Federal Court  Cour fédérale

Date: 20121218

Docket: IMM-1735-12

Citation: 2012 FC 1483

Ottawa, Ontario, December 18, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

ARSHAD MUHAMMAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision made by a Minister's Delegate rejecting the applicant's Pre-Removal Risk Assessment (PRRA) application. The applicant is identified under subsection 112(3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. Therefore, his application for protection was examined under the structure set out in

section 172 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[2] For the following reasons, the application for judicial review will be allowed.

Factual Background

[3] Mr. Arshad Muhammad (the applicant) is a citizen of Pakistan and a Sunni Muslim. He arrived in Canada on August 2, 1999, at Pearson International Airport in Toronto, using a false Italian passport (Applicant's Application Record, Vol 1, Affidavit of Humera Ahsan, Exhibit "A", p 72). The applicant was interviewed at the Port of Entry by immigration officials where he declared having been a member of a Sunni party in Pakistan.

[4] Upon arriving in Canada, the applicant initially resided in Montreal (Applicant's Application Record, Vol 1, p 72). He claimed refugee status, but his claim was denied on October 16, 2001 (Applicant's Application Record, Vol 2, pp 488-501). The Board held that the applicant should be excluded from the definition of a "Convention Refugee" pursuant to Articles 1F(a) and (c) of the UNHCR *1951 Convention Relating to the Status of Refugees* (the *Refugee Convention*) because of his membership to a terrorist organization banned by the Pakistani government (Applicant's Application Record, Vol 2, pp 497 and 880). The Board based its decision on the applicant's declarations at the Port of Entry and statements he made in his Personal Information Form (PIF) about being a member of a terrorist group for a brief period of time (Applicant's Application Record, Vol 1, Affidavit of Humera Ahsan, Exhibit "A", p 73). The applicant sought judicial review of the decision on his refugee claim to this Court, but application for leave was

denied on February 6, 2002 (Applicant's Application Record, Vol 2, p 881). The applicant is the subject of a removal order which became effective on February 5, 2002 (Applicant's Application Record, Vol 2, p 514).

[5] The applicant now claims that the declarations he made at the Port of Entry and on his PIF were untrue – he claims to have been coached to say he was a member of this organization in order to have his refugee claim accepted (Applicant's Application Record, Vol 2, p 881).

[6] The applicant subsequently applied for permanent residence on humanitarian and compassionate grounds, which was refused on November 5, 2002. He submitted a first PRRA application on October 30, 2002, which was also refused on March 19, 2003 (Applicant's Application Record, Vol 2, p 881). Prior to receiving these two (2) negative decisions, the applicant allegedly wrote to his former counsel advising that he was leaving Montreal and going back to Pakistan; however, he relocated to Toronto (Tribunal Record, Vol 1, p 5).

[7] The applicant was told to attend an interview with CBSA in January 2003 but did not, claiming he was afraid he would be jailed and returned to Pakistan if he went to the interview (Applicant's Application Record, Vol 2, p 881). A warrant for his removal was issued on July 3, 2003.

[8] The applicant worked in the construction industry in Toronto until his arrest in July 2011. The applicant was apprehended a few days after the Canada Border Services Agency (CBSA) had released his name, photograph, and last known whereabouts, along with that of twenty-nine (29)

other individuals, on its website under the heading "Wanted by the CBSA" (hereafter, "CBSA's list"). The website description stated: "These individuals are the subject of an active Canada-wide warrant for removal because they are inadmissible to Canada. It has been determined that they violated human or international rights under the *Crimes Against Humanity and War Crimes Act*, or under international law." (Applicant's Application Record, Vol 2, p 881). The applicant is currently detained at the Toronto West Detention Centre.

[9] The applicant claims that his case has received a significant amount of publicity after having been on the CBSA's list and as a result of Canadian officials publicly stating that the applicant was linked to an Islamist organization involved in terrorist attacks in Pakistan. According to the applicant, this media attention is widespread in Canada, but also in Pakistan (Applicant's Application Record, Vol 2, p 882).

[10] The applicant submits that his family was threatened in Pakistan. On July 28, 2011, individuals allegedly went to the applicant's family home and threatened to kill him. On August 23, 2011, the applicant's brother was allegedly attacked and asked about the applicant's whereabouts (Applicant's Application Record, Vol 2, p 882).

[11] The applicant submitted a second PRRA application on August 3, 2011, claiming that new facts had arisen since July 2011. He submitted that he was a person in need of protection because of the publicity surrounding his case (Applicant's Application Record, Vol 1, pp 34 and 45).

[12] The following new facts were alleged in the applicant's 2011 PRRA application (Applicant's Application Record, Vol 1, p 45):

1. CBSA identified the applicant as an individual who was the subject of an active Canada-wide warrant for removal for violating human or international rights under the *Crimes Against Humanity and War Crimes Act*, and Canadian officials publicly stated that he was a member of an Islamist group that has committed terrorist acts in Pakistan;
2. These allegations have been widely disseminated in the media, in Canada and internationally, along with the applicant's photograph and personal information;
3. The applicant's family in Pakistan has received death threats and has filed a police report pertaining to death threats made against the applicant himself; and
4. On August 2, 2011, the Board member presiding over the applicant's detention review found that there was a serious possibility of risk upon the applicant's removal to Pakistan.

[13] The applicant submits that possible risks in Pakistan include extreme physical abuse while in custody (Tribunal Record, Vol 2, p 101-04), unlawful detention and extrajudicial killings (Applicant's Application Record, Vol 2, p 883). The applicant also alleges risks from sectarian groups or vigilantes.

[14] The applicant's 2011 PRRA application (Tribunal Record, Vol 2, pp 97-109) received a positive outcome: on October 7, 2011, the PRRA Officer found that the applicant would be subject to risk should he be removed to Pakistan because he would be of interest to the Pakistani authorities. The Officer assessed the applicant's PRRA on the basis that he would be perceived as a member of a terrorist organization, since the applicant now claimed that he was not actually a member of such a group and lied to Canadian authorities, thinking it would aid his refugee claim. The PRRA Officer examined objective documentary evidence identifying human rights abuses at the hands of state authorities and law enforcement. The Officer found that the applicant's case had been widely

reported in Canada and somewhat in English-language media in Pakistan, and concluded that the Pakistani authorities are likely aware of the allegations made against the applicant. Given the consensus from objective documentation on the mistreatments of Pakistani citizens at the hands of the Pakistani police and security forces, the Officer found that it was more likely than not that the applicant would face risk if returned. The PRRA Officer found that there was an internal flight alternative (IFA) with respect to the threat by vigilante groups, but not with respect to the threat by state authorities.

[15] As required by subparagraph 113(*d*)(ii) of the Act, on December 15, 2011, the CBSA produced an assessment of the nature and severity of the acts committed by the applicant and the danger that he constitutes to the security of Canada (Applicant's Application Record, Vol 2, pp 514-27). It determined that it had insufficient information to establish that the applicant is a danger to the security of Canada and that he was "complicit by association" in the acts committed by the terrorist group (Applicant's Application Record, Vol 2, p 526). The CBSA wrote that it was not established that the applicant was directly involved in the perpetration of international crimes, and that "this may not be sufficient to justify his removal from Canada should he be found at risk" (Applicant's Application Record, Vol 2, p 527).

[16] The PRRA outcome and the CBSA's security assessment were disclosed to the applicant in December 2011 for comment before being sent to the Minister's Delegate. The applicant provided written submissions on January 17, 2012 (Applicant's Application Record, Vol 2, pp 533-56). The submissions included the following arguments: (i) the Minister's Delegate should only weigh and balance the PRRA and CBSA's security assessment and not re-evaluate the risk assessment; (ii) the

Minister's Delegate should not reassess risk because he/she is not sufficiently independent to do so; (iii) the Minister's Delegate is biased in the assessment of risk because the concerned Ministers have a vested interest in the outcome of the case; (iv) the PRRA should not be reversed because it was correct.

[17] The Minister's Delegate considered both the positive PRRA and CBSA's assessment and rendered a negative decision on February 16, 2012, rejecting the applicant's PRRA (Tribunal Record, Vol 1, pp 1-27). The Minister's Delegate's decision is the one under review before this Court.

[18] On February 17, 2012, the applicant was served with a Notification for Removal Arrangements following the Minister's Delegate's decision. Removal was scheduled for February 28, 2012. This Court granted a motion for stay of removal on February 27, 2012, pending the outcome of the present application (Applicant's Application Record, Vol 2, p 888).

The Impugned Decision

[19] The Minister's Delegate rendered a decision in which it determined that the applicant would not be at risk of torture, risk to life or risk of cruel and unusual treatment or punishment should he be returned to Pakistan. Having concluded that the applicant would not be facing the risks identified in section 97 of the Act, the Minister's Delegate did not balance this finding with CBSA's assessment of the seriousness of the applicant's actions and the danger he poses to Canada (Tribunal Record, Vol 1, p 25).

[20] The Minister's Delegate examined the PRRA Officer's risk assessment and cited excerpts from it. In response to the applicant's counsel's written submissions, the Minister's Delegate noted that the PRRA Officer's risk assessment is only an opinion, not a decision, as he or she does not have the delegated authority over this matter. The Minister's Delegate also explained the staffing procedure for her position, stating that she is an officer working for CIC, not CBSA; that delegates are not personally chosen by the Minister; and that the process that named her in this position is the same as the one used to choose a PRRA officer (involving a competition, examination and interview). The Minister's Delegate indicated that this process is free from ministerial involvement (Tribunal Record, Vol 1, pp 7-9).

[21] With regards to the applicant's concerns as to bias, the Minister's Delegate affirmed that her mandate is neither to confirm nor contest the political validity of the CBSA's list. She noted that media interest in the applicant's case has diminished over time, and that lately it was the applicant's counsel himself who attracted media attention with his client's case. The Minister's Delegate indicated that her decision was based solely on her interpretation of the evidence before her and is free from political influence (Tribunal Record, Vol 1, p 9).

[22] In her assessment of risk, the Minister's Delegate did not agree that the Pakistani authorities would be as interested in a person with alleged links to a terrorist organisation as the Canadian authorities are when such a person arrives in Canada because terrorist organizations are more prevalent in Pakistan (Tribunal Record, Vol 1, p 12). She noted that although it is a known practice to have government representatives enquire with relatives as to an individual's whereabouts in Pakistan, this has not been alleged in this case. The Minister's Delegate considered that it was

reasonable to believe that, given the sheer number of supporters of the group the applicant allegedly belongs to in Pakistan, the applicant would practically have gone unnoticed were it not for CBSA's list. After consulting objective evidence, she found it reasonable to believe that the applicant would be of interest to the authorities, would be questioned and may be labelled as a member of a terrorist group and suffer discrimination. She noted that there was no report of ill treatment by the authorities in the evidence she consulted, but that it was not "ruled out" (Tribunal Record, Vol 1, p 19). The Minister's Delegate found that, although the applicant could be subjected to questioning upon arrival, he might be detained if he mentioned his allegiance to the group or was recognized from the media reports. Although there are gross violations of human rights in Pakistan, this did not constitute sufficient grounds for determining that the applicant faced a danger of being tortured (Tribunal Record, Vol 1, p 21).

[23] With regards to the risk from non-state actors, the Minister's Delegate found it hard to believe that with only a photograph, date of birth and name, the applicant's family was found and threatened (Tribunal Record, Vol 1, p 23).

[24] The Minister's Delegate concluded that former members of the group to which the applicant allegedly belongs are not currently targeted by authorities in Pakistan, that the evidence does not show that the applicant occupied a high rank in the group, or that he has maintained links with it. Although discrimination, arrest and questioning upon return to Pakistan are likely in the applicant's case, the Minister's Delegate concluded that the applicant did not establish a connection between him being recognized in the media reports and risks as described in section 97 of the Act.

[25] Having made a negative determination on risks, the Minister's Delegate did not engage in a balancing exercise of the PRRA and CBSA's security assessment and denied the applicant's application for protection (Tribunal Record, Vol 1, p 26).

Issues

[26] Several issues are raised in the present case:

1. Is the affidavit of Jillan Sadek filed by the respondent admissible?
2. Did the Minister's Delegate breach the principles of natural justice by relying on extrinsic evidence that was not disclosed to the applicant?
3. Did the Minister's Delegate err in her assessment of the evidence?
4. Did the Minister's Delegate have the jurisdiction to override the PRRA Officer's conclusions with respect to risk of return to torture?
5. Did the Minister's Delegate lack independence to render a decision in relation to risk of return to torture?
6. Was there an apprehension of bias with respect to the Minister's Delegate due to the direct involvement of the Minister of Citizenship and Immigration in the case and the close proximity of the decision-maker to the Minister?

Statutory Provisions

[27] The relevant statutory provisions are included in Annex to the judgment. The statutory scheme particular to this case is set out in both the Act and Regulations.

Standard of Review

[28] The parties do not disagree on the proper standard of review to apply to each issue raised in the present case. Issues that pertain to procedural fairness and natural justice are reviewable on a standard of correctness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]; *Geza v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124, [2006] 4 FCR 377; *Benitez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 461 at para 44, [2007] 1 FCR 107). Therefore, the issues of whether the Minister's Delegate breached procedural fairness by

relying on extrinsic evidence and lack of independence are reviewable on a standard of correctness. Similarly, the issue of whether or not the Minister's Delegate could re-assess the PRRA is a question of jurisdiction involving the interpretation of the Act and its Regulations, and is reviewable on a standard of correctness (*Dunsmuir*, above, at paras 50 and 59). The parties agree that the standard of review applicable to the Minister's Delegate's assessment of the evidence is reasonableness (*Dunsmuir*, above; *John v Canada (Minister of Citizenship and Immigration)*, 2012 FC 688, [2012] FCJ No 657 (QL)).

Analysis

[29] As a preliminary comment, the Court finds it useful to recall the process involved for removal in cases like the one at bar, where the applicant is identified under subsection 112(3) of the Act. According to paragraph 112(3)(*c*) of the Act, a person whose refugee claim is rejected on the basis of section F of Article 1 of the *Refugee Convention*, as is the case with the applicant, cannot obtain refugee protection.

[30] As such, a PRRA for someone described in subsection 112(3) of the Act will only consider factors set out in section 97 of the Act, and not section 96. Paragraph 113(*d*) of the Act sets out the factors to consider for persons identified under subsection 112(3). In this case, the factors set out in section 97 must be considered along with the nature and severity of acts committed by the applicant or the danger he constitutes for Canada's security (subparagraph 113(*d*)(ii) of the Act).

[31] Furthermore, pursuant to paragraph 114(1)(*b*) of the Act, a positive PRRA decision in such a case would only result in staying the removal order against that person, not refugee protection.

Subsections 172(1) and (2) of the Regulations provide that before allowing or rejecting the application of someone identified in subsection 112(3) of the Act, the Minister (or his delegate) shall consider the written assessment on the section 97 factors (the PRRA), a written assessment on the factors set out in subparagraph 113(*d*)(i) or (ii), whichever the case may be (in this case, CBSA's assessment on nature and severity of the acts and danger to Canada), and any written response from the applicant. This is the process that was undertaken in the case at bar.

[32] The Court now turns to the issues raised by the parties.

First Issue: Is the affidavit of Jillan Sadek admissible?

[33] As a general principle, hearsay is a statement provided for the truth of its content, but which cannot be tested through cross-examination. It is presumed inadmissible, unless it is shown to be necessary and reliable (*R v Khelawon*, 2006 SCC 57 at paras 2-3 and 35, [2006] 2 SCR 787).

[34] In the present case, the respondent submitted an affidavit by Jillan Sadek, who is not the Minister's Delegate who rendered the final PRRA decision in the applicant's case. Ms. Sadek, Director of Case Review with Citizenship and Immigration Canada, provided evidence of her knowledge of staffing procedures for the Minister's Delegate's position (Director, Case Determination) and attached as Exhibit "A" to her affidavit a Public Service Staffing Advertisements and Notifications which outlines the necessary qualifications for the said position. She also provided questions and answers, asked and responded to by email, between herself and the Minister's Delegate who decided on the applicant's PRRA. Both parties agree that this evidence is hearsay. The Minister's Delegate did not swear the affidavit herself because she was on bed rest due

to her pregnancy when the affidavit was sworn (August 10, 2012), on vacation from August 16, 2012 to August 31, 2012, and expecting a child in September and thus was expected to be on maternity leave.

Applicant's Position

[35] The applicant submits that the affidavit of Ms. Sadek, filed by the respondent on August 14, 2012, contains hearsay and is therefore inadmissible. The applicant submits that, if the Minister's Delegate herself had sworn the affidavit, he would have cross-examined her on certain answers in order to obtain further evidence on the structure of the Minister's Delegate's office, the assignment of files and how work is distributed in order to establish whether there is an independent, impartial system in place. Although the respondent agrees that the affidavit contains hearsay, the respondent contends that the affidavit is necessary and reliable and thus should be admissible.

Analysis

[36] The criterion for necessity were set out in *R v F (WJ) (WJF)*, [1999] 3 SCR 569, 178 DLR (4th) 53. At paragraph 36, the Court stated that necessity "is a matter of whether, on the facts before the trial judge, direct evidence is not forthcoming with reasonable effort" and that "reasons for necessity may be diverse". In the present case, the Minister's Delegate is unavailable for medical reasons. In *Farzam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1432, 143 ACWS (3d) 308, the person susceptible of giving evidence was in another country and unwilling to give evidence or participate in the procedures in any way. The Court was not satisfied that reasonable efforts were made to obtain direct evidence.

[37] In the present case, the Minister's Delegate was not unwilling, but unavailable for medical reasons, holidays, and maternity leave. The Court notes that the Certified Tribunal Record was produced on July 23, 2012, thus reducing the window of time during which the respondent could reasonably file an affidavit. The Court also notes that the Minister's Delegate was away in August on bed rest. The affidavit presents relevant and reliable information, consistent with previous statements made by the Minister's Delegate prior to litigation. While the applicant could have cross-examined the affiant on the matters for which she had personal knowledge – namely, the accuracy of the reproduced answers, as well as organizational structure and case assignment – the Court notes that the applicant chose not to do so. The case of *Ka'a'Gee Tu First Nation v Canada (Attorney General)*, 2012 FC 297 at para 85, [2012] FCJ No. 327 (QL), cited by the applicant, states that the Federal Court "may strike all or portions of affidavits in circumstances where they are abusive, clearly irrelevant, or contain opinion, argument or legal conclusion". The Court is of the view that, in the circumstances, the respondent's affidavit is neither abusive nor irrelevant, and does not contain opinions or arguments.

[38] Therefore, it is difficult for the Court to agree with the applicant that the filing of this affidavit was prejudicial. In light of the Minister's Delegate's unavailability, the relevance and reliability of the information presented in the affidavit (as corroborated by Exhibit "A" and the Minister's Delegate's previous similar statements), the Court finds the affidavit admissible.

Second Issue: Did the Minister's Delegate breach the principles of natural justice by relying on extrinsic evidence that was not disclosed to the applicant?

Applicant's Position

[39] The applicant submits that the Minister's Delegate breached the principles of natural justice by conducting her own research into the issue of risk of return to torture and relying on extrinsic documents. The applicant alleges that this is a breach of natural justice for two (2) reasons: (i) because the Minister's Delegate is not entitled to do her own research; and (ii) because the said research did not involve recent, generally available documents which the applicant would reasonably have assumed would be considered. The applicant submits that at the first stage of the PRRA, the PRRA officer can consider generally available country condition documents that were accessible at the time submissions were made without disclosing them to the applicant (the test outlined in *Mancia v Canada (Minister of Citizenship and Immigration)* (CA), [1998] 3 FC 461, 161 DLR (4th) 488 [*Mancia*]). However, the applicant alleges that, because the Minister's Delegate is undertaking the "second step" of the PRRA process for applicants described in subsection 112(3) of the Act, she was not entitled to do further research without disclosing all of it.

[40] The applicant argues that because section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*] is engaged, the case is akin to *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3 [*Suresh*] in that full disclosure to the applicant was required, and the Minister's Delegate had to base her decision solely on the disclosed record. The applicant submits that the *Mancia* test does not apply in the case at bar, but rather a full disclosure pursuant to *Suresh*, above, is required. Alternatively, the applicant submits that even if the Minister's Delegate could undertake her own research without disclosing all documents, the

particular documents she relied on would not be subject to the disclosure exemption outlined in *Mancia*, above, because they are not general country conditions evidence and were not part of the IRB documentation package at the time of the decision.

Respondent's Position

[41] Citing *Placide v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1056, 359 FTR 217 [*Placide*], the respondent submits that the Minister's Delegate is entitled to conduct her own research and to consult publicly available documents that have not been disclosed to the applicant. The respondent submits that the applicant himself in his own PRRA submissions referred to documents similar to and published in the same year as the ones with which he now takes issue. The respondent further notes that the documents relied upon by the Minister's Delegate are publicly available from the UNHCR website. The respondent also submits that the disclosure requirements under *Suresh*, above, do not apply in this case because in *Suresh*, the information required to be disclosed did not pertain to country conditions and was not publicly available – rather, the documents were directly relevant to Mr. Suresh personally. The respondent also adds that it is inaccurate to say that the Minister's Delegate had to make full disclosure in *Suresh*, above. Indeed, the Minister's Delegate was under no duty to disclose a memorandum that contained materials that were generally known to the applicant and information that was publicly available (*Suresh v Canada (Minister of Citizenship and Immigration)* (1999), 173 FTR 1, 50 Imm LR (2d) 183 (FCTD); *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3).

Analysis

[42] As this Court has already stated in *Placide*, above, a Minister's Delegate deciding on an application for protection is entitled to conduct her own research. She is entitled to do so because she is not engaging in a review of the PRRA Officer's assessment, and need not limit herself to the information that was considered at that level. Furthermore, the documents concerned in the present case are quite different than the ones at issue in *Suresh*, above. They are publicly available documents pertaining to country conditions and do not specifically and personally relate to the applicant. Therefore, the decision in *Mancia*, above, applies to the present case. As indicated in *Guzman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 838, 131 ACWS (3d) 1124, and cited in *Placide*, above at para 39, IRB documents are not extrinsic documents. They are from a public source and are available online and at IRB documentation centres.

[43] In this case, the applicant objects to the use of three (3) documents: (i) "Project Thread" document, PAK42394.E, dated March 3, 2004; (ii); United States Department of State Report, *July-December, 2010 International Religious Freedom Report – Pakistan*, dated September 13, 2011 [Religious Freedom Report]; and (iii) Jamestown Foundation Report, *Islamist Reaction to the NATO Airstrike on the Pakistani Border*, dated December 9, 2011 (Tribunal Record, Vol 1, pp 68-94). The documents are available online through the Immigration and Refugee Board of Canada and on the UNHCR's Refworld website. However, the Court notes that the applicant himself has used a document from that same website and same year in his PRRA submissions (Tribunal Record, Vol 2, pp 266-67; Vol 3, pp 348-62). It is therefore difficult to establish that the applicant was not cognizant of such documents. While the weight that should be attributed to these documents is a

distinct matter that will be examined in the following section of the present judgment, the question here is whether they should have been disclosed.

[44] Having regard to the criteria outlined in *Mancia*, above, the Court finds no error in the Minister's Delegate's use of these documents without prior disclosure. The applicant is at the stage of a second PRRA application, and thus has experience with the general process of decision-makers relying on such documents, having already undergone the refugee application process as well as another PRRA (*Mancia*, above, at para 25). The documents are available to the public, are general and neutral because they do not refer to the applicant personally, nor were they prepared specifically for his case (*Mancia*, above, at para 26). Finally, as was the case in *Mancia*, above, at para 24, the Regulations do not impose a duty upon the Minister's Delegate to disclose the information on which she relies. The sole procedural right afforded to the applicant under subsection 172(1) of the Regulations is to make written submissions which must be considered by the Minister's Delegate. While the Regulations do not expressly allow the Minister's Delegate to conduct her independent research, neither do the provisions pertaining to the PRRA officer in a regular (i.e., non-subsection 112(3)) case (sections 161 and 162 of the Regulations).

[45] The applicant references a number of cases which are distinguishable from the one at bar. For instance, in *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, [2007] 3 FCR 400, the PRRA officer had used many documents from the Internet which were not available among the standard documents found in the IRB documentation centres, and in particular, a document from the Wikipedia website. In the present case, all documents used were available from

IRB documentation centres or the UNHCR's website, Refworld. The quality and reliability of these documents cannot be compared to an article sourced from Wikipedia.

[46] Also, in *Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1359, 2011 FCJ No 1659 (QL) [*Zheng*], the applicant was before the Refugee Board for the first time, a situation where all information relied on must be disclosed to the applicant. The Board had used a document that had been removed from the national information request package because its conclusions were no longer accurate, and replaced with a different, more accurate and recent document. The Court had considered this a breach of procedural fairness. In the present case, there is no indication that the documents relied on by the PRRA Officer are no longer accurate. The present situation is not one where an old version of a document is replaced with a newer, significantly different version that establishes the earlier version as being erroneous. The case of *Zheng*, above, is a case where the document used was superseded by another one and is therefore clearly distinguishable from the case at bar.

[47] Nothing in the jurisprudence allows the Court to conclude that all documents must be disclosed in a situation like the applicant's. The Court finds that there was no breach in procedural fairness because the Minister's Delegate engaged in her own research and did not disclose documents that were general in nature and publicly available from sources used by the applicant himself (the IRB documentation centres and the UNHCR's Refworld website). The Court reiterates that the burden of demonstrating a breach in procedural fairness lies with the applicant (*Wang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 833, 124 ACWS (3d) 776). The applicant has not discharged himself of that burden.

Third Issue: Did the Minister's Delegate err in her assessment of the evidence?

Applicant's Position

[48] The applicant submits that it is an error for a tribunal to engage in a selective reading of the documentary evidence (citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 83 ACWS (3d) 264). He argues that the Minister's Delegate in this case ignored an important amount of objective documentation supporting the fact that individuals held in custody are tortured and mistreated, only to favor a few selective and irrelevant excerpts that supported her negative conclusion on risks. The applicant cites several recent documents that were before the Minister's Delegate but were ignored and claims that the Minister's Delegate did not provide an analysis as to why she preferred the documents she chose over the other evidence before her. The applicant reiterates that section 7 of the *Charter* is engaged in the present case because he faces the possibility of deportation despite the presence of risk of torture or mistreatments.

Respondent's Position

[49] The respondent submits that the Minister's Delegate's consideration of the evidence was reasonable and that the Minister's Delegate did not ignore documents, but weighed them against the totality of the evidence. The respondent notes that a decision-maker is not required to refer to all items of evidence before him or her (citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708). The respondent submits that the Minister's Delegate's decision is based on the lack of evidence of the use of torture and abusive techniques with persons in situations similar to that of the applicant and that the applicant failed to establish that his profile was such that he would be of particular interest

to the Pakistani authorities. The respondent claims that the documents cited by the Minister's Delegate were particularly relevant to the applicant's personal circumstances, and that the Minister's Delegate preferred more specific evidence, which she was entitled to do.

[50] The respondent submits that the Minister's Delegate was aware of the situation in Pakistan with regards to human rights, but a poor human rights record is not sufficient – a connection must be established between the applicant and these conditions (*Ventura v Canada (Minister of Citizenship and Immigration)*, 2010 FC 871 at paras 24-25, 90 Imm LR (3d) 264) and the evidence does not support a finding that detainees of the applicant's profile would be subject to abuses.

Analysis

[51] The Court recalls that the standard of review for the present issue is that of reasonableness, deference being owed to a decision-maker for the evaluation of the evidence. However, for the reasons that follow, the Court is of the view that the Minister's Delegate's assessment of the documentary evidence before her was unreasonable.

[52] The Minister's Delegate referred to a Country of Origin Information Report from the United Kingdom Home Office, dated September 29, 2011 (Tribunal Record, Vol 1, pp 52-67), in which it is stated that failed refugees are detained and interviewed if they "are alleged to have violated any law in respect of travel/visit to a foreign country, e.g. traveled on fake travel documents" (Tribunal Record, Vol 1, p 19). This is applicable to the applicant, having traveled with a false Italian passport. The same document stated that all deportations are inquired into, and that "if a failed applicant for refugee status is handed over by the country concerned to Pakistani authorities,

Pakistani FIA/relevant authorities would question such a person." (Tribunal Record, Vol 1, p 20). Finally, that same report states that "[i]f a person's refugee status gets a lot of media publicity, the government will inquire into it." (Tribunal Record, Vol 1, p 21). From this document, the Minister's Delegate concluded that detention and questioning at arrival were reasonably possible if the applicant was recognized from the media reports.

[53] The Minister's Delegate consulted another document dealing with the "Project Thread", PAK42394.E, dated March 3, 2004 (Tribunal Record, Vol 1, pp 68-71). The applicant takes issue with the use of this document, which is older (the events having occurred in 2003) but somewhat relevant, as it illustrates what happens when the Canadian government labels Pakistani citizens as suspected terrorists, and returns these individuals to Pakistan – a situation very similar to the one at bar. From this document, the Minister's Delegate concluded that the applicant would be of interest to the authorities, that he would be questioned, and that he might be labeled as a member of a terrorist organization. She also concluded that he might be discriminated against, and that ill treatment by the authorities was not "ruled out" (Tribunal Record, Vol 1, p 19)

[54] The Minister's Delegate then cites excerpts from the PRRA Officer's report that illustrate the problems with torture and mistreatment of individuals by state authorities while in custody (Tribunal Record, Vol 1, pp 21-23). She then states that she has researched information pertaining to the particular treatment of individuals with links to the same group as the applicant, and cites (i) a September 13, 2011 report by the US Department of State (*July-December, 2010 International Religious Freedom Report – Pakistan*; Tribunal Record, Vol 1, pp 72-91) [Religious Freedom Report] and (ii) a Jamestown Foundation Report, dated December 9, 2011 (*Islamist Reaction to the*

NATO Airstrike on the Pakistani Border; Tribunal Record, Vol 1, pp 92-94). The applicant takes issue with these two (2) reports, arguing that they are irrelevant.

[55] The Jamestown Foundation Report recounts reactions from Islamist groups and Pakistani authorities following a hit by NATO air strike on two (2) Pakistani Army check posts in November 2011. Following this air strike, the group with which the applicant is linked organized anti-NATO protests in various cities. The Minister's Delegate relies on this document because it does not expressly mention that there were detentions or ill treatments of the protesters. However, the Court notes that the scope of this article was cross-border militancy and not human rights or treatment of protesting individuals. Given the nature of this report, the Court remains unconvinced that the article would have mentioned detention or ill treatment even if they had occurred. The Minister's Delegate does not provide any distinction or any explanation in that respect and there is no information to the contrary.

[56] The Religious Freedom Report contains information on blasphemy laws and other discriminatory legislation. It indicates that the government is taking some steps to improve religious freedom, and that 95% of the population is Muslim (of which 75% are Sunni, like the applicant, and 25% are Shia). The report mainly focuses on mistreatments that religious minorities endure. It does speak of religious prisoners and detainees, indicating that "[n]on-Muslim prisoners generally were accorded poorer facilities than Muslim inmates" (Tribunal Record, Vol 1, p 81). When noting attacks on holy places of religious minorities, the report did indicate that no arrests had been made yet (indicating that this report might include this type of information if it was available; Tribunal Record, Vol 1, p 83). However, the scope of the report is aimed at religious freedoms and various

mistreatments that religious minorities suffer in Pakistan. The applicant is not a member of a religious minority – he is a Sunni Muslim. Furthermore, while the document might report on arrests, it does not report on treatment within prisons or otherwise at the hands of authorities.

[57] The Minister's Delegate uses these reports to support the notion that members of the applicant's group are not necessarily arrested, tortured or subjected to ill treatment by the authorities because the said reports are silent on the subject. The Court takes issue with the use by the Minister's Delegate of the Jamestown Foundation Report and the Religious Freedom Report: these two (2) documents, which are narrow in scope, are weak in comparison to all the other documentary evidence pointing to mistreatment and torture while detained.

[58] The objective country conditions evidence clearly demonstrates poor prison conditions, torture and ill treatment by the police and security forces for individuals in custody. However, the Court is cognizant that this is insufficient: it remains incumbent on the applicant to show how this evidence relates to him. The applicant was reported in the media, including mid-eastern media, as being linked to a terrorist organization. The Minister's Delegate states that the applicant would have gone unnoticed in Pakistan, given the sheer number of supporters of the applicant's group, were it not for CBSA's list. It follows that the Minister's Delegate believes that the applicant will not go unnoticed. This is therefore the profile of the applicant – a failed refugee claimant who will be returned to Pakistan by Canadian authorities, who is said to be linked with a terrorist organization, and who will not go unnoticed.

[59] The Minister's Delegate uses the Religious Freedom Report and the Jamestown Foundation Report to discount recent information about mistreatments at the hands of officials, police officers and security forces towards detainees. The Court finds that the reliance on absence of information in two (2) very narrow documents to rebut the information that is present in a significant amount of other recent and relevant documents is, in these circumstances, unreasonable.

[60] The Minister's Delegate also considered recent information that states that all deportations are inquired into. It logically follows that Pakistani authorities would inquire as to the reason for the applicant's deportation. The Minister's Delegate concluded that, should the Pakistani authorities discover the applicant's link to the banned group, there was a reasonable possibility that he would be detained and questioned, but nonetheless concluded that there was no risk. Given the evidence of mistreatment of persons in custody, the Court finds that the Minister's Delegate's conclusion that the applicant would not likely face risk of torture or mistreatments is unreasonable and contradictory to her analysis.

[61] The Minister's Delegate recognized a risk of questioning and possible detention upon arrival in Pakistan. She was in possession of the initial PRRA, which had concluded to the presence of risk and extremely difficult conditions for detained persons. Given the use of insufficient documentation to justify her conclusions which were contrary to the initial PRRA assessment, and contrary to the bulk of country conditions evidence, the Court finds that the Minister's Delegate's treatment of the evidence was unreasonable. Furthermore, the Minister's Delegate's statement that ill treatment was "not ruled out" raises a doubt with regards to the reasonableness of her assessment. While she is not required to show that ill treatment is "ruled out" in order to dismiss a PRRA, the test being whether

it is more likely than not that the applicant would experience ill treatment (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1, [2005] 3 FCR 239), the Minister's Delegate fails to adequately justify, on the basis of the evidence, why she concludes that the applicant will likely not be at risk. The Court's intervention is therefore warranted.

[62] The Court's conclusion on this issue is determinative of the application for judicial review and there is no need to address the other issues.

The Proposed Questions for Certification

[63] The applicant has proposed three (3) questions for certification in the present application:

1. Is the Minister's Delegate required to provide full disclosure to the PRRA applicant of all material considered by him/her prior to rendering a decision on the application for protection made pursuant to section 112(3) and 113(*d*) of the Act?
2. Can the Minister's Delegate, when assessing an application for protection pursuant to sections 112(3) and 113(*d*) of the Act, go behind the conclusion of the PRRA Officer that the applicant is at risk pursuant to section 97 and make a finding that the applicant is not at risk?
3. Does the Minister's Delegate possess sufficient independence and impartiality to render decisions pursuant to section 112(3) and 113(*d*) when section 7 *Charter* rights are engaged?

[64] Given the Court's finding that the Minister's Delegate's decision was unreasonable, and the ensuing consequence that this application for judicial review will be granted, none of the proposed questions are determinative of the application (*Liyanagamage v Canada (Secretary of State)* (1994), 176 NR 4, 51 ACWS (3d) 910; *Zazai v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89 at para 12, 318 NR 365). Therefore, the Court will not certify the proposed questions in light of its conclusion on the reasonability of the Minister's Delegate's decision.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed. The Minister's Delegate's decision dated February 16, 2012 is set aside and the matter is remitted back to a different Minister's Delegate for re-determination. No question is certified.

"Richard Boivin"

Judge

Annex

The following provisions of the *Immigration and Refugee Protection Act* are relevant to the present case:

OBJECTIVES AND APPLICATION	OBJET DE LA LOI
Objectives — immigration	Objet en matière d'immigration
3. (1) The objectives of this Act with respect to immigration are	**3.** (1) En matière d'immigration, la présente loi a pour objet :
…	[…]
(*h*) to protect public health and safety and to maintain the security of Canadian society;	*h*) de protéger la santé et la sécurité publiques et de garantir la sécurité de la société canadienne;
(*i*) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and	*i*) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;
…	[…]
Objectives — refugees	Objet relatif aux réfugiés
(2) The objectives of this Act with respect to refugees are	(2) S'agissant des réfugiés, la présente loi a pour objet :
…	[…]
(*h*) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.	*h*) de promouvoir, à l'échelle internationale, la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.
Application	Interprétation et mise en œuvre
(3) This Act is to be construed and applied in a manner that	(3) L'interprétation et la mise en œuvre de la présente loi doivent avoir pour effet :
(*a*) furthers the domestic and international interests of Canada;	*a*) de promouvoir les intérêts du Canada sur les plans intérieur et international;

…

(*f*) complies with international human rights instruments to which Canada is signatory.

ENABLING AUTHORITY

…

Designation of officers

6. (1) The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated.

Delegation of powers

(2) Anything that may be done by the Minister under this Act may be done by a person that the Minister authorizes in writing, without proof of the authenticity of the authorization

PART 2
REFUGEE PROTECTION

DIVISION 1

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION

…

Person in need of protection

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

[…]

f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.

MISE EN APPLICATION

[…]

Désignation des agents

6. (1) Le ministre désigne, individuellement ou par catégorie, les personnes qu'il charge, à titre d'agent, de l'application de tout ou partie des dispositions de la présente loi et précise les attributions attachées à leurs fonctions.

Délégation

(2) Le ministre peut déléguer, par écrit, les attributions qui lui sont conférées par la présente loi et il n'est pas nécessaire de prouver l'authenticité de la délégation.

PARTIE 2
PROTECTION DES RÉFUGIÉS

SECTION 1

NOTIONS D'ASILE, DE REFUGIE ET DE PERSONNE A PROTEGER

[…]

Personne à protéger

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.

Person in need of protection

Personne à protéger

(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.

Exclusion – Refugee Convention

Exclusion par application de la Convention sur les réfugiés

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

…

[…]

DIVISION 3
PRE-REMOVAL RISK ASSESSMENT

Protection

Application for protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Exception

(2) Despite subsection (1), a person may not apply for protection if

(*a*) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;

(*b*) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;

(*b.1*) subject to subsection (2.1), less than 12 months have passed since their claim for refugee protection was last rejected — unless it was deemed to be rejected under subsection 109(3) or was rejected on the basis of section E or F of Article 1 of the Refugee Convention — or determined to be withdrawn or abandoned by the Refugee Protection Division or the Refugee Appeal Division;

(*c*) subject to subsection (2.1), less than 12 months, or, in the case of a person who is a national of a country that is designated under subsection 109.1(1), less than 36 months, have passed since their last application for protection was rejected or determined to be withdrawn or abandoned by the Refugee Protection Division or the Minister.

SECTION 3
EXAMEN DES RISQUES AVANT RENVOI

Protection

Demande de protection

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

Exception

(2) Elle n'est pas admise à demander la protection dans les cas suivants :

a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la Loi sur l'extradition;

b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);

b.1) sous réserve du paragraphe (2.1), moins de douze mois se sont écoulés depuis le dernier rejet de sa demande d'asile — sauf s'il s'agit d'un rejet prévu au paragraphe 109(3) ou d'un rejet pour un motif prévu à la section E ou F de l'article premier de la Convention — ou le dernier prononcé du désistement ou du retrait de la demande par la Section de la protection des réfugiés ou la Section d'appel des réfugiés;

c) sous réserve du paragraphe (2.1), moins de douze mois ou, dans le cas d'un ressortissant d'un pays qui fait l'objet de la désignation visée au paragraphe 109.1(1), moins de 36 mois se sont écoulés depuis le rejet de sa dernière demande de protection ou le prononcé du retrait ou du désistement de cette demande par la Section de la protection des réfugiés ou le ministre.

Exemption

(2.1) The Minister may exempt from the application of paragraph (2)(*b.1*) or (*c*)

(*a*) the nationals — or, in the case of persons who do not have a country of nationality, the former habitual residents — of a country;

(*b*) the nationals or former habitual residents of a country who, before they left the country, lived in a given part of that country; and

(*c*) a class of nationals or former habitual residents of a country.

Application

(2.2) However, an exemption made under subsection (2.1) does not apply to persons in respect of whom, after the day on which the exemption comes into force, a decision is made respecting their claim for refugee protection by the Refugee Protection Division or, if an appeal is made, by the Refugee Appeal Division.

Regulations

(2.3) The regulations may govern any matter relating to the application of subsection (2.1) or (2.2) and may include provisions establishing the criteria to be considered when an exemption is made.

Restriction

(3) Refugee protection may not result from an application for protection if the person

(*a*) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a

Exemption

(2.1) Le ministre peut exempter de l'application des alinéas (2)*b.1*) ou *c*) :

a) les ressortissants d'un pays ou, dans le cas de personnes qui n'ont pas de nationalité, celles qui y avaient leur résidence habituelle;

b) ceux de tels ressortissants ou personnes qui, avant leur départ du pays, en habitaient une partie donnée;

c) toute catégorie de ressortissants ou de personnes visés à l'alinéa a).

Application

(2.2) Toutefois, l'exemption ne s'applique pas aux personnes dont la demande d'asile a fait l'objet d'une décision par la Section de la protection des réfugiées ou, en cas d'appel, par la Section d'appel des réfugiés après l'entrée en vigueur de l'exemption.

Règlements

(2.3) Les règlements régissent l'application des paragraphes (2.1) et (2.2) et prévoient notamment les critères à prendre en compte en vue de l'exemption.

Restriction

(3) L'asile ne peut être conféré au demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au

conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

(*c*) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

(*d*) is named in a certificate referred to in subsection 77(1).

d) il est nommé au certificat visé au paragraphe 77(1).

Consideration of application

Examen de la demande

113. Consideration of an application for protection shall be as follows:

113. Il est disposé de la demande comme il suit :

(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en

the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.
Effect of decision	Effet de la décision
114. (1) A decision to allow the application for protection has	**114.** (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.
(*a*) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and	
(*b*) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.	
…	[…]

The following provisions from the *Immigration and Refugee Protection Regulations*, SOR/2002-227, are also relevant:

DIVISION 4 PRE-REMOVAL RISK ASSESSMENT	SECTION 4 EXAMEN DES RISQUES AVANT RENVOI
…	[…]
Applicant described in s. 112(3) of the Act	Demandeur visé au paragraphe 112(3) de la Loi
172. (1) Before making a decision to allow or reject the application of an applicant described in subsection 112(3) of the Act, the Minister shall consider the assessments referred to in subsection (2) and any written response of the applicant to the assessments that is received within 15 days after the applicant is given the assessments.	**172.** (1) Avant de prendre sa décision accueillant ou rejetant la demande de protection du demandeur visé au paragraphe 112(3) de la Loi, le ministre tient compte des évaluations visées au paragraphe (2) et de toute réplique écrite du demandeur à l'égard de ces évaluations, reçue dans les quinze jours suivant la réception de celles-ci.

Assessments

(2) The following assessments shall be given to the applicant:

(*a*) a written assessment on the basis of the factors set out in section 97 of the Act; and

(*b*) a written assessment on the basis of the factors set out in subparagraph 113(*d*)(i) or (ii) of the Act, as the case may be.

Certificate

(2.1) Despite subsection (2), no assessments shall be given to an applicant who is named in a certificate until a judge under section 78 of the Act determines whether the certificate is reasonable.

When assessments given

(3) The assessments are given to an applicant when they are given by hand to the applicant or, if sent by mail, are deemed to be given to an applicant seven days after the day on which they are sent to the last address that the applicant provided to the Department.

Applicant not described in s. 97 of the Act

(4) Despite subsections (1) to (3), if the Minister decides on the basis of the factors set out in section 97 of the Act that the applicant is not described in that section,

(*a*) no written assessment on the basis of the factors set out in subparagraph 113(*d*)(i) or (ii) of the Act need be made; and

(*b*) the application is rejected.

…

Évaluations

(2) Les évaluations suivantes sont fournies au demandeur :

a) une évaluation écrite au regard des éléments mentionnés à l'article 97 de la Loi;

b) une évaluation écrite au regard des éléments mentionnés aux sous-alinéas 113*d*)(i) ou (ii) de la Loi, selon le cas.

Certificat

(2.1) Malgré le paragraphe (2), aucune évaluation n'est fournie au demandeur qui fait l'objet d'un certificat tant que le juge n'a pas décidé du caractère raisonnable de celui-ci en vertu de l'article 78 de la Loi.

Moment de la réception

(3) Les évaluations sont fournies soit par remise en personne, soit par courrier, auquel cas elles sont réputées avoir été fournies à l'expiration d'un délai de sept jours suivant leur envoi à la dernière adresse communiquée au ministère par le demandeur.

Demandeur non visé à l'article 97 de la Loi

(4) Malgré les paragraphes (1) à (3), si le ministre conclut, sur la base des éléments mentionnés à l'article 97 de la Loi, que le demandeur n'est pas visé par cet article :

a) il n'est pas nécessaire de faire d'évaluation au regard des éléments mentionnés aux sous-alinéas 113*d*)(i) ou (ii) de la Loi;

b) la demande de protection est rejetée.

[…]

The following provisions from Article 1 of the *UNHCR 1951 Convention Relating to the Status of Refugees*, July 28, 1951, Can TS 1969 No 6, 189 UNTS 137 art 33 are also relevant to the present case:

Article 1. - Definition of the term "refugee"	Article premier. – Définition du terme « réfugié »
…	[…]
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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1735-12
STYLE OF CAUSE:	Arshad Munammad v MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 2, 2012
REASONS FOR JUDGMENT:	BOIVIN J.
DATED:	December 18, 2012

APPEARANCES:

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