Federal Court Cour fédérale

Date: 20121012

Docket: IMM-1515-12

Citation: 2012 FC 1190

Calgary, Alberta, October 12, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

IBRAHIM CALISKAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male citizen of Turkey. He claims to be of the Alevi religion and a Kurdish sympathizer, and for these reasons he feared remaining in Turkey and instead entered Canada in 2006, where he claimed refugee protection. The Refugee Protection Division, in a decision in 2009, rejected his claim largely on the basis of credibility, and that he had not established personalized risk. That decision is final.

[2] The Applicant, after June 29, 2010, made an application for permanent residence in Canada on humanitarian and compassionate grounds (H&C). Because this submission was made after that date, the matter was considered under the provisions of section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) as amended by the *Balanced Refugee Reform Act*, 2010 SC, c. 8 (Balanced Act). In a decision dated January 26, 2012, that application was denied. This is a judicial review of that decision.

[3] The only live issues for determination are those relating to the meaning of section 25 of IRPA, as amended by the Balanced Act, and whether the Officer making the decision, particularly with respect to the question of risk, correctly followed the proper interpretation of that section as amended. The Applicant, in his Counsel's written material also raised an issue as to adequacy of reasons, but that matter was not pursued in oral argument, largely in view of the Supreme Court of Canada's decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

1. INTERPRETATION OF SECTION 25 OF IRPA, AS AMENDED

[4] It is useful to set out the provisions of section 25 of IRPA as they stood before the amendments made by the Balanced Act and afterward. Prior to the amendment, section 25 read:

25. *(1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the*	***25.*** *(1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet*

circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

Marginal note: Payment of fees

(1.1) The Minister is seized of a request referred to in subsection (1) only if the applicable fees in respect of that request have been paid.

Marginal note: Exceptions

(1.2) The Minister may not examine the request if the foreign national has already made such a request and the request is pending.

Marginal note: Non-application of certain factors

(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

Note marginale : Paiement des frais

(1.1) Le ministre n'est saisi de la demande que si les frais afférents ont été payés au préalable.

Note marginale : Exceptions

(1.2) Le ministre ne peut étudier la demande de l'étranger si celui-ci a déjà présenté une telle demande et celle-ci est toujours pendante.

Note marginale : Non-application de certains facteurs

(1.3) Le ministre, dans l'étude de la demande d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

Note marginale: Critères provinciaux

(2) Le statut de résident

Marginal note:
Provincial criteria

(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

2001, c. 27, s. 25;

2008, c. 28, s. 117;

2010, c. 8, s. 4.

permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.

2001, ch. 27, art. 25;

2008, ch. 28, art. 117;

2010, ch. 8, art. 4.

[5] After the amendment, section 25 read as follows; I repeat only subsections 25(1) and 25(1.3):

***25.** (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate*

***25.** (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt*

considerations relating to the foreign national, taking into account the best interests of a child directly affected.	*supérieur de l'enfant directement touché.*
. . .	. . .
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	*(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.*
2001, c. 27, s. 25;	*2001, ch. 27, art. 25;*
2008, c. 28, s. 117;	*2008, ch. 28, art. 117;*
2010, c. 8, s. 4;	*2010, ch. 8, art. 4;*
2012, c. 17, s. 13.	*2012, ch. 17, art. 13.*

[6] There is very little jurisprudence as to the meaning of sections 25(1) and (1.3), as amended. In *Jing Mei Ye v Canada (MCI)*, 2012 FC 1072, Justice Harrington made the following comment *in obiter* at paragraph 10:

> *10 In the past, circumstances which did not quite amount to persecution or to the need of protection under sections 96 and 97 of IRPA, which serve as the basis of a refugee claim, might nevertheless have been found to constitute undue, undeserved or disproportionate hardship. However, those circumstances can no longer be taken into account in a humanitarian and compassionate application as a result of amendments made to IRPA in 2010. Section 25(1.3) now provides:*

> *(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.*
>
> * * *
>
> *(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié -- au sens de la Convention -- aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.*

[7] The Guidelines provided to Officers making decisions such as that at issue here in section 5.16 provide the following instruction (in part):

> *5.16. H&C and hardship: Factors in the country of origin to be considered*
>
> *While A96 and A97 factors may not be considered, the decision-maker must take into account elements related to the hardships that affect the foreign national. Some examples of what those "hardships" may include are:*
>
> *a. lack of critical of medical/healthcare;*
>
> *b. discrimination which does not amount to persecution;*
>
> *c. adverse country conditions that have a direct negative impact on the applicant.*

[8] Respondent's Counsel has drawn to the Court's attention certain discussions as recorded in the Commons and in the Senate Standing Committee in discussing the amendments as proposed in bill form, Bill C-11. In the meeting of the Commons Committee held on May 27, 2010, Mr. Peter

MacDougall, Director General, Refugees, Department of Citizenship and Immigration, made the following remarks in his address to the committee:

> *In addition, these H and C applications often raise issues related to personal risk and country conditions, factors that are already considered by the IRB when it assesses the asylum claim. As a result, the proposed reforms also include removing the consideration of certain kinds of risks from humanitarian and compassionate applications.*
>
> *Specifically, this concerns risks as defined under sections 96 and 97 of the Immigration and Refugee Protection Act, which are also assessed as part of the refugee protection process and in a pre-removal risk assessment. This reform would clarify the distinction between H and C decision-making and the refugee protection and pre-removal risk assessment processes.*
>
> *Under the proposed measures H and C decisions would focus on considerations such as establishment in Canada, the best interests of the child, relationships in Canada, the country of origin's ability to provide medical treatment, and risks of discrimination in that country, as well as generalized risk in the country of origin.*
>
> *In conclusion, as the minister has said, the proposed measures meet and exceed Canada's domestic and international obligations and maintain the balance and fairness that are the principles of our entire immigration, refugee, and citizenship systems.*

[9] At the meeting of the Senate Committee held on June 22, 2010, Ms. Jennifer Irish, Director, Asylum Policy Program Development, made the following remarks during her address:

> *Ms. Irish: The rationale for separating risk considerations from the H and C is to make clear that there are two different streams. The refugee system will continue to be dedicated to assessing risk, which, in Canada, is embodied in sections 96 and 97 of the IRPA, Immigration and Refugee Protection Act.*

> *In the future, H and C will not be able to look at these risk factors, so that will remove an important redundancy in our system. Rather than having two arms of the Canadian government looking at the same application under the same criteria, effectively now, if you are a refugee, you will be expected to go through the refugee determination system. If you have humanitarian and compassionate considerations, you can file separately for those. There will be no overlap in terms of assessment of risk.*
>
> *To ensure that an H and C application can still consider risk-like factors that do not meet the threshold of sections 96 and 97, it was made clear in the amendment that humanitarian and compassionate consideration can consider hardship factors.*
>
> *I do not mean to try to come up with an exhaustive list, but factors like generalized country situations, systemic discrimination, best interests of the child as well as traditional agency factors can continue to be considered in the humanitarian and compassionate consideration process. Anything that meets that threshold of sections 96 and 97 risk will be the purview of the Immigration and Refugee Board and the refugee status determination system.*

[10] In this case, we may focus on the following words used in subsections 25(1) and (1.3) of IRPA, as amended:

> *25(1) . . . justified by humanitarian and compassionate considerations relating to the foreign national…*
>
> *25(1.3) . . . the Minister may not consider the factors that are taken into account in the determination of whether a person is a convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.*

[11] Turning to section 96, it requires consideration as to whether a person has a well-founded fear of persecution by reason of race, religion, nationality, membership in a particular social group, or political opinion:

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.*

[12] Section 97(1) speaks of a person in need of protection who, in their home country, would be subjected personally to a risk to their life or cruel or unusual treatment:

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	*a) soit au risque, s'il y a des motifs sérieux de le croire,*

torture within the meaning of Article 1 of the Convention Against Torture; or	*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.*

[13] Section 97(1) (b) (ii) should be particularly noted because it *exempts* risk "faced generally by other individuals in or from that country". In the language sometimes used in this field of law, "generalized risk" is exempted from section 97(1) consideration; "personalized risk" is what section 97(1) deals with.

[14] The question is, therefore, whether section 25(1.3) of IRPA, as amended, which exempts sections 96 and 97(1) considerations is itself constrained by the exemption to section 97(1) afforded by subsection 97(1) (b) (ii). Put another way, is the Minister, or Minister's Officer, still required to consider "generalized risk" in the context of considering "hardship"?

[15] There is no doubt that, in addressing the Commons and Senate Committees, proponents of the Bill providing for the amendments believed that the Bill would eliminate consideration of all risks, personalized or generalized,. The guidelines quoted previously are little more than vague; they indicate that an Officer is to consider, for instance, "adverse country conditions that have a direct negative impact on the applicant".

[16] Section 12 of the *Interpretation Act*, RSC 1985, c. I-21, states that legislation is intended to be remedial and is to be given a fair, large and liberal interpretation as best ensures the attainment of its objectives.

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.	*12. Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.*

[17] There is a long history of jurisprudence respecting section 97(1) that distinguishes between "generalized risk" and "personalized risk", so much so that those terms have become imbedded into the culture of those dealing with that provision.

[18] This case is a good example of "personalized" or "generalized" risk. The applicant sought refugee protection and was denied that protection. It was determined by the Refugee Protection Division that he had not demonstrated "personalized" risk. Now the matter comes on an H&C application for determination. Must the H&C Officer accept the finding that there was no "personalized" risk. Must the Officer assume, by default, that there generalized risk was established? Must the Applicant demonstrate that there is a generalized risk? Should the Officer ignore risk altogether, whether personalized or generalized?

[19] We are left with what is, in effect, the sort of semantic exercise, in which lawyers delight in engaging, and into which the Courts are too often drawn. I believe that the true answer to the interpretation of the amended provisions of section 25 of IRPA lies in drawing back from the constraints of lingo such as "personalized" or "generalized" and focusing on the intent of that provision.

[20] The role of humanitarian and compassionate provisions in legislation dealing with refugees who find their way into Canada has been longstanding. In *Chieu v Canada (MCI),* [2002] 1 SCR 84, particularly at paragraphs 63 and 64, the Supreme Court of Canada recognized that such provisions are not to be considered as a matter of general recourse; but rather, essentially as a plea to the executive branch of government for special consideration not otherwise explicitly provided for in the legislation.

[21] The Federal Court of Appeal in *Legault v Canada (MCI*), 2002 FCA 125, acknowledged what the Supreme Court had written in *Chieu,* supra, and affirmed that humanitarian and

compassionate grounds are discretionary powers to be exercised by the Minister. Décary JA wrote at paragraphs 15 to 19:

> *15 Subsection 114(2) is an exceptional measure and, what's more, a discretionary one. As noted by Justice Iacobucci in Chieu, supra, at paragraph 64:*
>
> > *... an application to the Minister under s. 114(2) is essentially a plea to the executive branch for special consideration which is not even explicitly envisioned by the Act.*
>
> *16 This exceptional measure is a part of a legislative framework where "[n]on-citizens do not have a right to enter or remain in Canada", where "[i]n general, immigration is a privilege not a right" (Chieu, supra, at paragraph 57) and where "the Act treats citizens differently from permanent residents, who in turn are treated differently from Convention refugees, who are treated differently from individuals holding visas and from illegal residents. It is an important aspect of the statutory scheme that these different categories of individuals are treated differently, with appropriate adjustments to the varying rights and contexts of individuals in these groups" (Chieu, paragraph 59).*
>
> *17 Parliament chose, at subsection 114(2), to restrain the discretionary exercise to cases where there are compassionate and humanitarian considerations. Once these grounds are established, the Minister may allow the exception, but he may also choose not to allow it. That is the essence of the discretion, which must be exercised within the general context of Canadian laws and policies on immigration. The Minister can refuse to allow the exception when he is of the view that public interest reasons supersede humanitarian and compassionate ones.*
>
> *18 The Canadian government encourages immigration, as stated in the objectives of the Act at [page371] paragraphs 3(a) (attainment of demographic goals) and 3(b) (enrichment and strengthening of the cultural and social fabric of Canada). Subsection 5(2) of the Act foresees that "[a]n immigrant shall be granted landing if he ... meets the requirements of this Act and the regulations". According to subsection 6(1) [as am. by S.C. 1992, c. 49, s. 3], an immigrant may obtain the right of landing in Canada "if it is established to the satisfaction of an immigration officer that the immigrant meets the selection standards established by the regulation". Every year, the*

> *Minister, upon consulting with the provinces, must table in Parliament "the immigration plan for the next calendar year" (subsection 7(1) [as am. idem]). It is the responsibility of the immigrant to prove that he "has a right to come into Canada or that his admission would not be contrary to this Act or the regulations" (subsection 8(1)). Finally, an immigrant must, in principle, "make an application for and obtain a visa before that person appears at a port of entry" (subsection 9(1)) and "answer truthfully all questions put ... by a visa officer" (subsection 9(3)).*
>
> *19 In short, the Immigration Act and the Canadian immigration policy are founded on the idea that whoever comes to Canada with the intention of settling must be of good faith and comply to the letter with the requirements both in form and substance of the Act. Whoever enters Canada illegally contributes to falsifying the immigration plan and policy and gives himself priority over those who do respect the requirements of the Act. The Minister, who is responsible for the application of the policy and the Act, is definitely authorized to refuse the exception requested by a person who has established the existence of humanitarian and compassionate grounds, if he believes, for example, that the circumstances surrounding his entry and stay in Canada discredit him or create a precedent susceptible of encouraging illegal entry in Canada. In this sense, the Minister is at liberty to take into consideration the fact that the humanitarian and compassionate grounds that a person claims are the result of his own actions.*

[22] I conclude that the Guidelines got it right in construing how the amended provisions of section 25 of IRPA are to be interpreted. We are to abandon the old lingo and jurisprudence respecting personalized and generalized risk and focus upon the hardship to the individual. Included within the broader exercise in considering such hardship is consideration of "adverse country conditions that have a direct negative impact on the applicant".

2. DECISION OF THE OFFICER

[23] The relevant portion of the Reasons of the Officer is as follows:

> *Fear of Discrimination in Turkey*
>
> *According to CIC Inland Processing Manual #5, the definition of discrimination is: A distinction based on the personal characteristics of an individual that results in some disadvantage to that individual. Within the humanitarian and compassionate context, discrimination must be examined against a test of hardship that is unusual and undeserved; or disproportionate.*
>
> *In order for discrimination to amount to persecution it is normally repetitive, persistent and has grave personal consequences such as serious body injury, torture, mistreatment or in the denial of fundamental human rights.*
>
> *In this application, the applicant indicates that he fears extreme discrimination and ill-treatment due to his Alevi beliefs and his association with and support of Kurdish people. Counsel for the applicant states, "Based on the foregoing country condition evidence, it is our submission that the Applicant will suffer undue, undeserved, and disproportionate hardship on many fronts. Firstly, because of the human rights violations committed by state and security personnel. Secondly, because of the persecution of Kurdish nationals. And finally, because of the persecution of those who follow the Alevi faith. Although the Applicant is not Kurdish, he actively supported Kurds in his community. As such, he faced similar consequences. In our submissions, it is not undisputed that Kurds continue to fact extreme discrimination and hardships in Turkey. It is also our submission that those who sympathize with their cause also face similar treatment. Finally, the Applicant is Alevi, and experienced discrimination and harassment as a result of his faith. Once again, the reports are consistent in reporting that Alevis in Turkey continue to be persecuted. Despite promises made by the European Union to reform the treatment of Alevis in Turkey, the country has done little to commit to those promises and practices."*
>
> *The applicant has also given three examples of when he was arrested for protesting against the government in Turkey and subjected to beatings and torture while in custody and indicates that he will be targeted by the police upon his return to Turkey.*
>
> *The evidence submitted before me indicates that the applicant has been subjected to repetitive, persistent discrimination and*

> *harassment, and has suffered grave personal consequences at the hands of both the police and the general public. I find that the fears that the applicant has enumerated in this H&C application fall under the scope of 96 and/or 97 and thus are not within my jurisdiction to consider in this H&C with discrimination application.*
>
> *Counsel for the applicant indicates that the applicant demonstrates personalized risk to life and undue hardship in Turkey. I note that this application is an H&C with Discrimination application. Additionally, counsel quotes, "It is further submitted that, where allegations of risk are made in an H&C application, the elements of risk must be analyzed not only in accordance with the definition of a Person in Need of Protection. The elements of risk must also be considered as part and parcel of a consideration of undue, undeserved and disproportionate hardship. Often, it is submitted, individuals may not meet the definition of a person in need of protection. However, that does not negate the weight to be given to allegations of risk. That is, even when the refugee protection cannot be conferred, the elements of risk may weigh significantly in a "hardship" analysis." However, this H&C application was submitted post 29 June 2010 and as such is considered an H&C with Discrimination application, not an H&C with Risk application, and the appropriate tests will apply.*

[24] The Officer, instead of avoiding a determination of risk, appears to have plunged into a risk analysis and concluded, contrary to the findings of the Refugee Protection Division, that there was personalized risk to the Applicant. I repeat part of what Applicant's Counsel wrote in her Memorandum of Argument:

> *12. The Applicant submits that the Immigration Officer made these findings in order to preclude herself from having to undertake a hardship analysis based on the country conditions present in Turkey.*
>
> *13. What the Immigration Officer is stating is that the Applicant is a person who will face such high degrees of discrimination that it amounts to persecution, but refuses to determine whether someone in such a position might also face significant degree of hardship.*

> *14. Said another way, the Immigration Officer is stating that a person who is discriminated against "a little" will have their H&C case considered. Whereas a person who is discriminated against "a lot", as was found in this case, will not have their case reviewed. In our submission, such a conclusion is perverse.*

[25] Counsel for the Respondent agrees that the Reasons are not very skilfully written. He then entered into a very close reading of those Reasons and endeavoured to argue that, upon close examination, they make sense.

[26] I find that the Reasons improperly focus on risk and embark on an exercise of distinguishing personalized from generalized risk, which should not be done. The focus should be on hardship, including any adverse country conditions that have a direct negative impact on the applicant. The matter will be sent back for redetermination by a different Officer, having these principles in mind.

[27] I recognize that this case raises a new issue not considered by earlier jurisprudence and will certify the following question:

> *What is the nature of risk, if any, to be assessed with respect to humanitarian and compassionate considerations under section 25 of IRPA, as amended by the Balanced Refugee Reform Act?*

[28] Presumably, it will follow that the appeal court will consider whether the correct interpretation was followed in this case.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT'S JUDGMENT is that:

1. This application is allowed and the matter is returned for redetermination by a different Officer;

2. The following question is certified:

> *What is the nature of risk, if any, to be assessed with respect to humanitarian and compassionate considerations under section 25 of IRPA, as amended by the Balanced Refugee Reform Act?*

3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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