

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20090526**

**Docket: A-386-08**

**Citation: 2009 FCA 171**

**CORAM: DÉCARY J.A.  
NOËL J.A.  
BLAIS J.A.**

**BETWEEN:**

**ELDER BENJAMIN SOLIS PEREZ**

**Appellant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION CANADA**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondents**

Heard at Montréal, Quebec, on May 26, 2009.

Judgment delivered from the Bench at Montréal, Quebec, on May 26, 2009.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL J.A.**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Montréal, Quebec, on May 26, 2009)**

**NOËL J.A.**

[1] This is an appeal from a decision of Martineau J. (2008 FC 663), dated May 26, 2008, wherein he dismissed the appellant's application for judicial review of a Pre-Removal Risk

Assessment (PRRA) officer's decision on the ground that the matter was moot because the appellant was no longer in Canada. The Court further held that it would not exercise its discretion to hear the judicial review.

[2] The PRRA officer denied the appellant's application for protection on the ground that he would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Mexico, his country of nationality or habitual residence. After having sought without success to stay the removal order issued subsequent to the negative decision of the PRRA officer, the appellant returned to Mexico. Subsequently, leave to seek judicial review of the decision of the PRRA officer was granted.

[3] The judicial review application came before Martineau J. who raised the issue of mootness *proprio motu*, given that the appellant was no longer in Canada. Applying the factors set out in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at pages 358-363 he went on to dismiss the application on the ground of mootness (paras. 20 to 37).

[4] After the decision was rendered, Martineau J. agreed to certify the following questions:

- i) Is an application for judicial review of a PRRA moot where the individual who is the subject of the decision has been removed from or has left Canada after an application for stay of removal has been rejected?

- ii) What factors or criteria, if different or additional to those elucidated in *Borowski* should the Court consider in the exercise of its discretion to hear an application for judicial review that is moot?
- iii) If a judicial review of a PRRA is successful after the applicant has been removed from or has left Canada, does the Court have the authority to order the Minister to return the applicant to Canada pending re-determination and, as the case may be, at the cost of the government?

[5] We agree that the application for judicial review is moot, and in particular with the statement made by Martineau J. at paragraph 25 of his reasons where he says:

[...] Parliament intended that the PRRA should be determined before the PRRA applicant is removed from Canada, to avoid putting her or him at risk in her or his country of origin. To this extent, if a PRRA applicant is removed from Canada before a determination is made on the risks to which that person would be subject to in her or his country of origin, the intended objective of the PRRA system can no longer be met. Indeed, this explains why section 112 of the Act specifies that a person applying for protection is a “person in Canada”.

By the same logic, a review of a negative decision of a PRRA officer after the subject person has been removed from Canada, is without object.

[6] We also cannot detect any error in Martineau J.’s exercise of discretion in deciding not to hear the application despite its mootness.

[7] The appeal will accordingly be dismissed. The first certified question will be answered in the affirmative. In response to the second question, there is no need in this case to consider factors beyond those considered in *Borowski*. The third question being hypothetical in nature will not be answered.

“Marc Noël”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-386-08

**(APPEAL FROM A DECISION OF THE HONOURABLE MR. JUSTICE MARTINEAU,  
OF THE FEDERAL COURT, DATED MAY 26, 2008.)**

**STYLE OF CAUSE:** ELDER BENJAMIN SOLIS PEREZ  
v. THE MINISTER OF  
CITIZENSHIP AND  
IMMIGRATION CANADA ET AL

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 26, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** DÉCARY J.A.  
NOËL J.A.  
BLAIS J.A.

**DELIVERED FROM THE BENCH BY:** NOËL J.A.

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