

Federal Court



Cour fédérale

Date: 20090922

Docket: IMM-1395-09

Citation: 2009 FC 943

Ottawa, Ontario, September 22, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

KASTRIOT GJOKA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada (the IAD) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), brought by Kastriot Gjoka (the Applicant) seeking to quash an IAD decision that the Applicant is subject to section 98 of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (the current Regulations) and referring the matter back to the Immigration Division of the Immigration and Refugee Board of Canada (the ID) in order to determine whether the Applicant has met the conditions imposed by the Regulations.

Issue

[2] The present application raises the following issue:

- (a) Did the IAD err in law when it rendered its decision in allowing the Minister's appeal and finding that no Transitional Provisions applied which would allow Entrepreneur conditions under the former *Immigration Act* and the *Immigration Regulations, 1978* be imposed after the coming into force of the Act?

[3] The application for judicial review shall be allowed for the following reasons.

Factual Background

[4] In February 2001, the Applicant, a citizen of Albania, applied for permanent residence status in Canada under the entrepreneur category. Also included in the application was his wife, Anila Gjoka.

[5] The Applicant was selected on September 16, 2002 and was issued a permanent resident visa on February 4, 2003 and arrived in Canada and was landed on March 12, 2003.

[6] On May 28, 2004, in response to a letter from Canadian Immigration and Citizenship, the Applicant submitted a monitoring report and an application to cancel his terms and conditions of landing. No other monitoring reports were submitted.

[7] On March 18, 2008, a report was made, pursuant to subsection 41(1) of the Act, alleging the Applicant had failed to comply with the terms and conditions of his landing.

[8] An admissibility hearing was held before the ID on May 7, 2008. At the hearing, the Respondent submitted that the Applicant had not met the conditions imposed on him under the *Immigration Regulations, 1978*, S.O.R./78-172 (the former Regulations) more specifically paragraphs 23.1(1)(a) to (d) of those Regulations.

[9] This situation is particular as the Applicant made his application for permanent residency under the former Act but the selection decision and his permanent resident visa were issued after the coming into force of the current Act.

[10] Furthermore, the *Confirmation of Permanent Residence* form signed by the Applicant upon landing specified that the conditions to be met were those of the former Regulations and section 23.1 of those Regulations was attached to the form.

Decision Under Review

[11] An admissibility hearing was held by the Immigration Division pursuant to subsection 44(2) of the Act.

[12] At the admissibility hearing, the ID member found that the conditions imposed on the Applicant were those of section 98 of the current Regulations and as such the subsection 44(1) report alleging a failure to meet the conditions under the former Regulations was unfounded.

[13] Following an appeal by the Minister, the IAD set aside the ID decision and referred the matter back for reconsideration.

[14] The IAD accepted the conclusion that the Applicant is subject to the conditions set out in section 98 of the current Regulations and referred the matter back to the ID to determine whether or not the Applicant had met the conditions imposed under the Act.

[15] The IAD decision is the impugned decision before this Court.

Relevant Legislation

[16] The pertinent legislative provisions are provided below in Appendix A.

The Applicant's Arguments

[17] The Applicant takes issue with the remedy ordered by the IAD but not the conclusion that the terms and conditions to be met are those pursuant to section 98 of the current Regulations.

[18] The Applicant argues that on the appeal, the IAD agreed with and accepted the finding of the ID on the question of the application of section 98 of the Regulations to the Applicant and that these are the conditions that must be met.

[19] In view of this, he argues, that the report which led to the admissibility hearing is invalid as it alleges violations of the requirements under the former Regulations.

[20] Accordingly, the Applicant argues that the proper remedy would have been to dismiss the appeal and for the Minister to conduct a new investigation and a new report be issued with the correct allegations.

The Respondent's Arguments

[21] The Respondent argues that the IAD erred in law in concluding that the Applicant is subject to the conditions set out in section 98 of the current Regulations.

[22] The Respondent argues that the transitional scheme in the Act allows for the conditions under section 23 of the former Regulations to be imposed on individuals who applied under the former Act but landed under the current Act.

[23] It emphasizes on the transitional provisions under the current Act which allowed for applicants in the economic categories, in this case entrepreneurs, to be assessed using the factors of either Act as also allowing conditions from the former Regulations to be imposed.

Analysis

Did the IAD err in law when it rendered its decision in allowing the Minister's appeal and finding that no Transitional Provisions applied which would allow Entrepreneur conditions under the former Immigration Act and the Immigration Regulations, 1978 be imposed after the coming into force of the Immigration and Refugee Protection Act (IRPA)?

[24] This is a legal issue to which a standard of review of correctness is to be applied (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraphs 50, 51, 54 and 55).

[25] To begin, a brief overview of the legislation scheme might be helpful. The current Act came into effect on June 28, 2002. The former Act was repealed when the current Act came into force (s. 274).

[26] Under the current Act, applicants for permanent residence status can apply under an economic class; included in that category are entrepreneurs (subsection 12(2)). Section 88 of the Regulations defines an “entrepreneur” and section 98 sets out the conditions that must be met by an entrepreneur who becomes a permanent resident. In order to meet these conditions, the entrepreneur must, for a period of at least one year within the period of three years after the day on which they become a permanent resident, control a percentage of the equity of a qualifying Canadian business equal to or greater than 33 1/3 per cent; provide active and ongoing management of the

business; and create at least one full-time job for Canadian citizens or permanent residents, other than the entrepreneur and their family members (subsections 98(1) to (3)).

[27] Under the former Act, it was also possible for permanent residents to apply under an economic category as an entrepreneur. However the definition and the conditions to be met under the former Regulations were different (s. 23).

[28] The current Act does provide however a transitional scheme in order to address the issue of applications that were made before its coming into force. It creates a general rule that all applications, proceedings and matters that were pending or in progress before the coming into force of the Act are to be governed by it upon it coming into force (s. 190). The legislation also allows for regulations to govern issues arising in the transition from the former to the current Act (s. 201).

[29] Regulations were enacted under the current Act regarding the assessment of applicants under the economic classes, including entrepreneurs. The Regulations provide that, until March 31, 2003, applicants who applied before January 1, 2002 were to be assessed under the former Regulations (subsection 361(3)).

[30] Following further changes to the Regulations, for applicants in the entrepreneur category who had applied before January 1, 2002 and whose applications were still pending on December 1, 2003, assessment would be based on either the former or the current Regulations thus allowing for the most favourable assessment to be used (subsection 361(5.1)).

[31] Finally, section 363 of the current Regulations provides that section 98 of the same does not apply in respect of an entrepreneur who was issued an immigrant visa under the former Regulations.

[32] The transitional provisions in the Act clearly address the issue of assessment of applicants seeking to enter Canada as permanent residents in the entrepreneur category.

[33] The Respondent argues that the effect of section 363 of the current Act is that applicants assessed under the former Regulations must meet the terms and conditions under those regulations.

[34] In the case at bar, there is no issue to the fact that the Applicant was assessed under the former Regulations.

[35] Because of the Transitional Provisions and section 318 of the current Regulations, the Court finds that Entrepreneur class selected applicants under the former *Immigration Act* are required to comply with post-admission to Canada terms and condition as set out in paragraphs 23.1(1)(a) to (d) of the former *Immigration Regulations*.

[36] The Court agrees with paragraphs 41, 42, 43 and 44 of the Respondent's Further Memorandum of Argument. The interpretation of the Transitional Provisions by the IAD is too restrictive. It implies that section 98 of the current Regulations can be applied retroactively to Entrepreneur applicants who filed their application prior to January 1, 2002, were assessed and

issued visas as Entrepreneur under the former *Immigration Act* and Regulations. Nothing in the Act, the current Regulations or the Transitional Provisions support such a proposition.

[37] The IAD was correct when it allowed the Minister's appeal but made a reviewable error when it determined that no legislative authority applied which would allow Entrepreneur conditions under the former *Immigration Act* and the *Immigration Regulations, 1978* be imposed after the coming into force of the Act.

[38] The Applicant proposes the following question for certification:

Is it within the jurisdiction of the Appeal Division of the Immigration & Refugee Board to make orders that have the effect of amending the Reports and allegations that form the substance of an admissibility determination at an initial Admissibility Hearing as contemplated in the IRPA?

[39] The Respondent proposes the following question for certification and alleges that it is more relevant and determinative of the issue in the case at bar:

Where an entrepreneur applicant filed his visa application prior to January 1, 2002, do Transitional Provisions under *Immigration and Refugee Protection Regulations* and specifically section 363 of the *Immigration and Refugee Protection Regulations*, apply to an entrepreneur applicant, who was assessed as an Entrepreneur within the meaning of s 2 (1), and s. 8 of the former *Immigration Regulations, 1978*, and issued a visa after the coming into force of the *Immigration and Refugee Protection Act* to allow terms and conditions pursuant to s. 23.1 of the *Immigration Regulations, 1978* to be imposed on the entrepreneur as a condition of landing.

[40] The Court is of the opinion that due to its determination in the present case, it is unnecessary to certify any of the above-mentioned questions.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be allowed. The matter is remitted back for a redetermination by a newly appointed panel. No question is certified.

“Michel Beaudry”

Judge

APPENDIX A

Immigration Regulations, 1978, S.O.R./78-172, S.O.R./93-44 at s. 17 (the former Regulations):

- | | |
|--|--|
| <p>23.1(1) Entrepreneurs and their dependents are prescribed as a class of immigrants in respect of which landing shall be granted subject to the condition that, within a period of not more than two years after the date of an entrepreneur's landing, the entrepreneur</p> | <p>23.1(1) Les entrepreneurs et les personnes à leur charge constituent une catégorie réglementaire d'immigrants à l'égard desquels il est obligatoire d'imposer les conditions suivantes au droit d'établissement:</p> |
| <p>(a) establishes, purchases or makes a substantial investment in a business or commercial venture in Canada so as to make a significant contribution to the economy and whereby employment opportunities in Canada are created or continued for one or more Canadian citizens or permanent residents, other than the entrepreneur and the entrepreneur's dependants;</p> | <p>a) dans un délai d'au plus deux ans après la date à laquelle le droit d'établissement lui est accordé, l'entrepreneur établit ou achète au Canada une entreprise ou un commerce, ou y investit une somme importante, de façon à contribuer d'une manière significative à la vie économique et à permettre à au moins un citoyen canadien ou un résident permanent, à l'exclusion de lui-même et des personnes à sa charge, d'obtenir ou de conserver un emploi;</p> |
| <p>(b) participates actively and on an on-going basis in the management of the business or commercial venture referred to in paragraph (a);</p> | <p>b) dans un délai d'au plus deux ans après la date à laquelle le droit d'établissement lui est accordé, l'entrepreneur participe activement et régulièrement à la gestion de l'entreprise ou au commerce visé à l'alinéa a);</p> |
| <p>(c) furnishes, at the times and places specified by an immigration officer, evidence of efforts to comply with the terms and conditions imposed pursuant to paragraphs (a) and (b); and</p> | <p>c) dans un délai d'au plus deux ans après la date à laquelle le droit d'établissement lui est accordé, l'entrepreneur fournit, aux dates, heures et lieux indiqués par l'agent d'immigration, la preuve qu'il s'est efforcé de se conformer aux conditions imposées aux termes des alinéas a) et b);</p> |
| <p>(d) furnishes, at the time and place specified by an immigration officer, evidence of compliance with the terms and conditions imposed pursuant to paragraphs (a) and (b);</p> | <p>d) dans un délai d'au plus deux ans après la date à laquelle le droit d'établissement lui est accordé, l'entrepreneur fournit, à la date, à l'heure et au lieu indiqués par l'agent d'immigration, la preuve qu'il s'est conformé aux conditions imposées aux termes des alinéas a) et b).</p> |

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

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.

(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.

(3) An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.

45. The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the following decisions:

(a) recognize the right to enter Canada of a Canadian citizen within the meaning of the Citizenship Act, a person registered as an Indian under the Indian Act or a permanent resident;

(b) grant permanent resident status or temporary resident status to a foreign national if it is satisfied that the foreign national meets

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.

(2) S'il estime le rapport bien fondé, le ministre peut déferer 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.

(3) L'agent ou la Section de l'immigration peut imposer les conditions qu'il estime nécessaires, notamment la remise d'une garantie d'exécution, au résident permanent ou à l'étranger qui fait l'objet d'un rapport ou d'une enquête ou, étant au Canada, d'une mesure de renvoi.

45. Après avoir procédé à une enquête, la Section de l'immigration rend telle des décisions suivantes :

a) reconnaître le droit d'entrer au Canada au citoyen canadien au sens de la Loi sur la citoyenneté, à la personne inscrite comme Indien au sens de la Loi sur les Indiens et au résident permanent;

b) octroyer à l'étranger le statut de résident permanent ou temporaire sur preuve qu'il se conforme à la présente loi;

the requirements of this Act;

(c) authorize a permanent resident or a foreign national, with or without conditions, to enter Canada for further examination; or

(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.

66. After considering the appeal of a decision, the Immigration Appeal Division shall

(a) allow the appeal in accordance with section 67;

(b) stay the removal order in accordance with section 68; or

(c) dismiss the appeal in accordance with section 69.

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

(a) the decision appealed is wrong in law or fact or mixed law and fact;

(b) a principle of natural justice has not been observed; or

(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

c) autoriser le résident permanent ou l'étranger à entrer, avec ou sans conditions, au Canada pour contrôle complémentaire;

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.

66. Il est statué sur l'appel comme il suit :

a) il y fait droit conformément à l'article 67;

b) il est sursis à la mesure de renvoi conformément à l'article 68;

c) il est rejeté conformément à l'article 69.

67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;

b) il y a eu manquement à un principe de justice naturelle;

c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

(2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision-maker for reconsideration.

(2) La décision attaquée est cassée; y est substituée celle, accompagnée, le cas échéant, d'une mesure de renvoi, qui aurait dû être rendue, ou l'affaire est renvoyée devant l'instance compétente.

190. Every application, proceeding or matter under the former Act that is pending or in progress immediately before the coming into force of this section shall be governed by this Act on that coming into force.

190. La présente loi s'applique, dès l'entrée en vigueur du présent article, aux demandes et procédures présentées ou instruites, ainsi qu'aux autres questions soulevées, dans le cadre de l'ancienne loi avant son entrée en vigueur et pour lesquelles aucune décision n'a été prise.

Immigration and Refugee Protection Regulations, S.O.R./2002-227.

88. (1) The definitions in this subsection. "entrepreneur" means a foreign national who

88. (1) Les définitions qui suivent s'appliquent à la présente section. « entrepreneur » Étranger qui, à la fois :

(a) has business experience;

a) a de l'expérience dans l'exploitation d'une entreprise;

(b) has a legally obtained minimum net worth; and

b) a l'avoir net minimal et l'a obtenu licitement;

(c) provides a written statement to an officer that they intend and will be able to meet the conditions referred to in subsections 98(1) to (5).

c) fournit à un agent une déclaration écrite portant qu'il a l'intention et est en mesure de remplir les conditions visées aux paragraphes 98(1) à (5).

98. (1) Subject to subsection (2), an entrepreneur who becomes a permanent resident must meet the following conditions:

98. (1) Sous réserve du paragraphe (2), l'entrepreneur qui devient résident permanent est assujéti aux conditions suivantes:

(a) the entrepreneur must control a percentage of the equity of a qualifying Canadian business equal to or greater than 33 1/3 per cent;

a) il a le contrôle d'un pourcentage des capitaux propres de l'entreprise canadienne admissible égal ou supérieur à 33 1/3 %;

(b) the entrepreneur must provide active and

b) il assure la gestion de celle-ci de façon

ongoing management of the qualifying Canadian business; and

(c) the entrepreneur must create at least one incremental full-time job equivalent in the qualifying Canadian business for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

(3) The entrepreneur must meet the conditions for a period of at least one year within the period of three years after the day on which the entrepreneur becomes a permanent resident.

(4) An entrepreneur who becomes a permanent resident must provide to an officer evidence of compliance with the conditions within the period of three years after the day on which the entrepreneur becomes a permanent resident.

(5) An entrepreneur must provide to an officer:

(a) not later than six months after the day on which the entrepreneur becomes a permanent resident, their residential address and telephone number; and

(b) during the period beginning 18 months after and ending 24 months after the day on which the entrepreneur becomes a permanent resident, evidence of their efforts to comply with the conditions.

318. Terms and conditions imposed under the former Act become conditions imposed under the *Immigration and Refugee Protection Act*.

361. (1) If, before the day on which this section comes into force, a foreign national referred to in subsection (2) has been assessed by a visa officer and awarded the number of

active et suivie;

c) il crée pour des citoyens canadiens ou des résidents permanents, à l'exclusion de lui-même et des membres de sa famille, au moins un équivalent d'emploi à temps plein dans l'entreprise canadienne admissible.

(3) L'entrepreneur doit se conformer aux conditions imposées pendant une période minimale d'un an au cours des trois années suivant le moment où il devient résident permanent.

(4) L'entrepreneur qui devient résident permanent fournit à l'agent, dans les trois ans suivant la date où il devient résident permanent, la preuve qu'il se conforme aux conditions imposées.

(5) L'entrepreneur fournit à l'agent :

a) au plus tard six mois après la date où il devient résident permanent, l'adresse de sa résidence et son numéro de téléphone;

b) à un moment quelconque au cours de la période commençant dix-huit mois après la date où il devient résident permanent et se terminant vingt-quatre mois après cette date, la preuve des efforts qu'il a déployés pour se conformer aux conditions imposées.

318. Les conditions imposées sous le régime de l'ancienne loi sont réputées imposées aux termes de la *Loi sur l'immigration et la protection des réfugiés*.

361. (1) Si, avant l'entrée en vigueur du présent article, un étranger visé au paragraphe (2) a été évalué par un agent des visas et a obtenu le nombre de points d'appréciation

units of assessment required by the former Regulations, that assessment is, for the purpose of these Regulations, an award of points equal or superior to the minimum number of points required of

(a) a skilled worker, in the case of a foreign national described in paragraph (2)(a);

(b) an investor, in the case of a foreign national described in paragraph (2)(b);

(c) an entrepreneur, in the case of a foreign national described in paragraph (2)(c); or a self-employed person, in the case of a foreign national described in paragraph (2)(d).

(2) Subsection (1) applies in respect of a foreign national who submitted an application under the former Regulations, as one of the following, for an immigrant visa that is pending immediately before the day on which this section comes into force:

(a) a person described in subparagraph 9(1)(b)(i) or paragraph 10(1)(b) of the former Regulations;

(b) an investor; or

(c) an entrepreneur.

Application before January 1, 2002

(3) During the period beginning on the day on which this section comes into force and ending on March 31, 2003, units of assessment shall be awarded to a foreign national, in accordance with the former Regulations, if the foreign national is an immigrant who,

(a) is referred to in subsection 8(1) of those Regulations, other than a provincial nominee, and

exigés par l'ancien règlement, cette évaluation confère, pour l'application du présent règlement, un nombre de points égal ou supérieur au nombre minimum de points requis pour se voir attribuer :

a) la qualité de travailleur qualifié, dans le cas de l'étranger visé à l'alinéa (2)a);

b) la qualité d'investisseur, dans le cas de l'étranger visé à l'alinéa (2)b);

c) la qualité d'entrepreneur, dans le cas de l'étranger visé à l'alinéa (2)c);
d) la qualité de travailleur autonome, dans le cas de l'étranger visé à l'alinéa (2)a).

(2) Le paragraphe (1) s'applique à l'étranger qui a présenté une demande de visa d'immigrant conformément à l'ancien règlement — pendante à l'entrée en vigueur du présent article — à titre, selon le cas :

a) de personne visée au sous-alinéa 9(1)b)(i) ou à l'alinéa 10(1)b) de l'ancien règlement;

b) d'investisseur;

c) d'entrepreneur.

Demandes : avant le 1^{er} janvier 2002

(3) Pendant la période commençant à la date d'entrée en vigueur du présent article et se terminant le 31 mars 2003, les points d'appréciation sont attribués conformément à l'ancien règlement à l'étranger qui est un immigrant qui :

a) d'une part, est visé au paragraphe 8(1) de ce règlement, autre qu'un candidat d'une province;

(b) before January 1, 2002, made an application for an immigrant visa under those Regulations that is still pending on the day on which this section comes into force and has not, before that day, been awarded units of assessment under those Regulations.

...

(5.1) Beginning on December 1, 2003, a foreign national who is an immigrant who made an application under the former Regulations before January 1, 2002 for an immigrant visa as an entrepreneur and whose application is still pending on December 1, 2003 and who has not, before that day, been awarded units of assessment under those Regulations must, in order to become a permanent resident as a member of the entrepreneur class,

(a) be determined to be an entrepreneur within the meaning of subsection 2(1) of those Regulations and be awarded at least the minimum number of units of assessment required by those Regulations for an entrepreneur; or

(b) be an entrepreneur within the meaning of subsection 88(1) of these Regulations and obtain a minimum of 35 points based on the factors set out in subsection 102(1) of these Regulations.

363. For greater certainty, section 98 does not apply in respect of an entrepreneur within the meaning of subsection 2(1) of the former Regulations who was issued an immigrant visa under subparagraph 9(1) (b)(ii) or (c)(i) of those Regulations.

b) d'autre part, a fait, conformément à ce même règlement, une demande de visa d'immigrant avant le 1^{er} janvier 2002, pendante à l'entrée en vigueur du présent article, et n'a pas obtenu de points d'appréciation en vertu de ce règlement.

...

(5.1) À compter du 1^{er} décembre 2003, l'étranger qui est un immigrant et qui, avant le 1^{er} janvier 2002, a présenté conformément à l'ancien règlement une demande de visa d'immigrant à titre d'entrepreneur et dont la demande est pendante le 1^{er} décembre 2003 et qui n'a pas obtenu avant cette date de points d'appréciation en vertu de l'ancien règlement doit, pour devenir résident permanent au titre de la catégorie des entrepreneurs :

a) soit s'être vu attribuer la qualité d'entrepreneur au sens du paragraphe 2(1) de l'ancien règlement et obtenir au moins le nombre minimum de points d'appréciation exigés par l'ancien règlement à l'égard d'un entrepreneur;

b) soit avoir la qualité d'entrepreneur au sens du paragraphe 88(1) du présent règlement et obtenir un minimum de 35 points au regard des critères visés à son paragraphe 102(1).

363. Il est entendu que l'article 98 du présent règlement ne s'applique pas à l'entrepreneur, au sens du paragraphe 2(1) de l'ancien règlement, qui a obtenu un visa d'immigrant en vertu des sous-alinéas 9(1)b)(ii) ou c)(i) de ce règlement.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1395-09

STYLE OF CAUSE: **KASTRIOT GJOKA and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

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DATE OF HEARING: September 1, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

DATED: September 22, 2009

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