

Federal Court



Cour fédérale

**Date: 20171012**

**Docket: IMM-74-17**

**Citation: 2017 FC 907**

**Ottawa, Ontario, October 12, 2017**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**ABIDULLAH MARDUMY**

**Applicant**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a permanent resident of Canada who had a Removal Order issued against him due to criminal conduct. In 2012, he was successful in obtaining a three year stay of his removal [Stay Order] provided he avoided further criminal activity and abided by certain conditions. On December 7, 2016, after learning of his involvement in criminal activity and a failure to abide by conditions of the Stay Order, the Immigration Appeal Division [IAD] cancelled the Stay Order and the Applicant is now subject to removal from Canada. The

Applicant argues that the IAD failed to properly consider his schizophrenia diagnosis in reaching its decision to cancel the Stay Order.

[2] For the reasons that follow this application is dismissed as the Applicant has failed to identify a reviewable error.

I. Background

[3] The Applicant is a citizen of Afghanistan who came to Canada with his family as a Convention refugee. He obtained Permanent Resident status in 2003. On May 6, 2011, a Removal Order was issued against the Applicant following his 2009 conviction for robbery and possession of a weapon.

[4] On December 4, 2012, the IAD granted the Stay Order, subject to various conditions including counselling, an anger management assessment, psychotherapy, and a weapons prohibition.

[5] In 2013, the Applicant was found guilty of assault which he failed to report as required by the conditions of his Stay Order. In October 2013, in a reconsideration of the Stay Order, the IAD instructed the Applicant to seek assistance from the John Howard Society. He was warned that a failure to comply with the conditions of the Stay Order could result in its cancellation.

[6] On December 3, 2013, the Applicant failed to attend for sentencing on the assault charge and a warrant was issued for his arrest. On December 15, 2013, another arrest warrant was issued

for breach of recognizance. On April 29, 2014, the Applicant pled guilty to the outstanding warrants and was sentenced to 30 days in jail and 12 months' probation.

[7] The Minister applied for a reconsideration of the Stay Order, citing various breaches of the Order.

## II. Decision Under Review

[8] The IAD began its reconsideration of the Stay Order by noting the factors to be considered as outlined in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (Imm App Board) [*Ribic*], and modified by the Supreme Court in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 [*Chieu*].

[9] In the reconsideration process, the IAD accorded "significant weight" to the fact that some of the Applicant's conduct was violent in nature and the Applicant did not show remorse. The IAD noted that the onus is on the Applicant to demonstrate remorsefulness and rehabilitation. Nonetheless, the IAD considered the mental health of the Applicant, noting his efforts at obtaining counselling. However, the IAD concluded that these efforts were not enough to show that the Applicant was on the path to rehabilitation.

[10] The IAD also considered the Applicant's establishment in Canada, including his family in Canada, his experience working as a painter, and the emotional impact on his family if he were subject to relocation.

[11] The IAD expressly noted that while there were some humanitarian and compassionate grounds weighing in favour of the Applicant, they were outweighed by the Applicant's breaches of the Stay Order. The IAD found that the Applicant would pose an "unacceptable risk to Canadian society."

### III. Issues

[12] The Applicant raises two issues:

- I. Did the IAD reasonably apply the *Ribic* factors?
- II. Did the IAD reasonably consider humanitarian and compassionate [H&C] factors?

[13] The standard of review on both questions is reasonableness. A reasonable decision is one which shows "justification, transparency, and intelligibility" and which falls into a range of reasonable outcomes, based on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9).

### IV. Analysis

- I. *Did the IAD reasonably apply the Ribic factors?*

[14] The Applicant argues that the IAD failed to consider the impact of the 2015 schizophrenia diagnosis when it applied the *Ribic* factors to his situation.

[15] *Ribic* provides a list of non-exhaustive factors for the decision-maker to consider in exercising its discretion to provide special H&C relief against removal under s.67 (1)(c) of the *Immigration and Refugee Protection Act* (*El Houkmi v Canada (Citizenship and Immigration)*),

2015 FC 1306 at para 12). The weight to be given to each factor is discretionary based on the facts of the case (*Chieu*, at para 40).

[16] In this case, the Applicant's schizophrenia diagnosis is a key factor. The IAD considered the Applicant's written and oral submissions regarding the diagnosis. However, in considering the "seriousness of the offences involved" *Ribic* factor, the IAD assigned "significant weight" to the nature of the convictions and the Applicant's failure to abide by the conditions. This was a reasonable conclusion based on the Applicant's failure to report to authorities when charged with a violent offence and to abide by lawful orders. Further, it was proper and appropriate for the IAD to consider the crimes giving rise to the original removal order (*Canada (Citizenship and Immigration) v Stephenson*, 2008 FC 82 at para 30).

[17] The IAD did not *reject* the evidence of the schizophrenia diagnosis, but simply afforded little weight to it in the balance. The weight to be afforded to evidence is not subject to reconsideration on review (*Pathinathar v Canada (Citizenship and Immigration)*, 2015 FC 1312 at paras 15-17).

[18] Even so, the Applicant submits that the IAD's analysis does not constitute "clear reasons" and that the decision is unreasonable because the Applicant "cannot be assured that the diagnosis was considered in relation to the pre-dated condition breaches."

[19] However, the IAD was not required to refer to every piece of evidence. The Supreme Court in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury*

*Board*), 2011 SCC 62 at para 16 held that reasons need not include all details that a reviewing judge, or a litigant, would prefer. A judge must simply be able to understand how the administrative decision-maker came to its decision.

[20] Here the IAD balanced the rehabilitation factors in relation to the other factors. This is all that is required to establish that the IAD made a reasonable decision on this issue.

II. *Did the IAD reasonably consider humanitarian and compassionate [H&C] factors?*

[21] The Applicant argues that the IAD also failed to reasonably consider the Applicant's mental health when it assessed the H&C factors.

[22] The IAD took into consideration the Applicant's work history, his ties to Canada, his family within Canada, evidence in the record of tax returns, and the impact that his relocation would have on his family. The IAD also considered the Applicant's rehabilitation efforts.

[23] Upon balancing all of these factors, the IAD concluded that although there were some H&C grounds weighing in favour of the Applicant, the balance ultimately weighed in favour of the negative factors and a removal of the Stay Order.

[24] On this application, the Applicant is in effect asking this court to reweigh the evidence on this finding and come to a different result. That is not the role of this court (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[25] I conclude that the IAD's assessment of the H&C factors was balanced and therefore reasonable.

**JUDGMENT in IMM-74-17**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review of the IAD decision is dismissed.
2. No serious question of general importance is certified.

"Ann Marie McDonald"

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-74-17

**STYLE OF CAUSE:** ABIDULLAH MARDUMY v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 5, 2017

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** OCTOBER 12, 2017

**APPEARANCES:**

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