Federal Court  Cour fédérale

**Date: 20190912**

**Docket: IMM-473-19**

**Citation: 2019 FC 1170**

**Ottawa, Ontario, September 12, 2019**

**PRESENT: The Honourable Madam Justice Fuhrer**

**BETWEEN:**

**HARJANT SINGH**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] This is an application for judicial review of the decision dated January 8, 2019 of the Minister's Delegate [Delegate] to refer the Applicant to the Immigration Division [ID] of the Immigration and Refugee Board [IRB] for an admissibility hearing, pursuant to s 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application is allowed.

## II. Background

[3] The Applicant, Mr. Harjant Singh, is a citizen of India. He obtained Canadian permanent resident status on January 29, 2014.

[4] On May 30, 2015, having worked just three months as a professional truck driver in Canada, Mr. Singh lost control of the tractor trailer he was driving, crossed the centre line of a curved roadway, and struck two vehicles. Another driver died as a result. On June 19, 2018, Mr. Singh was convicted of dangerous operation of a motor vehicle causing death, contrary to s 249(4) of the *Criminal Code of Canada*, RSC 1985, c C-46, and sentenced to two years less one day (729 days) in prison. The sentencing judge explicitly considered the possible consequences for Mr. Singh's immigration status when determining this sentence.

[5] Following the sentencing, an inland enforcement officer [Officer] with the Canadian Border Services Agency [CBSA] began preparing a report pursuant to IRPA s 44(1) on the basis that the conviction may render Mr. Singh inadmissible to Canada under IRPA s 36(1)(a). The Officer issued a fairness letter informing Mr. Singh of his investigation, invited him to an interview, and advised him of his right to provide submissions and documentation. Mr. Singh attended the requested interview, but provided no further submissions nor documentation despite the Officer granting him several extensions of time to do so.

[6] On October 31, 2018, two days after the final deadline for Mr. Singh to provide additional submissions, the Officer submitted the s 44(1) Report to the Delegate, recommending

Mr. Singh be referred to the Immigration Division [ID] for an admissibility hearing. The Officer based his analysis on information about the conviction, the sentence, and Mr. Singh's testimony from his interview. CBSA also forwarded the s 44(1) Report to Mr. Singh.

[7] On or around November 2, 2018, Mr. Singh's counsel submitted 63 pages of undated submissions and supporting documentation to the Minister's counsel for the Delegate's review and consideration. These submissions highlighted the presence of mitigating factors, and referred to and included copies of Mr. Singh's pre-sentence report [PSR], sentencing judgment, medical prescriptions, and a letter from Mr. Singh's wife. These submissions relied heavily on factors mentioned in the Immigration Manual ENF-6: Decision under Review [ENF 6 Manual].

[8] On December 9, 2018, the Delegate referred Mr. Singh for an admissibility hearing pursuant to IRPA s 44(2). In his reasons, the Delegate referred to Mr. Singh's not guilty plea and subsequent conviction, Mr. Singh's familial status, and the Officer's analysis in the s 44(1) Report. In his supplementary reasons, the Delegate did not refer to any of the documents or mitigating factors provided in Mr. Singh's additional submissions. Mr. Singh received notice of the Delegate's decision on January 3, 2019.

[9] On January 8, 2019, Mr. Singh's counsel requested the Delegate reconsider his decision to refer Mr. Singh for an admissibility hearing, on the basis that the Delegate did not appear to consider Mr. Singh's submissions nor supporting documentation before deciding the matter. That same day, the Delegate reissued his decision to refer Mr. Singh to an admissibility hearing. The amended reasons repeated the original reasons, but added the statement "Submissions received

and reviewed" and removed the statement "At time of writing report no submissions or new extensions requests were made."

## III. Issues

A. *Was the Delegate's decision to refer Mr. Singh to an admissibility hearing reasonable? As a subsidiary issue, was the underlying s 44(1) Report, and hence the Delegate's reliance on it, reasonable?*

## IV. Standard of Review

[10] The appropriate standard of review for the exercise of discretion under IRPA s 44(2) is reasonableness: *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 319 at para 15 [*Sharma*]. The exercise of discretion attracts deference: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53 [*Dunsmuir*]; *Sharma*, *supra* at para 16.

[11] To intervene, this Court must be satisfied that, in respect of the Delegate's ultimate decision assessed in the context of the entire record, there did not exist "justification, transparency and intelligibility within the decision making process," and the decision was not "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, *supra* at para 47. In other words, a "court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": *Dunsmuir*, *supra* at para 47. This does not mean undertaking two discrete analyses; rather, "[i]t is a more organic exercise - the reasons must be read together with the outcome and serve the purpose of showing whether the result falls

within a range of possible outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14 [*NL Nurses*].

[12] A deferential reasonableness standard does not mean that the decision maker is required to make explicit findings on every issue leading to the decision. To meet the *Dunsmuir* criteria, the decision maker's reasons, when considered as a whole in the context of the record, must "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": *NL Nurses, supra* at para 16.

## V. Relevant Provisions: See Appendix

[13] Canadian permanent residents or foreign nationals convicted of serious criminal activity may become inadmissible to Canada: IRPA 36(1).

[14] CBSA Officers are empowered to investigate allegations of inadmissibility. If their investigations lead them to believe that an individual is inadmissible, they must prepare what is known as a s 44(1) Report. This report details the grounds of inadmissibility and other relevant information such as evidence of rehabilitation and personal circumstances. Officers submit this report, along with their recommendation as to whether or not to refer the matter to the ID, to another more senior official known as a "Minister's Delegate": IRPA 44(1).

[15] The Delegate reviews the s 44(1) Report and all other relevant information, determines whether the report is well-founded, and decides whether a referral to the ID is warranted: IRPA 44(2).

[16] The Federal Court of Appeal has previously considered the meaning of "well-founded": *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126, at para 34:

> [34] When a report prepared by an immigration officer against a foreign national does not include any grounds of inadmissibility other than serious or simple criminality in Canada, the Minister's delegate is expected under subsection 228(1) of the Regulations to make a deportation order if he is of the opinion that the report is well founded (i.e. that the immigration officer correctly found that all the requirements described above have been met) and if he is further satisfied that no rehabilitation within the meaning of section 18.1 of the Regulations has taken place and that the foreign national meets the age and mental condition requirements set out in subsection 228(4) of the Regulations.
>
> [Underlining added.]

[17] Once it receives a referral, the ID has no discretion to consider any information other than the facts underlying the grounds for inadmissibility. Once the ID confirms these facts, it must find the individual inadmissible and issue the applicable removal order: IRPA 45(d).

[18] Individuals who are referred to the ID for an admissibility hearing on the basis of IRPA s 36(1)(a), and who are sentenced to at least 6 months in jail have no right of appeal to the Immigration Appeal Division. Their only recourse is judicial review by this Court: IRPA 64(1) and (2).

## VI. Analysis

### A. *Was the Delegate's decision to refer Mr. Singh to an admissibility hearing reasonable? As a subsidiary issue, was the underlying s 44(1) Report, and hence the Delegate's reliance on it, reasonable?*

#### (1) Applicant's Submissions

[19] Mr. Singh alleges the Delegate's failure to engage with his submissions, which sought to contextualize his conviction and highlight his possibility of rehabilitation, demonstrates the Delegate's failure to consider these factors at all before referring Mr. Singh to an admissibility hearing. In the alternative, Mr. Singh submits that even if the Delegate did consider these factors, he did not weigh them reasonably.

[20] Regarding the underlying s 44(1) Report prepared by the Officer, Mr. Singh asserts it was "short and lacked a reasonable degree of analysis". In particular, Mr. Singh alleges the Officer erroneously: (a) treated Mr. Singh's plea of "not guilty" as evidence of a lack of remorse; and (b) used Mr. Singh's testimony that 'it was an accident' and that 'he had no other driving infractions' to draw a negative inference and to find a lack of remorse.

#### (2) Respondent's Submissions

[21] The Minister argues the referral stage "should be focused on the facts underlying the alleged inadmissibility". While Officers and Delegates have the discretion to consider other factors such as humanitarian and compassionate [H&C] considerations, there is no obligation for

them to do so, and therefore no obligation to mention such factors in their decisions: *McAlpin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422 [*McAlpin*] at paras 82-83.

[22] Regarding the underlying s 44(1) Report, the Minister submits the Officer's decision was reasonable. The Minister argues the Officer was entitled to prefer his conclusions from the interview over the conclusions of the pre-sentence report [PSR] and reasons for sentencing when determining culpability and likelihood of rehabilitation; further, the Officer was not obligated to refer explicitly to the H&C factors mentioned elsewhere in his own report in his reasons when recommending the decision for referral.

(3) Analysis

[23] The jurisprudence accepts that even when Officers and Delegates confirm the underlying facts of the alleged inadmissibility, they maintain some form of discretion to not refer an individual for an admissibility hearing. This encompasses situations where Officers or Delegates believe that other considerations, such as potential for rehabilitation or significant humanitarian factors, are more important to maintaining IRPA's objectives: *Melendez v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1363 [*Melendez*] at para 34; updated in *McAlpin*, *supra* at para 70.

[24] There is considerable debate, however, on just how much discretion Officers and Delegates actually have, and under what circumstances they must or should exercise this discretion. The Chief Justice in *McAlpin*, *supra*, summarizes this current tension:

[70] Having regard to all of the foregoing, and in particular the guidance that the FCA has provided in *Sharma*, above, I consider it necessary and appropriate to update and elaborate upon the conclusions reached by Justice Boswell in respect of the current state of the jurisprudence concerning the scope of the discretion contemplated by subss. 44(1) and (2) in cases involving allegations of "criminality" and "serious criminality" on the part of permanent residents. Maintaining the framework adopted by Justice Boswell, I would summarize that jurisprudence as follows:

> 1. In cases involving allegations of criminality or serious criminality on the part of permanent residents, there is conflicting case law as to whether immigration officers and ministerial delegates have any discretion under subss. 44(1) and (2) of the **IRPA**, respectively, beyond that of simply ascertaining and reporting the basic facts which underlie an opinion that a permanent resident in Canada is inadmissible, or that an officer's report is well founded.
>
> 2. In any event, any discretion to consider H&C factors under subss. 44(1) and (2) in such cases is very limited, if it exists at all.
>
> 3. Although an officer or a ministerial delegate may have very limited discretion to consider H&C factors in such cases, there is no general obligation or duty to do so.
>
> **4. However, where H&C factors are considered by an officer or by a ministerial delegate in explaining the rationale for a decision that is made under subs. 44(1) or (2), the assessment of those factors should be reasonable, having regard to the circumstances of the case. Where those factors are rejected, an explanation should be provided, even if only very brief in nature.**
>
> 5. In this particular context, a reasonable assessment is one that at least takes account of the most important H&C factors that have been identified by the person who is alleged to be inadmissible, even only by listing those factors, to demonstrate that they were considered. A failure to mention any important H&C factors that have been identified,

> when purporting to take account of the H&C factors that have been raised, may well be unreasonable.
>
> [Bold emphasis added.]

[25] The Minister argues Officers and Delegates need not consider or refer to any facts other than those underlying the alleged inadmissibility before making a referral decision: *McAlpin, supra* at para 70 (Point 3)*; Pham v Canada (Public Safety and Emergency Preparedness),* 2016 FC 824 [*Pham*] at para 18*; Apolinario v Canada (Public Safety and Emergency Preparedness),* 2016 FC 1287 [*Apolinario*] at para 46; *Balan v Canada (Public Safety and Emergency Preparedness),* 2015 FC 691 [*Balan*] at para 16*;* and *Lin et al v Canada (Public Safety and Emergency Preparedness),* 2019 FC 862 [*Lin et al*] at para 16. I agree with the Minister that the jurisprudence does not obligate Officers or Delegates to consider submissions or H&C factors, except where the evidence is *prima facie* compelling: *Lin et al, supra* at para 16, citing *Faci v Canada (Public Safety and Emergency Preparedness),* 2011 FC 693 at para 63; *McAlpin, supra* at paras 70 (Point 5), 74.

[26] It is trite law, however, that once an Officer or Delegate exercises their discretion to consider submissions on H&C or other factors before making a decision, they undertake to do so reasonably: *McAlpin, supra* at para 70 (Point 4). The Minister asserts the Delegate refused to consider additional factors, and therefore was not obligated to consider Mr. Singh's submissions. In my view, this is not what occurred. It is clear on the record that Mr. Singh's "submissions [were] received and reviewed." The term "reviewed" demonstrates the Delegate agreed to at least consider Mr. Singh's submissions before re-issuing the decision, and opens the door for this Court to examine the reasonableness of the Delegate's assessment.

[27] The relevant question, therefore, is whether the Delegate reasonably considered these factors. In reviewing whether the Delegate conducted his analysis reasonably, the Court is concerned with whether the record as a whole reasonably supports the outcome: *Dunsmuir*, *supra* at para 47; *NL Nurses*, *supra* para 14.

[28] In *McAlpin*, the Chief Justice recognized the factors enumerated in the ENF 6 Manual - for example, the seriousness of the crime and the applicant's potential for rehabilitation - are not simply H&C factors which equally could be considered in other forms of proceedings. Instead, these factors are directly relevant to the Delegates' s 44(2) referral decisions, and therefore require reasonable consideration even within the Delegate's "limited discretion": *McAlpin*, *supra* at paras 66 and 95. These paragraphs read:

> [66] The very restrictive approach that the FCA in *Sharma*, above, took in commenting upon the scope of the discretion contemplated by subss. 44(1) and (2) of the IRPA in a case involving serious criminality is consistent with the approach taken by Citizenship and Immigration Canada in its manual entitled ENF 5 Writing 44(1) Reports [ENF 5]. Although that manual is not binding on the Court, it can be helpful in determining the reasonableness of the approach taken by an officer or a ministerial delegate to the exercise of the discretion contemplated by subss. 44(1) and (2), respectively.
>
> …
>
> [95] … the explanation provided was not only reasonable, but was supported by the passages from Mr. McAlpin's Correctional Plan that [he] discussed at paragraph 93 above [cite omitted].

[29] I recognize this may not be Mr. Singh's last recourse to submit his potential for rehabilitation prior to removal, as he can apply for an exemption under IRPA s 25(1) ("H&C application"): *Sharma*, *supra* at para 37; *Apolinario*, *supra* at para 46; *McAlpin*, *supra* at para 64.

An H&C application, however, is not directly equivalent to what occurs pursuant to IRPA ss 44(1) and (2). Under the former, an Officer examines whether as a whole, the applicant's individual circumstances justify overcoming an inadmissibility finding. Under the latter, an Officer or Delegate assesses whether the objectives of the IRPA would be better served by referring or not referring the applicant for an admissibility hearing. Therefore, it is not an equivalent alternative venue, since the H&C application requires that the applicant surmount a pre-existing inadmissibility finding and can be considered after removal. I also recognize CBSA's mandate to remove individuals as soon as possible after being found inadmissible, and that IRPA s 25(1) applications create no legal interests to justify a stay of removal.

[30] In my view, the above suggests that for a referral under IRPA s 44(2) to be reasonable, the Delegate who has agreed to exercise their discretion and consider additional facts which do not directly pertain to the underlying inadmissibility (such as possibility of rehabilitation) should make reference to such factors when they are submitted. While this may not require significant analysis, at a minimum the Delegate should identify what factors they considered and why they were discounted or given low weight.

[31] I do not suggest the ENF 6 Manual is binding, nor that these factors must be considered or referred to in every case. Where, however, the Applicant presents evidence of such factors and the Officer or Delegate has already committed to considering them, it would be unreasonable for them to not consider this evidence, even briefly, given its relevance to the decision. Such was this Court's approach in *Pham, supra* at para 16, *Apolinario, supra* at paras 48-49, and *Balan, supra* at para 27.

[32] The Minister relies heavily on this Court's decision in *Lin et al* to assert that such consideration is unnecessary. Here, Barnes J. emphasizes the Delegate's limited discretion to consider extraneous submissions and H&C factors, and reinforces that s 44(1) Reports and s 44(2) referrals are administrative in nature: *Lin et al*, *supra* at para 16.

[33] In my view, *Lin et al* is not comparable to the case before me and must be distinguished. *Lin et al* involved several legally-complex arguments on the scope of conduct captured under IRPA s 40 and the fairness of multiple inadmissibility hearings: *Lin et al, supra* at paras 5-7. Further, based on its interpretation of the scope of IRPA s 40, the ID was empowered to find either that the applicants met the definition and should be removed; or that they did not meet the definition and refuse to issue a removal order. It was because of the nature of the question and the authority of the ID that Barnes J. found the ID was the best venue to adjudicate that case.

[34] Here, the ID is unable to consider Mr. Singh's submissions or adjudicate the claim in his favour. It was clear Mr. Singh's conviction rendered him inadmissible: IRPA 36(1)(a). In circumstances where an individual is factually inadmissible, the ID must issue a removal order: IRPA s 45(1)(d). As such, the Delegate was the last decision maker authorized to consider his submissions and other H&C factors, and on this basis decide not to issue a referral for removal. Mr. Singh's only real chance to avoid removal was to provide the Delegate with submissions, and hope that the Delegate would exercise discretion not to refer him for an admissibility hearing as a result.

[35] In other words, where the Applicant's underlying inadmissibility is not in question, the Delegate, not the ID, is in the best position to consider relevant submissions and H&C factors. I emphasize again that, absent *prima facie* compelling evidence, the Delegate is not obligated to do so. Once the Delegate chooses to review the submissions or H&C factors, however, it is imperative they do so reasonably, and that their reasoning is justifiable, transparent, and intelligible: *Dunsmuir, supra* at para 47; *NL Nurses, supra* at para 14.

[36] Here, the Delegate's decision is unreasonable because despite electing to consider the submissions, they did not provide sufficient analysis to support their decision. This closely resembles what occurred in *Melendez, supra,* where Boswell J. found that boilerplate language indicating a Delegate considered submissions, but which lacked adequate consideration of those submissions so as to allow this Court to understand their decision-making process, rendered the decision unreasonable: *Melendez, supra* at paras 36-38.

[37] In his amended reasons, the Delegate failed to engage in a meaningful way with relevant facts provided in Mr. Singh's summary. The boilerplate phrase "submissions received and reviewed," while demonstrating the Delegate's willingness to consider such factors, provides no insight as to how he considered Mr. Singh's submissions.

[38] In certain cases, the record can supplement and rationalize an outcome: *NL Nurses, supra*. One might surmise that that the Delegate prioritized the observations of the CBSA officer and/or the underlying facts of the inadmissibility over the presence of Mr. Singh's alleged potential for rehabilitation. There is no explanation, however, that this was the Delegate's

process or reasoning in making the referral decision. While this Court can review the record in its entirety, it should not read in reasoning that is not plain on the record: *Canada v Kabul Farms Inc*, 2016 FCA 143 at para 35.

[39] In this instance, the record reasonably could support either outcome. Reviewing it in its entirety is therefore not much help without the Delegate's further analysis to justify their decision. For example, the PSR refers to Mr. Singh's inability to come to terms with his culpability, but also finds that he is remorseful for the outcome. Similarly, the criminal sentencing Judge notes that Mr. Singh's sentence focused on denouncing and deterring such actions, and was not a direct reflection of Mr. Singh's culpability or level of remorse. Without this analysis, the Court is left to wonder how the Delegate weighed these various considerations.

[40] In his additional reasons, the Delegate also appears to rely heavily on the s 44(1) Report, going so far as to "copy and paste" the procedural history into his own supplementary reasons. While Delegates may rely on and import the analysis found in ss 44(1) Reports, in this instance sole reliance on the initial report without further analysis is unreasonable, given that the Officer did not benefit from Mr. Singh's additional submissions: *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 21.

[41] That said, in my view the Officer's conclusions in the s 44(1) Report were reasonable. I note at the outset that it appears the Officer did not have the benefit of Mr. Singh's additional submissions, including the PSR and the Reasons for Sentencing, when authoring the report. The

Delegate therefore was the only one who could weigh all of the relevant factors contained in the submissions.

[42] I agree with the Applicant that it is unreasonable for the Officer to consider a plea of "not guilty" as automatically demonstrative of lack of remorse: *R v Betts BW (Ordinary Seaman)*, 2017 CM 3010 at para 24. There are many reasons why an individual may take a case to trial even where they felt morally culpable, the least of which are possible immigration consequences: *R v Wong*, 2018 SCC 25. However, the Officer appears to have based his conclusion not solely on the not guilty plea, but also on Mr. Singh's demeanour and answers during the interview. Given Mr. Singh continued to insist that the whole event was an accident while highlighting his previously spotless driving record, it was reasonable for the Officer to conclude Mr. Singh had not fully accepted responsibility for his actions.

[43] I also agree that like the Delegate's reliance on the s 44(1) report, the Officer's recommendation is largely devoid of any analysis on how he came to his conclusion. The s 44(1) report mainly describes facts collected and the procedural steps communicated to Mr. Singh and the conviction itself. In my view, however, the Officer's assessment of Mr. Singh's lack of moral culpability, combined with the facts of the underlying conviction, intelligibly explain why the Officer decided to refer Mr. Singh for an admissibility hearing. While this was not a substantial assessment, as discussed above, this is not the case to meet. Instead, the record as a whole before the Officer could justify the s 44(1) Report.

## VII. Conclusion

[44] The application for judicial review is allowed. The January 8, 2019 decision of the Delegate is set aside, including, for certainty, the earlier December 19, 2018 Delegate's decision (since it is not stated that the former rescinds or replaces the latter). The matter, including the Applicant's additional submissions, is to be returned for redetermination by a different Delegate under IRPA s 44(2).

[45] Counsel were provided with an opportunity to submit a question for certification. None was submitted.

**JUDGMENT in IMM-473-19**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review application is allowed.
2. The Delegate's January 8, 2019 decision is set aside, including the Delegate's earlier December 19, 2018 decision.
3. The matter, including the Applicant's additional submissions, is to be returned for redetermination by a different Delegate under IRPA s 44(2).
4. There is no question for certification.

"Janet M. Fuhrer"
Judge

## APPENDIX: RELEVANT PROVISIONS

| **Immigration and Refugee Protection Act (S.C. 2001, c. 27)** | **Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 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; |
| … | … |
| **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 regulations, in the case of a foreign national. In those cases, the Minister may make a | **(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. |

removal order.

…

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

**...**

**(d)** make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.

**64 (1)** No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

**(2)** For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(b) or (c).

…

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

…

**d)** prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire.

**64 (1)** L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.

**(2)** L'interdiction de territoire pour grande criminalité vise, d'une part, l'infraction punie au Canada par un emprisonnement d'au moins six mois et, d'autre part, les faits visés aux alinéas 36(1)b) et c).

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-473-19 |
| **STYLE OF CAUSE:** | HARJANT SINGH v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | SEPTEMBER 4, 2019 |
| **JUDGMENT AND REASONS:** | FUHRER J. |
| **DATED:** | SEPTEMBER 12, 2019 |

**APPEARANCES:**

| | |
|---|---|
| Aris Daghighian | FOR THE APPLICANT |
| Neeta Logsetty | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
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| Deputy Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |