Federal Court  Cour fédérale

Date: 20120925

Docket: IMM-6285-11

Citation: 2012 FC 1127

Ottawa, Ontario, September 25, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

JASMINA ANTONIA FINTA

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Minister's delegate (the delegate), dated August 30, 2011, in which a deportation order was issued against the applicant pursuant to subsection 44(2) of the Act. This decision was based on the delegate's finding that the subsection 44(1) inadmissibility report and allegations against the applicant were well-founded, thereby warranting a deportation order.

[2] The applicant requests that the delegate's decision be quashed and a stay be imposed on any further proceedings by the respondent against the applicant.

Background

[3] The applicant, Jasmina Antonia Finta, is a citizen of Australia. She arrived in Canada as a minor in 1969. The applicant's family in Canada consists of her mother, two sisters, one daughter, two granddaughters and one great-granddaughter. All these family members are Canadian citizens. The applicant's father holds Australian citizenship and resides in Australia.

[4] The applicant married Mario Rocco around 1973. The couple's daughter was born in 1974. The applicant and her husband separated in the late 1980s, but they never divorced. The applicant's husband died on March 13, 2005.

[5] When the applicant first arrived in Canada, her sister applied to sponsor her for permanent residence. The applicant married her husband before the sponsorship application was approved. Her new husband wrongly advised her that she no longer needed to pursue her permanent residence application because, as the wife of a Canadian citizen, she automatically obtained status. The applicant therefore did not pursue her immigration application further.

[6] The applicant has been charged with various crimes in Canada. In July 1971, she was charged with theft under $5,000. Later, in September 1997, she was charged with theft over $5,000 and personation with intent. In February 2004, she was charged with several offences including

personation with intent, possession of property obtained by crime, fraud over $5,000, fraud under $5,000, false pretence and failure to appear in Court. For these 2004 offences, the applicant was sentenced to 245 days incarceration and three years probation. At that time, the applicant was also approached by an immigration officer who recommended that she obtain a temporary resident permit. The applicant obtained a temporary resident permit in December 2006. It expired in December 2007 and the applicant did not renew it.

[7] In August 2008, the applicant was charged for driving while impaired. She was issued a $1,000 fine and prohibited from driving for one year. A few months later, the applicant was sentenced to 12 months' probation for failure to comply with the conditions of her undertaking.

[8] In June 2011, Canada Border Services Agency (CBSA) officers attended the applicant's home, took her into custody and interviewed her. On June 27, 2011, a subsection 44(1) inadmissibility report was issued against the applicant. This report first summarized the applicant's immigration background and criminal history in Canada. It noted that the applicant is collecting a "widow's pension" from CN Rail and appears well established in her community. The report also remarked that consideration can be given to the length of time that the applicant had lived in Canada and the establishment of her and her family. However, due to her criminal convictions and as the applicant had not sought to renew her immigration status after she discovered it was lacking and her temporary permit expired, the officer recommended a removal order be issued. The officer also noted the immigration history of the applicant's family and found it difficult to believe that the applicant was not aware that she had no legal status in Canada.

[9] In a letter dated August 12, 2011, the applicant was notified that she was required to attend a CBSA office on August 30, 2011. The applicant did not attend the scheduled meeting. Thereafter, CBSA officers went to the applicant's residence and transported her to the CBSA office. There she was advised that a deportation order had been issued against her.

[10] On October 13, 2011, the applicant filed a pre-removal risk assessment (PRRA) application. The applicant explained that she feared returning to Australia due to the grave effect that her departure would have on the health and well-being of her elderly mother. Her mother currently lives in a seniors' residence that does not provide assisted living services, hence, the applicant is her primary caregiver. In her PRRA application, the applicant also stated that she fears returning to Australia where she has not lived for over four decades and will be left without a home and only minimal means to support herself.

[11] In a letter dated March 2, 2012, Dr. Laura Voltic, the applicant's mother's doctor indicated that the applicant's mother is in grave condition and relies extensively on her daughter as her primary caregiver.

Delegate's Decision

[12] The delegate issued a deportation order against the applicant on August 30, 2011.The delegate issued the order based on the finding that the applicant is a person described in paragraphs 36(1)(a) and 36(2)(a) of the Act.

[13] In the notes to file that form part of the decision, the delegate explained that she scheduled a meeting with the applicant on August 30, 2011. The meeting notification letter was sent with 18 days advance notice and was not returned as undelivered. The applicant did not attend the meeting. The delegate tried to contact the applicant by phone. As this attempt was unsuccessful, the delegate drove to the applicant's address with another officer to locate her.

[14] The applicant was home and she let the officer and the delegate in. On inquiry about her failure to attend the meeting, the applicant explained that she had forgotten. The delegate advised the applicant of her rights and then asked her to get dressed and come with them to the CBSA office. The applicant got prepared, called her mother and left food and water for her pets. She was then handcuffed and brought to the CBSA office.

[15] At the CBSA office, the applicant was photographed and her fingerprints were taken. She declined counsel and declined notification to the Australian consulate. The delegate then interviewed the applicant. From the interview, the delegate determined that the inadmissibility report and allegations were well founded. The delegate therefore advised the applicant that a deportation order would be issued against her. As the applicant had an elderly mother that relied on her for assistance and had a large number of animals requiring her care, the delegate released the applicant on bond of $1,000 with strict terms and conditions. The applicant's brother-in-law acted as bondsperson.

Issues

[16] The applicant submits the following points at issue:

1. The delegate erred in law by making negative credibility findings and violated the duty of procedural fairness owed to the applicant by failing to give her notice and a reasonable opportunity to respond and put forward evidence before the Immigration Division.

2. The delegate erred in law by making a deportation order without providing clear, or in fact, any reasons on humanitarian and compassionate grounds in her ultimate decision as it appears on the face of the record.

[17] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the delegate err by not referring the applicant's case to the Immigration Division for a hearing?

3. Did the delegate breach procedural fairness?

4. Did the delegate err by not considering H&C factors?

5. Was the delay an abuse of process?

Applicant's Written Submissions

[18] The applicant submits that the delegate erred by issuing a deportation order and then failing to exercise her discretion to refer the applicant's case to the Immigration Division for a hearing

pursuant to section 228 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations).

[19] The applicant submits that the minimum standards for procedural fairness mandate that foreign nationals be granted notice and the opportunity to present evidence of their case. The applicant submits that she was denied this minimum opportunity. She should have been given the opportunity to rebut and explain the exceptional circumstances that demonstrated why she should be permitted to stay in Canada. These circumstances included the degree to which she has been established in Canada, the degree of hardship that would be caused by her removal and the length of time she has spent in Canada.

[20] The applicant also submits that the scope of the delegate's discretion under subsection 44(2) of the Act is sufficiently broad to include humanitarian and compassionate (H&C) factors. The applicant submits that in determining whether a person should be removed, relevant factors include the length of time spent in Canada, the degree of establishment established in Canada and the degree of hardship caused by removal. Relevant factors in the applicant's case included the fact that she entered Canada as a child, the difficulty and hardship she would face in establishing herself in another country, her living and functioning in Canada as a Canadian for over four decades and her support of her dependants in Canada. At a minimum, the delegate should have reviewed these particular circumstances. The delegate erred by not reviewing them or explaining in detail the reasons that led to the decision.

[21] The applicant also submits that the respondent's delay in pursuing the applicant's case for over seven years renders the deportation order questionable. This delay is an abuse of process that must be addressed by referral to the Immigration Division.

Respondent's Written Submissions

[22] The respondent submits that the standard of review of the delegate's decision to issue a deportation order under subsection 44(2) of the Act involves questions of mixed fact and law and is reviewable on a reasonableness standard. On the question of the delegate breaching natural justice, the respondent submits that the courts have the final say on such matters.

[23] The respondent submits that a foreign national who is inadmissible to Canada for criminality or serious criminality is only entitled to a low level of procedural protection. Further, a delegate's decision to issue a deportation order under subsection 44(2) of the Act is a purely administrative decision that only attracts a minimal duty of fairness. The respondent submits that the duty of fairness in the context of issuing removal orders to foreign nationals is satisfied by the provision of the following participatory rights: the right to a copy of the immigration officer's report; the right to being informed of the allegations, of the case to be met and of the nature and possible consequences of the decision; the right to be interviewed; and the right to present relevant evidence and to express a point of view.

[24] The respondent submits that the applicant was granted all these rights. The applicant's PRRA application and the delegate's decision clearly indicate that the applicant had notice of the

allegations, the case to be met and the nature and possible consequences of the decision. The applicant also acknowledged in her PRRA application that she had been interviewed by a CBSA officer in June 2011. After the interview, she was informed that a section 44 report describing her as criminally inadmissible would be referred to another officer who would contact her. The applicant also acknowledged that she had received a letter requiring her to attend the CBSA office.

[25] The respondent submits that there was no evidence that the applicant did not have an opportunity to present relevant evidence or to express her point of view. The delegate interviewed the applicant for 25 minutes on August 30, 2011 and at the end of that interview, determined that the allegations were well founded. The deportation order was issued on that basis. The respondent notes that the applicant has not provided any evidence to support her claim that she was not provided an opportunity to explain the exceptional circumstances that would demonstrate why she should be permitted to stay in Canada. Nevertheless, the respondent notes that when a result is inevitable, an error may not require a decision to be set aside.

[26] The respondent also submits that subsection 228(a) of the Regulations clearly states that a delegate does not have the discretion to refer the report to the Immigration Division. This provision states that if a report in respect of a foreign national does not include any grounds of inadmissibility other than serious criminality or criminality under paragraphs 36(1)(a) or 36(2)(a) of the Act, the report shall not be referred to the Immigration Division. Rather, the delegate shall issue a deportation order. In this case, the delegate properly followed the procedure set out in the Regulations. As there was no discretion to refer the 44(1) report to the Immigration Division, there was no breach of procedural fairness in the delegate not doing so.

[27] The respondent also submits that the H&C factors are not relevant. It is established jurisprudence that a delegate acting under subsection 44(2) of the Act is simply on a fact finding mission. H&C factors have no place in this decision, where the sole focus is on whether the information on the applicant's inadmissibility is accurate.

[28] Finally, the respondent submits that the seven year delay in issuing the deportation order is not a serious deficiency that warrants referral to the Immigration Division. A delay in itself is not an abuse of process that gives rise to a remedy. Rather, a delay may be considered an abuse of process where that passage of time prejudices an applicant's ability to defend him or herself. The respondent submits that there are no such circumstances in this case. Any delay in reporting the applicant does not prejudice her and there is nothing oppressive about the delay.

Analysis and Decision

[29] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[30] This application pertains to a removal for inadmissibility pursuant to section 44 of the Act. Once an inadmissibility report has been prepared and found to be well founded, the Minister has the discretion to refer the report to the Immigration Division. However, the Act and Regulations specify

certain circumstances when the Minister may issue a removal order. A Minister's decision to refer the report to the Immigration Division as opposed to issuing a removal order is essentially a determination of the scope of its discretion. This is a question of law reviewable on the correctness standard (see *Faci v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 693, [2011] FCJ No 893 at paragraph 21). Similarly, it is well established that the appropriate standard of review for issues of procedural fairness is correctness (see *Wang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 798, [2008] FCJ No 995 at paragraph 13; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 43). No deference is owed to decision makers on these issues (see *Dunsmuir* above, at paragraph 50).

[31] If the Minister correctly decides that a removal order rather than referral to the Immigration Division is warranted, "the Minister may make a removal order" (subsection 44(2) of the Act). This determination involves questions of mixed fact and law that are reviewable on a reasonableness standard. In reviewing the delegate's decision on the standard of reasonableness, the Court should not intervene unless the officer came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Khosa* above, at paragraph 59). It is not up to a reviewing Court to substitute its own view of a preferable outcome, nor is it the function of the reviewing Court to reweigh the evidence (see *Khosa* above, at paragraphs 59 and 61).

[32] **Issue 2**

Did the delegate err by not referring the applicant's case to the Immigration Division for a hearing?

As mentioned above, the inadmissibility of foreign nationals is regulated under section 44 of the Act. This provision first requires the preparation of an inadmissibility report pursuant to subsection 44(1). The inadmissibility report is then transmitted to the Minister or more commonly the Minister's delegate. Pursuant to subsection 44(2) of the Act, if the Minister or its delegate finds the report well founded, he or she may refer the report to the Immigration Division for an admissibility hearing. In this application, the applicant argues that the delegate erred by not referring her case to the Immigration Division.

[33] However, pursuant to subsection 44(2), there are specific circumstances when a report shall not be referred to the Immigration Division. In those instances, the Minister may make a removal order. Section 228 of the Regulations lists prescribed circumstances for foreign nationals when the Minister may make a removal order. In this case, the applicant does not contest her criminal history. This history places her within the scope of paragraphs 36(1)(a) and (2)(a) of the Act. Thus, pursuant to paragraph 228(1)(a), any removal order made by the Minister or its Delegate must be a deportation order. Therefore, the Delegate clearly did not err by not referring the applicant's case to the Immigration Division for a hearing. In fact, had the Delegate done so, the Delegate would have exceeded its jurisdiction pursuant to section 44(2) of the Act and paragraph 228(1)(a) of the Regulations.

[34] **Issue 3**

Did the delegate breach procedural fairness?

The applicant submits that she was not given notice or the opportunity to explain the exceptional circumstances that demonstrated why she should be permitted to stay in Canada. These

circumstances included her length of time and establishment in Canada and the hardship that her removal would cause. The applicant submits that this was a breach of procedural fairness.

[35] It is well established that the duty of fairness for proceedings under section 44 of the Act is "relaxed and consists of the right to make submissions and the right to obtain a copy of the report" (see *Richter v Canada (Minister of Citizenship and Immigration)*, 2008 FC 806, [2008] FCJ No 1033 at paragraph 18, aff'd 2009 FCA 73, [2009] FCJ No 309; and *Tran v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 1078, [2009] FCJ No 1332 at paragraph 16). In *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126, [2006] FCJ No 491, the Federal Court of Appeal listed the following participatory rights as meeting the requirements of the duty of fairness in cases such as the one at bar (at paragraph 52):

> - provide a copy of the immigration officer's report to the person
> - inform the person of the allegation(s) made in the immigration officer's report, of the case to be met and of the nature and possible consequences of the decision to be made
>
> - conduct an interview in the presence of the person, be it live, by videoconference or by telephone
>
> - give the person an opportunity to present evidence relevant to the case and to express his point of view.

[36] As noted by the respondent, the evidence here indicates that the applicant was granted these requisite procedural rights. The history of the case, including the advice on seeking a temporary resident permit after her conviction in 2004, suggests that the applicant was in fact provided greater procedural rights than what is required under section 44 of the Act. Thus, there was no breach of procedural fairness here.

[37] **Issue 4**

Did the delegate err by not considering H&C factors?

The applicant also submits that the delegate erred by not taking into account H&C factors in exercising its discretion. According to the applicant, these factors include the fact that she came to Canada as a minor, the difficulty she would face in establishing herself outside Canada after four decades here and the important supporting role she plays for her family members in Canada.

[38] Contrary to the applicant's submissions, H&C factors are not relevant to the section 44 admissibility process. As I noted in *Rosenberry v Canada (Minister of Citizenship and Immigration)*, 2010 FC 882, [2010] FCJ No 1101 (at paragraph 36):

> The substance of the decision did not require the Minister's delegate to consider the H&C application or H&C factors at all. Under section 44 immigration officials are simply involved in fact-finding. They are under an obligation to act on facts indicating inadmissibility. It is not the function of such officers to consider H&C factors or risk factors that would be considered in a pre-removal risk assessment. [emphasis added]

[39] This is confirmed in the well cited case of *Cha* above. Mr. Justice Robert Décary noted (at paragraph 37):

> It cannot be, in my view, that Parliament would have in sections 36 and 44 of the Act spent so much effort defining objective circumstances in which persons who commit certain well defined offences in Canada are to be removed, to then grant the immigration officer or the Minister's delegate the option to keep these persons in Canada for reasons other than those contemplated by the Act and the Regulations. It is not the function of the immigration officer, when deciding whether or not to prepare a report on inadmissibility based on paragraph 36(2)(a) grounds, or the function of the Minister's delegate when he acts on a report, to deal with matters described in sections 25 (H&C considerations) and 112 (Pre-Removal Assessment Risk) of the Act (see *Correia* at paragraphs 20 and 21;

> *Leong* at paragraph 21; *Kim* at paragraph 65; *Lasin v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1655, 2005 FC 1356 at paragraph 18). [emphasis added]

[40] Although the section 44 process is not the correct forum to consider H&C factors, these may be considered in a future request under section 25 of the Act or under section 48 of the Act in an application to stay the applicant's removal (see *Rosenberry* above, at paragraph 37).

[41] **Issue 5**

Was the delay an abuse of process?

Finally, the applicant submits that the respondent's delay in pursuing her case for over seven years renders the deportation order an abuse of process that necessitates referral to the Immigration Division.

[42] As noted by Mr. Justice Sean Harrington in *Beltran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 516, [2011] FCJ No 633 (at paragraph 32), the purpose of the doctrine of abuse of process was described by Madam Justice L'Heureux-Dubé in the criminal law case of *R v Conway*, [1989] 1 SCR 1659 at paragraph 8:

> Under the doctrine of abuse of process, the unfair or oppressive treatment of an appellant disentitles the Crown to carry on with the prosecution of the charge. The prosecution is set aside, not on the merits (see *Jewitt*, *supra*, at p. 148), but because it is tainted to such a degree that to allow it to proceed would tarnish the integrity of the court. The doctrine is one of the safeguards designed to ensure "that the repression of crime through the conviction of the guilty is done in a way which reflects our fundamental values as a society" (*Rothman v. The Queen*, [1981] 1 S.C.R. 640, at p. 689, per Lamer J.). It acknowledges that courts must have the respect and support of the community in order that the administration of criminal justice may properly fulfil its function. Consequently, where the affront to fair

> play and decency is disproportionate to the societal interest in the effective prosecution of criminal cases, then the administration of justice is best served by staying the proceedings.

[43] The Supreme Court of Canada's decision in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 is generally cited as the leading administrative law case on this issue. In *Wachtler v College of Physicians and Surgeons of Alberta*, 2009 ABCA 130, [2009] AJ No 347, the Alberta Court of Appeal summarized the guidance set out in *Blencoe* above, including the following (at paragraph 23):

> [..] Delay, without more, will not warrant a stay of proceedings as an abuse of process (para. 101);
>
> . . .
>
> Administrative delay may impugn the validity of the proceedings where it impairs a party's ability to answer the complaint against him or her - where memories have faded, essential witnesses are unavailable, or evidence has been lost (para. 102);
>
> Where the fairness of the hearing has not been compromised, delay may nevertheless amount to an abuse of process, but few lengthy delays will meet this threshold (para. 115). It must be unacceptable to the point of being so oppressive as to taint the proceedings (para. 121). The court must be satisfied that, "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (para. 120). This will depend on: the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances (para. 122); […]

[44] In this case, the applicant came to Canada in 1969. The record suggests that the Minister was not aware of her lack of immigration status until 2004 when she was arrested. At that time, an immigration officer advised the applicant to seek a temporary resident permit. The applicant did

obtain a temporary resident permit in 2006, but did not renew it upon its expiry in December 2007. In June 2011, a CBSA officer contacted the applicant and issued an inadmissibility report against her.

[45] This series of events does not support a finding of an abuse of process. Admittedly, three and a half years lapsed between the expiry of the applicant's temporary permit and the issue of the inadmissibility report. However, as mentioned above, delay, without more, is insufficient to constitute an abuse of process. There was no suggestion that this delay impaired the applicant's ability to answer the complaint against her. In addition, there was no evidence of oppression that would bring the justice system into disrepute. There was simply no evidence to suggest that the delay in this application amounted to an abuse of process.

[46] For these collective reasons, I would dismiss this application for judicial review.

[47] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

[48] At the request of the respondent, The Minister of Citizenship and Immigration is removed as a respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The Minister of Citizenship and Immigration is removed as a respondent.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
. . .	. . .
(2) A foreign national is inadmissible on grounds of criminality for	(2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence; . . .	a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits; . . .
44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	44. (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.
(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	(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

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.

(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.

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

Immigration and Refugee Protection Regulations, SOR/2002-227

228. (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

228. (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déférée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :

(a) if the foreign national is inadmissible under paragraph 36(1)(a) or (2)(a) of the Act on grounds of serious criminality or criminality, a deportation order;

a) en cas d'interdiction de territoire de l'étranger pour grande criminalité ou criminalité au titre des alinéas 36(1)a) ou (2)a) de la Loi, l'expulsion;

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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