

Date: 20030708

Docket: IMM-3873-02

Citation: 2003 FC 847

BETWEEN:

**LUIS MIGUEL AMADO-CORDEIRO**

**Applicant**

**- and -**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

CAMPBELL J.

[1] This is an application for judicial review of the decision of the Immigration Appeal Division of the Immigration and Refugee Board (the "IAD"), dated July 30, 2002, wherein, for lack of jurisdiction, the IAD discontinued the Applicant's appeal from a removal order.

[2] The Applicant is a citizen of Portugal. He came to Canada in 1973 at the age of 2 along with his family, and was granted permanent resident status. He has lived in Canada continuously ever since. In 1999, the Applicant was convicted of an offence under s. 5(2) of the *Controlled Drugs and Substances Act*, and was sentenced to a term of imprisonment for 27 months. As a result of the operation of S. 27(1)(d) of the *Immigration Act* (now repealed), on February 21, 2002, the Applicant was ordered deported.

[3] The Applicant filed an appeal from his removal order with the Immigration Appeal Division on February 21, 2002, pursuant to the *Immigration Act*, R.S.C. 1985, c.-20. ( the “ *Act*”). By s.49(1) of the *Act*, by the filing of the appeal, a statutory stay came into effect.

[4] On June 28, 2002, the *Immigration and Refugee Protection Act* (the “*IRPA*”) came into force, and replaced the *Act*. Subsequently, the Minister of Citizenship and Immigration sent a “Notice of Discontinuance” to the Registrar of the IAD requesting that the Applicant’s appeal be discontinued pursuant to s.196 of the *IRPA*. As a result, by order dated July 30, 2002, the IAD discontinued the Applicant’s appeal. This decision was communicated to the Applicant on August 2, 2002.

[5] The Applicant now seeks judicial review of the IAD’s decision on the grounds

that he had received a statutory stay of deportation when he submitted his appeal, and as a result, should not be removed from the country.

[6] It is agreed that the legal issue in the present case is as follows:

Did the IAD err in law in concluding that s.196 of the *IRPA* had the effect of extinguishing the Applicant's appeal rights under s.192 of the *IRPA*?

[7] Most recently, Justice Snider in *Olga Medovarski v. Canada (Minister of Citizenship and Immigration)* (IMM-4060-02, decided May 20, 2003; Neutral Citation: 2003 FCT 634) has addressed this issue and, following a detailed analysis, concluded at paragraphs 48-49 as follows:

Accordingly, I conclude that the word "stay" in section 196 of the *IRPA* contemplates a stay that came into effect as a result of the operation of paragraph 49(1)(b) of the former Act. My decision in this case does not establish whether Parliament could, through legislative amendments, remove the right of appeal from the Applicant and others in her position; it only determines that Parliament did not do so for this Applicant.

As a result, the IAD erred in concluding that section 196 had the effect of extinguishing the Applicant's appeal rights under section 192 of the *IRPA*.

[8] I agree with Justice Snider's analysis and, for the same reasons as she provided, find that the IAD erred in concluding that s.196 of the *IRPA* had the effect of extinguishing the Applicant's appeal rights under s.192 of the *IRPA*.

**ORDER**

Accordingly, I set aside the IAD's decision of July 30, 2002 and refer this matter back to a differently constituted panel for redetermination.

As did Justice Snider in *Medovarski*, I certify the following question of general importance for determination by the Appeal Division:

Does the word "stay" in s.196 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 contemplate a stay that came into effect under the *Immigration Act*, R.S.C. 1985, c. I-2 as a result of the operation of s.49(1)(b)?

**"Douglas R. Campbell"**

**Judge**

**FEDERAL COURT**  
**COUR FÉDÉRALE**

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**REASONS FOR ORDER AND ORDER**



**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-3873-02

**STYLE OF CAUSE:** LUIS MIGUEL AMADO-CORDEIRO v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JULY 8, 2003

**REASONS FOR ORDER  
AND ORDER:** CAMPBELL, J.

**DATED:** JULY 8, 2003

**APPEARANCES:**

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