

Date: 20080717

Docket: IMM-435-08

Citation: 2008 FC 883

Toronto, Ontario, July 17, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

RIGOBERTO ANTONIO MARTINEZ-SOTO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Rigoberto Antonio Martinez-Soto applies for judicial review of the Immigration Appeal Board refusal to grant a stay of a deportation order arising from a decision that he was inadmissible because of serious criminality.

[2] Mr. Martinez-Soto was born in El Salvador on March 24, 1959. He was accepted by Canada as a Convention refugee on May 22, 1986. He became an alcoholic because of the anxieties occasioned by the trauma of witnessing El Salvadoran death squads in action. His alcohol abuse

contributed to a lengthy history of criminality. His efforts to deal with his alcohol abuse during that period were unsuccessful. After being convicted of assault causing bodily harm, he was found inadmissible on the grounds of serious criminality.

[3] After his conviction, Mr. Martinez-Soto changed the direction of his life: he quit alcohol; he became compliant with court ordered supervision and he began to succeed, in the estimation of both his probation officer and his psychiatrist, dealing with his alcohol addiction and with the underlying issues that contributed to his abuse. He no longer committed criminal offences.

[4] Mr. Martinez-Soto applied for a stay of his deportation order to the Immigration Appeal Division pursuant to section 68 of the Immigration Appeal Division (IAD). The IAD denied his appeal because it determined he had not proved, on the civil balance of probabilities, that he had rehabilitated himself.

[5] The standard of review for a discretionary decision of a tribunal is reasonableness but with “giving due consideration to the determinations of the decision maker.” *Dunsmuir v. New Brunswick*, [2008] S.C.J. No 9 at para. 49.

[6] The IAD established in *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4, a list of factors to consider in a deportation appeal. They include:

- the seriousness of the offence or offences leading to the deportation
- the possibility of rehabilitation or in the alternative, the circumstances surrounding the failure to meet the conditions of admission which led to the deportation order [Emphasis added]
- the length of time spent in Canada
- the degree to which the appellant is established
- family in Canada, and the dislocation to that family that deportation of the appellant would cause
- the support available for the appellant not only within the family but also within the community
- the degree of hardship that would be caused to the appellant by his return to his country of nationality

[7] The Supreme Court of Canada approved the *Ribic* factors in *Chieu v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 3. In doing so the Court observed that it has long approved a broad approach to the then equivalent provision in effect. The Court noted that the remedial powers of the Board were very flexible: the Board could dispose of an appeal by allowing an appeal, dismissing it, or directing a stay of the execution of the order on conditions.

[8] Considering the broad approach endorsed by the Supreme Court of Canada and its specific observation that the IAD can stay a deportation order on conditions, I conclude that the interpretation to be given to the *Ribic* rehabilitation factor is, as expressly stated, the possibility of rehabilitation, rather than the proof of rehabilitation.

[9] The IAD applied a more restrictive interpretation to rehabilitation than set out in the *Ribic* factors when it held that Mr. Martinez-Soto had not proved his rehabilitation. In doing so, I find that the IAD decided unreasonably.

[10] The parties have not proposed a serious question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed and the appeal is remitted for re-determination by another tribunal.
2. No serious question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-435-08

STYLE OF CAUSE: RIGOBERTO ANTONIO MARTINEZ-SOTO v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 16, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANDAMIN J.

DATED: JULY 17, 2008

APPEARANCES:

J. Norris Ormston FOR THE APPLICANT

John Provart FOR THE RESPONDENT

SOLICITORS OF RECORD:

ORMSTON, BELLISSIMO,
ROTENBERG
Barristers and Solicitors
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE RESPONDENT