

No:

FEDERAL COURT

Between:

Carl MALASKIEWICZ BLAISE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**APPLICATION FOR LEAVE
and for JUDICIAL REVIEW**

TO THE RESPONDENT:

AN APPLICATION FOR LEAVE TO COMMENCE AN APPLICATION FOR JUDICIAL REVIEW UNDER SECTION 72(1) OF THE IMMIGRATION AND REFUGEE PROTECTION ACT has been commenced by the applicant.

UNLESS A JUDGE DECIDES OTHERWISE, THIS APPLICATION FOR LEAVE will be disposed of without personal appearance by the parties, in accordance with subsection 72(2)(d) of the Immigration Act.

IF YOU WISH TO OPPOSE THIS APPLICATION FOR LEAVE, you or a solicitor authorized to practice in Canada acting for you must forthwith prepare a Notice of Appearance in Form IR2 prescribed by the Federal Court in Immigration and Refugee Protection Rules, serve it on the tribunal and the applicant's solicitor or, where the applicant do not have a solicitor, serve it on the applicant, and file it, with proof of service, at the Registry, within 10 days of service of this application for leave.

IF YOU FAIL TO DO SO, the Court may nevertheless dispose of this application for leave and, if leave is granted, the subsequent application for judicial review without further notice to you. Note: Copies of the relevant rules of Court, information on the local office of the Court and other necessary information may be obtained from any local office of the Federal Court or the Registry of the Trial Division in Ottawa, telephone: (613) 992-4238.

The applicant seeks leave of the Court to commence an application for judicial review of the decision of Michelle Langelier of the Immigration and Refugee Board (Refugee Division) rendered on March 19, 2008 in file number MA7-03208 and received by the applicant on or around April 2, 2008 stating that the applicant is not a Convention refugee or a protected person. The address of the Immigration and Refugee Board is 200 René Lévesque Boul. West, Montreal, Québec and the telephone number is 283-3160.

In the event that leave is granted, the applicant seeks the following relief by way of judicial review:

DECLARE invalid and quash the decision of the Immigration and Refugee Board (Refugee Division) and refer back the case for determination in accordance with such directions as it considers appropriate,

AND DECLARE that Section F of the Geneva Convention cannot apply to infractions related to the free expression of opinion unless there is a direct incitation to violence.

In the event that leave is granted, the application for judicial review is to be based on the following grounds:

1. The tribunal has erred in law in the following:

a) the tribunal has not addressed a central question of this case, the illegality of several of the accusations under federal law in the United States and the question of double jeopardy. This is prohibited by article 5 of the Bill of Rights in the American Constitution and by Section 11(h) of the Canadian Charter of Freedoms. This central issue which puts into question the entire legal procedure against the applicant in the United States is not really addressed by the decision even though it was clearly raised as an issue before the tribunal;

b) the tribunal errs in assessing the credibility of the applicant, equivalent to an error in law. There are no valid reasons for rejecting the applicant's testimony and preferring the administrative reports of the persecutory authorities. The decision lacks any serious motivation as required in law;

c) The deportation of Mr. Carl Malaskiewicz would violate Canada's obligations in international law under the Geneva Convention as well as other international obligations of Canada;

d) The tribunal exercised its discretion wrongly when it excluded evidence of the nature of political repression in the United States today that established clearly the plausibility of the applicant's story for purely procedural reasons even though this was at the heart of the case;

e) The tribunal was clearly biased and expressed this bias on several occasions during the hearing. This is clearly shown by the treatment given to an American psychiatric opinion and a pre-sentencing report from the U.S. which is full of falsehoods and wild exaggerations;

f) The tribunal clearly does not understand the importance of freedom of expression which is protected by the Canadian Charter of Rights and Freedoms in Section 2(b) and also in Article One of the American Bill of Rights. Mr. Malaskeiwicz's opinions about the Bush family are protected expressions of opinion in the law of any democratic country as was shown before the tribunal;

g) It is a serious error in law for the tribunal to say that Mr. Malaskiewicz was found guilty of a serious non-political crime because of what he said about George Bush. The other accusations which were brought illegally cannot be considered to be a serious non-political crime; these are clearly a pretext for persecution. Section F of the Geneva Convention cannot reasonably apply to this case without turning it into a farce;

2. The tribunal has erred in its assessment of the facts and of law in the following:

a) the tribunal generally appears willing to ignore the serious human rights abuses of the Bush years in the United States and the climate of repression that the Bush Justice Department has fostered in the United States;

b) the tribunal made several factual errors which denote a lack of attention to the evidence:

(i) the tribunal errs on page 3 of the decision when they say that Mr. Malaskiewica fell off a roof when he was young;

(ii) the tribunal also errs when they say he moved to Virginia in 2005 on page 3 of the decision, he moved in January 1999;

(iii) it is wrong to say that Mr. Malaskeiwicz did a six-month sentence for possession of stolen property as is said on page 5 of the decision;

(iv) the tribunal exaggerated the situation with Dawn Jackson on page 5 of the decision;

(v) Dr. Philipps, the Secret Service psychiatrist, never treated the applicant at the Alexandria Jail as is stated on page 8 of the decision, he only prepared a strange psychiatric evaluation which is full of demonstrable untruths;

c) the tribunal errs in its evaluation of the federal charges on page 7 of the decision. The tribunal does not consider the false information in the Secret Service search warrant mentioned on pages 8 to 9 of the decision;

d) the tribunal attaches far too much importance to the Secret Service psychiatric evaluation and the pre-sentencing report prepared during the post-Sept. 11 hysteria rather than to the objective evidence placed before the court;

e) the tribunal shows biased reasoning on the nature of repression in the United States on pages 8 to 10 and page 16 of the decision. The tribunal wrongly states that George Bush was fairly elected as president;

f) the tribunal is clearly wrong to say that it is true that Mr. Malaskiewicz should serve more time because of his legal problems in the U.S., the explanations offered by Mr. Malaskiewicz have clearly not been understood or fairly considered;

g) it is clearly an error in law to consider that the caricatures of President Bush which were done by the applicant could be the subject of a criminal conviction in any reasonable democratic state;

3. The tribunal seems to hold a biased view of the situation in the United States and the refugee claimants from that country. The total disrespect of the Bush administration for the American Bill of Rights and for international law is willfully ignored by the decision-maker;

The applicant has received written reasons from the I.R.B.. In the event that leave is granted, the applicant proposes that the application for judicial review be heard at Montreal, in the English language.

Dated this 16th day of April, 2008

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