Federal Court		Cour fédérale

Date: 20091204

Docket: IMM-1851-09

Citation: 2009 FC 1247

Ottawa, Ontario, December 4, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

RONNIE TJIUEZA

Applicant

and

THE MINISTER FOR PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "*Act*" or "*IRPA*"), of a notice given by an enforcement officer of the Pacific Region Enforcement Centre of the Canada Border Services Agency (CBSA) under s. 104(1)(b) of the *Act*, dated March 30, 2009. The officer found the applicant's claim for refugee protection ineligible to be referred to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) pursuant to s. 101(1)(f) of the *Act*, because the

Immigration Division (ID) of the IRB had determined the applicant to be inadmissible on grounds of security. The ID's decision is subject to a judicial review application in the related file IMM-1582-09. The applicant seeks an order quashing the notice, and ordering that the evidence presented to the officer "cannot result in a finding of inadmissibility".

a. Background

[2] The applicant, Ronnie Tjiueza, is a 33 year old citizen of Namibia where he was a member of the "Caprivi Liberation Movement" (CLM). He arrived in Canada on October 2, 2006 and made a claim for refugee protection at the airport. He alleged that the Namibian police and military were arresting CLM members. His refugee claim was initially considered eligible and was referred to the RPD.

[3] On October 3, 2008, the applicant was reported as being inadmissible to Canada on security grounds under s. 34(1)(f) of the *Act*. This section 44(1) report was based on his membership in the CLM [Already defined in para. 2], an organization that was alleged to have engaged in subversion by force of the Namibian government. This allegation related to an armed attack that took place on August 2, 1999 against government buildings in the city of Katima Mulido in the Caprivi region of Namibia.

[4] On October 16, 2008, the Canada Border Services Agency (CBSA) notified the RPD that a report had been referred to the ID to determine whether Mr. Tjiueza was inadmissible on security

grounds. The hearing of Mr. Tjiueza's refugee protection claim had not yet been scheduled. Under s. 103(1)(a) of the *Act*, this notification suspended the RPD proceedings.

[5] On October 21, 2008 the RPD notified Mr. Tjiueza, his counsel, and CBSA that Mr. Tjiueza's RPD hearing had been suspended under subsection 103(1) of the *IRPA*. The RPD informed Mr. Tjiueza and his counsel that Citizenship and Immigration Canada would subsequently notify the RPD to either continue the proceedings or terminate them.

[6] The applicant admitted being a member of the CLM, and in a decision dated March 10, 2009 the ID determined that there were reasonable grounds to believe the CLM had carried out the attack. Therefore, the ID held the applicant inadmissible to Canada, and issued him a deportation order. The ID accepted, however, that there was no evidence the applicant participated in, supported, or had prior knowledge of any violent act committed by the CLM. This ID decision is the subject of the application for judicial review in the related file IMM-1582-09.

[7] On March 30, 2009, an enforcement officer gave notice that he had determined the applicant's refugee claim to be ineligible under s. 101(1)(f) of the *Act*, because the ID had determined that the applicant was inadmissible on security grounds. On the notice, an indiscernible signature appears on the line marked "Signature of Minister". An affidavit submitted by Enforcement Officer Trevor Gross on behalf of the respondent swears that he was the officer who determined the applicant's claim, and that the signature on the notice is his. Under s. 104(2) of the

Act, this notice had the effect of terminating the applicant's refugee claim. This notice is the subject of the present judicial review.

II. The impugned decision

[8] The decision under attack is contained in a one-page letter. The substantive part of the letter is short enough to be reproduced in its entirety:

> The Refugee Protection Division is hereby notified that pursuant to section 103 of the Immigration and Refugee Protection Act, it has been determined that your claim for refugee protection is ineligible to be considered by the Refugee Protection Section, for the following reasons:
>
> In accordance with paragraph 101(1)(f), the Immigration Division has ruled that you have been determined to be inadmissible on grounds of security, as described in section 34 of the Immigration and Refugee Protection Act.
>
> Consequently, pursuant to section 104, this notice terminates consideration of your claim for refugee protection.

III. Issues

[9] Mr. Tjiueza challenged the authority of the decision-maker in this case, and submitted that in the absence of any evidence of the decision-maker's identity, the respondent must prove that the decision-maker had authority to issue the notice. Since the Minister has provided uncontradicted evidence that CBSA Inland Enforcement Officer Trevor Gross signed the Notice and had delegated authority to make the determination under s. 104 of the *IRPA*, this issue has been resolved. Indeed, counsel for the applicant conceded this point at the hearing.

[10] The only remaining issue, therefore, is whether the enforcement officer had discretion over whether or not to issue the notice, and if so, whether he failed to exercise it.

IV. Analysis

[11] It is clear from the jurisprudence that the issue raised by the applicant is reviewable on a correctness standard. Determining whether or not the officer had the discretion to issue the notice requires statutory interpretation and is therefore a question of law. If he had discretion, whether he failed to exercise it was either an issue of law or of procedural fairness, both of which are reviewable against the standard of correctness. Finally, if it is found that he had discretion and that he did exercise it, whether he exercised that discretion properly is reviewable on a standard of reasonableness.

[12] The applicant submits that s. 104 of the *Act* uses the word "may": "An officer **may**, with respect to a claim that is before the [RPD] …give notice that an officer has determined that …(b) the claim is ineligible under paragraph 101(1)(f)". The applicant therefore argues that s. 104 is permissive: even if the applicant's claim is ineligible to be referred to the RPD under s. 101(1)(f), the officer has discretion over whether or not to issue a notice terminating the applicant's refugee claim. For ease of reference, the relevant legislative provisions are reproduced in the Annex to these reasons.

[13] While I agree that the word "may" normally entails discretion (see *Interpretation Act*, R.S. 1985, c. I-21, s. 11), this cannot be determinative in the case at bar if only because the French

version of section 104(1) (“L’agent donne un avis…”) is more imperative and appears to direct the officer to give a notice in the circumstances set out in paragraphs (a) to (d). Be that as it may, a close look at the statutory scheme as a whole indicates Parliament’s intention to remove discretion where proceedings have been suspended. Section 104 of *IRPA* cannot be interpreted in isolation. As the Supreme Court said in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21:

> Today there is only one principle or approach, namely, the words of an Act are to read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[14] Section 101 of *IRPA* sets out the grounds on which claims are ineligible to be referred to the RPD for determination. Under paragraph 101(1)(f), a claim is ineligible if, among other things, “the claimant has been determined to be inadmissible on grounds of security…”.

[15] Under ss. 100(1) and (3) of *IRPA*, an officer must determine whether a refugee protection claim is eligible to be referred to the RPD within 3 working days after receipt of the claim. If no determination is made within 3 days, the claim is deemed to be referred to the RPD. Paragraph 100(2)(a), however, provides that the officer shall suspend consideration of the eligibility of the person’s claim if a report has been referred, pursuant to s. 44, for an admissibility hearing to determine whether the person is inadmissible on grounds of security. On October 3, 2006, when Mr. Tjiueza’s claim was referred to the RPD, the s. 44 report had not been referred to the ID, and the ID had not yet determined his admissibility.

[16] After a refugee protection claim has been referred to the RPD, section 103(1)(a) of *IRPA* allows an officer to give notice to the RPD that a matter has been referred to the ID to determine whether the claimant is inadmissible on certain grounds, including security. This notice has the effect of suspending the RPD proceedings. The grounds on which an RPD hearing may be suspended are limited, and do not include all the grounds on which a claim might be ineligible. The suspension of a claim prevents the RPD from making a decision before the claim's eligibility has been determined.

[17] In October 2008, Mr. Tjiueza's RPD proceedings were suspended under s. 103(1)(a) of *IRPA* as a result of a notification by the CBSA that a report had been referred to the ID to determine whether Mr. Tjiueza was inadmissible on security grounds. At the time, the hearing of Mr. Tjiueza's refugee protection claim had not yet been scheduled. Once the RPD proceedings are suspended, they may only be continued again if an officer notifies the RPD that the suspended claim is eligible.

[18] Section 104 of *IRPA* also allows an officer to terminate RPD proceedings that are pending if an officer determines that the claim is ineligible, or that an ineligible claim was referred to the RPD based on misrepresentation or the withholding of material facts. The power to terminate pending RPD proceedings does not depend on the RPD proceedings having first been suspended.

[19] If the RPD proceedings are not suspended, and the RPD renders a decision, the circumstances in which the decision may be nullified are very limited. After the RPD has made a decision on a claim, the decision may only be nullified if an officer determines that it was not the

first claim received with respect to the claimant. The decision may not be nullified on the basis that the claim was ineligible to be referred to the RPD (s. 104(2)(b)).

[20] Mr. Tjiueza argues that section 104 of *IRPA* gave Officer Gross discretion as to whether or not to notify the RPD that his claim was ineligible, thereby terminating Mr. Tjiueza's RPD proceedings. Mr. Tjiueza's argument, if accepted, would result in the absurd result that his RPD proceedings would be suspended indefinitely.

[21] Indeed, on its face, the language of s. 103 suspends RPD proceedings indefinitely unless they are resumed under s. 103(2). Section 103(1) says that proceedings "are suspended" on notice by the officer that the matter has been referred to the ID. They are not suspended "pending" or "until" the ID's decision. Section 103(2) states that "On notice by an officer that the suspended claim was determined to be eligible", the RPD proceedings will continue. The statute provides no other method to have a proceeding continue. Thus, it appears that if an officer does not expressly determine a claim to be either eligible or ineligible, the RPD proceedings will remain suspended. I agree with the respondent that Parliament could not have intended to give the officer the discretion to suspend RPD proceedings indefinitely.

[22] It seems more logical to interpret ss. 103 and 104 together as a statutory scheme that envisions an officer suspending RPD proceedings only until he can gather enough information, via the ID's decision, to make a determination of eligibility. The scheme then envisions the officer ending the suspension either by giving notice to the RPD that the suspended claim has been

determined to be eligible under s. 103(2), or by giving notice that the claim is ineligible as a result of the ID decision under s. 104.

[23] For these reasons, while section 104 of *IRPA* does generally give an officer discretion as to whether or not to re-determine the eligibility of a claim, that discretion does not exist in the case of a claim that has been suspended under s. 103 of *IRPA*. In the case of a claim that has been suspended, any discretion that may exist regarding re-determining the eligibility of a claim would have been exercised in making the decision under section 103 to suspend the RPD proceedings. Once a claim is suspended, *IRPA* only provides for two possible results: either the proceedings are continued because an officer notifies the RPD that the claim is eligible, or the proceedings are terminated because an officer notifies the RPD that the claim is not eligible.

[24] Some guidance as to Parliament's intentions may also be gleaned from Citizenship and Immigration Canada's manual *PP1: Processing Claims for Refugee Protection in Canada*, which states as follows (at p. 49):

> An officer "may" proceed with a redetermination of eligibility if there is information to indicate that the claimant should not have been found eligible to make a claim or is no longer eligible to make a claim. [Section] 104 allows an officer to redetermine the eligibility of a claim and to notify the Refugee Protection Division that the claim is no longer eligible, thus ending their jurisdiction over the case. Although redetermination is discretionary, if there is evidence to prove that a person is ineligible, redetermination should be the preferred course of action. However, there may be situations where it is appropriate to have the RPD make a decision on the claim.

[25] This manual therefore confirms that the officer generally has discretion under s. 104. However, it states that the officer would only exercise this discretion because situations may arise where the RPD ought to make a decision on the claim (for example in cases involving exclusion clauses). Since a claim that has been suspended under s. 103 will remain suspended indefinitely, the RPD will never make a decision on this sort of claim. Thus it seems that the discretion in s. 104 was never meant to apply in this situation.

[26] This interpretation is consistent with the provisions of *IRPA* and the objectives of this act that require refugee protection claims to be dealt with efficiently and expeditiously. In particular, s. 162(2) of *IRPA* requires the RPD "to deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit".

[27] Furthermore, this interpretation is supported by the fact that an indefinite suspension would not give any practical benefit to the applicant. The applicant still would not have his refugee claim determined by the RPD. As a result, he would not be entitled to permanent resident status and the associated rights and privileges. He would remain subject to the removal order issued by the ID. He would also remain subject to the restriction on persons found inadmissible for security reasons that a Pre-Removal Risk Assessment (PRRA) application cannot result in refugee protection. In short, if the officer exercised a discretion under s. 104 not to terminate the RPD proceeding, it would offer no practical benefit to the applicant. It seems absurd that Parliament would grant an officer a discretion whose exercise would serve no practical purpose. It would run counter to s. 12 of the *Interpretation Act*, *supra*, which states that "[e]very enactment is deemed remedial, and shall be

given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

[28] Having come to the conclusion that the officer had no discretion, and was required to determine the eligibility of Mr. Tjiueza's claim according to the ID finding and to notify the RPD of his determination, there is no need to address the other questions raised by the applicant. Needless to say, even though Mr. Tjiueza's claim cannot be heard by the RPD, he may still have his risk assessed by making a PRRA application.

[29] Counsel for both the applicant and the respondent have proposed a certified question pertaining to the proper interpretation of s. 104. Their proposed questions are virtually identical, although I believe the wording of the applicant's proposal is more neutral than the respondent's. The applicant's proposed question reads as follows:

> After an RPD hearing has been suspended under s. 103 of the *Immigration and Refugee Protection Act* pending the outcome of an ID hearing and re-determination of a claim's eligibility, if the ID determines that the claimant is inadmissible for security reasons, does the officer have discretion under the *Immigration and Refugee Protection Act* to not re-determine the claim's eligibility and to not notify the RPD of the officer's decision on eligibility, and thereby suspend the RPD hearing indefinitely?

[30] There is no doubt in my mind that this question deserves to be certified. It clearly transcends the interests of the parties, it contemplates an issue of general application and it is also determinative of the appeal: *Canada (Minister of Citizenship and Immigration) v. Liyanagamage* (F.C.A.), 176 N.R. 4 A.).

JUDGMENT

THIS COURT ORDERS that this application for judicial review is dismissed. The following question is certified:

> After an RPD hearing has been suspended under s. 103 of the *Immigration and Refugee Protection Act* pending the outcome of an ID hearing and re-determination of a claim's eligibility, if the ID determines that the claimant is inadmissible for security reasons, does the officer have discretion under the *Immigration and Refugee Protection Act* to not re-determine the claim's eligibility and to not notify the RPD of the officer's decision on eligibility, and thereby suspend the RPD hearing indefinitely?

"Yves de Montigny"

Judge

ANNEX

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

Security	**Sécurité**
34. (1) A permanent resident or a foreign national is inadmissible on security grounds for (a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada; (b) engaging in or instigating the subversion by force of any government; (c) engaging in terrorism; (d) being a danger to the security of Canada; (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).	**34.** (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants : a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada; b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force; c) se livrer au terrorisme; d) constituer un danger pour la sécurité du Canada; e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada; f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).
Exception	**Exception**
(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national	(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

interest.

Referral to Refugee Protection Division

100. (1) An officer shall, within three working days after receipt of a claim referred to in subsection 99(3), determine whether the claim is eligible to be referred to the Refugee Protection Division and, if it is eligible, shall refer the claim in accordance with the rules of the Board.

Decision

(2) The officer shall suspend consideration of the eligibility of the person's claim if

(a) a report has been referred for a determination, at an admissibility hearing, of whether the person is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or

(b) the officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.

Examen de la recevabilité

100. (1) Dans les trois jours ouvrables suivant la réception de la demande, l'agent statue sur sa recevabilité et défère, conformément aux règles de la Commission, celle jugée recevable à la Section de la protection des réfugiés.

Sursis pour décision

(2) L'agent sursoit à l'étude de la recevabilité dans les cas suivants :

a) le cas a déjà été déféré à la Section de l'immigration pour constat d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée;

b) il l'estime nécessaire, afin qu'il soit statué sur une accusation pour infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Consideration of claim

(3) The Refugee Protection Division may not consider a claim until it is referred by the officer. If the claim is not referred within the three-day period referred to in subsection (1), it is deemed to be referred, unless there is a suspension or it is determined to be ineligible.

Saisine

(3) La saisine de la section survient sur déféré de la demande; sauf sursis ou constat d'irrecevabilité, elle est réputée survenue à l'expiration des trois jours.

Duty of claimant

(4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.

Obligation

(4) La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées et fournir à la section, si le cas lui est déféré, les renseignements et documents prévus par les règles de la Commission.

Quarantine Act

(5) If a traveller is detained or isolated under the Quarantine Act, the period referred to in subsections (1) and (3) does not begin to run until the day on which the detention or isolation ends.

Loi sur la mise en quarantaine

(5) Le délai prévu aux paragraphes (1) et (3) ne court pas durant une période d'isolement ou de détention ordonnée en application de la Loi sur la mise en quarantaine.

Ineligibility

101. (1) A claim is ineligible to be referred to the Refugee Protection Division if
(a) refugee protection has been conferred on the claimant under

Irrecevabilité

101. (1) La demande est irrecevable dans les cas suivants :
a) l'asile a été conféré au demandeur au titre de la

this Act;
(b) a claim for refugee protection by the claimant has been rejected by the Board;
(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;
(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;
(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or
(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).

Serious criminality

(2) A claim is not ineligible by reason of serious criminality under paragraph (1)(f) unless
(a) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence

présente loi;
b) rejet antérieur de la demande d'asile par la Commission;
c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;
d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;
e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)c) — , grande criminalité ou criminalité organisée.

Grande criminalité

(2) L'interdiction de territoire pour grande criminalité visée à l'alinéa (1)f) n'emporte irrecevabilité de la demande que si elle a pour objet :
a) une déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle un emprisonnement d'au moins

of at least two years was imposed; or
(b) in the case of inadmissibility by reason of a conviction outside Canada, the Minister is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.

deux ans a été infligé;
b) une déclaration de culpabilité à l'extérieur du Canada, pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans, le ministre estimant que le demandeur constitue un danger pour le public au Canada.

Regulations

102. (1) The regulations may govern matters relating to the application of sections 100 and 101, may, for the purposes of this Act, define the terms used in those sections and, for the purpose of sharing responsibility with governments of foreign states for the consideration of refugee claims, may include provisions
(a) designating countries that comply with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture;
(b) making a list of those countries and amending it as necessary; and
(c) respecting the circumstances and criteria for the application of paragraph 101(1)(e).

Règlements

102. (1) Les règlements régissent l'application des articles 100 et 101, définissent, pour l'application de la présente loi, les termes qui y sont employés et, en vue du partage avec d'autres pays de la responsabilité de l'examen des demandes d'asile, prévoient notamment :
a) la désignation des pays qui se conforment à l'article 33 de la Convention sur les réfugiés et à l'article 3 de la Convention contre la torture;
b) l'établissement de la liste de ces pays, laquelle est renouvelée en tant que de besoin;
c) les cas et les critères d'application de l'alinéa 101(1)e).

Factors

(2) The following factors are to

Facteurs

(2) Il est tenu compte des

be considered in designating a country under paragraph (1)(a):

(a) whether the country is a party to the Refugee Convention and to the Convention Against Torture;
(b) its policies and practices with respect to claims under the Refugee Convention and with respect to obligations under the Convention Against Torture;
(c) its human rights record; and
(d) whether it is party to an agreement with the Government of Canada for the purpose of sharing responsibility with respect to claims for refugee protection.

facteurs suivants en vue de la désignation des pays :
a) le fait que ces pays sont parties à la Convention sur les réfugiés et à la Convention contre la torture;
b) leurs politique et usages en ce qui touche la revendication du statut de réfugié au sens de la Convention sur les réfugiés et les obligations découlant de la Convention contre la torture;
c) leurs antécédents en matière de respect des droits de la personne;
d) le fait qu'ils sont ou non parties à un accord avec le Canada concernant le partage de la responsabilité de l'examen des demandes d'asile.

Review

(3) The Governor in Council must ensure the continuing review of factors set out in subsection (2) with respect to each designated country.

Suivi

(3) Le gouverneur en conseil assure le suivi de l'examen des facteurs à l'égard de chacun des pays désignés.

Suspension or Termination of Consideration of Claim
Suspension

103. (1) Proceedings of the Refugee Protection Division and of the Refugee Appeal Division are suspended on

Interruption de l'étude de la demande d'asile
Sursis

103. (1) La Section de la protection des réfugiés ou la Section d'appel des réfugiés sursoit à l'étude de la demande

notice by an officer that
(a) the matter has been referred to the Immigration Division to determine whether the claimant is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or
(b) an officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that may be punished by a maximum term of imprisonment of at least 10 years.

sur avis de l'agent portant que :
a) le cas a été déféré à la Section de l'immigration pour constat d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée;
b) il l'estime nécessaire, afin qu'il soit statué sur une accusation pour infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Continuation

(2) On notice by an officer that the suspended claim was determined to be eligible, proceedings of the Refugee Protection Division and of the Refugee Appeal Division shall continue.

Continuation

(2) L'étude de la demande reprend sur avis portant que la demande est recevable.

Notice of ineligible claim

104. (1) An officer may, with respect to a claim that is before the Refugee Protection Division or, in the case of paragraph (d), that is before or has been determined by the Refugee Protection Division or the Refugee Appeal Division, give notice that an officer has determined that
(a) the claim is ineligible under paragraphs 101(1)(a) to (e);

Avis sur la recevabilité de la demande d'asile

104. (1) L'agent donne un avis portant, en ce qui touche une demande d'asile dont la Section de protection des réfugiés est saisie ou dans le cas visé à l'alinéa d) dont la Section de protection des réfugiés ou la Section d'appel des réfugiés sont ou ont été saisies, que :
a) il y a eu constat d'irrecevabilité au titre des alinéas 101(1)a) à e);

(b) the claim is ineligible under paragraph 101(1)(f);
(c) the claim was referred as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter and that the claim was not otherwise eligible to be referred to that Division; or
(d) the claim is not the first claim that was received by an officer in respect of the claimant.

b) il y a eu constat d'irrecevabilité au seul titre de l'alinéa 101(1)f);
c) la demande n'étant pas recevable par ailleurs, la recevabilité résulte, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait;
d) la demande n'est pas la première reçue par un agent.

Termination and nullification

(2) A notice given under the following provisions has the following effects:

(a) if given under any of paragraphs (1)(a) to (c), it terminates pending proceedings in the Refugee Protection Division respecting the claim; and
(b) if given under paragraph (1)(d), it terminates proceedings in and nullifies any decision of the Refugee Protection Division or the Refugee Appeal Division respecting a claim other than the first claim.

Classement et nullité

(2) L'avis a pour effet, s'il est donné au titre :

a) des alinéas (1)a) à c), de mettre fin à l'affaire en cours devant la Section de protection des réfugiés;
b) de l'alinéa (1)d), de mettre fin à l'affaire en cours et d'annuler toute décision ne portant pas sur la demande initiale.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1851-09
STYLE OF CAUSE:	Ronnie Tjiueza v. MCI
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	September 22, 2009
REASONS FOR JUDGMENT AND JUDGMENT BY:	Justice de Montigny
DATED:	December 4, 2009

APPEARANCES:

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Caroline Christiaens	FOR THE RESPONDENT

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