INSTRUCTIONS FROM CBSA TO ITS HEARINGS OFFICERS, DISTRIBUTED BY CBSA ON AUGUST 29, 2016:

Subject: URGENT PLEASE READ IMMEDIATELY: GUIDANCE FOR HEARINGS OFFICERS FOLLOWING COURT SETTLEMENT RE: DETENTION FACTORS

****** FRENCH TRANSLATION WILL FOLLOW***

PLEASE SHARE WITH HEARINGS OFFICERS WITHOUT DELAY

The Federal Court recently issued an Order for Judgement based on a Motion for Judgement on Consent of all parties in the case *B.B. and Justice for Children and Youth v. MCI* IMM-5754-15. The subject matter of this case was whether the Immigration Division (ID) had the jurisdiction to consider under R. 245 and R. 248 the interests of a Canadian child who is housed at an Immigration Holding Centre (IHC) at the request of the detained parent when considering if the parent should be released from detention.

The parties settled the case. The first part of the settlement agreement involved the parties making a Motion for Judgement on Consent to have the judicial review allowed on certain terms. Those terms are reflected in the Order for Judgement attached and **should be taken as the position of the government on these specific issues**.

The second part of the settlement involved the parties agreeing that certain instructions would be provided to Hearings Officers in order to clarify the government's position and the meaning of a previous Federal Court case *Shote v. MCI* 2004 FC 115 which until now the ID has relied on for the proposition that it does not have the jurisdiction to consider the interests of a Canadian child who is housed at an IHC at the request of the detained parent when considering if the parent should be released from detention.

The following text is the instructions that the government has agreed to provide to Hearings Officers and this text should be taken as the position of the government in cases involving Canadian children who are housed at an IHC at the request of their detained parent.

a) The Respondent will instruct ID Hearings Officers to bring the Order on Consent to the ID's attention. The Respondent will instruct Hearings Officers that *Shote* is being misapplied by the ID and that *Shote* does not stand for the proposition the ID believes it does. While in *Shote,* the Court concluded that the ID erred in releasing the detained parent based on an irrelevant factor, namely the superior interests of the child, the Court did confirm at paragraph 29 that R. 245(g), which covers strong ties to the community when considering flight risk, may include the presence of children but that factor does not supersede other factors. Hence, the ID could have considered the Applicant's child as a tie to Canada and how the presence of that child and her interests could motivate or influence the detained parent to comply with terms or conditions of release in assessing whether the person concerned presents a flight risk.

b) The Respondent will instruct Hearings Officers that in *Shote* the litigation centred on R.245. The Court therefore did not turn its mind to R. 248. *Shote* is silent as to what factors can be considered under R.248 as that issue was not before the Court.