Date: 20081114

Docket: A-73-08

Citation: 2008 FCA 355

CORAM: **EVANS J.A.**
SHARLOW J.A.
RYER J.A.

BETWEEN:

KARIM BADRUDIN PARSHOTTAM

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Heard at Toronto, Ontario, on October 30, 2008.

Judgment delivered at Ottawa, Ontario, on November 14, 2008.

REASONS FOR JUDGMENT BY: EVANS J.A.

CONCURRED IN BY: RYER J.A.
CONCURRING REASONS BY: SHARLOW J.A.

Date: 20081114

Docket: A-73-08

Citation: 2008 FCA 355

CORAM: **EVANS J.A.**
SHARLOW J.A.
RYER J.A.

BETWEEN:

KARIM BADRUDIN PARSHOTTAM

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

EVANS J.A.

A. INTRODUCTION

[1] This is an appeal by Karim Badrudin Parshottam, a citizen of Uganda by birth, from a decision of the Federal Court (2008 FC 51), in which Justice Mosley dismissed his application for judicial review of a rejection of his application for protection by a Pre-Removal Risk Assessment ("PRRA") officer.

[2] Mr Parshottam entered Canada in February 2004 from the United States with a Green Card, evidencing his status in the United States as a permanent resident. The card was valid until June

2004. He had resided lawfully in the United States for the previous 18 years. On his arrival in Canada, Mr. Parshottam applied for recognition as a refugee. Although he alleged a fear of persecution in the United States, the principal basis of his claim was that he had a well founded fear of persecution as a gay Muslim man in Uganda and in Pakistan, where he lived with his parents after their expulsion from Uganda by the regime of Idi Amin. Mr Parshottam is now 47 years old.

[3] In a decision dated January 9, 2006 the Refugee Protection Division of the Immigration and Refugee Board ("RPD") dismissed his application for recognition in Canada as a refugee. The RPD found that Mr Parshottam had been a permanent resident of the United States since 1990, a status which he retained when he arrived in Canada. The RPD also stated that "on a balance of probabilities, the claimant continues to be a permanent resident of the United States" and "there is no serious doubt that the United States of America would no longer recognise him as a permanent resident."

[4] Accordingly, Mr Parshottam was held to be a person referred to in Article 1E of the *United Nations Convention Relating to the Status of Refugees* ("Convention") and, as such, was neither a Convention refugee nor a person in need of protection by virtue of section 98 of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27 ("IRPA").

[5] In April 2006, the Federal Court denied Mr Parshottam's application for leave to apply for judicial review of the RPD's decision. Following the issue of a removal order, he applied for a PRRA.

[6] In a decision dated December 12, 2006, a PRRA officer dismissed Mr Parshottam's application for protection, concluding:

> At the time of this PRRA assessment, and based on the evidence before me, the applicant is a Permanent Resident of the United States and may be returned to that country based on that status. The evidence before me does not show that the applicant has lost his status in the United States as a Permanent Resident. (Emphasis added.)

The officer also rejected his arguments that, if returned to the United States, he would be at risk of persecution there as a gay Muslim man and of *refoulement* to Uganda or Pakistan.

[7] Under a Reciprocal Arrangement between Canada and the United States for the exchange of deportees, U.S. Customs and Border Protection issued a letter, dated July 31, 2006, consenting to the return of Mr Parshottam to the United States. However, this letter is not an acknowledgement by U.S. authorities that, on his return, Mr Parshottam would be regarded by U.S. authorities as a permanent resident.

[8] Justice Mosley dismissed his application for judicial review of the PRRA decision and certified the following question for appeal under paragraph 74(*d*) of IRPA:

> Once the Refugee Protection Division excludes an individual from protection under Article 1E of the Refugee Convention and IRPA s. 98 due to having nationality of a third country, what is the relevant date for a PRRA officer's determination whether the individual should also be excluded under Article 1E and section 98 from PRRA protection – the time of admission to Canada or the time of the PRRA application?

B. LEGISLATIVE FRAMEWORK

ARTICLE 1 OF THE UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES	***L'ARTICLE PREMIER DE LA CONVENTION DES NATIONS UNIES RELATIVE AU STATUT DES RÉFUGIÉS***
E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.
IMMIGRATION AND REFUGEE PROTECTION ACT	***LOI SUR L'IMMIGRATION ET LA PROTECTION DES RÉFUGIÉS***
98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet
(…)	[…]
(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	*c)* s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
(…)	[…]

C. ISSUES AND ANALYSIS

[9] Mr Parshottam had advanced a number of arguments before the RPD, the PRRA officer, and Justice Mosley to support his claim for protection in Canada. However, before us counsel relied on only two: (1) the PRRA officer was correct to determine whether Mr Parshottam was a permanent resident of the United States for the purposes of Article 1E and section 98 of IRPA as of the date of the assessment, not of his admission to Canada; (2) the PRRA officer erred in concluding that Mr Parshottam was a permanent resident of the United States at the time of the assessment.

Issue 1: Permanent residence: time of determination

[10] In my view, the question certified by Justice Mosley is not dispositive of the appeal and should not be answered. It is clear from the extract from the PRRA officer's reasons which I quoted in paragraph 5 above that she determined Mr Parshottam's permanent residence status in the United States as of the date of her assessment. Counsel for Mr Parshottam submits that this is the correct date. However, because I would dismiss the appeal on other grounds, I am prepared to assume for present purposes that counsel is right to say that an applicant's permanent residence in a third country is determined as of the date of the PRRA.

[11] I would only add that, with all respect to Justice Mosley, I do not share his view that it is "settled law" that whether a claimant for protection in Canada is a permanent resident of a third country for the purpose of Article 1E and section 98 of IRPA is invariably determined as of the time of the claimant's arrival in Canada and that subsequent events are irrelevant: see, for example, Martin Jones and Sasha Baglay, *Refugee Law* (Toronto: Irwin Law Inc., 2007) at 153-54. Beyond

this, nothing in these reasons is to be taken as expressing a view on the correct answer to the certified question.

[12] It is common ground that if Mr Parshottam was a permanent resident of the United States at the relevant time, he is excluded by Article 1E from claiming refugee status in Canada.

Issue 2: Did the PRRA officer err in concluding that Mr Parshottam was a permanent resident of the United States at the time of the assessment for the purposes of Article 1E and IRPA, section 98?

[13] Justice Mosley did not deal with this issue because he was of the view that the PRRA officer should have assessed Mr Parshottam's permanent resident status as of his entry into Canada in February 2004.

[14] Counsel for the Minister argued that a PRRA officer may only consider whether an applicant is at risk as against the country to which he or she is being removed from Canada. Accordingly, since Mr Parshottam was being removed to the United States, where he would be admitted under the letter of consent, the only questions were whether he was at risk of persecution in, or *refoulement* from, the United States. Because Mr Parshottam no longer challenges the PRRA officer's conclusion that he was not at risk in these respects, the Minister says that the appeal should be dismissed. However, I need not decide this issue in order to dispose of the appeal and I express no view on it.

[15] As I have already noted, the RPD found that Mr Parshottam was a permanent resident of United States on his arrival in Canada and continued to be so. Since the Federal Court denied Mr Parshottam's application for leave to challenge this decision, he is bound by it and cannot collaterally impugn its findings in this proceeding.

[16] The PRRA officer took into consideration two opinion letters, which had not been before the RPD, expressing doubts as to whether Mr Parshottam would still be recognized as a permanent resident of the United States as a result of both the length of his absence and his application for refugee status in Canada. Despite these letters, the PRRA officer concluded that he had not lost his status.

(i) *standard of proof*

[17] Whether the officer applied the appropriate standard of proof is a question of law of general application to PRRAs and, like other such questions of law decided in this administrative context, is reviewable on a standard of correctness. I agree with Justice Mosley (at para. 16 of his reasons) on this issue.

[18] Counsel argued that the PRRA officer had erred in law by applying the wrong standard of proof. That is, the officer required Mr Parshottam to prove as a matter of certainty that that he had lost his permanent residence status in the United States. Counsel relied on *Mahdi v. Canada (Minister of Citizenship and Immigration)* (1995), 191 N.R. 170 at para. 12 (F.C.A.) as authority for the proposition that the officer should have asked whether on a balance of probabilities Mr

Parshottam had lost his status, taking into account the possibility that United States' authorities might no longer recognize him as a permanent resident because of the expiry of his Green Card, the length of time that he had been in Canada and the fact that he had left the United States to apply for permanent resident status in Canada as a refugee.

[19] I do not agree. Although the PRRA officer did not articulate the standard of proof that she was applying, it is to be assumed in the absence of indications to the contrary that she applied the correct one, namely, a balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53 at para. 54 ("*F.H.*"). In my opinion, the officer's reasons, including her observation that whether Mr Parshottam was still a permanent resident would ultimately be determined by an immigration judge in the United States, do not establish that she applied some standard other than a balance of probabilities.

[20] I do not read her reasons as treating a judicial determination of loss of status as a necessary precondition to a finding by the PRRA officer that Mr Parshottam was no longer a permanent resident in the United States. Further, the fact that the RPD had expressly applied the correct standard, a decision which the PRRA officer had before her, also makes it unlikely that she selected another standard. Since it is clear from the officer's reasons that she took into account the evidence supporting Mr Parshottam's contention that he had lost permanent residence status in the United States, it would be unduly formalistic to require, as a matter of law, that she advert expressly in her reasons to the doubt which that evidence raised.

(ii) ***application of the standard of proof***

[21] The officer's application of the correct standard of proof to the evidence is a question of mixed fact and law, in which the factual element is the larger. Hence, the standard of review is unreasonableness: *Rai v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 12 at para. 17.

[22] Counsel argued that, in view of the new evidence before her, the PRRA officer's finding that Mr Parshottam was a permanent resident in the United States at the time of the assessment was unreasonable.

[23] The first item of "new" evidence considered by the PRRA officer was a letter, dated June 28, 2006, from Nan Berezowski, an immigration lawyer practising in Toronto and a member of the New York Bar. On the basis of the information about Mr Parshottam's situation that she had been given by his counsel, Ms Berezowski stated that permanent residents do not have an automatic right to resume their status after an absence from the United States: the length of time spent abroad and whether absence from the United States was intended to be temporary will be taken into consideration. She concluded that Mr Parshottam "has extremely poor prospects for readmission to the United States as a lawful Permanent Resident."

[24] The second letter, dated May 19, 2006, was from Gary Sheaffer, Consular Section Chief, U.S. Consulate in Montreal. He expressed the view that, on the basis of the facts that he had been given (including his claim to remain in Canada as a refugee and the length of his absence), it was

"not likely" that Mr Parshottam would qualify as a returning resident. He referred, in particular, to the fact that, by applying for refugee status in Canada, Mr Parshottam had evinced "a clear desire to abandon U.S. status."

[25] The Minister has not challenged the decision of the PRRA officer to admit the two letters under paragraph 113(*a*) of IRPA as "new evidence". However, I make the following observations in order to put the letters in context. First, although dated approximately 12 months after the date of the RPD hearing (June 3, 2005), the letters do not demonstrate any material change of circumstances since the RPD dismissed Mr Parshottam's refugee claim in January 2006. Second, since Mr Parshottam had arrived in Canada in February 2004 and his Green Card had expired in June of that year, the opinions expressed in the letters might be thought to have been reasonably available to him at the time of the hearing at the RPD, and could have been expected to have been put in evidence by his legal counsel, who was not his present counsel. The fact that the letters were dated after the RPD hearing does not make them "new evidence": *Elezi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 240 at paras. 27-30.

[26] The letters were written by appropriately qualified people and on their face raise a doubt about Mr Parshottam's future status in the United States. However, it is not the function of a reviewing court to determine for itself whether it would have concluded that this evidence was "sufficiently clear, convincing and cogent to satisfy the balance of probabilities" (*F.H.* at para. 46) that Mr Parshottam would no longer be regarded by U.S. authorities as a permanent resident. That is

the job of the PRRA officer. This Court has the more limited task on judicial review of examining the evidence to ensure that her finding was not unreasonable.

[27] I am not persuaded that, when the circumstances are considered in their entirety, the PRRA officer's conclusion was unreasonable, particularly since the evaluation of the evidence before her was at the core of her expertise.

[28] An important context of the officer's decision is the finding by the RPD, in a decision rendered less than a year earlier, that Mr Parshottam was at the time of entry into Canada, *and continued to be*, a permanent resident of the United States. Although noting that the expiry of Mr Parshottam's Green Card did not result automatically in the lapse of his permanent residence status, the RPD does not seem otherwise to have specifically considered the effect of his absence on his status. However, having failed to obtain leave to apply for judicial review of that decision, Mr Parshottam cannot collaterally attack the RPD's decision but must take its findings as they are.

[29] The PRRA officer was concerned that the letters may not have given sufficient weight to the fact that residence status is determined on the facts of individual cases. Hence, the cogency of the letters that she considered can only be assessed by reference to the factual assumptions on which they were based, something that the record does not reveal. The officer notes, for example, that the letters do not refer to Mr Parshottam's "psychological challenges" and their possible impact on his decision to leave the United States. Nor do they refer to the fact that he had resided in the United States for 18 years, the last 14 of them as a permanent resident.

[30] To the extent that the seriousness of the consequences of the PRRA officer's decision are considered as part of the context in a determination of whether the balance of probabilities standard has been met (*F.H.* at para. 40), I would note that the refusal of his PRRA application does not put Mr Parshottam at risk of being sent to a country where he requires protection.

[31] We know also that, because he holds a letter of consent, Mr Parshottam will not be peremptorily refused entry at the border, whatever his residence status in the United States is ultimately determined to be. The PRRA officer's reasons may suggest that she may not always have kept separate and distinct the different bases advanced by Mr Parshottam for his application for protection. However, I am not satisfied that, when considered "globally and as a whole" (*Figurado v. Canada (Minister of Citizenship and Immigration*), 2005 FC 347 at para. 51), her decision can be said to be unreasonable.

D. CONCLUSIONS

[32] For these reasons, I would dismiss the appeal.

"John M. Evans"

J.A.

"I agree
C. Michael Ryer J.A."

CONCURRING REASONS

SHARLOW J.A.

[33] I agree with the disposition of this appeal proposed by my colleague Justice Evans. However, I reach that conclusion for different reasons.

[34] The certified question that opened the door to this appeal reads as follows:

> Once the Refugee Protection Division excludes an individual from protection under Article 1E of the Refugee Convention and IRPA s. 98 due to having nationality of a third country, what is the relevant date for a PRRA officer's determination whether the individual should also be excluded under Article 1E and section 98 from IRPA protection – the time of admission to Canada or the time of the PRRA application?

[35] Article 1E of the Convention and section 98 of IRPA establish a legal bar to a refugee claim. They are quoted in the reasons of Justice Evans and are repeated here for ease of reference.

CONVENTION	**CONVENTION**
E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.
IRPA	**LIPR**
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.

[36] It is generally accepted that the Article 1E exclusion would apply to any person who has the status of permanent resident of the U.S. and who makes a refugee claim in Canada against the country of his or her nationality. Mr. Parshottam was a permanent resident of the U.S. in February

of 2004 when he entered Canada and when he made his refugee claim against Uganda (he also made a refugee claim against the U.S. but that claim was dismissed and is not being pursued). There is no evidence that the U.S. immigration authorities have taken any steps to deprive Mr. Parshottam of his status as a permanent resident of the U.S. Thus, if Mr. Parshottam's refugee claim against Uganda had been adjudicated in February of 2004, it would have been barred by Article 1E. Mr. Parshottam's fear is that if he is now removed to the U.S., the U.S. authorities may determine that he is no longer entitled to the status of permanent resident of the U.S., and could remove him to Uganda despite his well founded fear of persecution there.

[37] It is clear from the record that, even if the U.S. authorities determine that Mr. Parshottam is no longer entitled to the status of permanent resident of the U.S., he is unlikely to be refouled to Uganda. However, that should not obscure the importance of this appeal to Mr. Parshottam. If the decision of the PRRA officer in this case is wrong in law or is unreasonable, Mr. Parshottam will have been wrongly deprived of his right to assert, in Canada, a potentially valid refugee claim against Uganda. It is clear that, but for Article 1E, Mr. Parshottam's refugee claim against Uganda would have succeeded on the merits (see the written observations made by the Refugee Protection Officer, Appeal Book, Volume 2, page 241).

[38] As I understand the certified question, it is intended to determine whether it was open to the PRRA officer to consider whether the Article 1E bar remained in effect in December of 2006 when, on the eve of Mr. Parshottam's removal to the U.S., he made his claim for protection under section 112 of IRPA. I agree with Justice Evans that this issue is unsettled but I do not agree that it should

remain unsettled, even if it is not dispositive of this appeal. I reach that conclusion because the Federal Court jurisprudence discloses some confusion on this point and because Justice Mosley, by certifying the question, has expressed the opinion that it is a serious question of general importance.

[39] Mr. Parshottam proposes an answer to the certified question that is the polar opposite of the answer proposed by the Minister. Mr. Parshottam argues that his status as a permanent resident of the U.S. must be determined as of the date of the pre-removal risk assessment and at no other time. The Minister argues that, because Mr. Parshottam was a permanent resident of the U.S. in February of 2004 when he entered Canada and made his refugee claim, it is not open to him to assert that he may have lost that status at some point during his sojourn in Canada or that the U.S. authorities may not recognize that status if he is removed to the U.S.

[40] It is instructive to consider the decision of the RPD in this case, even though it is final and not subject to judicial review. The RPD did not accept either of the extreme views stated above. Rather, the RPD took a middle path, recognizing that Mr. Parshottam was a permanent resident of the U.S. in February of 2004 when he entered Canada and made his refugee claim, but going on to consider Mr. Parshottam's assertion that he had lost his status as a permanent resident of the U.S. while he was in Canada. In effect, the RPD determined Mr. Parshottam's U.S. status at two points in time, first as of February of 2004 when Mr. Parshottam first made his refugee claim, and then as of January of 2006 when the RPD made its decision. The RPD examined carefully what change to Mr. Parshottam's status was alleged to have occurred in the interim, and the degree of responsibility that should reasonably be borne by Mr. Parshottam if in fact there was a change of status.

[41] I see no error in principle in the general approach taken by the RPD. It respects the purpose of Article 1E and section 98, both of which are expressed in the present tense, by ensuring an examination of Mr. Parshottam's status in the U.S. as of the date of the decision. At the same time, it discourages asylum shopping by considering evidence that would tend to indicate that Mr. Parshottam has failed to take the formal steps available to him to preserve his status in the U.S. as it was when he first asserted his refugee claim in February of 2004.

[42] The PRRA officer took the same approach, correctly in my view, when she considered the merits of Mr. Parshottam's assertion that his status as a permanent residence of the U.S. was lost or would not be recognized. The PRRA officer, like the RPD, considered Mr. Parshottam's status in the U.S. as of February of 2004 when he entered Canada and made his refugee claim, and also at the time of the pre-removal risk assessment in December of 2006. In my view, that was the correct approach. I would answer the certified question as follows:

> Question: Once the Refugee Protection Division excludes an individual from protection under Article 1E of the Refugee Convention and IRPA s. 98 due to having nationality of a third country, what is the relevant date for a PRRA officer's determination whether the individual should also be excluded under Article 1E and section 98 from PRRA protection – the time of admission to Canada or the time of the PRRA application?
>
> Answer: If the claimant presents new evidence (as contemplated by paragraph 113(a) of IRPA) that Article 1E does not apply as of the date of the pre-removal risk assessment, the PRRA officer may determine on the basis of the new evidence that Article 1E currently applies, in which case the claim for protection is barred.

> Alternatively, the PRRA officer may determine on the basis of the new evidence that Article 1E does not currently apply although it did apply at the time of the claimant's admission to Canada (or at the date of the RPD decision). If such a change of status has occurred, the PRRA officer should consider why the change of status occurred and what steps, if any, the claimant took or might have taken to cause or fail to prevent the change of status. If the acts or omissions of the claimant indicate asylum shopping, Article 1E may be held to apply despite the change in status.

[43] I turn now to the merits of the PRRA officer's decision. She concluded first that Mr. Parshottam had presented her with two letters that met the statutory conditions for "new evidence" pursuant to paragraph 113(a) of IRPA. One is a letter dated June 28, 2006 from an immigration lawyer. The other is a letter dated May 19, 2006 from a U.S. consular official.

[44] The Minister did not object to the PRRA officer considering the letters. The admissibility of the letters was not the subject of debate in the Federal Court and was not raised in this appeal as an issue in Minister's memorandum of fact and law. I do not agree with the observation of Justice Evans that the information in the letters might have been reasonably available at the time of the RPD hearing and could have been expected to have been produced at that stage. In my view the record provides no foundation for that observation. My analysis presumes that the evidence was properly accepted by the PRRA officer on the basis that in the circumstances, it would not have been reasonable to expect Mr. Parshottam to present that evidence to the RPD

[45] The question in this appeal is whether it was reasonable for the PRRA officer to conclude, on a balance of probabilities, that Mr. Parshottam was a permanent resident of the U.S. as of the date of the pre-removal risk assessment.

[46] The new evidence considered by the PRRA officer indicates that the conduct of Mr. Parshottam in coming to Canada to make a refugee claim may be taken by the U.S. authorities as a declaration of his intention not to return to the U.S. or an expression of his desire to abandon his U.S. status. The record does not establish what factual information was provided to the writers of these letters to elicit this reply, which weakens their probative value. Further, as the PRRA officer noted, there are a number of aspects of U.S. immigration law that these letters do not address, including the fact that in the U.S., the determination of the status of a returning permanent resident is assessed on an individual basis. Therefore, it was reasonable in my view for the PRRA officer to find that these two letters were insufficient to establish that Mr. Parshottam had lost his status as a permanent resident of the U.S.

[47] There is one aspect of the PRRA officer's consideration of the new evidence that appears to me to be incorrect. It appears in this sentence (Appeal Book, Volume 1, page 33):

> Further, [the letters] do not take into account the U.S./Canada Reciprocal Arrangement. A consent letter is on file dated, July 31, 2006 which indicates that the applicant is authorized to return to the United States pursuant to Section III (2) of the Reciprocal Arrangement.

[48] This comment refers to a letter dated July 31, 2006 to the Minister from the U.S. Customs and Border Protection consenting to the return of Mr. Parshottam to the U.S. I agree with Justice Evans that this letter is not an acknowledgement by U.S. authorities that, on his return, Mr.

Parshottam would be regarded by U.S. authorities as a permanent resident. For that reason, it seems to me illogical for the PRRA officer to use the consent letter as a reason for giving less weight to the letters from the lawyer and the U.S. consular official addressing Mr. Parshottam's status as a permanent resident of the U.S. However, even if she had not made that statement, I cannot conclude that the letters from the lawyer and the U.S. consular officer are sufficiently probative to warrant a new pre-removal risk assessment.

[49] For these reasons, I would dismiss the appeal.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-73-08
STYLE OF CAUSE:	Karim Badrudin Parshottam and The Minister of Citizenship and Immigration
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 30, 2008
REASONS FOR JUDGMENT BY:	Evans J.A.
CONCURRED IN BY:	Ryer J.A.
CONCURRING REASONS BY:	Sharlow J.A.
DATED:	November 14, 2008

APPEARANCES:

Leigh Salsberg	FOR THE APPELLANT
Martin Anderson David Joseph	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jackman & Associates Toronto, Ontario	FOR THE APPELLANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT