Federal Court  Cour fédérale

Date: 2011004

Docket: IMM-3905-10

Citation: 2011 FC 132

Ottawa, Ontario, February 4, 2011

PRESENT: THE CHIEF JUSTICE

BETWEEN:

MASSIMO THOMAS MORETTO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, a citizen of Italy where he was born in 1969, became a permanent resident in Canada before his first birthday. He has lived in Canada ever since. He has only a vague

recollection, if any at all, of a one-month family vacation in Italy when he was approximately eight years of age.

[2] The applicant's criminal life began in 1997, shortly after he was diagnosed with bipolar disorder. He began abusing crack cocaine after his father died in 2002. There is no suggestion that he involved others in the use of cocaine.

[3] Since 1997, the applicant has been convicted of more than twenty-five offences, including taking a motor vehicle without consent, fraud, failing to comply with a probation order, break and enter, failing to comply with an undertaking, breach of a conditional sentence order and false pretences. His victims were often elderly citizens residing in senior residences. He has pled guilty in every instance.

[4] According to the applicant, his addiction and mental health issues have played a significant role in his criminal offences.

[5] In 2009, a removal order was issued against the applicant on the basis of his serious criminality. His appeal of the removal order before the Immigration Appeal Division (the member) was dismissed. The member also refused the applicant's request for a stay of his removal order. The stay had been sought based on humanitarian and compassionate considerations, including the best interests of his daughter, who was born in 2001.

[6] The member properly understood that she was to consider the factors set out in *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4 (QL), as modified by the Supreme Court of Canada in *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, and in particular, the length of time the applicant has spent in Canada, the degree to which he is established here and the degree of hardship that would be caused by his removal to Italy.

[7] In her assessment of these factors, particularly the hardship factor, the member misapprehended the available evidence.

[8] The member's assessment of hardship did not take into account that the applicant was facing removal to Italy, a place he does not know. The reference to the applicant's ability to "reintegrate" himself in that country suggests that he will be returning to a place he was familiar with. In fact, he has only a vague recollection at best of his single vacation there over thirty years ago when he was a child.

[9] Second, the member failed to consider how separation from his family support would affect his ability to manage his mental health and addiction issues. While the member acknowledges the support the applicant received from his family in Canada, she infers that this assistance could be replaced by his relatives in Italy. However, he does not know these people, the very persons the member assumed could replace his Canadian family support structure.

[10] Third, the member ignored the impact removal would have on an individual with serious mental health and addiction issues. She makes no mention of the applicant's sister's attendance at

all of his medical appointments. Nor does she deal with the testimony of the applicant and his sister about the undue stress his return to Italy will cause and that stress is a factor in triggering the applicant's cocaine relapses.

[11] Finally, and significantly, the member ignored the uncontradicted evidence that the applicant had a positive and loving relationship with his daughter. The member failed to explain why it was not in the daughter's best interests to continue this relationship with her father in Canada: *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at paragraph 5.

[12] The applicant is a virtual Canadian. He arrived here when he was nine months old. The member's decision would have the applicant return to a place where he has never lived and does not know. In my view, the member misapprehended the evidence in this exceptional case. Her findings were made without regard to the material before her. This resulted in an outcome which is unreasonable.

[13] The Court agrees with the parties that this proceeding presents no serious question to be certified.

JUDGMENT

THIS COURT ORDERS that:

1. This application for judicial review is granted;

2. The decision of the Immigration Appeal Division, dated May 31, 2010, is set aside and the matter referred for re-determination by a different member.

"Allan Lutfy"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3905-10
STYLE OF CAUSE:	MASSIMO THOMAS MORETTO
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	January 20, 2011
REASONS FOR JUDGMENT:	LUTFY C.J.
DATED:	FEBRUARY 4, 2011

APPEARANCES:

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Ms. Kimberly Shane	FOR THE RESPONDENT

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