Federal Court  Cour fédérale

Date: 20180419

Docket: IMM-4067-17

Citation: 2018 FC 421

Ottawa, Ontario, April 19, 2018

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

CARLOS MARIO JARAMILLO BARCO
DIANA MARIA OSPINA GUZMAN
JUAN PABLO JARAMILLO OSPINA
(A MINOR BY HIS LITIGATION GUARDIAN
CARLOS MARIO JARAMILLO BARCO)
LUISA MARIA JARAMILLO OSPINA
(A MINOR BY HER LITIGATION
GUARDIAN
CARLOS MARIO JARAMILLO BARCO)

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicants are a family from Colombia. Carlos Mario Jaramillo Barco and his wife, Diana Maria Ospina Guzman, are the parents of two teenaged children, namely, Juan Pablo Jaramillo Ospina and Luisa Maria Jaramillo Ospina. They entered Canada from the United States on September 29, 2014 and claimed refugee protection. Their claims for Canada's protection were refused on February 4, 2015. After leave for judicial review of the negative refugee determination was denied on May 27, 2015, the Applicants unsuccessfully applied for a pre-removal risk assessment. Although the Applicants have been scheduled for removal from Canada on three occasions since 2015, their removal has been deferred: first in March 2015; again in March 2017; and most recently by an Order of this Court dated October 5, 2017, staying the Applicants' removal until this application for judicial review is finally determined.

[2] On September 7, 2017, the Applicants attended an interview at the Enforcement and Intelligence Operations Division of the Canada Border Services Agency in Toronto and signed a Direction to Report for removal scheduled for September 30, 2017. Following this interview, the Applicants submitted a request to the CBSA on September 11, 2017, to defer their removal pending the processing of their application for permanent residence on humanitarian and compassionate [H&C] grounds. However, in a letter dated September 27, 2017, an Inland Enforcement Officer refused the Applicants' request that their removal be deferred; the Officer determined that a deferral of execution of the removal order was not appropriate in the circumstances. The Applicants have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the Officer's decision.

They ask the Court to set aside the Officer's decision and have their request for deferral of their removal reconsidered by a different enforcement officer.

II. The Officer's Decision

[3] After summarizing the Applicants' immigration history since their arrival in Canada, the Officer acknowledged their request to defer their removal to allow for processing of their H&C application which had been received by Immigration, Refugees and Citizenship Canada [IRCC] on March 7, 2017. The Officer noted that CBSA has an obligation under subsection 48(2) of the *IRPA* to enforce removal orders as soon as possible and that "an enforcement officer has little discretion to defer removal." The Officer further noted that the Applicants had requested consideration of the hardship they would face upon return to Colombia and the best interests of the children [BIOC]. The Officer acknowledged that, while the Applicants' H&C application remained outstanding, this did "not automatically give rise to a statutory stay of removal under the IRPA and its Regulations, nor is it meant to pose as an impediment to removal." The Officer found that the Applicants' presence in Canada was not required for processing of their H&C application and their application would continue to be processed even after the Applicants' scheduled removal from Canada.

[4] The Officer did not accept the Applicants' submissions that an H&C decision was imminent or overdue, noting that:

> … counsel has provided recent IRCC statistics indicating that the median processing time for H&C cases to reach AIP [approval in principle] decisions is 9 months, and that the accept rate for application decided within Canada is higher. I note that each application is decided on its own individual merits and that the

> evidence presented by counsel is insufficient to indicate that a decision on this application is imminent. I have reviewed the Immigration, Refugees and Citizenship Canada (IRCC) internet webpage (http://www.cic.gc.ca/english/information/times/index.asp) and I note that current published processing times for H&C applications, as of 27 September 2017, is approximately 29 months. Thus, I note, that insufficient evidence was presented to indicate that a decision by IRCC on the application is imminent or overdue.

[5] Turning to the H&C considerations and the BIOC, the Officer prefaced his reasons in this regard by stating:

> While it is beyond my authority to perform an adjunct H&C evaluation, I have reviewed the specific considerations brought forward in the deferral request. The deferral of removal is a temporary measure intended to alleviate exceptional circumstances. …
>
> …I note that I am not an IRCC Officer and I am not mandated to conduct an assessment of the merits of the pending H&C application. In the context of a request to defer removal, my limited discretion is centered on evidence of serious detrimental harm resulting from the enforcement of the removal order as scheduled. I acknowledge that the removal process is a challenging experience and that relocation may be difficult at this time, but that alone does not warrant a deferral of removal.

[6] The Officer accepted that, while the family had begun to establish themselves and have ties in Canada, noting that Mr. Jaramillo Barco had steady employment and that Ms. Ospina Guzman assisted in the daily care of a woman currently dealing with cancer, this was insufficient to delay execution of the removal order. With respect to the best interests of Juan and Luisa, the Officer recognized that the removals process "is a difficult experience, especially when it pertains to children involved or affected by it." The Officer continued by stating that: "I am alert, alive and sensitive to the best short term interests of Juan and Luisa" and also noting "this family

was previously given a deferral of removal twice by CBSA to allow the children to complete their school year." The Officer recognized that, while Canada may present Juan and Luisa with better long-term opportunities, this was insufficient grounds to delay the execution of a removal order. The Officer then noted that:

> …I am not an H&C officer, and I can only access Juan and Luisa's short term best interests. I note that return to United Kingdom [*sic*] will present a period of adjustment for them; however, they will continue to have the love and support of their parents upon return to Colombia. I am confident that with the continued love and support of their parents, they will continue to be emotionally adjusted individuals. I also note that insufficient evidence was presented to indicate that Juan and Luisa would not be able to pursue their education in Colombia. I also note that the children came to Canada when they were 14 and 11 years old and…will be returning to a culture and environment of which they are familiar with and also understand the language.

[7] While acknowledging that Colombia remains an unstable and unsafe country, the Officer was nonetheless satisfied that the Applicants had had an opportunity to have their risk assessed prior to their removal by virtue of the pre-removal risk assessment. After considering the country conditions evidence submitted by the Applicants, the Officer found there was insufficient new and compelling evidence to warrant a deferral of removal for further risk assessment. The Officer concluded the reasons for denying the Applicants' deferral request by remarking that Colombia was not on the list of countries with Temporary Suspended Removals, and that insufficient evidence had been presented to show the Applicants would suffer from disproportionate or irreparable harm upon return to Colombia.

III. Issues

[8] The Applicants raise three discrete issues: whether the Officer fettered his discretion in determining the extent to which H&C factors could be considered in deciding the Applicants' deferral request; whether the Officer's reasons are sufficiently transparent and intelligible; and whether the Officer reasonably considered the H&C factors in the context of the Applicants' request for deferral. In my view, however, it is unnecessary to consider these issues separately because the overarching issue is: was the Officer's decision reasonable?

IV. Analysis

A. *Standard of Review*

[9] An enforcement officer's decision whether to defer an individual's removal from Canada is afforded deference and is reviewed on the standard of reasonableness (*Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 25, [2010] 2 FCR 311 [*Baron*]; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 43, 23 Admin LR (6th) 185 [*Lewis*]). Under the reasonableness standard, the Court is tasked with determining not only whether the decision-maker's decision is justifiable, transparent, and intelligible, but also "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion

is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

(1) The Scope of a Removal Officer's Discretion

[10] An enforcement officer's discretion to defer removal is narrow. As stated by the Federal Court of Appeal in *Baron*: "It is trite law that an enforcement officer's discretion to defer removal is limited" (para 49). In *Baron*, Justice Nadon cited *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FCR 682 at para 48, 2001 FCT 148 [*Wang*], where it was found that deferral of removal orders "should be reserved for those applications or processes where the failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment in circumstances and where deferral might result in the order becoming inoperative" (see also *Lewis* at para 54).

[11] An enforcement officer has a limited ability to address H&C grounds raised in the context of a request for deferral of a removal order. Both this Court and the Federal Court of Appeal have noted that, "absent special considerations" an outstanding application for permanent residence on H&C grounds is not a bar to execution of a valid removal order unless there is a threat to personal safety (see: *Baron* at para 50; *Wang* at para 45; *Lewis* at paras 56-57; *Arrechavala de Roman v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 478 at para 25, 432 FTR 176).

[12] Moreover, in *Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286 at para 45, [2012] 2 FCR 133, the Court of Appeal stated that enforcement officers'

"functions are limited, and deferrals are intended to be temporary. Enforcement officers are not intended to make, or to re-make, PRRAs or H&C decisions." In *Munar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1180 at para 36, [2006] 2 FCR 664 [*Munar*], the Court observed that enforcement officers "cannot be required to undertake a full substantive review of the humanitarian circumstances that are to be considered as part of an H&C assessment. Not only would that result in a 'pre-H&C' application, to use the words of Justice Nadon in *Simoes*, but it would also duplicate to some extent the real H&C assessment." More recently, in *Newman v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 888, [2016] FCJ No 852 [*Newman*], the Court stated that:

> [19] … no matter how compelling or sympathetic an applicant's H&C application may be, CBSA enforcement officers are under no duty to investigate H&C factors put forth by an applicant as they are not meant to act as last minute H&C tribunals. The obligation to conduct an H&C assessment properly rests with an officer deciding an H&C application. It is well established that a removal officer is not required to conduct a preliminary or mini H&C analysis and to assess the merits of an H&C application (*Shpati v Canada (Minister of Public Safety & Emergency Preparedness)*, 2011 FCA 286 [*Shpati*] at para 45; *Munar v Canada (Minister of Citizenship & Immigration)*, 2005 FC 1180 at para 36; *Prasad* at para 32).

[13] In view of the foregoing, it can be said that a pending H&C application may justify a deferral of removal only if there are either "special considerations" or a threat to personal safety. As noted by the Court in *Newman*, "special considerations" are broader than a threat to personal safety, but do not "include the strength or compelling nature of the underlying H&C application" (at para 29); "special considerations must therefore be looked at bearing in mind the limited discretion granted to enforcement officers on requests for deferral of removal. …they must be

other than simply the basis for the H&C claim, or else all H&C applications would have ‘special considerations’” (*Newman* at para 30).

[14] The extent to which an enforcement officer must address the BIOC is limited. In *Baron*, Justice Nadon stated that: “an enforcement officer has no obligation to substantially review the children’s best interest before executing a removal order” (para 57). In *Munar*, Justice de Montigny found that the “obligation of a removal officer to consider the interests of Canadian-born children must rest at the lower end of the spectrum” (para 38); and, in contrast to an immigration officer who must weigh the long-term BIOC in the context of an H&C application, an enforcement officer has to consider only the short-term BIOC such as whether “to defer removal until a child has terminated his or her school year, if he or she is going with his or her parent” (para 40). Similarly, in *Canada (Minister of Citizenship and Immigration) v Varga*, 2006 FCA 394 at para 16, [2007] 4 FCR 3, Justice Evans stated: “Within the narrow scope of removals officers’ duties, their obligation, if any, to consider the interests of affected children is at the low end of the spectrum, as contrasted with the full assessment which must be made on an H&C application under subsection 25(1).”

[15] More recently, in *Kampemana v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1060 at para 34, [2015] FCJ No 1119 [*Kampemana*], the Court confirmed that while enforcement officers “must consider the immediate and short-term interests of the children and treat these fairly and with sensitivity”, they “are not required to review the best interests of any children comprehensively before enforcing a removal order.” Similarly, in *Lewis* the Court of Appeal concluded that: “under the existing case law, enforcement officers may look at the short-

term best interests of the children whose parent(s) are being removed from Canada, but cannot engage in a full-blown H&C analysis of such children's long-term best interests" (para 61).

[16] The jurisprudence has established that enforcement officers are required to consider the short-term best interests of a child in a fair and sensitive manner (see: *Joarder v Canada (Minister of Citizenship and Immigration)*, 2006 FC 230 at para 3, 146 ACWS (3d) 305; *Kampemana* at para 34). It is also clear that: "while the best interests of the children are certainly a factor that must be considered in the context of a removal order, they are not an over-riding consideration" (*Pangallo v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 229 at para 25, 238 ACWS (3d) 711).

(2) Fettering of Discretion

[17] According to the Applicants, an assessment of whether the Officer's discretion was fettered attracts a correctness standard of review or, alternatively, in view of *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299, 341 DLR (4th) 710 [*Stemijon*], a reasonableness standard of review because fettering of discretion is always unreasonable. The Applicants further maintain that the Officer applied the wrong test by failing to consider the H&C test articulated by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 [*Kanthasamy*], and this failure attracts review on a standard of correctness. The Respondent says, in view of *Lewis*, it is well-established that an exercise of an enforcement officer's limited discretion is reviewable on the standard of reasonableness.

[18] The standard of review in respect of an allegation that an administrative decision-maker has fettered their discretion remains somewhat unsettled in the jurisprudence. In *Stemijon*, Justice Stratas described how, traditionally, fettering of discretion constituted an automatic ground for setting aside an administrative decision; but now, post-*Dunsmuir*, an allegation that a decision-maker has fettered their discretion should be subsumed into the reasonableness analysis:

> [21] The appellants' submissions, while based on reasonableness, seem to articulate "fettering of discretion" outside of the *Dunsmuir* reasonableness analysis. They seem to suggest that "fettering of discretion" is an automatic ground for setting aside administrative decisions and we need not engage in a *Dunsmuir*-type reasonableness review.
>
> [22] On this, there is authority on the appellants' side. For many decades now, "fettering of discretion" has been an automatic or nominate ground for setting aside administrative decision-making: see, for example, *Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 S.C.R. 2 at page 6. The reasoning goes like this. Decision-makers must follow the law. If the law gives them discretion of a certain scope, they cannot, in a binding way, cut down that scope. To allow that is to allow them to rewrite the law. Only Parliament or its validly authorized delegates can write or rewrite law.
>
> [23] This sits uncomfortably with *Dunsmuir*, in which the Supreme Court's stated aim was to simplify judicial review of the substance of decision-making by encouraging courts to conduct one, single methodology of review using only two standards of review, correctness and reasonableness. In *Dunsmuir*, the Supreme Court did not discuss how automatic or nominate grounds for setting aside the substance of decision-making, such as "fettering of discretion," fit into the scheme of things. Might the automatic or nominate grounds now be subsumed within the rubric of reasonableness review? On this question, this Court recently had a difference of opinion: *Kane v. Canada (Attorney General)*, 2011 FCA 19. But, in my view, this debate is of no moment where we are dealing with decisions that are the product of "fettered discretions." The result is the same.
>
> [24] *Dunsmuir* reaffirms a longstanding, cardinal principle: "all exercises of public authority must find their source in law" (paragraphs 27-28). Any decision that draws upon something other than the law – for example a decision based solely upon an

> informal policy statement without regard or cognizance of law, cannot fall within the range of what is acceptable and defensible and, thus, be reasonable as that is defined in *Dunsmuir* at paragraph 47. A decision that is the product of a fettered discretion must *per se* be unreasonable.

[19] In *Gordon v Canada (Attorney General)*, 2016 FC 643, 267 ACWS (3d) 738, this Court acknowledged the unsettled question as to whether a correctness or a reasonableness standard of review applies to an allegation that an administrative decision-maker fettered their discretion, observing that:

> [25] Some confusion exists regarding the appropriate standard of review where the fettering of discretion is at issue.
>
> [26] Traditionally, the fettering of discretion has been reviewable on the correctness standard: *Thamotharem v. Canada (Minister of Citizenship & Immigration)*, 2007 FCA 198 at para. 33, 366 N.R. 301.
>
> [27] However, the Federal Court of Appeal has recently posited that post-*Dunsmuir*, the fettering of discretion should be reviewed on the reasonableness standard, as it is a kind of substantive error. The Federal Court of Appeal has, however, also been careful to say that the fettering of discretion is always outside the range of possible, acceptable outcomes, and is therefore *per se* unreasonable: *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299 at paras. 23-25, 425 N.R. 341.
>
> [28] It is sufficient to state in this case that the fettering of discretion is a reviewable error under either standard of review, and will result in the decision being quashed: *JP Morgan Asset Management (Canada) Inc. v. Minister of National Revenue*, 2013 FCA 250 at paras. 71-73, 450 N.R. 91; see also *Stemijon Investments*, above, at para. 23. Simply put, if the Minister's Delegate fettered her discretion, her decision should be set aside regardless of the standard of review applied.

[20] For the purposes of this case, it is sufficient to conclude that, regardless of the standard of review to be applied to the fettering of discretion issue raised by the Applicants, if the Officer

fettered his discretion that would constitute a reviewable error under either standard of review and would require that the decision be set aside.

B. *Was the Officer's decision reasonable?*

[21] The Applicants say the Officer was required to consider the factors articulated in *Kanthasamy* in evaluating their request for deferral of removal. According to the Applicants, the test for evaluating H&C factors after *Kanthasamy* includes the equitable concept of fairness and is not simply one of unusual and undeserved or disproportionate hardship. The Applicants contend that the combined effect of section 233 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and subsection 25(1) of the *IRPA*, is such that any officer granting an exemption from the normal operation of the *IRPA*, such as an inland enforcement officer deferring execution of a removal order, may consider H&C factors. Although the Applicants acknowledge the statement in *Kanthasamy* that exercise of H&C discretion is limited to situations where a foreign national applies for permanent residency but is inadmissible or does not meet the requirements of the *IRPA*, they characterize this statement as *obiter* and argue that the Supreme Court did not turn its attention to the application of subsection 25(1) in other contexts such as an inland enforcement officer's decision to defer execution of a removal order.

[22] The Applicants argue that the Officer merely identified factors which could support a deferral, then concluded without elaboration why they were insufficient. The Applicants fault the Officer's decision because it does not address or explain why (based on statistics from IRCC) applicants for permanent residence on H&C grounds who have been removed from Canada have a significantly lower rate of success (22.4%) than those who are allowed to remain in Canada

while their H&C application is processed (66.7%). According to the Applicants, the Officer erred in only conducting a BIOC analysis in terms of risk and not in terms of hardship. Although the Applicants acknowledge that *Lewis* mandates that only the short-term best interests of children are to be assessed and that a full BIOC and H&C analysis is not required, the Officer's reasons, in which positive factors are listed and then summarily dismissed, does not meet this requirement.

[23] The Respondent maintains that the Officer's decision was reasonable. Contrary to the Applicants' submissions, the Respondent notes that the Federal Court of Appeal held in *Lewis* that *Kanthasamy* applies only to H&C decisions made under section 25 of the *IRPA* and not to decisions under section 48 of the *IRPA* which allows inland enforcement officers to defer removal. As to the Applicants' submissions concerning the success rates of H&C applicants inside and outside Canada, the Respondent says this confuses correlation with causation. Aside from the general limitations of statistics, the Respondent contends that the Applicants ignore the logical explanation for these outcomes - which is that applicants with strong H&C factors are less likely to be removed from Canada in the first place since they will receive stage one acceptance or have other sympathetic and compelling evidence.

[24] I agree with the Respondent's submission at the hearing of this matter that *Lewis* answers all of the Applicants' arguments. In *Lewis*, the appellant argued that *Kanthasamy* requires that all decision-makers under the *IRPA* comply with the United Nations Convention on the Rights of the Child, and that because inland enforcement officers do not have the authority under section 48 to make complex decisions involving children in a manner consistent with

Kanthasamy, any such decision would be incomplete and therefore unreasonable. Justice Gleason rejected this argument in *Lewis*, stating that:

> [82] … neither *Kanthasamy* nor the Children's Convention required the Enforcement Officer in this case to undertake a full-blown assessment of the best interests of Mr. Lewis' daughter or to grant the requested deferral until Mr. Lewis' last minute H&C application was decided by a ministerial delegate. Rather, the Enforcement Officer was only required to consider the short-term best interests of the child.
>
> [83] In previous cases, such short-term best interests have been found to include matters such as the need for a child to finish a school year during the period of the requested deferral (see, e.g. *Munar* at para. 40; *Khamis* at para. 30) or maintaining the well-being of children who require specialized ongoing medical care in Canada (see, e.g. *Danyi* at paras. 36-40). In addition, as noted in *Munar* at paragraphs 40-42, the short-term needs of a child that an enforcement officer must consider include ensuring that there will be someone to care for the child after his or her parent(s) are removed if the child is to remain in Canada.

[25] In my view, the Officer's reasons in this case show that the short-term interests of the children were reasonably considered. Factors raised by the Applicants such as the children's loss of friends and personal relationships, the challenges of obtaining an education in an unstable country, and the possibility of having to frequently relocate in order to avoid confrontation with dangerous individuals, are not short-term factors which must be considered by an inland enforcement officer. These are factors which would be more appropriately considered by the officer who assesses the Applicants' H&C application.

[26] As to the Applicants' submissions concerning the success rates of H&C applicants inside and outside of Canada, I agree with the Respondent. The Applicants ignore a logical explanation for these outcomes, which is that applicants with strong H&C factors may be less likely to be

removed from Canada in the first place if they have received stage one acceptance or have other sympathetic and compelling evidence to support their H&C application. The Applicants have offered no explanation as to why this would not be so, and the Respondent's submissions regarding the success rates of H&C applicants inside and outside of Canada are persuasive.

[27] Lastly, the Officer's reference to the children returning to the United Kingdom (as quoted above) is an obvious typographical error, especially in view of the fact that elsewhere in the reasons there are numerous references to Colombia as the country to which the Applicants would be removed. This error does not negate the rest of the Officer's analysis and reasons for the decision, nor does it show that the Officer misunderstood the evidence (see *Evans v Canada (Citizenship and Immigration)*, 2015 FC 259 at paras 30-31, 250 ACWS (3d) 321).

V. Conclusion

[28] The Officer's reasons for refusing the Applicants' deferral request are intelligible, transparent, and justifiable, and the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicants' application for judicial review is therefore dismissed.

[29] Following the Court's direction at the conclusion of the hearing of this matter, the Applicants have submitted three proposed questions of general importance to be certified under paragraph 74(d) of the *IRPA* as follows:

> 1. Does section 25(1) of *IRPA* provide authority to the Minister of Public Safety and Emergency Preparedness to provide relief from "[...] an exemption from any applicable

> criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected," or is this power limited to the Minister of Immigration, Refugees and Citizenship?
>
> 2. If the answer to question one is yes, does section 25(1) provide an authority to stay a removal independent of section 233 of the Regulations?
>
> 3. If the answer to questions one and two is yes, to what extent does the Minister of Public Safety and Emergency Preparedness have to consider the best interests of an affected child as understood in the context of the Kanthasamy?

[30] The Respondent submits that none of the questions proposed by the Applicants meets the test for certification.

[31] The Federal Court of Appeal recently reiterated the criteria for certification in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, 287 ACWS (3d) 532:

> [46] This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).

[32] In my view, the questions proposed by the Applicants do not transcend the interests of the parties and do not raise an issue of broad significance or general importance. The answer to the first proposed question is, in my view, no, because subsections 4(1) and 4(2) of the *IRPA* clearly delineate the responsibility of the Minister of Public Safety and Emergency Preparedness under the *IRPA* and the reference to the Minister in subsection 25(1) is to the Minister of Citizenship and Immigration. Since the answer to the first proposed question is no, there is no need to address the other two proposed questions. I decline, therefore, to certify the Applicants' proposed questions for certification.

JUDGMENT in IMM-4067-17

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4067-17
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PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 19, 2018
JUDGMENT AND REASONS:	BOSWELL J.
DATED:	APRIL 19, 2018

APPEARANCES:

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