Federal Court  Cour fédérale

Date: 20140807

Docket: IMM-8243-13

Citation: 2014 FC 782

Ottawa, Ontario, August 7, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PAUL EDGARDO GALINDO VASQUEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

INTRODUCTION

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD or the Board], dated December 6, 2013 [Decision], which

found that the Applicant is excluded from refugee protection under Article 1F(b) of the *1951 Convention Relating to the Status of Refugees* [Refugee Convention].

BACKGROUND

[2] The Applicant is a 43-year-old citizen of Honduras who arrived in Canada on December 24, 2011. He made a claim for refugee protection in February 2012, claiming to fear death at the hands of a prominent individual with whom he previously had a same-sex relationship. The RPD did not consider the grounds for protection put forward by the Applicant because it found that he is excluded from refugee protection under Article 1F(b) of the Refugee Convention. That provision, incorporated into domestic law by s. 98 of the Act, precludes protection where there are serious reasons for considering that the claimant has committed a serious non-political crime in another country before their admission to the country of refuge.

[3] In December 2006, the Applicant was charged in the State of Florida with two counts of burglary of a dwelling and grand theft third degree ($300-$5,000). He was deported from the US in March 2007 without having stood trial on these charges. It appears he returned to the US illegally in March 2008, and remained there until he came to Canada in December 2011.

[4] The Minister of Public Safety and Emergency Preparedness [Minister] intervened in the RPD proceeding on the issue of whether the Applicant was excluded from refugee protection based on the above-noted charges.

DECISION UNDER REVIEW

[5] The RPD found that documents provided by the Minister alleged that the Applicant broke into a dwelling and stole approximately $5,000 worth of possessions. The Minister submitted that if committed in Canada, the alleged actions would constitute breaking and entering a dwelling house under s. 348 of the *Criminal Code*, which carries a maximum penalty of life imprisonment.

[6] The Board noted that its role was neither "to try the criminal case to Canadian standards" nor "to establish guilt or innocence according to U.S. law," but was rather "to establish if there are serious reasons for considering that the claimant committed a serious non-political crime outside of Canada before his entry into Canada" (Decision at para 7).

[7] The Board considered "the degree of proof required," and found that the "serious reasons for considering" standard requires "more than a mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities" (citing *Moreno v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 298 (CA); *Ramirez v Canada (Minister of Employment and Immigration)*, [1992] 2 FC 306 (CA) [*Ramirez*]; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100 [*Mugesera*]). The Board broke its analysis up into two parts, addressing first whether there were "serious reasons" for considering that the claimant had committed a non-political crime before entering Canada, and second, whether that crime was "serious" for the purposes of Article 1F(b) of the Refugee Convention.

[8] The Board found that there were two "dramatically different" accounts of the events that led to the charges in the US. The Applicant stated in his Personal Information Form [PIF] narrative that he had moved into a new house in Tampa, Florida, and went next door to see if he could use their garbage can. The house was abandoned and in disrepair, he said, and in the four to five months he had lived next door there had been no one living there. He discovered an old vehicle without an engine on the property, and took the key that was left in the ignition because he was attracted by a deer decoration on the key. He then left and went to the store and, when he returned, the police were waiting and arrested him. He made no mention in his PIF of having entered the house.

[9] During his testimony before the RPD, the Applicant said that, in addition to taking the key from the old vehicle, he also entered the house. The door was slightly ajar, and he put his shoulder into it and it opened. He was curious and walked around the house, which was in disrepair with the ceiling falling down. He was struck by the artistic beauty of two ceramic dogs, and put them in his pocket. He then left to conduct some business and was arrested by police when he returned later that night. The Board observed (at paras 15-17):

> The claimant stated he was not aware of being charged with any offences as a result of entering the house. He stated the first he learned of these charges was when he came to Canada and made a refugee claim.
>
> He allegedly was held in custody in the U.S. after his arrest on December 20, 2006 until he was deported to Honduras. He stated he was transferred to an immigration hold in February 2007 and asked to be deported to Honduras. He was deported in March 2007.
>
> The claimant was asked why he did not include the fact that he entered the house in his PIF narrative and he stated that he had forgotten he actually entered the house and took the two ceramic

> dogs until in the process of preparing for his Immigration Division hearing.

[10] The Board found that the Applicant's account of these events was "in stark contrast to the evidence entered by the Minister." A police report stated that on December 19, 2006, the Applicant forced his way into an unoccupied dwelling and removed property with an estimated value of $5,000 USD and took it to his residence. He was arrested on the evening of December 20, 2006 as a result of a driving violation, and after being advised of his "Miranda" rights, admitted to breaking into the house and stealing the property. A copy of the charges filed by the State Attorney showed that the Applicant was charged with one count of Burglary of a Dwelling and one count of Grand Theft Third Degree ($300-$5,000).

[11] The Minister also submitted a declaration from a Canada Border Services Agency [CBSA] Officer. The CBSA Officer contacted Robert Earl Knowles Sr., who said that the house belonged to his aunt, who had passed away. Mr. Knowles had been advised of the break and enter by police on the day it occurred. He was told that a group of individuals renting the house next door had broken in through a back window and stolen a large amount of property, and that the culprits had been removed from the US. He said that stolen items included a couple hundred ceramic dogs, a vacuum cleaner, vases, and other items he could not specifically remember. The CBSA Officer observed (at para 22):

> Although Officer Clarke's declaration is silent on the particulars regarding the status of the house the charges filed by the State Attorney state that the property was that of Robert Knowles and/or the Estate of Emily Hazel. I conclude from this that the owner of the house was Emily Hazel and that she had died and Robert Knowles was her Executor.

[12] The RPD found that the two "drastically different versions" of the events leading up to the criminal charges required an assessment of "the credibility of the evidence." The Board stated that it had carefully examined the evidence and strongly preferred the Minister's evidence over that of the Applicant. The Applicant had failed to state in his PIF that he entered the house, and it was not credible that he had forgotten this but remembered taking the key from the old car. It was "more likely that the claimant was trying to hide from the reader that he entered the house." In addition, the police report was very specific about what had occurred. The Board found that it is "the job of the police in a democratic country like the U.S. to impartially investigate incidents," and there was no reason to believe this was not done in the present matter. The Board continued (at paras 26-28):

> … The police report is corroborated by the charges laid by the State Attorney. The U.S. is a highly democratic country and I find that criminal charges would not be laid if there was not evidence to support them. The claimant stated that all he was guilty of was taking a key out of the ignition of an old car and taking two ceramic dogs from the house. If this were true then he would not have been charged with Grand Theft Third Degree ($300-$5,000). The value of the key and two ceramic dogs would be far less than $300.
>
> I find the claimant's evidence not to be credible and therefore place little weight on it and place considerably more weight on the evidence contained in the police report and in Officer Clarke's declaration regarding what Mr. Knowles had to say about the break in of his aunt's house. I find it implausible that the claimant would face the charges he did if what he stated was true.
>
> I therefore find that the claimant broke into his neighbour's house with the intention of stealing anything of value that he might encounter therein and that he did steal various items of a value of approximately $5,000 USD.

[13] Based on the above, the Board found that there were serious reasons for considering that the Applicant committed the crimes of Burglary of a Dwelling and Grand Theft Third Degree in the State of Florida.

[14] As to whether these crimes were "serious" for the purposes of Article 1F(b), the Board agreed with the Minister that if the same acts were committed in Canada, the Applicant would have been charged under s. 348(1)(d) of the Criminal Code, which carries a maximum penalty of life imprisonment. The Board then considered the factors set out in *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404 at para 44 [*Jayasekara*], which it enumerated as follows (at para 32):

- an evaluation of the elements of the crime;
- the mode of prosecution;
- the penalty prescribed; and
- the mitigating and aggravating circumstances underlying the conviction.

[15] The Board found that the Applicant had not appeared in criminal court to answer to the charges, so there was no penalty prescribed. With respect to the elements of the crime, the RPD rejected as not being credible the Applicant's evidence that he entered the house to satisfy his curiosity and had no intent of stealing anything, taking the two ceramic dogs only because of their artistic appeal. Rather, the RPD stated that it relied on the police report and court documents. Based on this evidence, the Board concluded that the Applicant was one of several occupants renting a house next door to the house in question, and that the owner, Emily Hazel, passed away and her house was left unoccupied. It was not an abandoned house, but rather

formed part of an estate, and had not ceased to be a dwelling. The RPD did not accept that it was a run down and crumbling structure as the Applicant described. Rather (at para 36):

> Ms. Hazel's nephew, Mr. Robert Knowles, was responsible for the estate and it is logical to conclude that, as executor, he attended to the maintenance needs of the house…

[16] It was unclear whether the Applicant was held in custody until deported in March as he alleged, or was released from custody. However, the Applicant had failed to attend an interview for the Pre-Trial Intervention program, which suggested he was not incarcerated, and it did not seem logical that the State of Florida would issue a warrant for failing to appear in court on April 16, 2007 if the Applicant had been deported in March 2007.

[17] With respect to mitigating factors, the Board found that it was reasonable to conclude that the Applicant was aware that the house he broke into was unoccupied, which would greatly reduce the chances of him having to confront a resident. The State Attorney felt that the circumstances might warrant having the offence dealt with through a diversion program (though in the end the Applicant did not qualify), which suggested it was considered less serious than break and enters committed under different circumstances.

[18] With respect to aggravating factors, the RPD observed that s. 348 of the *Criminal Code* sets out a maximum penalty of life imprisonment for the break and enter of a dwelling house, indicating the seriousness with which Canadian law makers view this offence. The Applicant would have no way of knowing that the owner of the property was deceased; she could have been on an extended holiday or hospitalized, and could return home at any time. The Board found that "[h]e was obviously prepared to take anything of value and was reckless to what kind

of harm this might inflict on the owner of the property both in terms of stolen property and psychologically regarding feeling violated and unsafe as a result of the break in." In addition, he was reckless to the sentimental value the items might hold. To this date, the RPD found, the Applicant has not taken responsibility for his actions, maintaining that he had no intent to steal when he entered the house which was "simply not believable." In support of this version of events, he "was untruthful in his PIF narrative regarding the circumstances surrounding the criminal charges" and "omitted any details about entering the house which is a lie by omission." He had not made restitution to the victim, and although the police report stated that he expressed regret, "his actions avoiding his responsibilities to the court demonstrate the opposite." The Board continued (at paras 52-53):

> The claimant was reckless to the fact that break and enter of a dwelling often leave a significant psychological impact on the victims. They no longer feel safe in their residence, a place that should serve as a sanctuary for the owners. Victims often feel violated knowing that someone was in their house and going through their most personal possessions. This, no doubt, is part of the reason that our law makers view this offence with such severity.
>
> Although of the belief that the house he broke into was vacant the claimant could not have been assured he would not confront anyone. The executor could have walked in, the owner could have returned (the claimant had no way of knowing the owner was deceased) after their holiday or hospitalization. If he was confronted the chances of this break and enter escalating into something even more serious was a distinct possibility. He obviously was prepared to take this chance.

[19] The Board found that these were all aggravating factors, and that after considering all of the factors set out in *Jayasekara*, above, the crime the Applicant committed was "a serious matter that could reasonably have serious consequences far beyond the loss of property." As such, the Applicant had committed a serious, non-political crime before his entry to Canada and

was excluded from the definition of a refugee and a person in need of protection under Article 1F(b) of the Refugee Convention and s. 98 of the Act.

ISSUES

[20] The Applicant raises the following issues for the Court's consideration in this proceeding:

a. Do the doctrines of *res judicata* or abuse of process apply, such that the Minister was estopped from arguing certain factual issues before the RPD that were already finally decided in a prior preceding before the Immigration Division of the Immigration and Refugee Board?

b. Did the RPD misapprehend evidence about the value of the missing items in a manner that tainted its analysis of the Applicant's credibility?

c. Did the RPD fail to properly identify and analyze the offence forming the basis of the Applicant's exclusion under Article 1F(b) of the Refugee Convention?

d. Was the RPD's approach to assessing the Applicant's credibility unreasonable?

e. Did the RPD err in finding that there was sufficient evidence before it to conclude that there were serious reasons for considering that the Applicant had committed a criminal offence outside Canada?

f. Did the Board err in finding that the acts done by the Applicant, even if offences, were serious offences within the meaning of Article 1F(b)?

STANDARD OF REVIEW

[21] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be

inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[22] The Respondent argues that the standard of review for a question of exclusion involving the application of s. 98 of the Act and Article 1F(b) of the Refugee Convention is reasonableness, as it involves a question of mixed fact and law: see *Lai v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 68 [*Lai*]; *Jayasekara*, above; *Feimi v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 325 at para 16 [*Feimi*]. The Applicant agrees, except when it comes to questions of the content and effect of foreign law, which is relevant to issues e. and f. above. The content of foreign law is a finding of fact, the Applicant argues, while the determination of how the foreign law is applied is a question of law. While older case law held that the standard of review for findings of fact with respect to foreign law is reasonableness, the Federal Court of Appeal has recently suggested that it is correctness, the Applicant argues. The RPD therefore had to be correct in its identification of the elements of the foreign offence and whether they applied to the Applicant: see *Canada (Minister of Citizenship and Immigration) v Sharma* (1995), 101 FTR 54 (FCTD) at para 10; *Kisimba v Canada (Minister of Citizenship and Immigration)*, 2008 FC 252 at para 15, citing *v Canada (Minister of Citizenship and Immigration) v Choubak*, 2006 FC 521 at paras 37, 40; *JPMorgan Chase Bank v Lanner (The)*, 2008 FCA 399 at para 33, leave to appeal dismissed [2009] SCCA No 48 [*JPMorgan*]; *General Motors Acceptance Corp of Canada v Town and Country Chrysler Ltd*, 2007 ONCA 904 [*General Motors*]; see also *Mugesera*, above, at para 59.

[23] *JPMorgan* and *General Motors*, both above, dealt with appellate standards of review rather than administrative law standards of review on judicial review. However, the observation that, while technically a question of fact to be proven, the content of foreign law is a unique factual question to which the traditional justifications for deference on appeal may be less relevant applies equally in the administrative law context. In *JPMorgan*, it was not necessary to decide the standard of review on this issue. The Federal Court of Appeal expressed no opinion on the matter, simply noting the finding of the Ontario Court of Appeal in *General Motors* that a standard of correctness applied.

[24] I am mindful of the observation of my colleague Justice Heneghan in *Sayer v Canada (Minister of Citizenship and Immigration)*, 2011 FC 144 at para 4 that "[a] reviewing court cannot simply take judicial notice of foreign law." It must be proven with evidence. A standard of correctness implies that I am to make a definitive finding on the proper interpretation of foreign law, but the Court faces the same constraints as the tribunal in that its ability to interpret the foreign law at issue (here the criminal law of the State of Florida) is affected by the quality of the evidence before it. Under these circumstances, it would be disingenuous for the Court to imply that it was offering a "correct" interpretation. The Court must look at the evidence and determine whether the Board reasonably interpreted the foreign law and reasonably applied it to the facts of the case.

[25] Furthermore, in the context of criminal inadmissibility, where the foreign law must first be proven and then compared to an equivalent Canadian offence, findings on the content of foreign law have been reviewed on a standard of reasonableness: *Lu v Canada (Minister of*

Citizenship and Immigration), 2011 FC 1476 at para 12; *Patel v Canada (Minister of Citizenship and Immigration)*, 2013 FC 804 at para 6; *Ulybin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 629 at para 19. In my view it would be incongruous to apply a different standard either to the interpretation or the application of foreign law in the present context.

[26] As such, I conclude that a standard of reasonableness is applicable to each of the issues set out above.

[27] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[28] The following provisions of the Act are applicable in these proceedings:

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

person in need of protection.	qualité de réfugié ni de personne à protéger.

[29] Article 1F(b) of the Refugee Convention, incorporated into the Act by s. 98, reads as follows:

> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> […]
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> […]

ARGUMENT

Applicant

Issue Estoppel

[30] The Applicant argues that it was an abuse of process, resulting in procedural unfairness, for the Minister to challenge the credibility of his testimony on matters that had already been finally decided by the Immigration Division of the Immigration and Refugee Board [ID], and were thus *res judicata*. He argues that the factual issues surrounding his entry into the neighbour's house were decided at his admissibility hearing before the ID on August 22, 2013, based on the same evidence presented to the RPD, and the Minister was therefore estopped from re-litigating this issue before the RPD.

[31] The Applicant notes that the concept of *res judicata* applies to proceedings before administrative tribunals (*Al Yamani v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 482 [*Al Yamani*]) and that there are two types of *res judicata*: cause of action estoppel, and issue estoppel. It is only the latter that is at issue here, he says, and a three part test applies: (1) the issue must be the same as the one decided in the prior proceeding; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same, or their privies (*Al Yamani*, above; *Thambiturai v Canada (Solicitor General)*, 2006 FC 750) [*Thambiturai*]

[32] In the present case, the Applicant argues, the "issue of credibility between the Minister's evidentiary documents and applicant's testimony" was finally decided by the ID on August 22, 2013. Both proceedings were based on the same evidence (including substantially the same testimony from the Applicant at both hearings), and both tribunal members had to find the facts respecting the Applicant's conduct and decide if it met the elements of the offence of burglary in Florida. While a judicial review of the ID decision is pending, the Applicant argues that it relates solely to the ID's use of foreign law, not credibility or other fact findings.

[33] The Applicant says that the Minister did not take issue with the ID's finding that the Applicant was credible in his description of the events that led to the criminal charges against him. Nor did the Minister re-evaluate his eligibility for a refugee claim and cancel his hearing, as permitted by ss. 102 and 104 of the Act where a person is found inadmissible for serious criminality. The Applicant argues that it was an abuse of the Board's process for the Minister to allow the matter to go to an RPD hearing and then, by way of collateral attack on the ID

decision, re-litigate issues finally decided by the ID by urging the RPD to find that he was not credible on the same factual points. This created duplicative proceedings and inconsistent decisions and, as a result, the Applicant was treated unfairly. He was found to be credible in one proceeding, and later, having given the same testimony, found not to be credible on the same factual matters and excluded from refugee protection.

Misapprehension of Evidence Regarding the Value of the Missing Items, Affecting the Board's Assessment of Credibility and the Seriousness of the Applicant's Conduct

[34] The Applicant argues that he Board erred in concluding that the items allegedly missing from the house were worth $5,000, when there was an insufficient basis in the evidence to make such a finding. The Applicant testified that he could not state a value for the items he took, but in his mind they had almost no monetary value. Robert Knowles could not state a value for the items, as reported in the CBSA Officer's statutory declaration. The Board found that the police report put the value at $5,000, and that this was reflected in the indictment for grand theft ($300-$5,000). However, the Board's reading of this evidence was incorrect. $5,000 is the upper limit of the charge listed on the indictment, and theft of $5,000 or more is a different offence in Florida, the Applicant argues. The writing in the police report is almost illegible; it is impossible to tell whether it says the items were valued at approximately $5,000 or $500.$\underline{00}$, similar to how the figure $130.$\underline{00}$ is written immediately below in the same report. The missing items are not fully listed, described or appraised in any document in the record.

[35] The Applicant argues that this misapprehension of the evidence affected the Board's assessment of the Applicant's credibility about what he took and his intentions, and the Board's view of the seriousness of the Applicant's conduct.

Failure to Properly Identify and Analyze the Offence Forming the Basis of Exclusion

[36] The Applicant argues that the RPD had an obligation to make a factual finding about the offence that forms the basis of the Applicant's exclusion from protection: *Zeng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 956 [*Zeng*]. It had to identify the elements of the foreign offence (including the defences) and have a basis in the facts to find that they were met. While not required to list or refer to each element of the offence, the Board's reasons must make it sufficiently clear why it was of the view that the offence had been committed: *Jayasekara*, above; *Zeng*, above; *Ivanov v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1210.

[37] The Applicant says the legal foundation of this case was complex, involving a highly technical area of Florida's law, and that the Board failed to properly analyze the underlying legal framework. He says the RPD failed to adequately differentiate between the offences of grand theft and burglary, and therefore erred in law by failing to identify the foreign offence for which the Applicant was being excluded from protection. Due to the lack of discussion of this issue in the Decision, the reviewing Court cannot conclude that the Board understood the intricacies of the offence of burglary in the law of Florida. In the absence of a foreign conviction, this lack of legal analysis is fatal to the Decision. The case turned on whether there were serious reasons to consider that burglary was committed, since the lesser offences included in that offence (such as

theft) would not qualify as serious under Article 1F(b): *Osman v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1414, 46 ACWS (3d) 101.

[38] While the Applicant admitted that his act of taking items from the house met both the *actus reus* and *mens rea* requirements of the offence of theft, he argues that the offence of burglary under s. 810.02 of Chapter 810, Title XLVI of the 2012 Florida Statute requires that an "intent to commit an offence therein" be present at the time of entry into the dwelling, structure or conveyance in question. If the accused does not intend to commit offences at the time of entry, burglary is not established, even though the accused may later form such an intent and in fact do so. The Applicant testified that he did not have an intent to commit theft at the time of his entry into the neighbour's house, and the documents submitted by the Minister are silent on the issue of intent at the time of entry. The Board (unreasonably in the Applicant's view) found the Applicant not to be credible, accepted the Minister's version of events, and appears to have decided that the elements of burglary were established based on that version of events. However, there was no discussion about why those elements were established, and in particular why the element of intent to commit offences at the time of entry was established. There was, the Applicant argues, neither documentary evidence of such an intent nor evidence of circumstances from which it could be inferred. Moreover, there were contradictions in the Minister's evidence regarding the circumstances of the offence that were not resolved by the Board (Did the Applicant act alone or with a group of men? Did he enter through the door or a window?), and this makes it impossible to discern why the Board found that the Applicant committed burglary rather than a combination of lesser offences such as trespass and theft. The Board stated that the

Applicant "obviously" intended to steal anything of value, but the reasons do not state when that intention arose.

[39] The Applicant submits that the Board conflated the intent requirements of the Florida offences of grand theft and burglary, and in doing so, ignored expert evidence regarding these offences submitted by the Applicant. Having missed this important detail, the Board thought the Applicant's denial of an intent to commit offences at the time of entry was a denial of his eventual intent to steal the ceramic dogs (Decision at para 34). Only this reading of the reasons can explain the Board's credibility findings and its comment that the Applicant continues not to take responsibility for having committed offences, when in fact he had freely admitted to the theft and expressed remorse for his actions.

Credibility Analysis Was Unreasonable

[40] The Applicant says that the Board had a duty to grapple with inconsistencies in the evidence and make sufficiently clear findings about the facts constituting the offence that forms the basis of exclusion. Where credibility is an issue, the Board is required to give clear and unmistakeable reasons in support of its findings: *Moreno v Canada (Minister of Employment and Immigration)* (1993), 107 DLR (4^{th}) 424 (FCA). Here, the Board appears to have found that the evidence presented an all-or-nothing credibility contest between the Applicant's testimony and the Minister's documents, rather than considering the strengths and weaknesses of each. While it fully accepted the Minister's documents, the Board did not deal with significant inconsistencies in that evidence, to the point that the reasons do not make clear what facts the Board found to be established. The police report and the CBSA Officer's declaration offer very different accounts

of what occurred, the Applicant argues, and the inconsistencies related directly to the nature and seriousness of the offence in question.

[41] Moreover, the Board failed to consider that the Applicant's testimony was consistent with the police report, and that from the beginning the Applicant was forthcoming and remorseful about what occurred. The Applicant never denied that charges were laid against him. Rather, his position was that had he gone to court, he would have been able to raise a defence to the offence of burglary – the only offence that is relevant to the issue of exclusion under Article 1F(b).

[42] The Board's finding that it is "implausible that the claimant would face the charges that he did if what he stated were true" is unreasonable and unsupported by the record. The extent of the police investigation, the Applicant says, was attendance at the scene, interviews with the complainant and the Applicant and preparation of the police report. The evidence was gleaned from the interviews. No other evidence is referenced and it is improper for the Board to speculate that it existed. The facts that came out of this investigation could form the basis of several criminal offences, the most serious of which was burglary. There is absolutely nothing in the documents that suggests which offence the Applicant's *mens rea* was consistent with. It was therefore entirely possible for the Applicant to have been charged with burglary and to have had a credible defence. The sole fact of the criminal charge was not enough to undermine the Applicant's credibility when he denied that he committed burglary: *Aguilar Valdes v Canada (Minister of Citizenship and Immigration)*, 2011 FC 959 at para 46.

[43] The Applicant says the Board's all-or-nothing approach to credibility caused it to reject even innocuous and uncontested evidence from the Applicant. For example, the Applicant testified that the neighbouring house was in disrepair. He was not challenged on this and it was consistent with all the other evidence, which stated that the house was unoccupied. However, the Board rejected this evidence and found that the executor of the estate was managing the house and renting it out – facts for which there was no basis in the evidence – and viewed this as a significant aggravating factor relating to the seriousness of the offence.

[44] It was also unreasonable for the Board to draw a negative credibility inference from the fact that the Applicant revealed more details of what happened at the hearing than in his PIF. The Applicant explained that he was unaware of the exact nature of the charges before he saw the documents from Florida in preparing for his ID hearing. In his PIF narrative, which focuses more on risk in a home country than criminality, he freely admitted to having been in trouble with US authorities. When asked by counsel about taking the ceramic dogs when preparing for the admissibility hearing, the Applicant remembered that he had done so and immediately admitted the surrounding circumstances to Canadian authorities. Contrary to the Board's findings that he was attempting to deceive authorities or was avoiding responsibility for his offences, the Applicant was forthcoming to the best of his ability. The fact that he made significant statements against interest rather than denying the allegations wholesale should have made him more and not less credible.

Unreasonable Conclusion that "Serious Grounds to Believe" Standard Was Met

[45] The Applicant argues that when all credible aspects of the evidence are properly considered, the following is established: the Applicant, acting alone, entered the neighbouring unoccupied house through the door, because it was old, appeared to be abandoned and he was curious. He had no intention to commit any offences at the time of entry, but while inside, took two ceramic dogs and a key, which he admitted was theft.

[46] Since the Applicant had no intention to commit offences when he entered the house, he argues, there are no serious grounds to believe he committed burglary. This was the only offence that could form the basis of the finding of exclusion from protection.

Unreasonable Finding that the Offences Were "Serious" Within the Meaning of Article 1F(b)

[47] The Applicant argues that the Board unreasonably concluded that the offences committed were serious within the meaning of Article 1F(b). In addition to the alleged errors with respect to the value of the missing items and the failure to identify and discuss the elements of the offences discussed above, the Applicant says a number of aggravating facts considered by the Board have no basis in the record. There was no basis for the finding that he intended to take "anything of value," as there was no full listing or appraisal of the items taken. Furthermore, the Board found, without any support in the record, that:

- Someone could have returned to the house at any time;
- The Applicant was obviously prepared to take anything of value, even sentimental value, and was reckless to the physical and psychological harm this would inflict on the owner;

- The Applicant has not taken responsibility for his actions;
- The Applicant has not made restitution and has avoided his responsibilities to the court;
- The Applicant was prepared to take the chance that the break-in would escalate into something more serious.

The Applicant argues that none of these scenarios has any basis in the evidence, and the Applicant was not asked about any of them during the hearing. There was no information that anyone was living in the house or planned to visit it, that any person reported feeling violated or suffering psychological harm, that any of the items had sentimental value to any person, that the Applicant was consciously taking a chance that the break-in would escalate, or that there was any chance it would. The Board's conclusions on these points are speculative and unreasonable, the Applicant argues. Moreover, the finding that the Applicant was avoiding responsibilities to the court is inconsistent with the Board's own analysis that it was unable to determine what happened to the Applicant before his deportation to Honduras: whether he was avoiding responsibilities to the court or there were some administrative oversights by US authorities.

[48] All information suggested that the house was unoccupied and had been so for some period of time. Thus, the Applicant submits that it had ceased to be a dwelling house in law, and this was a mitigating factor. There was no basis in the facts to conclude that the executor continued to permit any person to reside there: see *R v Sappier*, 2005 NBPC 37.

Respondent

No Abuse of Process or Issue Estoppel

[49] The Respondent argues that there is no merit in the Applicant's serious allegation of an abuse of process by the Minister. The case law is clear that establishing an abuse of process "requires overwhelming evidence that the proceedings under scrutiny are unfair to the point that they are contrary to the interest of justice" and there must be "conspicuous evidence of improper motives or bad faith or of an act so wrong that it violates the conscience of the community, such that it would genuinely be unfair and indecent to proceed": *R v Power*, [1994] 1 SCR 601 at para 17; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 120 [*Blencoe*]; *Caraan v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 360 at para 40. The Minister properly exercised its discretion to intervene at the RPD hearing, as is its statutory right under s. 170(e) of the Act. While the Applicant cites ss. 102 to 104 of the Act and the fact that the Minister did not re-determine the Applicant's eligibility after the inadmissibility claim, the ineligibility provision for serious criminality does not apply in these circumstances. It applies only where the inadmissibility arises from a *conviction* outside of Canada meeting certain criteria: Act, ss. 101(f), 101(2)(b).

[50] Furthermore, the Respondent argues, this Court and the Federal Court of Appeal have found that there is no issue estoppel, nor is it unreasonable for the Minister to intervene at the RPD hearing. The Court of Appeal's analysis in *Feimi*, above, at paras 19-21 says that there are no express statutory limitations on the Minister's discretion to intervene before the RPD, and that (at para 21):

> … The issues at the eligibility and exclusion stages of processing a refuge claim are not the same. Thus, no question of estoppel can arise, even when the same criminal conduct underlies both the danger opinion at the eligibility stage and intervention at the exclusion hearing.

See also *Abu Ganem v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1147 at para 43 [*Abu Ganem*].

Board Reasonably Found Standard of Proof Met

[51] The Respondent says that the RPD set out in detail why it "strongly" preferred the objective evidence of the US police report, the criminal charge and the information in the CBSA Officer's declaration. Based on this evidence, the Board determined that the Minister had established that there were "serious reasons for considering" that the Applicant committed a crime in the US. The Board was entitled to weight all of the evidence and has complete jurisdiction to determine plausibility, gauge the Applicant's credibility and draw the necessary inferences: *Mundi v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1260 at para 11; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ NO 732 (FCA) at para 4 [*Aguebor*]; *Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481 (FCA).

[52] The Respondent notes that an exclusion hearing is not in the nature of a criminal trial, and the onus on the Minister is to establish only that there are "serious reasons for considering" that the refugee claimant has committed a crime before coming to Canada: *Lai*, above, at paras 23, 56; *Murillo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 966 at para 24.

"Serious reasons for considering" is equivalent to "reasonable grounds to believe." It requires more than suspicion but less than proof on a balance of probabilities, and will exist where there is an objective basis for the belief that is based on credible and compelling information: *Mugesera*, above, at paras 114-116; *Lai*, above, at para 25; *Xie v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 250 at para 23 [*Xie*].

[53] Here, the Respondent argues, the Respondent had sufficient evidence based on the police report, the criminal charge, and the Applicant's own admissions that he went into his neighbour's house with the intent of stealing a garbage can, forced the door open, walked around and took objects from the home and vehicle. Both this Court and the Court of Appeal have held that the Board can rely on an indictment and an arrest warrant to conclude, reasonably, that there are serious grounds for considering that a refugee claimant has committed a crime. The Board can consider evidence of charges being laid even if those charges do not result in convictions: *Xie*, above, at paras 17-23; *Legault v Canada (Secretary of State)* (1997), 42 Imm LR (2d) 192 (FCA); *Abu Ganem*, above, at para 27; *Betancour v Canada (Minister of Citizenship and Immigration)*, 2009 FC 767 at paras 48-54.

Finding That the Crime Was Serious Was Reasonable

[54] The Respondent argues that the Board's credibility finding is determinative of the Applicant's claim. The Federal Court of Appeal has recognized that the RPD is a specialized tribunal with complete jurisdiction to determine the plausibility of testimony. Assessments of the credibility of evidence are findings of fact for which the Board is entitled to a high level of deference: *Aguebor*, above; *Saha v Canada (Minister of Citizenship and Immigration)*, [2003]

FCJ No 1117 at para 23 (FC); *Razzagh v Canada (Minister of Citizenship and Immigration)*, [2004] FCJ No 918 at para 2 (FC). The Board's assessment of the seriousness of the crime was reasonable based on all of the evidence presented.

[55] When assessing the seriousness of a crime, the Respondent argues, there is a presumption that an offence is a "serious crime" if it would be punishable by a term of imprisonment of at least ten years if it had been committed in Canada: *Jayasekara*, above, at para 40; *Chan v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 390; *Xie*, above, at para 40. In this case, the Applicant's crime, if committed in Canada, would have been punishable as breaking and entering contrary to s. 348 of the *Criminal Code*, which is an indictable offence liable to a maximum penalty of life imprisonment. As such, there is a presumption that this crime was serious.

[56] However, the Board properly recognized that this presumption can be rebutted by other factors, and considered the "*Jayasekara* factors" in addition to the international and domestic view of the seriousness of the crime. The Board's credibility finding and assessment of the seriousness of the crime were reasonable and the reasons demonstrate justification, transparency and intelligibility within the decision-making process.

Applicant's Reply and Further Submissions

Issue Estoppel

[57] The Applicant says that he is not arguing that the Minister was precluded from intervening before the RPD on the issue of exclusion. Rather, since the issue of what facts were established based on the documents and the Applicant's testimony had already been finally decided by the ID, the Minister was bound to concede those facts. He was bound by law to accept the ID's findings rather than re-litigate them to get a better result. This is precisely the situation which the principle of *res judicata* exists to prevent.

[58] The Applicant says the cases relied upon by the Respondent on this issue are not applicable. *Feimi*, above, concerned arguments about cause of action estoppel, not issue estoppel. *Abu Ganem*, above, concerned the decision of the RPD, not the conduct of the Minister, who was a party to both the ID and RPD proceedings in this matter.

[59] The Applicant also disagrees with the view that bad faith on the part of the Minister must be proven to establish an abuse of process. Apart from *Blencoe*, above, the case law cited by the Respondent relates to the exercise of prosecutorial discretion, which is only reviewable in select circumstances. *Blencoe* establishes that, in the administrative law context, abuse of process can be found for reasons other than the bad faith of a party, where a denial of natural justice or obvious prejudice would occur.

[60] The Applicant argues that the present situation is very similar to that addressed in *Thambiturai*, above.

Unreasonable Findings

[61] The Applicant does not dispute the legal principles set out by the Respondent, but disagrees that they were properly applied in this case. In particular, while the Board is allowed in appropriate circumstances to base its conclusions on a foreign indictment, the Applicant is similarly entitled to refute the allegations. Any defences to the charge must be properly considered: *Ramirez*, above, at para 311.

[62] The question of whether the Applicant committed the offence of burglary abroad is more than an issue of credibility. The Board has a statutory duty to conclude that the person committed an offence, albeit on a low standard of proof. This means that, where there is no foreign conviction, the Board must perform at least some analysis of the foreign legal framework and explain how the foreign law applies to the facts, in order to conclude that the foreign charges are accurate and the offence has been committed.

[63] In this case, the Board did not acknowledge that in order to make out the offence of burglary in law, the intention must be present at the time of entry. It appears that the Board concluded that just because the Applicant subsequently formed the intent to commit theft, he had the requisite intent for burglary and therefore found that the Applicant was not credible in denying intent at the time of entry.

[64] Contrary to the Respondent's assertion that the police report contradicted the Applicant's testimony, the Applicant argues that the police and court documents did not in any way contradict his testimony. He did not deny the charges existed, but testified that he had a valid defence. The mere existence of the charges does not undermine his credibility, and it was unreasonable for the Board to find that it had a mutually exclusive choice between the credibility of the US documents and that of the Applicant.

[65] Even if the worst case scenario could be established in the case, the Applicant argues, the offence cannot be considered "serious" within the meaning of Article 1F(b). The Refugee Convention is a human rights instrument, and the exclusion articles are narrowly interpreted. The purpose informing Articles 1F(a) and 1F(c) is to "exclude those individuals responsible for serious, sustained or systematic violations of human rights which amount to persecution": *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982 at paras 63-64; *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40. This suggests that only the perpetrators of the gravest non-political crimes, who profoundly violate the human rights of others, are to be punished by exclusion from refugee protection under Article 1F(b). This is not that case, the Applicant argues.

The Impact of Febles

[66] The Applicant notes that the Supreme Court heard arguments in the case of *Febles v Canada (Minister of Citizenship and Immigration)*, SCC Docket No 35215 [*Febles*] on March 25, 2014. The scope and proper interpretation of Article 1F(b) are at issue in that case, and the Applicant argues that *Febles* will likely change the law in this area. He asks the Court to consider

certain propositions put forward by the appellant and intervenors in *Febles* as being correct principles of law, including that:

- Article 1F(b) should apply only to exclude the perpetrators of grave non-political crimes such as capital crimes and crimes against "physical integrity, life and liberty";
- The standard of proof "serious reasons to believe" is lower than the criminal standard of beyond a reasonable doubt but higher than the civil standard of balance of probabilities;
- It is overbroad and contrary to treaty interpretation principles to presume that crimes that have a maximum sentence of 10 years or more when prosecuted by indictment are "serious." Rather, serious crimes are those that would actually be punished by an appreciable number of years of incarceration. The Board should look at the facts of the case rather than theoretical maximums;
- The exclusion provisions of the Refugee Convention should be interpreted narrowly, and applied only when the integrity of the purpose of the Convention is called into question by inclusion. Both inclusion and exclusion should be considered, and the seriousness of the claimant's conduct should be weighed against the consequences of exclusion; and
- Even claimants who have committed serious non-political crimes in the past should not be excluded when inclusion would not undermine the purposes of the Refugee Convention.

ANALYSIS

[67] One of the central findings of the Decision occurs at paragraph 28:

> I therefore find that the claimant broke into his neighbour's house with the intention of stealing anything of value that he might encounter therein and that he did steal various items of a value of approximately $5,000 USD.

[68] The evidentiary basis for this finding is difficult to discern, either in the Decision itself or in the record.

[69] I find the Board's conclusions about the discrepancies between the Applicant's PIF narrative and his oral testimony reasonable:

> I have carefully examined the evidence and strongly prefer the Minister's evidence over that of the claimant for the following reasons. The claimant failed to document in his PIF narrative that he entered the house. I do not accept as credible that, at the time he prepared his PIF, he had forgotten he had entered the house but did remember taking a key from an old vehicle. If there was not evidence to the contrary any reasonable person reading this PIF narrative would conclude that the claimant's only action was to take a key from an old vehicle. It is more likely that the claimant was trying to hide from the reader that he entered the house. This Panel is not in a position to assess why the claimant would have admitted to entering the house at the Immigration Division hearing but there is insufficient credible evidence before me to conclude that this admission was made because the claimant had suddenly remembered it.

[70] However, this finding does not provide a basis for the Board's conclusion that the Applicant broke into the house "with the intention of stealing anything of value…." It is clear that he broke into the house, but the Board still needs to provide an evidentiary basis for his intent at the time of the break-in. The Board attempts to do this with the following reasoning:

> The police report is very specific about what had occurred. It is the job of the police in a democratic country like the U.S. to impartially investigate incidents and I have no reason to believe that his was not done in the matter before me.
>
> There is insufficient credible evidence before me to conclude the police fabricated evidence or did not properly document the incident involving the claimant. The police report is corroborated by the charges laid by the State Attorney. The U.S. is a highly democratic country and I find that criminal charges would not be laid if there was not evidence to support them. The claimant stated that all he was guilty of was taking a key out of the ignition of an old car and taking two ceramic dogs from the house. If this were true then he would not have been charged with Grand Theft Third Degree ($300 - $5,000). The value of a key and two ceramic dogs would be far less than $300.

> I find the claimant's evidence not to be credible and therefore place little weight on it and place considerably more weight on the evidence contained in the police report and in Officer Clarke's declaration regarding what Mr. Knowles had to say about the break in of his aunt's house. I find it implausible that the claimant would face the charges he did if what he stated was true.

[71] As I read these paragraphs, the Board's rationale for finding the requisite "intention of stealing anything of value" is that the Police Report is "specific" in this regard and this evidence is corroborated by the State Attorney who laid the charges. It is important to remember that the Applicant never faced trial and was deported from the US, so we do not know what evidence he would have adduced to meet the charges and, in particular, what his evidence would have been on the issue of intent.

[72] The Police Report, which appears at page 185 of the CTR, says, in relevant part, that the Applicant:

(a) Forced entry into the unoccupied dwelling;

(b) He removed property estimated at "$500C";

(c) He took the property to his residence;

(d) He later expressed remorse about what he had done and "admitted that the entered the complainant's house without permission, and took property from it to his own house."

[73] None of this supports a finding that the Applicant broke into the house "with the intention of stealing anything of value that he might encounter." The Applicant himself provided evidence of his intent upon entry and, although I accept the Board's conclusions in paragraph 24 that "[i]t is more likely that the claimant was trying to hide from the reader that he entered the house," this does not decide the crucial issue of his "intent" in entering the house.

[74] The bringing of charges by the State Attorney corroborates very little. There would obviously be a possibility that the Applicant had entered with the requisite intent, but this would have to be proved at trial and we simply don't know whether that would have been possible, or how the Court would have received the Applicant's version of events and intent if he had chosen to testify in his own defence.

[75] The Police Report, and the bringing of charges by the State Attorney, do not refute the Applicant's account of his "intent" on entering the house because they provide no evidence of that intent.

[76] The Police Report is also unclear on the value of the property that was taken by the Applicant. "$500C" is not necessarily "$5,000," and the Board doesn't say why it decided it was, except by reference to the charge of "Grand Theft Third Degree ($300 - $5000)." All this means is that the value of the property taken fell within the range; not that it was $5,000. The Board is obviously implying that the Applicant must have taken more than the "two ceramic dogs" if he was charged with this offence. But this does tell us that "he did steal various items of a value of approximately $5,000 USD." We just don't know what the Board is referring to here or how it reached a $5,000 USD value, unless it is relying upon the figure contained in the Police Report which is just not clear. The Board's reasoning on this issue is circular. It interprets the figure as "$5,000" because "the Applicant would not have been charged with a $300 - $5,000 offence."

[77] There were many credibility issues at play in the proceeding before the Board, and the Board cannot be faulted for its suspicions about the Applicant's PIF omissions, but it still had to

decide whether there were reasonable grounds to support the requisite "intent" or entry for burglary under the laws of the State of Florida, and the Board has failed to do so in any way that could be called reasonable.

[78] The Board is also swayed in its deliberations by the declaration of the CBSA Officer, Adam Clarke, and his dealings with Robert Earl Knowles:

> The Minister also submitted a declaration from Canada Border Services Officer Adam Clarke. Officer Clarke contacted Robert Earl Knowles Sr. Mr. Knowles advised that the house that was broken (sic) belonged to his aunt who had passed away. He was advised of the break and enter by the police on the day that it occurred. He was told by the police that a group of individuals who were renting the house next door broke into the house through a back window and stole a large amount of property. He observed the extent of the theft but had nothing further to do with the incident. He was advised by the police that the culprits had been removed from the U.S.
>
> Mr. Knowles advised that the stolen items included a couple hundred ceramic dogs, a vacuum cleaner, vases and a number of other items that he cannot specifically remember.
>
> Although Officer Clarke's declaration is silent on the particulars regarding the status of the house the charges filed by the State Attorney state that the property was that of Robert Knowles and/or the Estate of Emily Hazel. I conclude from this that the owner of the house was Emily Hazel and that she had died and Robert Knowles was her Executor.

[79] It isn't clear what this evidence goes to. The Board doesn't say whether it thinks the Applicant broke into the house through a back window and stole a large amount of property, or whether it thinks the Applicant stole "a couple of hundred ceramic dogs." Perhaps this is simply about ownership of the house. But it is noticeable that there are significant differences between the Police Report heavily relied upon by the Board for what happened and the evidence of what

happened as relayed by the CBSA Officer after his conversation with Mr. Knowles. This required the Board to clarify its findings as to what it accepted as evidence to support serious grounds.

[80] The Applicant raises many issues and I do not accept all of them as reviewable errors. However, the principal concern for the Court is the Board's failure, in its "serious reasons for considering" analysis to provide an evidentiary basis for its crucial finding at paragraph 28 that, in breaking into the house, the Applicant's intent was to steal "anything of value that he might encounter therein and that he did steal various items of a value of approximately $5,000 USD." It is not enough to say that the Applicant was charged with the offences, and the Police Report provides no evidence of intent that would allow a finding of burglary as opposed to, say, trespass. On this ground alone, this matter should be retuned for reconsideration.

[81] Applicant's counsel has suggested the following questions for certification:

> Has the Supreme Court of Canada decision *Ezokola v. Canada (Citizenship and Immigration),* 2013 SCC 40, [2013] 2 S.C.R. 678 overtaken prior jurisprudence and established that, under s. 98 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 and article 1F of the *Convention Relating to the Status of Refugees*, 189 U.N.T.S. 150, entered into force April 22, 1954, the evidentiary standard of "serious reasons for considering" that a refugee claimant has committed or been guilty of the acts set out in article 1F is equivalent to neither the criminal nor civil standard of proof, but is higher than "reasonable grounds to believe" and implies that, prior to excluding a refugee claimant from protection, a decision maker must be satisfied on at least a balance of probabilities that the refugee claimant has committed or been guilty of those acts?

[82] In view of the result and my reasons these questions are not material to my decision.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a differently constituted Board.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8243-13
STYLE OF CAUSE:	PAUL EDGARDO GALINDO VASQUEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JULY 14, 2014
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	AUGUST 7, 2014

APPEARANCES:

Maria Sokolova	FOR THE APPLICANT
Edward Burnet	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Maria Sokolova Barrister and Solicitor Vancouver, British Columbia	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT