whether the "officer applied the correct test in assessing risk in an humanitarian and compassionate application is a question of law, and it has been held reviewable on the standard or correctness" (see *Pinter v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 366, *Thalang v. Canada (Minister of Citizenship and Immigration)* 2008 FC 340 and *Zambrano* above).

[40] The applicant raises a procedural fairness question. A standard of review analysis does not apply as no deference is due Canadian (see *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539).

[41] I wish to first deal with Issue 3.

[42] **Issue 3**

Did the officer commit a reviewable error by failing to evaluate the H&C application according to the CIC Manual and Gender Guidelines?

I am of the view that the issues of domestic violence in this case were not canvassed by the officer despite the fact that the charge and conviction of the husband was mentioned. The officer appeared to regard the domestic violence in the applicant's marriage as an extraneous matter.

[43] In *Thalang* above, it was found that the officer based the H&C assessment on the wrong test. The officer's assessment was based on risk, which was a PRRA criteria, not an H&C criteria. The proper H&C criteria are unusual and undeserved or disproportionate hardship (see *Liyanage v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1045 (CanLII), *Pinter v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 296 (CanLII)). I am concerned that that is what happened here.

[44] It was not the case that there was not information before the officer on the domestic violence. CIC held an interview on September 6, 2007 in an effort to ascertain whether the marriage

was legitimate between the sponsor and the applicant. It was discovered during the interview, and written in the FOSS notes that the sponsor had been convicted with uttering death threats against the applicant and failure to comply with recognizance. The sponsor had received 28 days imprisonment and 24 months of probation and a suspended sentence. The husband therefore was ineligible to sponsor the applicant under the Act and Regulations. The FOSS notes also show that the applicant's husband was ordered by the Court to attend rehabilitative programs for his violence and alcohol abuse.

[45] The consequence of ignoring the domestic violence experienced by the applicant is that the decision fails to acknowledge the role the immigration process had in the violence, albeit unintentionally, when the applicant remained in her marriage for fear of being deported. And while, the officer is not compelled to follow the Gender Guidelines or the CIC Manual, these policies suggest that the evidence on domestic violence including the psychological report is more important and bears mentioning. There is a big picture in this analysis which includes public policy considerations found in the wording of the preamble, the objectives and section 25 of the Act. These considerations point strongly towards an error by the officer in failing to discuss in his decision the impact of domestic violence on the applicant related to her immigration status.

[46] A review of the salient portions of the Act discloses the following. The Preamble states that the legislation is:

> An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger.

[47] Subsection 3(1) enunciates the objective of the Act and reads in part:

> 3.(1) The objectives of this Act with respect to immigration are
>
> (a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
>
> (b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada; . . .

Section 25 reads in part:

> . . . that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

[48] Section 13.10 of the CIC Manual reads:

> **13.10 Family violence**
>
> Family members in Canada, particularly spouses, who are in abusive relationships and are not permanent residents or Canadian citizens, may feel compelled to stay in the relationship or abusive situation in order to remain in Canada; this could put them at risk.
>
> Officers should be sensitive to situations where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved sponsorship.
>
> Officers should consider the following factors:
>
> information indicating there was abuse such as police incident reports, charges or convictions, reports from shelters for abused women, medical reports, etc.;
>
> whether there is a significant degree of establishment in Canada (see Section 11.2, Assessing the applicant’s degree of establishment in Canada);

> the hardship that would result if the applicant had to leave Canada;
>
> the customs and culture in the applicant's country of origin;
>
> support of relatives and friends in the applicant's home country;
>
> whether the applicant is pregnant;
>
> whether the applicant has a child in Canada;
>
> the length of time in Canada;
>
> whether the marriage or relationship was genuine; and
>
> any other factors relevant to the H&C decision.

[49] *Swartz v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 268 (CanLII) dealt with the issue of domestic violence as a consideration in H&C applications and the applicants similarly submitted that the officer failed to consider the abuse they experienced. It is instructive:

> [20] In my view, the immigration officer considered and generally accepted the evidence of the applicants on the history of the abusive relationship, and particularly the physical and emotional abuse of Ms. Swartz by her husband, both before and after the family's arrival in Canada. In the "rationale" section of her notes, the immigration officer acknowledged that the marriage was an abusive one, stating that it was commendable that Ms. Swartz had extricated herself from "an abusive marriage".
>
> [21] While the officer considered, as her notes also demonstrate, the support network Ms. Swartz had developed in Canada, and the difficulties she would face if she were required to return to South Africa, the reasons show no direct reference to sympathetic consideration of Ms. Swartz's circumstances as a result of her leaving an abusive relationship and thus foregoing any prospect of an approved sponsorship by her husband. In that way the reasons of the immigration officer do not consider the circumstances in accord with the guidelines concerning family violence set out in the *Manual*.

> [22] Nevertheless, guidelines are guidelines - they are not law. It would be difficult to intervene simply because one guideline appears to have been overlooked where other relevant guidelines have been followed. If this were the only shortcoming in the immigration officer's decision, it would be difficult to conclude that her discretionary decision, made in what was clearly a difficult case, was unreasonable.
>
> [23] In any reconsideration of the application, the guidelines applicable to h & c applications by persons who, having left a family relationship in which they were abused, have lost the prospect of an approved sponsorship, should be carefully considered.

[50] I note that in *Schwartz* above, the officer did make mention of the abuse of the wife, despite not granting the application on that basis. This was not the case in this decision. The officer mentioned the criminal charge of the applicant's husband for the purpose of outlining why a spousal application was not possible under the Regulations; there was no canvassing of the unusual and undeserved or disproportionate hardship of domestic violence during the immigration process and in the applicant's return to Tanzania.

[51] I have reviewed the officer's reasons and I cannot find where the officer discussed the hardship associated with the abuse as documented in the husband's convictions. The applicant's husband's abusive and criminal conduct towards her is outlined in the FOSS notes. He uttered death threats and his sentence included 28 days in prison (tribunal record at page 139). There is no discussion of these facts in the officer's decision. I am of the opinion that the officer was required to discuss and address the issue of domestic violence in coming to the decision on the H&C application. It is up to the officer to make a decision after addressing this issue of domestic violence.

To not do so was unreasonable in light of the provisions of the Act and in particular, section 25 of the Act. As a result, the officer's decision must be set aside and the matter referred to a different officer for redetermination.

[52] Because of my finding on this issue, I need not deal with the other issues.

[53] The respondent did not wish to submit a proposed serious question of general importance for my consideration for certification and the applicant wished to have an opportunity to submit a proposed question after my decision was delivered.

[54] The applicant shall have one week after the date of my decision to submit any such proposed question and the respondent shall have one week after the receipt of the proposed question to file any reply.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, S.C. 2001, c. 27

3.(1) The objectives of this Act with respect to immigration are	3.(1) En matière d'immigration, la présente loi a pour objet :
(a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;	a) de permettre au Canada de retirer de l'immigration le maximum d'avantages sociaux, culturels et économiques;
(b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;	b) d'enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel;
(b.1) to support and assist the development of minority official languages communities in Canada;	b.1) de favoriser le développement des collectivités de langues officielles minoritaires au Canada;
(c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;	c) de favoriser le développement économique et la prospérité du Canada et de faire en sorte que toutes les régions puissent bénéficier des avantages économiques découlant de l'immigration;
(d) to see that families are reunited in Canada;	d) de veiller à la réunification des familles au Canada;
(e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;	e) de promouvoir l'intégration des résidents permanents au Canada, compte tenu du fait que cette intégration suppose des obligations pour les nouveaux arrivants et pour la société canadienne;

(f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;

f) d'atteindre, par la prise de normes uniformes et l'application d'un traitement efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après consultation des provinces;

(g) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;

g) de faciliter l'entrée des visiteurs, étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d'activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l'échelle internationale;

(h) to protect the health and safety of Canadians and to maintain the security of Canadian society;

h) de protéger la santé des Canadiens et de garantir leur sécurité;

(i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and

i) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;

(j) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

j) de veiller, de concert avec les provinces, à aider les résidents permanents à mieux faire reconnaître leurs titres de compétence et à s'intégrer plus rapidement à la société.

25.(1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the

25.(1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se

requirements of this Act, and may, on the Minister's own initiative or 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 obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3696-08
STYLE OF CAUSE:	BINA MATHURDAS JOGIA - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 14, 2009
REASONS FOR JUDGMENT:	O'KEEFE J.
DATED:	June 11, 2009

APPEARANCES:

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Judy Michaely	FOR THE RESPONDENT

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