Date: 20080819

Docket: IMM-2319-07

Citation: 2008 FC 956

BETWEEN:

HANY ZENG (a.k.a. HAN LIN HANY ZENG)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated May 16, 2007, wherein the Board found the applicant was excluded from refugee protection by reason of Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can. T.S. No. 6 (the Convention).

[2] The applicant requested that the decision be set aside and the matter referred back to a newly constituted panel of the Board for redetermination.

Background

[3] Hany Zeng (the applicant), also known as Han Lin Hany Zeng, made a claim for refugee protection in Canada. During the determination of his refugee claim, the Minister intervened seeking a determination that the applicant was a person to be excluded by reason of Article 1F(b) of the Convention. The parties have agreed to the facts as per the reasons of the Board.

[4] The applicant obtained citizenship from the Commonwealth of Dominica in May 1994, but has continued to regard himself as a citizen of the People's Republic of China (China). The applicant alleges he sought a Dominica passport to facilitate his international travels.

[5] In 1993, the applicant started a very profitable shipping company called the Flying Dragon High-Speed Shipping Company (HSS). By 1997, HSS was worth about 100 million RMB (about $12,994,146 USD). In 1997, the applicant established a comprehensive holding company, Guangdong Flying Dragon Group Company Limited (FDG). Both HSS and FDG were based in Guangdong Province.

[6] In August 1997, FDG was targeted by Chengdu Lianyi Group Company (CLG). This company was based in Sichuan Province, and headed by Haizhong Xu. By September, the applicant

and Mr. Xu reached a share transfer agreement whereby FDG bought 40% of the share in Lianyi Industries (LI), a subsidiary of CLG, for 68 million RMB (the first share transfer agreement). Under the first share transfer agreement, payment was made through a payment schedule and disputes were to be handled by way of arbitration.

[7] In October 1997, the applicant and Mr. Xu reached a second agreement (the second share transfer agreement). This agreement provided for LI to buy 75% of HSS in accordance with another payment schedule. The total cost to LI was 74 million RMB. In early December, the applicant became Chairperson of the LI Board of Directors, and Mr. Xu became Vice-Chairman. The agreement was not formalized until December 25, 1997.

[8] Mr. Xu then began to pressure the applicant to allocate resources from LI to the local Sichuan steel industry and to make LI's company decisions subject to approval by CLG and the Sichuan provincial government. The two men were at odds and conflicts escalated as Mr. Xu wanted to invest in his home province of Sichuan, whereas the applicant wanted to invest further in Guangdong Province. In September 1998, the applicant alleged that he was forced under the threat of violence to sign an amendment to the first share transfer agreement. The amendment called for the applicant to pay 10 million RMB by December 1998 or to forfeit his share in LI to CLG. The applicant did not report the incident to the police because of Mr. Xu's alleged close connections with the Sichuan government officials and provincial police.

[9] The conflict and tension between the two men went unresolved. In July 1999 while in Sichuan Province on business, the applicant alleged that he was taken to a motel. He alleged that Mr. Xu, government officials, and thugs were there and that he was detained, tortured and threatened for several days until he signed another agreement under duress (the third share transfer agreement). This agreement provided that FDG would sell its 40% interest in LI to Sanjiu Enterprises Group (SEG), but that the payment would instead go to CLG. The agreement provided no benefit for the applicant. As a result of this incident, the applicant went into hiding in August 1999.

[10] Officials at SEG questioned the validity of the third share transfer agreement and became concerned about the management of LI. As a result, they cancelled the third share transfer agreement. Mr. Xu and his friends persisted and alleged to the Chengdu police that FDG had defrauded them of their stock rights in LI. An investigation was initiated to determine if the applicant and FDG had committed financial fraud.

[11] In September 1999, Mr. Xu sent thugs to Guangdong Province to intimidate HSS employees. The thugs also threatened the applicant's wife. As a result of the threats, HSS ceased operating.

[12] On October 21, 1999, the applicant returned to Guangdong Province from Hong Kong in order to consult with his lawyer about possible fraud charges. The applicant feared not receiving a fair trial and the possibility of the death penalty. As a result, the applicant returned to Hong Kong on

October 30, 1999. Upon learning from the media that he was wanted by police, the applicant and his wife fled to Canada that same day using their Dominican passports. They arrived in Canada on November 4, 1999.

[13] Back in China, Chaohui Zhang (Mr. Zhang), the Vice-General Manager of FDG was arrested, tried and found guilty of fraud. He was sentenced to thirteen years in jail and fined 200,000 RMB. The sentence was reduced to ten years by an appeal court.

[14] Upon his arrival in Canada, the applicant was uncertain of his next step. He feared being sent back to China by Canadian authorities. He did not return to Dominica for similar reasons. It appears that the applicant originally entered Canada on a visitor's visa and did not claim refugee status. As his visitor's visa was close to expiration, the applicant travelled to the United Kingdom on March 19, 2000 where he obtained visitor's status until September 26, 2000. He returned to Canada on March 27, 2000 and applied for an extension of his visitor's status. An interview was ordered, but the applicant failed to attend as he feared being returned to China. On January 12, 2004, after having been arrested by Canadian authorities for overstaying his authorized stay, he filed a refugee claim against both China and the Dominica.

[15] On June 24, 2005, the Minister issued a "Notice of Intent to Participate" as it had come to the Minister's knowledge through Interpol that the applicant was wanted in China for two crimes of contract fraud amounting to 8.5 million USD and 4.3 million USD.

[16] In its decision dated May 16, 2007, the Board found that the applicant was excluded from refugee protection by reason of Article 1F(b) of the Convention.

Board's Decision

[17] The Board began its analysis by accepting on a balance of probabilities that the applicant was who he claimed to be and that he was a national of both the Commonwealth of Dominica and the People's Republic of China.

Legislative Scheme

[18] The Board made a few initial comments on the legislative scheme, its interpretation, and the appropriate standard of proof. The Board considered the legislative scheme and noted that the Federal Court of Appeal in *Ramirez* v. *Canada (Minister of Employment and Immigration),* [1992] 2 F.C. 306 (C.A.) made it clear that exclusion clauses were not to be construed narrowly. Moreover, the Federal Court of Appeal also determined that there is no requirement to balance the inclusion and exclusion components of the definition of Convention refugee. Regarding the standard of proof, the Board noted that the Federal Court of Appeal found that "serious reasons for considering" (a Convention phrase) applies to questions of fact rather than law and is a lesser standard of proof than that of a balance of probabilities, but somewhat more than a suspicion or conjecture. The Board further noted that to meet this standard, there need not be evidence that the applicant has been

charged, convicted or criminally prosecuted. The Board stated that the onus to establish that exclusion was on the Minister.

Economic Fraud

[19] The Board noted the first Interpol warrant wherein the applicant was wanted for arrest in China for defrauding CLG by 40% of his shares as the respresentative of FDG. The warrant alleged that the applicant's act violated Article 224 of the China Criminal Law, which is similar to section 380(1) of the *Canadian Criminal Code*. The Board noted that under both Chinese and Canadian law, the offence required *mens rea.* The Board also discussed a subsequent communication from Interpol which provided details as to the specific acts alleged to have been committed by the applicant.

[20] The Board noted that the applicant was inconsistent in his testimony regarding the failure to make the scheduled payments as per the share transfer agreement. While the applicant first noted that payment was not necessary because the two had been "buddies" since December 1996, the applicant changed his story when confronted with documentation that the two had met in August 1997. With regards to the applicant's testimony on how he proposed to eventually make the payment, the Board noted that it was "lacking the clarity or even consistency one would expect from someone who has been falsely accused as he alleges."

[21] The Board also noted that the applicant's testimony regarding a false deposit certificate in the amount of 3.1869 million USD made to LI was inherently implausible. When initially questioned about the false deposit certificate, the applicant testified that he never asked anyone to make the deposit. However, the applicant acknowledged this to be factual when the applicant was confronted by the false deposit certificate signed by Mr. Zhang on record, and a resolution authorizing Mr. Zhang to sign all relevant documents related to the sale from the HSS Board of Directors (of which the applicant was the chairman). In conclusion, the Board found that with regards to the above transaction with LI, there was "serious reason to believe the claimant was complicit in fraudulent criminal activities related to defrauding LI".

[22] The Board also reviewed the evidence regarding the existence of a mortgage for about 58 million RMB against HSS in January 1997. The applicant at first denied the existence of the mortgage, but after further questioning he responded only that "it should be in the financial statement about the bank". The Board stated that "while this does not acknowledge the existence of the mortgage, it is hardly a ringing denial of the existence of the mortgage." The Board also noted that when later asked to confirm that the purchasers of HSS had no knowledge of the mortgage, the applicant replied that he needed to do a thorough check of the documents. The Board stated "this response also allows for the existence of a mortgage." The Board went on to state that as the hearing progressed and the significance of the mortgage became clearer, the applicant emphatically denied its very existence.

Applicant's Fear

[23] The Board then proceeded to analyze the applicant's fears that if returned to China he would be unable to get justice because he is being persecuted. The Board considered testimony from Professor Vincent Cheng Yang, an expert witness who provided sworn written and oral testimony on the workings of the Chinese criminal justice system. The Board noted that Professor Yang's "comments were of immediate relevance to the case". The Board made the following comments about Professor Yang's testimony:

> Another result of Yang's testimony is an affirmation for the panel that while Courts in China may occasionally be less scrupulous or ethical than courts in Canada, nevertheless they are usually concerned with the appropriate rule of law in accordance with established legal procedures. For this reason, the panel gives considerable weight to the findings of the Chinese courts in this case, without accepting them as conclusive.

[24] The Board then turned to the applicant's link to Dominica. The applicant was asked about his application for a Dominican passport, specifically why he had used a different name and signature than that on his Chinese passport. The Board noted that the applicant's answers could be described as somewhat ingenuous as he answered questions by asking questions. Moreover, the Board stated that "from all this shifting and inconsistent testimony [the Board] take[s] a negative inference regarding the claimant's credibility as a witness." The Board also noted that while the applicant claimed that he and his family had obtained Dominican passports because of the convenience involved when traveling internationally without having to obtain visas required by travelling Chinese citizens, the applicant had used his Dominica citizenship when it was convenient

in other circumstances as well. The Board noted that "the claimant's behaviour [was] apparently that of someone who frequently regards his own convenience or self-interest as being of more immediate importance than the applicable regulations or laws."

Credibility of the Applicant

[25] The Board provided a very lengthy analysis of the applicant's credibility and provided numerous specific instances that raised credibility concerns. The Board's ultimate determination was that, having considered the totality of the applicant's testimony, there were "many instances where the claimant has provided testimony that is evasive or less than the whole truth." The Board went on to state at page 29 of its decision:

> There are also numerous and significant instances where the claimant has simply not told the truth. These instances cannot be dismissed as a few examples where the claimant was tired or stressed, or where there may have been a question of some misunderstandings with the interpreters, both of whom were consistently highly professional and capable throughout the hearing. From the many instances of contradictory, inconsistent, shifting, evasive and implausible testimony I find the claimant to be a witness who is not credible.

[26] In conclusion, the Board determined that for the foregoing reasons the applicant was excluded from refugee protection.

Issues

[27] The applicant submitted the following issues for consideration:

1. Whether the Board erred in finding the applicant excluded from refugee protection under Article 1F(b):

    a. By failing to specify which alleged criminal acts or offences formed the basis of the determination, and so rendering unclear reasons;

    b. By applying an incorrect legal analysis;

    c. By rendering the decision in the absence of sufficient credible and trustworthy evidence, ignoring evidence, and rendering an unreasonable determination;

    d. By improperly rendering a negative credibility determination, and thereby relying on irrelevant considerations; or

    e. By rendering a negative credibility determination that was patently unreasonable, or not in accordance with the evidence.

[28] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the Board fail to identify which criminal acts led to its finding of exclusion?

3. Did the Board commit an error of law in failing to apply the correct legal analysis of Article 1F(b)?

4. Was the Board's finding of exclusion unreasonable given the evidence before it?

5. Did the Board err in finding that the applicant was not a credible witness?

[29] For simplicity, I have summarized the parties' arguments under the following headings:

1. Failure to specify which criminal acts led to exclusion
2. Incorrect legal analysis of Article 1F(b)
3. Absence of sufficient credible and trustworthy evidence
    a. Concealed Mortgage
    b. Lack of payment under share transfer agreement
    c. False Deposit
    d. Interpol correspondence and Chinese court judgements not credible
4. Error in finding exclusion on the basis of negative credibility

Applicant's Submissions

[30] With regards to the appropriate standard of review for cases dealing with Article 1F(b), the applicant submitted that in *Harb* v. *Canada (Minister of Citizenship and Immigration)*, 2003 FCA 39 at paragraph 14, Justice Décary found that findings of fact were to be reviewed on a standard of patent unreasonableness, findings of mixed fact and law were to be reviewed on a standard of reasonableness and interpretations of the exclusion clause were to be reviewed on a standard of correctness.

1. Failure to specify which criminal acts led to exclusion

[31] The applicant's first argument was to the effect that the Board erred in failing to specify which alleged criminal acts or offences formed the basis of its determination, and as such, rendered unclear reasons. In refusing a refugee claim, the Board must provide sufficiently clear, precise and intelligible reasons; the Board is required to make a clear finding with respect to which act(s) formed the basis of the exclusion finding (*Mehterian* v. *Canada (Minister of Employment and Immigration)*, [1992] FCJ No. 545 (FCA); *Sivakumar* v. *Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 433 (CA); *Ivanov* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FC 1210; *Zrig* v. *Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No. 565 (CA); *Iliev* v. *Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 493). It was submitted that a number of alleged criminal offences were discussed by the Board and therefore the Board was required to specify exactly which of those offences formed the basis for the exclusion. The applicant noted the Board's determination that "with regards to these transactions, I find there is serious reason to believe [the applicant] was complicit in fraudulent activities related to LI", and argued that the words "these transactions" was too vague to meet the Board's obligation. The applicant also submitted that although the Board cited relevant sections of the Canadian and Chinese criminal codes, it never engaged in an analysis of whether the alleged transactions met the requirements of the sections and therefore the Board's reasons are even more unclear. It was further submitted that the only offences specified by the Minister were a 58.8 million RMB mortgage, failure to make payments under the share transfer agreement and forcing Zhang to forge a deposit receipt and a remittance draft. Moreover, it was alleged that the evidence of these alleged offences is

flawed. The applicant concluded that as a result of these considerations, it is obvious that the Board failed to identify the alleged criminal offences upon which the exclusion was based and thus its reasons where unclear.

2. Incorrect legal analysis of Article 1F(b)

[32] The applicant's second major argument was that the Board applied the incorrect legal analysis for Article 1F(b). It was submitted that exclusion should not be applied for economic offences where there is a risk of the death penalty. Exclusion should be applied restrictively (*Pushpanathan* v. *Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982). Moreover, the applicant argued that exclusion should only be applied in cases where the crimes in question are persecutory offences, not simply economic offences. It was noted that persecutory offences are almost always violent in nature (*Brzezinski* v. *Canada (Minister of Citizenship and Immigration)*, [1998] 4 F.C. 525 (T.D.)). Economic acts are only persecutory where they deprive a person of their ability to survive, or otherwise impact on a person's physical or moral integrity (*N.K.* v. *Canada (Solicitor General)*, [1995] F.C.J. No. 889 (T.D.)). The applicant submitted that there is no evidence of this in the present case. The applicant also submitted that in considering exclusion, the gravity of the offence should be weighed against consequences of removal. Moreover, according to the applicant, this balancing must take place within the exclusion analysis and not after. The applicant acknowledged that this is contrary to the cases of *Malouf* v. *Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1506, and *Gil* v. *Canada (Minister of Employment and Immigration)*, [1995] 1 F.C. 508 wherein the Federal Court of Appeal held that in making a

refugee determination, inclusion should be balanced against exclusion. The applicant submitted that *Malouf* above and *Gil* above, are no longer good law in light of the Supreme Court of Canada's finding in *United States of America* v. *Burns*, [2001] 1 S.C.R. 283. The applicant submitted that in *Burns* above, the Supreme Court of Canada held that the possibility of the death penalty should now be a proper consideration in determining the applicability of Article 1F(b). The applicant further noted that while in *Gil* above, the Federal Court of Appeal ruled that the death penalty should not bar the application of 1F(b), the Supreme Court of Canada in *Burns* above overruled this. In *Burns* above, the Supreme Court of Canada held that extradition where the person in question faces the death penalty violates sections 7 and 12 of the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the *Charter*) in all but exceptional circumstances. In *Burns* above, the alleged offences were the murders of three immediate family members, yet the Court still determined that exception circumstances were not present. When compared to *Burns* above, it is obvious that the facts in the present case do not give rise to exceptional circumstances. The applicant concluded this argument stating that the applicant faces a possibility of the death penalty and as such, exclusion should not have been considered by the Board.

3. Absence of sufficient credible and trustworthy evidence

[33] The applicant's third argument was that the Board's finding that there were serious reasons for considering the applicant to have committed fraud was unreasonable given the absence of sufficient credible and trustworthy evidence before the Board. Specifically, the applicant took issue

with the lack of credible and trustworthy evidence regarding (1) the concealed mortgage, (2) the lack of payments made under the share transfer agreement, and (3) the false deposit. Moreover, the applicant submitted that the evidence relied upon, specifically the Interpol correspondence from Chinese police and the Chinese court proceedings, are not trustworthy evidence.

a. Concealed Mortgage

[34] The applicant submitted that in order to exclude the applicant, the Board had to be satisfied that the Minister had provided sufficient credible evidence as to the essential elements of fraud in both countries, namely intent, loss, and causation. It was submitted that this was simply not the case. With regards to the requirement of intent of fraud, the applicant submitted that his business was highly profitable both before and during the merger, that he was the one approached by Mr. Xu, and that the merger was beneficial to both companies. It was submitted that the critical issue is the value of the applicant's assets at the time of FDG's purchase of LI because if the value was sufficient to meet the purchase price, then no crime was committed under Chinese or Canadian law. The applicant submitted that the only direct evidence regarding the value of assets at the time of the merger was the Asset Evaluation Report for HSS for the end of 1996. This report established that HSS alone was worth 98.5563 million RMB, which is above the purchase price of LI and therefore there was no possibility that the applicant had the intent of fraud. The applicant submitted that to get around this credible evidence, the Board relied on the Minister's submission of an alleged mortgage worth 58.8 million RMB taken out prior to the merger, as the existence of the undisclosed mortgage diminished the value of the applicant's assets. Therefore, the existence of the mortgage is the

lynchpin to the fraud allegations. The applicant highlighted the following facts in support of a finding that the mortgage did not exist and noted that none of these facts were addressed by the Board in its reasons:

- GS identified HSS as a profitable company and potential buyer for LI shares, thus GS obviously had no concerns about the ownership or assets of FDG or HSS;
- CLG investigated and audited HSS prior to the merger and found no trace of a mortgage;
- KPMG audited the assets of HSS and found no sign of a concealed mortgage;
- Both the Chengdu City Stock Management Officer, and Chinese Securities Regulatory Commission approved the securities transaction and found no irregularities;
- LI's annual reports for 1997 and 1998 do not indicate any concern of a concealed mortgage;
- The Guangdong Economic Law Firm stated that the share transfer agreements were "legal and effective";
- Professor Yang testified that all evaluation reports prepared by accountants and auditors in a financial transaction should be presumed to be true and accurate unless indications to the contrary given the serious criminal consequences for issuing false reports;
- No direct evidence whatsoever of this mortgage was ever provided to the Board; and
- None of the evidence before the Board even mentioned the existence of any direct evidence of this mortgage.

[35] The applicant submitted that there was no evidence to support the finding that the mortgage existed. The only reasonable conclusion is that no mortgage existed, and as such, there was no intention of fraud on the part of the applicant and consequently, no ground for exclusion. Given the

centrality of this evidence and the failure of the Board to mention it, the Board is presumed to have ignored it (*Cepeda-Gutierrez* v. *Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (F.C.T.D.) at paragraph 17).

b. Lack of payment under share transfer agreement

[36] The applicant submitted that he provided a reasonable explanation as to why transfer of payments between the parties was unimportant as long as the parties continued to enjoy the benefit of the increased profits from the newly merged, listed LI. It was further submitted that the agreements contemplated late payment of the scheduled instalments.

c. False Deposit

[37] The applicant argued that aside from the concealed mortgage, the other key element of fraud in this case was the allegation that the applicant induced his vice-manager (Zhang) to provide a false deposit document in 1997. It was submitted that this accusation was fabricated by Zhang against the applicant in order to justify the accusations against him, to seize control of the applicant's company and to force the applicant out. The applicant argued that while the Chinese court proceedings cite as evidence Zhang's confession, and the alleged fraudulent bank and remittance documents, Zhang's confession cannot be considered credible for the following reasons:

- Zhang was facing immense pressure for a conviction, as the only person associated with the charges personally who had been arrested and brought to trial;

- Zhang had little chance of avoiding conviction and thus he likely sought leniency in his sentence by ‘confessing’ that he was forced to commit the offence; and
- There is potential that Zhang was tortured by Chinese police.

[38] The applicant further submitted that in the absence of the actual documents, the Chinese court’s consideration of the evidence cannot be trusted as documentary evidence because the Chinese criminal judicial process is deeply flawed and politicized.

d. Interpol correspondence and Chinese court judgements not credible

[39] The applicant submitted that the only remaining allegations against him are the judgments of the Sichuan courts and Interpol correspondence and they can simply not be trusted. It was argued that the Chengdu court (that rendered judgment in this case) has been specifically criticized by Amnesty International for the use of fabricated evidence and incompetent judicial decision-making. Further, while the Board suggested that Professor Yang testified that the Chinese courts were reliable, this mischaracterizes his testimony and ignores numerous statements to the contrary. It was noted that Professor Yang’s testimony was to the effect that:

- “Local protectionism” may have played a role in the court judgments against FDG and Zhang and that this is a serious problem in China;
- In the area in question, there are known cases of local businesspersons working in collusion with local police to make threats, extort money, and inflict torture and abuse;

- There are many problems with the rule of law in China, particularly in less developed in-land areas;
- There are many problems with judicial independence in China particularly in Sichuan;
- The local government in provinces like Sichuan have a variety of mechanisms of control over the judiciary including financial and political control.

[40] The applicant submitted that the Board erred in relying on the Chinese court decisions and Interpol correspondences as they are not credible. The applicant further submitted that the Minister failed to provide any direct evidence of the alleged acts of fraud and as a result, the Board erred in failing to draw an adverse inference from the Minister's failure to provide the best evidence possible. While the Board is not bound by the normal rules of evidence, it should nonetheless accord less weight to indirect hearsay evidence, especially where more direct evidence is or should be available (*Balili* v. *Canada (Minister of Employment and Immigration)*, [1994] FCJ No. 628; *Ekwueme* v. *Canada (Minister of Citizenship and Immigration)*, 2002 FCT 495). Tribunals should draw an adverse inference where a party has failed to produce the best evidence that is or should be available to it (*Ali* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCT 609; *Bond* v. *N.B. (Board of Management)*, [1992] NBJ No. 567 (N.B.C.A.); *Kusi* v. *Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 523).

4. Error in finding exclusion on the basis of negative credibility

[41] The applicant's fourth argument was that the Board's finding that the applicant was not a credible witness was patently unreasonable. It was submitted that any perceived contradictions in the applicant's testimony must be considered in view of the fact that the applicant provided testimony for six days, mostly under rigorous cross-examination. The applicant also noted that the Board's finding that the applicant was evasive is perverse given that it was the applicant that provided every item of evidence (aside from the Interpol correspondence) used by the Board to exclude the applicant. With regards to the Board's specific credibility findings, the applicant provided the following responses in his affidavit:

- Regarding the non-payment under the share transfer agreement, the applicant was not evasive, but yet provided very clear reasons in his PIF narrative;
- Regarding the alleged fraudulent bank deposit receipt, the applicant consistently denied any involvement or knowledge;
- Regarding the alleged concealed 58 million RMB mortgage, the questions to the applicant were very unclear and tainted by interpretation errors, but he always denied that the mortgage existed;
- Regarding his testimony in general, any inconsistencies must be seen in light of the length of the hearing, the very detailed questions asked of the applicant, and the problems with translation;
- Regarding the applicant's wife's English first name, the applicant forgot the name because he has difficulty remembering English names;
- Regarding the applicant's purchase of property in Canada, the interpretation of the question was ambiguous as to whether the Board was referring to past or current ownership;

- Regarding whether the applicant's sons left Canada voluntarily or were deported, the applicant honestly believes that his sons were not deported because they left by purchasing their own airline tickets;
- Regarding when the applicant was arrested by Immigration, this is a non-contentious fact and the applicant's poor memory should not be held against him;
- Regarding how and when the applicant learned of the refugee process, there was no ambiguity in his answers; and
- Regarding incorrect information provided to Immigration officials in prior applications, the applicant has plausibly explained that some errors were caused by his immigration advisors and there was no attempt to deceive the Board.

Respondent's Submissions

1. Failure to specify which criminal acts led to exclusion

[42] The respondent submitted that there is no requirement that every element of the alleged offence be identified, and particularized before article 1F(b) can be relied upon (*Zrig* above). The Board is not required to engage in a quasi-criminal inquiry to determine which specific fraudulent transactions the applicant is guilty of. The respondent noted that the Board's reasons clearly and specifically set out, under the heading "Evidence and Fraud", the various transactions relied upon by the prosecution in China for the arrest warrants. It was noted that there can be no doubt in the

applicant's mind as to the nature of the charges against him forming the basis for exclusion. The Board clearly identified the transactions that led to the applicant's exclusion.

2. Incorrect legal analysis of Article 1F(b)

[43] The respondent submitted that the Board applied the correct legal test in its analysis of Article 1F(b). It was submitted that the Federal Court of Appeal has conclusively stated that exclusion pursuant to Article 1F(b) may be based on a purely economic crime (*Xie* v. *Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1142 (F.C.A.)). Moreover, it has been determined that in making a determination of exclusion, the Refugee Protection Division is not concerned with the consequences of removal from Canada (*Xie* above). Thus, the Board was rightly not concerned that exclusion would lead to the possibility of the death penalty. It was submitted that there remains a pre-removal risk assessment process wherein the possibility of the death penalty will be considered by the government. The respondent also noted that the issue of assurances from China is not a matter for the Board, but yet for the Canadian government should extradition occur. It was submitted that the effect of the Supreme Court's decision in *Burns* above, is that Canada does not extradite persons to face the death penalty absent exceptional circumstances, unless appropriate assurances are obtained from the country seeking extradition. As the issue of assurances and 'exceptional circumstances' are not within the scope of the Board's mandate or expertise, the Board was correct in not considering them. Jurisdiction of the Board is limited to determining the issue of exclusion and not the consequences of removal (*Xie* above). Moreover, the respondent submitted that as per *Xie* above, the Board is not to engage in a balancing exercise between the nature of the

offence and the potential consequences. It was submitted that the applicant's argument that the decision in *Burns* above, should prompt a re-thinking of the issue of exclusion is misguided. The Federal Court of Appeal has confirmed that the Board's jurisdiction is limited by the legislative scheme to the issue of exclusion, and not to the consequences of removal (*Xie* above).

3. Absence of sufficient credible and trustworthy evidence

[44] The respondent submitted that in *Xie* above, the Federal Court of Appeal affirmed that the Board could rely upon the arrest warrant against the applicant as evidence to support the finding of exclusion. Direct evidence of the crime is not required as the issue is not whether the crime was indeed committed by the applicant, but whether there are serious reasons for considering that he did (*Xie* above). It was submitted that the Board is also entitled to rely upon the particulars in the arrest warrants. With regards to the mortgage, the respondent noted that the Board did not find that the mortgage in question existed. In fact, the Board concluded that the evidence on the mortgage was inconclusive. Thus, the applicant's arguments in this regard are groundless.

4. Error in finding exclusion on the basis of negative credibility

[45] The respondent submitted that the Board had ample grounds for finding that the applicant was not credible. It was further submitted that the Board was very clear and explicit about what precise problems it had with the applicant's testimony. The respondent argued that no area of the applicant's testimony was free from inconsistency or evasion:

- The applicant gave completely contradictory evidence as to why he did not make payments to LI pursuant to the share transfer agreement;
- The applicant denied asking Zhang, his vice-chair, to forge a bank deposit slip to LI, but then acknowledged his authorization once confronted with a relevant document with his signature;
- The applicant gave evasive and contradictory evidence as to the existence of the mortgage;
- The applicant gave inconsistent evidence as to whether he was responsible for the altered name on his Dominica passport;
- The applicant gave vague and inconsistent evidence about his off-shore investments in Dominica;
- The applicant misled Canadian immigration officials as early as 1996 saying that he set up his joint venture as a vehicle to transfer Chinese business assets to Canada, but later conceded that his intention was to run his Chinese company through the joint venture in the British Virgin Islands;
- The applicant lied to Canadian immigration authorities in stating that he only had Dominican citizenship and maintained his lie when he applied for an extension of his visitor's status in Canada;
- The applicant forgot his wife's name despite having voluntarily offered it the previous day;
- The applicant gave contradictory evidence as to whether he ever bought property in Canada;

- The applicant lied about why his sons had left Canada saying that they had run out of money for their studies, when in fact they were deported due to their involvement with organized crime; and
- The applicant gave inconsistent evidence regarding when he first knew of the availability of making a refugee claim.

[46] The respondent submitted that the applicant's arguments regarding the Board's credibility findings address mainly alternate inferences which he claims should have been drawn by the Board. A finding is not patently unreasonable merely because the evidence is consistent with other inferences (*Sinan* v. *Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 188 at paragraph 11). Moreover, the respondent submitted that the Board is not required to mention all of the evidence before it and failure to do so does not mean that the evidence was ignored (*Taher* v. *Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1433 at paragraph 14).

Applicant's Reply

[47] The applicant submitted that while the Federal Court of Appeal in *Xie* above, did hold that an economic offence can form the basis of exclusion, the circumstances of this case are not similar to those in *Xie* above. Specifically, the applicant noted that unlike in *Xie* above, the uncontradicted evidence before the Board was that the applicant will likely be sentenced to death for an economic offence. Moreover, the applicant submitted that the case of *Xie* above, pre-dates *Burns* above, and that the latter changed the law.

[48] With respect to the respondent's argument concerning *Xie* above, and the ability of the Board to rely on the Chinese arrest warrant, the applicant submitted that *Xie* above, merely found that the Board was entitled to give a warrant "a certain amount of weight" in appropriate circumstances. It was submitted that the Court in *Xie* above, did not hold, as the respondent alleges, that the Board may rely on a warrant to the exclusion of any evidence to the contrary. The applicant submitted that while direct evidence of a crime may not be required in every case, the absence of key evidence in the present case can be enough to call into question the allegations in a warrant, especially where there was evidence that the rule of law is weak in China and the Chinese police and judicial system engage in corrupt and/or politicized prosecutions.

[49] The applicant again submitted that while he is aware of the offences that he is alleged to have committed, the Board failed to specify which offence(s) formed the basis for exclusion.

[50] And finally, with regards to the alleged mortgage and the Board's finding or lack of finding thereof, the applicant submitted that the absence of direct evidence of the mortgage means that the criminal allegations against the applicant collapses and there cannot be a finding of intent to fraud on the part of the applicant and as such, the Board's finding of exclusion is unreasonable.

Analysis and Decision

[51] **Issue 1**

What is the appropriate standard of review?

This application for judicial review was heard before the decision of the Supreme Court of Canada in *Dunsmuir* v. *New Brunswick*, [2008] S.C.J. No. 9 on March 7, 2008. *Dunsmuir* above, collapsed the standard of reasonableness *simpliciter* and patent unreasonableness for a more straightforward standard of reasonableness. *Dunsmuir* above, also streamlined the steps to take in establishing the appropriate standard of review, which was previously referred to as the "pragmatic and functional" approach. The Supreme Court proposed a two step process at paragraph 62:

> First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of [deference] to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[52] In this application the factors to consider in determining the standard of review for each issue, if it has not been already established, are the existence of a privative clause, a discrete and special administrative regime in which the decision maker has special expertise, and the nature of the question as being of central importance to the legal system and thus outside the specialized area of the decision maker's expertise, *Dunsmuir* above. While there is no privative clause in IRPA, the Act and Regulations as well as jurisprudence in this area suggests that there exists a discrete administrative regime with decision makers' that have specialized knowledge and expertise. Courts should, therefore, not interfere unless there is a question of law that is of "central importance to the legal system…and outside the…specialized area of expertise" (*Toronto (City)* v. *C.U.P.E., Local 79*, [2003] 3 S.C.R. 77) of the Board.

[53] This case has an added factor of the Board's interpretation of the Convention, however. *Dunsmuir* above, states, "[w]hile an administrative decision maker like the Board always risks having its determination of an external statute set aside on judicial review", jurisprudence has moved away from finding that it is always warranted. It must be noted that IRPA complies with the Convention as was Parliament's intention on June 28, 2002 when it came into effect. Further, the Convention is clearly part of an administrative regime regarding refugees of which the Board has expertise. Nevertheless, the Federal Court of Appeal held that when interpreting international law principles, the Board does not have more expertise than the Court (*Nagalingam* v. *Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 670 and as such, is reviewable on the standard of correctness.

[54] The standard of review for each of the remaining issues is determined to be as follows.

[55] Issue 2: Did the Board fail to identify which criminal acts led to its finding of exclusion?

This issue is, in my view, a question of fact. Following *Dunsmuir* above, this issue is reviewable on a standard of reasonableness.

[56] Issue 3: Did the Board commit an error of law in failing to apply the correct legal analysis of Article 1F(b)?

This issue raised by the applicant, is in my view, a question of law reviewable on a correctness standard. *Dunsmuir* above states:

> [w]hen applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question.

As stated above, the Board made a decision based on its interpretation of the Convention Article 1F(b) which required an evaluation of international law.

[57] Issue 4: Was the Board's finding of exclusion unreasonable given the evidence before it?

This issue raised a question of fact and law reviewable on a standard of reasonableness. The Board's finding of exclusion based on the evidence before it required consideration where the legal issues cannot easily be separated from the factual ones. In *Dunsmuir* above, the court explained that deference usually applies automatically in this case unless there are constitutional questions involved. Further, where a Board is interpreting its own statute or statutes closely connected to its function, deference may be warranted. In this case, the Board's interpretation of international law related to refugees which is in accordance into its own statute suggests a deferential approach.

[58] Issue 5: Did the Board err in finding that the applicant was not a credible witness?

This issue raised by the applicant is a question of fact and reviewable on the standard of reasonableness. In *Dunsmuir* above, the Supreme Court noted that board decisions related to fact and credibility will continue to attract a high standard of deference. Issues related to reviewing credibility findings made by the Board attract the deferential standard of reasonableness (*Sukhu* v. *Canada (Minister of Citizenship and Immigration),* [2008] F.C.J. No. 515.

[59] **Issue 2**

Did the Board fail to identify which criminal acts led to its finding of exclusion?

The applicant submitted that the Board erred in failing to clearly identify which criminal acts led to its finding of exclusion. In support of this argument, the applicant cited a number of cases. Having reviewed these, I find only one to be of particular relevance to the situation in the present case. In *Sivakumar* above, at paragraph 33, the Federal Court of Appeal stated the following regarding the Board's duty to identify which offences led to finding of exclusion:

> Given the seriousness of the possible consequences of the denial of the appellant's claim on the basis of section F(a) of Article 1 of the Convention to the appellant and the relatively low standard of proof required of the Minister, it is crucial that the Refugee Division set out in its reasons those crimes against humanity for which there are serious reasons to consider that a claimant has committed them. In failing to make the required findings of fact, I believe that the Refugee Division can be said to have made an error of law.

I accept the applicant's argument that the Board has a duty to identify which offences in question form the basis for the exclusion. However, in my opinion, the Board in the present case did not fail to do so.

[60] To begin, under the section entitled "Evidence of Fraud" at pages 7 and 8 of the decision, the Board considered the two Interpol warrants against the applicant and explained which offences they each alleged the applicant had committed. The Board went on to note the relevant section of the China Criminal Law, and to identify the parallel section of the Canadian Criminal Code as subsection 380(1). Moreover, I note that the majority of the Board's decision deals with the specific

acts alleged to have occurred in the Interpol warrants, specifically the concealed mortgage, the failure to make payments on the share transfer agreement and the false deposit.

[61] I do recognize the applicant's argument that the Board never explicitly listed the offences; however, this is also not a situation where the Board failed to provide sufficient indication as to which offences constituted its finding of exclusion. I am of this opinion because of the care taken by the Board to identify the offences and acts to which the applicant was alleged to have committed. Moreover, in the Board's final section entitled "Summary and Assessment", the Board once again identifies the two Interpol warrants and the specific acts that the applicant is alleged to have committed, and then proceeds to state that while the evidence regarding the concealed mortgage was not conclusive, the "the other charges were apparently properly and convincingly documented in the Chinese courts". The Board goes on to find that "plausible evidence exists that serious crimes of fraud were committed in China."

[62] With regards to the applicant's submission that the Board failed to assess whether the elements of the criminal code offences were met in the criminal acts alleged to have been committed by the applicant, I find no merit in this argument. There is no requirement on the Board in rendering a finding of exclusion to ensure that every element of the alleged offence be identified, and particularized (*Zrig* above). I would not allow the judicial review on this ground.

[63] **Issue 3**

Did the Board commit an error of law in failing to apply the correct legal analysis of Article 1F(b)?

The applicant's argument on this issue was twofold. Firstly, the applicant submitted that the alleged criminal acts are not the kind to which exclusion under Article 1F(b) should apply. Secondly, the applicant submitted that the Supreme Court of Canada's decision in *Burns* above, overruled the Federal Court of Appeal's decisions in *Gil* above, and *Malouf* above, such that the Refugee Protection Board is now required to balance the gravity of the offence against the consequences of removal. Moreover, it was submitted that the Supreme Court's decision in *Burns* above, indicates that where, as in the present case, the risk is the possibility of the death penalty, exclusion should not be applied.

[64] I intend to first address whether the alleged criminal acts in question are ones for which Article 1F(b) can apply. Article 1F of the Convention reads as follows:

> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

[65] The applicant argued that persecutory offences are almost always violent in nature (*Brzezinski* above) and that only economic acts that deprive a person of their ability to survive, or otherwise impact on a person's physical or moral integrity are persecutory (*N.K.* above). Having reviewed the cited case law, I am not convinced that they stand for the principles as articulated by the applicant. Moreover, in *Xie* above, Justice Kelen of this Court engaged in a very thorough analysis of whether a purely economic crime committed for personal gain could be considered a "serious non-political crime" for the purposes of Article 1F(b). The Court in *Xie* above, relied on the gravity of the sentence imposed on the Canadian equivalent of the crime alleged to be committed and found that an offence of fraud over $5,000 as described in paragraph 380(1)(a) of the *Criminal Code of Canada* above, was indeed a "serious non-political crime" for the purposes of Article 1F(b). Given the Court's finding in *Xie* above, I am satisfied that there is no question that the alleged offence in the present and its Canadian equivalent under paragraph 380(1)(b) of the *Criminal Code of Canada*, qualified as a "serious non-political crime".

[66] Having found that the alleged criminal acts are indeed ones for which Article 1F(b) applies, I will now consider the applicant's argument that as per *Burns* above, the Board was required to engage in a balancing of the gravity of the offence against the consequences of removal.

[67] The Federal Court of Appeal has been very clear on numerous occasions that the Refugee Protection Board in making a determination under Article 1F(b) need not engage in a balancing of the seriousness of the crime versus the consequences of deportation. For instance, at paragraph 43 of *Gil* above, the Court stated:

> One final point. Another panel of this Court has already rejected the suggestion made by a number of authors that Article 1F(a) requires a kind of proportionality test which would weigh the persecution likely to be suffered by the refugee claimant against the gravity of his crime. Whether or not such a test may be appropriate for Article 1F(b) seems to me to be even more problematical. As I have already indicated, the claimant to whom the exclusion clause applies is *ex hypothesi* in danger of persecution; the crime which he has committed is by definition "serious" and will therefore carry with it a heavy penalty which at a minimum will entail a lengthy term of imprisonment and may well include death. This country is apparently prepared to extradite criminals to face the death penalty and, at least for a crime of the nature of that which the appellant has admitted committing, I can see no reason why we should take any different attitude to a refugee claimant. It is not in the public interest that this country should become a safe haven for mass bombers.

[68] In *Malouf* above at paragraph 4, the Federal Court of Appeal again reiterated its finding in *Gil* above:

> […] Paragaph [*sic*] (b) of Article 1F of the Convention should receive no different treatment than paragraphs (a) and (c) thereof: none of them requires the Board to balance the seriousness of the Applicant's conduct against the alleged fear of persecution. In *Gil*, 25 Imm. L.R. (2nd) 209 we examined the issue with particular reference to paragraph 1F(b) and determined that a proportionality test was only appropriate for the purposes of determining whether or not a serious crime should be viewed as political. That question does not arise in this case. We are not persuaded that our decision in *Gil* was wrong.

[69] The applicant submitted that the Supreme Court of Canada’s decision in *Burns* above, which post-dates the decision in *Gil* above, and *Malouf* above, has changed the law in that a balancing of the two relevant factors is now required.

[70] In *Burns* above, the Supreme Court of Canada found that extradition to face the death penalty violated section 7 of the *Charter* above, and that without assurances from the country to which the individuals were being deported the violation could not be saved under section 1 of the *Charter* above. I am not convinced of the applicant's argument.

[71] Firstly, the situation in *Burns* above, is simply not comparable to the present case. In *Burns* above, the Court dealt with the extradition of two Canadian citizens to the United States of America where they were each wanted for three counts of aggravated first degree murder. The present case deals with a refugee application. The differences between extradition and refugee law are not to be forgotten (*Gil* above at paragraph 11). "The distinction between entry and removal is an important one because, as the Supreme Court noted at paragraph 102 of *Suresh* v. *Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R 3, the power of a state to refuse entry are broader than its powers to deport" (*Xie* above at paragraph 43).

[72] Secondly, as a corollary to my first observation, the decision under review in the present case is not determinative of the applicant's removal unlike in the situation in *Burns* above. As stated by the Federal Court of Appeal in *Xie* above at paragraph 36:

> As the review of the statutory scheme has shown, the purpose of the exclusion is not to remove claimants from Canada. It is to exclude them from refugee protection. Claimants who are excluded under section 98 continue to have the right to seek protection under section 112.

[73] That is to say that the result of the Board's negative decision is not deportation; the applicant can still apply for a pre-removal risk assessment. In my opinion, it is at this stage that the applicant's arguments regarding *Burns* above, are more appropriately considered. That is not to say that I accept the applicant's argument that *Burns* above, has changed the current law surrounding Article 1F(b). I merely find that consideration of these arguments is more appropriate when removal is imminent.

[74] As such, in my opinion, the legal analysis of Article 1F(b) as articulated by the Federal Court in *Gil* above, and *Malouf* above, remains good law. As this is the analysis applied by the Board in the present decision, I see no reason to interfere with the Board's decision. I would not allow the judicial review on this ground.

[75] **Issue 4**

Was the Board's finding of exclusion unreasonable given the evidence before it?

The applicant submitted that the Board's finding of exclusion was unreasonable given the lack of direct evidence supporting the applicant's committal of the alleged criminal offences. Moreover, the applicant argued that the Board erred in relying almost exclusively on the Interpol warrants and Chinese court proceedings, and failed to consider evidence supporting the applicant's position.

[76] I do not agree with the applicant that the Board failed to consider evidence relating to the concealed mortgage, the lack of payment under the share agreement and the false deposit. It is

evident in the Board's decision that it clearly reviewed all the evidence surrounding these, but simply did not find the applicant's evidence and testimony credible. For instance, with regards to the mortgage, the Board on several occasions noted discrepancies and vagueness in the applicant's testimony. The Board noted that the applicant's answers to questions about the mortgage did not acknowledge its existence, but also did not outright deny it. The Board further noted that "[l]ater in the hearing as the significance of the existence of this particular mortgage became clearer, the claimant now emphatically denied its very existence."

[77] With regards to the Board's apparent reliance on the Interpol warrants and Chinese court proceedings, this Court in *Xie* above, dealt with the same issue. In that case the applicant also argued that the Interpol warrant relied upon by the Board was inadequate evidence of the alleged offence. The Court in *Xie* above, at paragraph 23, noted that the evidentiary standard in immigration proceedings to establish that the applicant committed a crime is "something 'more than suspicion or conjecture' but less than evidence on the balance of probabilities". In *Xie* above, the Court determined that there was nothing unreasonable in the Board's assessment of the evidence.

[78] In the present case, the Board relied on the Interpol warrants and the Chinese court proceedings to find that the standard was met for exclusion under Article 1F(b). The Board carefully considered the validity of the Interpol warrant and found it trustworthy. Moreover, the Board considered expert evidence from Professor Yang on the Chinese court and police systems and stated that his testimony was "an affirmation for the panel [the Board] that while courts in China may occasionally be less scrupulous or ethical than courts in Canada, nevertheless they are usually

concerned with the appropriate rule of law in accordance with established legal procedures". The Board clearly did not take the Interpol warrant or the Chinese court proceedings without first assessing whether they were sufficiently trustworthy to be depended on. The applicant has failed to convince me that there is anything unreasonable about the Board's overall determination in light of the evidence before it. I would not allow the judicial review on this ground.

[79] **Issue 5**

Did the Board err in finding that the applicant was not a credible witness?

The Board found that the applicant was not a credible witness. Given the evidence before the Board, I find that there was nothing unreasonable with this finding. The Board noted that testimony given under oath was presumed to be valid unless there was reason to doubt its truthfulness. However, the Board went on to provide a number of reasons for which they doubted the truthfulness of the applicant's testimony. The Board noted the applicant's apparent lack of business knowledge for such an experienced businessman. Moreover, the Board noted that the applicant's testimony was evasive and confusing when answering questions, was filled with inconsistencies, and was often changed when confronted with contradictory evidence. The Board provided over seven pages of specific examples wherein the Board had credibility concerns with the applicant's testimony. There were ample grounds for the Board to find that the applicant was not credible. I see no reason to interfere with the Board's finding.

[80] The application for judicial review is therefore dismissed.

[81] The parties shall have ten days after the date of this decision to submit any proposed serious question of general importance for my consideration for certification. A further period of five days is allowed for any reply to any proposed question.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can. T.S. No. 6:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;	a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un rime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.	c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

The Immigration and Refugee Protection Act, S.C. 2001, c. 27 (IRPA):

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l’incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d’une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT

SOLICITORS OF RECORD

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