Federal Court  Cour fédérale

Date: 20130411

Docket: IMM-8558-12

Citation: 2013 FC 367

Toronto, Ontario, April 11, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DAWY'S RAUL GAMBOA MICOLTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Refugee Protection Division's [RPD] finding that there were serious reasons for considering that the Applicant committed burglary of habitation was based on objective evidence in the form of police reports, an FBI records search, a bail bond, and a warrant for his arrest.

[2] The RPD could reasonably find that the Minister met the evidentiary threshold for Article 1F(*b*) of the United Nations Convention Relating to the Status of Refugees [Convention] and could

reasonably conclude that there were serious reasons for considering that the Applicant committed burglary of habitation in the US.

[3] The maximum proscribed penalty for break and entry or burglary is quite high. Under section 348 of the *Criminal Code*, RSC, 1985, c C-46 [*Code*], a person is liable to life imprisonment if he breaks and enters a dwelling-house and commits therein an indictable offence. Theft of property, the value of which exceeds $5,000 CDN, is an indictable offence under section 334 of the *Code*. A similar penalty applies under the Texas Penal Code [TPC]. Article 30.02(3) of the TPC prohibits entering, without an owner's consent, a habitation and committing theft. Under Article 30.02(*c*)(2), an offence under Article 30.02 is a felony of the second degree if committed in a habitation. Section 12.33 of the TPC states that individuals adjudged guilty a felony of the second degree shall be punished by imprisonment for any term of not more than 20 years or less than 2 years.

[4] In assessing the penalty prescribed for burglary, the RPD could reasonably consider the maximum sentences under both the *Code* and the TPC rather than speculate on whether a more lenient sentence would have been prescribed. *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404, [2009] 4 FCR 164 considered reasonable a finding that a drug trafficking conviction was a serious non-political crime by referring to maximum penalty for drug trafficking under the *Controlled Drugs and Substances Act*, SC 1996, c 19, s 5 [CDSA], even though the applicant had received a more lenient sentence in the US (at para 50 and 54). The Federal Court of Appeal's reasoning is instructive: "There are many reasons why a lenient sentence

may actually be imposed even for a serious crime. That sentence, however, would not diminish the seriousness of the crime committed" (at para 41).

II. Introduction

[5] The Applicant seeks judicial review of a RPD decision excluding him from protection under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and Article 1F(*b*) of the Convention because there are serious reasons for considering that he committed a serious non-political crime outside Canada prior to his admission to Canada.

III. Judicial Procedure

[6] This is an application under subsection 72(1) of the *IRPA* for judicial review of the decision of the RPD, dated August 2, 2012.

IV. Background

[7] The Applicant, Mr. Dawy's Raul Gamboa Micolta, a citizen of Colombia born in 1985, relocated to Texas in 2006.

[8] In February 13, 2008, the police questioned a person alleged to be the Applicant [alleged Applicant] on suspicion of burglary of $52,370.00USD in cash and jewellery.

[9] The alleged Applicant, with two other suspects, was carrying the stolen jewellery but fled after producing identification (Certified Tribunal Record [CTR] at p 409).

[10] The Applicant lost his wallet containing his college identity card in the summer of 2008. He claims he reported the loss to the police but did not present a corroborating report, claiming it was lost and his ex-girlfriend could not obtain a copy (since he was required to apply for one in person). He testified that he himself never wrote to the police requesting a copy of the report (CTR at p 522).

[11] In his Personal Information Form [PIF] narrative, the Applicant alleged that he applied for a police background check and learned of a warrant for his arrest for burglary and missed hearings because notices were sent to the wrong address (CTR at p 28). He claims he signed a $2,000 bond and an officer informed him there was a video of the February 18, 2008 questioning (CTR at p 500).

[12] The Applicant denies involvement in the February 13, 2008 incidents, claiming that the person alleged to be him produced his missing college identity card to police.

[13] The Applicant violated the bond and fled the US, arriving in Canada on June 6, 2009.

[14] On June 23, 2009, the 400th District Court of Fort Bend County, Texas issued a warrant for the Applicant's arrest upon an indictment pending charging him with Burglary of Habitation/F2 – (Bond Forfeiture) (CTR at p 388). He was charged with burglary under Article 30.02(*c*)(2) of the TPC and evading arrest under Article 38.04(*b*) of the TPC (CTR at p 392).

[15] The Applicant declared in his PIF that he had previously been sought, arrested, or detained by police but not charged with a crime (CTR at p 20). In his Claim for Refugee Protection form, he

stated that he had not been sought, arrested, or detained by police or charged with a crime in another country (CTR at p 428).

[16] In Canada, the Applicant was convicted of possessing a stolen licence plate (CTR at p 514).

V. Decision under Review

[17] The RPD found that the Applicant was excluded from protection since there were serious reasons to consider he committed a serious non-political crime outside Canada prior to admission. Having applied section 98 of the *IRPA* and Article 1F(*b*) of the Convention, the RPD did not analyze the Applicant's claim under sections 96 and 97 of the *IRPA*.

[18] The RPD stated that the standard of proof for an Article 1F(*b*) exclusion is more than a mere suspicion but less than a balance of probabilities. The RPD stressed, citing *Deng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 943, that an Article 1F(*b*) exclusion hearing is not a criminal trial where guilt or innocence is determined.

[19] The RPD found that the basic ingredients of the Canadian offence of breaking and entry obtained in the burglary charge, Section 30.02 of the TPC, prohibits entering a habitation or a building (or any portion of a building) not then open to the public and without the owner's consent with the intent to commit a felony, theft or assault. This corresponded to section 348 of the *Code*, which prohibits breaking and entering a place with intent to commit an indictable offence therein; theft of property of a value exceeding $5,000 CDN is an indictable offence.

[20] The RPD concluded that police reports and court documents outlining the charges against the Applicant established serious reasons for considering that he committed the crime of burglary. The RPD reasoned that the United States [US] is a democratic country with strong rule of law institutions whose police reports and court documents warrant substantial weight and that there were credibility problems in his testimony.

[21] The RPD considered burglary a serious non-political crime based on the factors in *Xie v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 250, [2005] 1 FCR 304 and *Jayasekara*, above: (i) the nature of the act; (ii) the harm inflicted; (iii) the form of procedure used to prosecute the crime; (iv) the nature of the penalty for the crime; and (v) whether most jurisdictions would consider the act a serious non-political crime.

[22] In the RPD's view, the act was serious because the stolen property was valuable and there was evidence of a Colombian burglary ring targeting Asian and Middle Eastern groups. The RPD was persuaded that the act inflicted harm on its female victim, who claimed to feel insecure, apprehensive, and nervous but noted there was "no sure way to know the full effect the burglary had on the victims" (Decision at para 35). On procedures for prosecution, the RPD found that the charges were adjudicated by courts, investigated by police, and access to legal representation would have been available. Finally, the RPD noted that the penalty for burglary of a dwelling place is severe.

[23] The RPD did not find credible the Applicant's claim that he was implicated in the burglary because someone else produced his college identity card to police. The RPD drew an adverse

inference from the Applicant's lack of effort in obtaining a police report on the alleged loss of his wallet; the RPD considered this evidence central as it may have supported his allegation that he was wrongfully implicated. Noting Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, the RPD stressed that claimants have the burden of providing acceptable documents to corroborate elements of their claims.

[24] Nor did the timing of the alleged events support the Applicant's credibility. Since the burglary occurred before he lost his wallet in the summer of 2008, it was unlikely that another individual provided his college identity card to the police.

[25] The RPD drew an adverse inference from the Applicant's failure to describe his charge on his Claim for Refugee Protection form. The RPD reasoned that questions on the form were clear and the Applicant declared that he understood all statements, received an explanation on unclear points, and understood that false statements or concealments of material fact could result in exclusion, prosecution, or removal.

[26] Finally, the RPD found the Applicant's account inconsistent with his stated intention to clear his name of the criminal charges and emphasized that the arresting officer stated in the report of the February 13, 2008 incident that the Applicant's college identification card "had a photo likeness ... that matched" (CTR at p 416). The RPD stressed that the Applicant fled "knowing that his next court date ... was scheduled for the month after he departed the United States" (Decision at para 27).

[27] In assessing mitigating or aggravating circumstances, the RPD considered the Applicant's recidivism. The RPD noted that the Applicant testified that he was charged for possessing licence plates belonging to a stolen car and received a four to six-month sentence.

[28] The RPD also found the Applicant ineligible to have his claim referred to the RPD under paragraph 101(1)(*f*) of the *IRPA* because he has been determined to be inadmissible on grounds of serious criminality. Pursuant to paragraph 101(2)(*b*) of the *IRPA*, the RPD found that the claim was ineligible under paragraph 101(*f*) because the Applicant was inadmissible by reason of a conviction outside Canada, the Minister is of the opinion that the Applicant is a danger to the public in Canada, and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years. The RPD reasoned that the crime of burglary, if committed in Canada, would attract a maximum sentence of life imprisonment.

VI. Issues

[29] (1) Was the RPD's finding that there were serious reasons for considering that the Applicant had committed the crime of burglary of habitation in the US under Article 1F(*b*) of the Convention reasonable?

(2) Was the RPD's finding that the crime of burglary of habitation was a serious non-political crime under Article 1F(*b*) reasonable?

VII. Relevant Legislative Provisions

[30] The following legislative provisions of the *IRPA* are relevant:

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.

[31] The following provisions of the Convention are relevant:

1F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	1F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
...	...
(*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;

[32] The following legislative provisions of the *Code* are relevant:

348. (1) Every one who	**348.** (1) Quiconque, selon le cas :
(*a*) breaks and enters a place with intent to commit an indictable offence therein,	*a*) s'introduit en un endroit par effraction avec l'intention d'y commettre un acte criminel;
(*b*) breaks and enters a place and commits an indictable offence therein, or	*b*) s'introduit en un endroit par effraction et y commet un acte criminel;
(*c*) breaks out of a place after	*c*) sort d'un endroit par effraction :
(i) committing an indictable offence therein, or	(i) soit après y avoir commis un acte criminel,
	(ii) soit après s'y être

(ii) entering the place with intent to commit an indictable offence therein,

introduit avec l'intention d'y commettre un acte criminel,

is guilty

est coupable :

(*d*) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and

d) soit d'un acte criminel passible de l'emprisonnement à perpétuité, si l'infraction est commise relativement à une maison d'habitation;

(*e*) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

e) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans ou d'une infraction punissable sur déclaration de culpabilité par procédure sommaire si l'infraction est commise relativement à un endroit autre qu'une maison d'habitation.

334. Except where otherwise provided by law, every one who commits theft

334. Sauf disposition contraire des lois, quiconque commet un vol :

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or

a) est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans, si le bien volé est un titre testamentaire ou si la valeur de ce qui est volé dépasse cinq mille dollars;

(*b*) is guilty

b) est coupable :

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(i) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans,

(ii) of an offence punishable on summary conviction,	(ii) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire,
where the value of what is stolen does not exceed five thousand dollars.	si la valeur de ce qui est volé ne dépasse pas cinq mille dollars.

VIII. Position of the Parties

[33] The Applicant submits that the burglary nor breach of bond are not serious non-political crimes under Article 1F(*b*) of the Convention. Relying on the United Nations High Commissioner for Refugees Handbook [Handbook], the Applicant equates serious non-political crimes with capital crimes or very grave punishable acts that are not minor offences punishable by moderate sentences. The Applicant argues that the following principles inform Article 1F(*b*): (i) offences must be committed before arrival; (ii) offences must be so serious as to warrant denying protection under the Convention, which aims to protect human rights; (iii) offences must be extraditable, (iv) mitigating or aggravating factors must be considered; and (v) offences must be non-political.

[34] The Applicant argues he is charged with mid-level offences that do not engage Article 1F(*b*). *Canada (Minister of Citizenship and Immigration) v Nyari*, 2002 FCT 979 (which held that escaping prison while serving a twenty-month sentence for bodily harm will not engage Article 1F(*b*)) shows that breaching bond is not a serious non-political crime. Citing *Brzezinski v Canada (Minister of Citizenship and Immigration)*, [1998] 4 FC 525, the Applicant argues that burglary is only serious if other factors (weapons, injury to persons, drugs, habitual criminal conduct, high property values) obtain. Non-violent economic crime may result in exclusion but the value of stolen property is not comparable to the funds embezzled in *Xie*, above.

[35] Finally, the Applicant concludes that no evidence suggests his offence is extraditable, his conviction for possessing a stolen licence plate does not suggest habitual criminal conduct, and psychological harm to burglary victims is immaterial in assessing harm.

[36] The Respondent counters that the RPD could reasonably consider the warrant and police reports sufficient to apply Article 1F(*b*). The Respondent argues that the RPD reasonably rejected the Applicant's claim that he was accused of burglary because someone else produced his college identify card to police. The Respondent views the Applicant's failure to contest the RPD credibility finding as a concession that his account lacks credibility.

[37] The Respondent contends that the RPD reasonably considered the burglary a serious non-political crime under Article 1F(*b*). The Respondent cites *Jayasekara*, above, for the proposition that crimes attracting a maximum sentence of 10 years are generally serious crimes under Article 1F(*b*). The Respondent argues that there is a strong indication that burglary (with a maximum sentence of life imprisonment) is within the scope of the exclusion.

[38] The Respondent adds that, if a claimant flees before trial, it is not necessary that a sentence actually be imposed in assessing the penalties a crime may attract. Since the Applicant fled the US before trial, the RPD was left to consider the maximum penalty prescribed by law and the circumstances of the evidence before it. The Applicant's flight, the Respondent, argues, can only be an aggravating factor.

[39] Nor, according to the Respondent, is sentence length determinative under *Jayasekara*, above. The Respondent contends that the following factors also show that the Applicant's criminal charge is serious: (i) the elements of the crime; (ii) the mode of prosecution; (iii) the penalty prescribed; and (iv) the circumstances and mitigating or aggravating factors.

[40] According to the Respondent, the Applicant's flight from prosecution prevents him from characterizing his burglary charge as mid-level. Since his flight prevented a trial which could have shown that the burglary warranted a moderate sentence, the Applicant cannot ask this Court to speculate on the sentence he would have received.

[41] Finally, the Respondent argues that Article 1F(*b*) is not limited to extraditable crimes and that the Applicant did not provide evidence that burglary is not extraditable.

[42] In his Reply, the Applicant challenges the finding that he committed burglary.

IX. Analysis

Standard of review

[43] A finding that the evidentiary threshold for Article 1F(*b*) is met is a question of mixed fact and law assessed on a standard of reasonableness (*Pineda v Canada (Minister of Citizenship and Immigration)*, 2010 FC 454, 367 FTR 211 at para 18 and 29); a credibility finding is also so reviewed (*Valdes v Canada (Minister of Citizenship and Immigration)*, 2011 FC 959 at para 21). A finding that burglary of habitation is a serious non-political crime, a question of mixed fact and law,

attracts deference (*Feimi v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 325 at para 16).

[44] When the standard of reasonableness applies, courts may only intervene if the reasons are not "justified, transparent or intelligible" or a decision does not fall in the "range of possible, acceptable outcomes ... defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

(1) Was the RPD's finding that there were serious reasons for considering that the Applicant had committed the crime of burglary of habitation in the US under Article 1F(*b*) of the Convention reasonable?

[45] The RPD could reasonably find that the Minister met the evidentiary threshold for Article 1F(*b*) and could reasonably conclude that there were serious reasons for considering that the Applicant committed burglary of habitation in the US.

[46] The RPD correctly identified the evidentiary burden on the Minister under Article 1F(*b*) as less than a balance of probabilities but more than mere suspicion (*Lai v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 25). In *Ammar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1094, Justice André Scott held that, under this standard, there "must be an objective basis for the [RPD's] finding that is based on compelling and credible information" (at para 15).

[47] The RPD's finding that there were serious reasons for considering that the Applicant committed burglary of habitation was based on objective evidence in the form of police reports, an FBI records search, a bail bond, and a warrant for his arrest.

[48] The record contains a warrant to arrest the Applicant and bring him before the 400th District Court of Fort Bend County, Texas to answer "upon an indictment pending in said Court charging him with BURGLARY OF HABITATION/F2-(BOND FOREFEITURE)" (CTR at p 388). A bail bond indicates that he was charged with Burglary of Habitation (CTR at p 404). The FBI records search, based on biometric data and finger printing, indicates that he was charged with burglary of habitation under Article 30.02(*c*)(2) and evading arrest under Article 38.04(*b*) of the TPC (CTR at p 392). Finally, Fort Bend County Sheriff report confirms that police questioned three men on burglary of $52,370 USD in cash and jewellery from a habitation, these men were carrying the stolen jewellery when questioned, one produced the Applicant's college identity card, and the college identity card had a photo likeness matching that of the man questioned (CTR at pp 409 - 418).

[49] The RPD could reasonably rely on the warrant for the arrest and indictment of the Applicant issued in the US, which has a properly functioning judicial system, and other evidence from the authorities identifying in detail the charges against him in deciding there were serious grounds for considering that he had committed the crime of burglary of habitation (*Canada (Minister of Citizenship and Immigration) v Legault* (1997), 133 FTR 320 at para 10 (FCA)). In drawing this inference, the RPD was also reasonable to observe that, because the US has strong rule of law institutions, the police reports and court documents concerning the Applicant carry substantial

weight. In *Pineda*, above, Justice Johanne Gauthier stated that the ability to rely on an indictment and an arrest warrant to apply Article 1F(*b*) is premised on the existence of "a system where the rule of law prevails, the RPD can reasonably infer that there were reasonable and probable grounds for the police or the judicial investigative system to issue a warrant or lay a charge" (at para 29).

[50] Since the Applicant denied participating in the burglary, the RPD was correct to assess the credibility of his denial (*Valdes* at para 11).

[51] The RPD could reasonably doubt the credibility of the Applicant's allegation that he did not participate in the burglary and someone else produced his college identity card to the police on questioning. First, the RPD could draw an adverse inference from his lack of effort in obtaining a police report documenting the alleged loss of his wallet and college identity card; this report would have been critical in supporting his allegation (*Tejeda v Canada (Minister of Citizenship and Immigration)*, 2009 FC 421 at para 15). Second, the RPD could reasonably find that the alleged loss of his wallet and college identity card in summer of 2008 was inconsistent with his allegation that someone else produced his college identity card to police on February 13, 2008. Third, the RPD could rely on the statement in the police report that the Applicant's photo likeness on his college identity card matched the appearance of the person who produced it to the police on February 13, 2008. Fourth, the false statements on his Claim for Refugee Protection form could impugn his credibility, even though he eventually disclosed the burglary charge in his PIF. *Polasi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 897 held that eventual disclosure would not invalidate a panel's inference that an applicant had attempted to mislead immigration authorities on arrival and that this would reasonably detract from her credibility (at para 13).

[52] Given the reasonable credibility finding, one could reasonably find that there were serious reasons to believe the Applicant committed burglary of habitation in the US.

(2) Was the RPD's finding that the crime of burglary of habitation was a serious non-political crime under Article 1F(*b*) reasonable?

[53] The RPD could reasonably find that a charge under Article 30.02(*c*)(2) of the TPC of burglary of habitation was a serious non-political crime under Article 1F(*b*).

[54] *Jayasekara*, above (the leading case if a crime is a serious non-political crime under Article 1F(*b*)), holds that applying the exclusion requires evaluating "elements of the crime, the mode of prosecution, the penalty prescribed, the facts and the mitigating and aggravating circumstances underlying the conviction" (at para 44).

[55] Contrary to the Applicant's submissions, the RPD can reasonably rely on psychological harm to victims in assessing the essential elements of a crime (*Canada (Minister of Citizenship & Immigration) v Raina*, 2012 FC 618 at para 43). Although the evidence of psychological harm does not appear to rise to the level in *Raina*, above, there was evidence that the female victim "felt insecure, apprehensive and nervous" as a result of the burglary (CTR at p 412). Although the RPD did not consider the social harms arising from burglary, *Jayasekara*, above, permits the RPD to consider "harm caused to ... society" in determining if a particular crime is serious (at para 45). It would be reasonable to find that breaking and entering into a private residence with the intent to steal a large amount of property, even if non-violent and without the use of weapons, poses considerable harm to the social fabric.

[56] The RPD could reasonably consider evidence of habitual criminal conduct and the value of property stolen in applying Article 1F(*b*) (*Jayasekara*, above, at para 38). A conviction for possessing a stolen licence plate could reasonably lead to an inference of habitual criminal conduct. At $52,370.00 USD, contrary to the Applicant's claim, the value of the property stolen could be reasonably considered high.

[57] The maximum proscribed penalty for break and entry or burglary is quite high. Under section 348 of the *Code*, a person is liable to life imprisonment if he breaks and enters a dwelling-house and commits therein an indictable offence. Theft of property, the value of which exceeds $5,000 CDN, is an indictable offence under section 334 of the *Code*. A similar penalty applies under the TPC. Article 30.02(3) of the TPC prohibits entering, without an owner's consent, a habitation and committing theft. Under Article 30.02(*c*)(2), an offence under Article 30.02 is a felony of the second degree if committed in a habitation. Section 12.33 of the TPC states that individuals adjudged guilty a felony of the second degree shall be punished by imprisonment for any term of not more than 20 years or less than 2 years.

[58] In assessing the penalty prescribed for burglary, the RPD could reasonably consider the maximum sentences under both the *Code* and the TPC rather than speculate on whether a more lenient sentence would have been prescribed. *Jayasekara*, above, considered reasonable a finding that a drug trafficking conviction was a serious non-political crime by referring to maximum penalty for drug trafficking under the CDSA, even though the applicant had received a more lenient sentence in the US (at para 50 and 54). The Federal Court of Appeal's reasoning is instructive:

"There are many reasons why a lenient sentence may actually be imposed even for a serious crime. That sentence, however, would not diminish the seriousness of the crime committed" (at para 41).

[59] Although the RPD did not consider the Applicant's flight from the US in applying Article 1F(*b*), absconding may be considered under *Jayasekara*, above (at para 55). Consequently, the Applicant's flight could have been reasonably considered an aggravating factor.

[60] The RPD did not address the social harms arising from burglary or the Applicant's flight from his criminal charges in applying *Jayasekara*, above; however, "to the extent that [the RPD] does not fully explain aspects of its decision", a reviewing court "may consult evidence referred to by [it] in order to flesh out its reasons" provided it does not "usurp the tribunal's responsibility for justifying its decisions" (*Public Service Alliance of Canada v Canada Post Corp*, 2011 SCC 57, [2011] 3 SCR 572, affirming the dissenting reasons of Justice John Maxwell Evans, 2010 FCA 56 at para 164). Deference requires this Court to pay "'respectful attention to the reasons offered or which could have been offered [emphasis added] in support of a decision'" (*Public Service Alliance,* (FCA Decision), above, citing Professor Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M Taggart, ed, The Province of Administrative Law (Oxford: Hart Publishing, 1997), 279 at p 286).

[61] Finally, a crime need not be extraditable to engage Article 1F(*b*) (*Zrig*, above, at para 67).

X. Conclusion

[62] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed.

No question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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