Federal Court  Cour fédérale

Date: 20170125

Docket: IMM-1578-16

Citation: 2017 FC 91

Ottawa, Ontario, January 25, 2017

PRESENT: THE CHIEF JUSTICE

BETWEEN:

JOSE ADOLFO CAMEY SANTIAGO

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] An important issue raised in this judicial review is the relevance of an initial decision by the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada to stay a removal from Canada, when it decides to reconsider that decision.

[2] In my view, when the IAD decides to grant a stay of removal from Canada on humanitarian and compassionate [H&C] grounds and then decides to reconsider that stay, it may

reverse its initial decision, provided that it gives a cogent explanation for doing so, and provided that its decision as a whole is reasonable. In contrast to certain other reconsideration decisions that are taken by the Board, a prior decision to stay a removal does not constitute a "footprint" that must be followed unless there are clear and compelling reasons for reaching a different conclusion.

[3] In its initial decision in respect of Mr. Santiago, the IAD decided to grant his request for a stay of removal, in order to give him "a second chance" to demonstrate, through counselling and other programs for sexual offenders, that "he will be a productive and law-abiding member of Canadian society." Having made that decision, the IAD was obliged in its reconsideration to provide a cogent explanation for reversing its initial determination and lifting its stay of removal. It could not simply undertake what amounted to a *de novo* assessment and lift the stay, based on a different panel member's analysis of the relevant factors, and without coming to grips with its earlier determination.

[4] Were it otherwise, the IAD would be free to reverse its decisions on grounds that might well appear to be arbitrary and unreasonable, having regard to its initial decisions. This would undermine the rule of law and public confidence in the IAD and in the Board as a whole. It would also undermine the incentive of persons, such as Mr. Santiago, who had been given a second chance, to make every effort to avail themselves of that opportunity.

[5] In reconsidering the stay of removal that it had granted to Mr. Santiago on H&C grounds, the IAD failed to provide a cogent explanation for effectively reversing the decision that it had

previously made. That failure alone constitutes a sufficient basis for setting aside the decision. The IAD then compounded this error in two ways. First, it conducted an unreasonable assessment of Mr. Santiago's establishment in Canada. Second, after its assessment of the factors that it was required to consider, it baldly stated, without any additional discussion whatsoever, that the stay of removal would not be extended because of Mr. Santiago's inability to meet the conditions of his stay. Accordingly, and for the reasons further explained below, this application will be granted.

I. **Background**

[6] Mr. Santiago is a 41-year-old national of Guatemala. He arrived in Canada in 2001 and made an application for refugee protection. That application was rejected in 2002, after it was found to have been based on claims that were not credible or trustworthy.

[7] Between 2001 and 2007, Mr. Santiago was in a relationship with a woman whom he married and with whom he had a son. He became a permanent resident by way of spousal sponsorship in 2006.

[8] Mr. Santiago's relationship with his spouse broke down in 2007 when she discovered that he had been sexually abusing her daughter from a prior relationship, over a period of several years, starting when she was approximately five years old.

[9] In 2008, Mr. Santiago was convicted of two offences, namely, sexual interference with a person under 16 years of age, and sexual assault. He was sentenced to approximately eight

months in jail and to an additional three years of probation. His pre-sentencing report stated that he had also been physically abusive towards his spouse and her other children. Although they do not appear to have become formally divorced, he has not resided with his spouse, who has a total of three children from other relationships, since that time.

[10] Among other things, the probation order issued against Mr. Santiago required him to complete counselling for sexual offenders and to participate in psychiatric/psychological programming.

[11] In 2009, a deportation order was issued by the Immigration Division against Mr. Santiago, after he was found to be inadmissible to Canada on grounds of serious criminality, pursuant to paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[12] The following year, Mr. Santiago appealed the deportation order on H&C grounds, pursuant to paragraph 67(1)(c) of IRPA.

[13] After considering the required factors, an initial panel of the IAD decided in 2010 to stay his removal from Canada for three years. That decision was subject to a number of conditions, including that he engage in or continue psychotherapy or counselling as directed by his parole officer, after his probation period had been completed.

[14] In reaching that decision, the IAD placed significant emphasis on Mr. Santiago's request for an opportunity to demonstrate that he could continue on his path toward rehabilitation. In this regard, the IAD observed that he had demonstrated the possibility of becoming rehabilitated if he continued to stabilize his life through work and counselling or other programs for sexual offenders.

[15] Upon an initial reconsideration of that decision in early 2014, the IAD dismissed Mr. Santiago's appeal and lifted the stay of removal from Canada. Approximately one year later, that decision was set aside by this Court on consent and referred back to the IAD for reconsideration by a different panel.

II. **Decision Under Review**

[16] In its second reconsideration decision [the Decision], the IAD attributed "significant" negative weight to the serious nature of the offences for which Mr. Santiago had been convicted, and found his lack of establishment in Canada to be a "strong negative factor."

[17] However, the IAD attributed positive weight to the possibility of his rehabilitation, "slight positive weight" to letters of support that had been written by members of the community, "slight positive weight" to the hardship that would be caused by his removal to Guatemala, neutral weight to the hardship that his family would face if he were removed from Canada, and neutral weight to the best interests of his biological son.

[18] In the final result, the IAD decided to reject his appeal and lift the stay of his removal, after concluding that there was a "slight balance in favour of the negative factors."

[19] In reaching that conclusion, the IAD noted in passing that Mr. Santiago had failed to abide by the counselling condition that had been set forth in the IAD's initial decision.

III. **Relevant Legislation**

[20] Pursuant to subsection 63(3) of the IRPA, a permanent resident who is the subject of a removal order may appeal that order to the IAD. After considering the appeal, the IAD may allow it in accordance with section 67, stay the removal order in accordance with section 68, or dismiss the appeal in accordance with section 69.

[21] Pursuant to paragraph 67(1)(c), the IAD may allow an appeal brought by a permanent resident where it is satisfied that, at the time the appeal is disposed of, sufficient H&C considerations warrant special relief in light of all the circumstances of the case, including the best interests of a child directly affected by the decision.

[22] In addition, subsection 68(1) provides that, to stay a removal order, the IAD must be satisfied that, taking into account the best interests of a child directly affected by the decision, sufficient H&C considerations warrant special relief in light of all the circumstances of the case.

[23] Pursuant to subsection 68(3), if the IAD has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under Division 7 of the IRPA.

[24] The foregoing provisions of the IRPA, together with the text of paragraph 36(1)(a) of the IRPA, are set forth in Appendix 1 to these Reasons for Judgment.

IV. **Issue and Standard of Review**

[25] Mr. Santiago has raised several issues with respect to the Decision. These concern the IAD's treatment of the evidence, the weight that it assigned to various factors, and the transparency, justification and intelligibility of the Decision. In my view, these alleged deficiencies all concern questions of fact, or of mixed fact and law, and can be reduced to the single issue of whether the Decision was reasonable. That issue is reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 53 [*Dunsmuir*]; *Abdallah v Canada (Citizenship and Immigration)*, 2010 FC 6, at para 23).

[26] In conducting a review on a reasonableness standard, the Court will assess whether the Decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, above, at para 47). In performing that assessment, the Court must consider whether the *process of articulating reasons* and the *outcome* fit comfortably within the principles of justification, transparency and intelligibility (*Dunsmuir*, above, at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 59 [*Khosa*]).

V. **Analysis**

A. *Applicable Legal Principles*

[27] Paragraph 67(1)(c) provides a mechanism for individuals to establish exceptional circumstances, based on H&C considerations, why they should be allowed to remain in Canada (*Khosa*, above, at para 57; *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, at para 90; *Iamkhong v Canada (Citizenship and Immigration)*, 2011 FC 355, at para 47; *Pervaiz v Canada (Citizenship and Immigration)*, 2014 FC 680, at para 40). To establish "exceptional" circumstances why they should be allowed to remain in Canada, individuals must demonstrate that their circumstances are exceptional, relative to other foreign nationals who seek to remain here after unsuccessful applications in that regard under other provisions of the IRPA (*Gonzalo v Canada (Citizenship and Immigration)*, 2015 FC 526, at paras 16–19).

[28] The IAD's ability to allow an appeal based on whether "sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case" contemplates a highly discretionary exercise that must be accorded significant deference *(Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 61; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, at para 36; *Karshe v Canada (Citizenship and Immigration)*, 2015 FC 530, at para 22).

[29] In reconsidering a decision pursuant to subsection 68(3), the IAD must analyze the same broad range of considerations that it is required to assess under subsection 68(1), when making an initial decision as to whether to stay a removal order. As with paragraph 67(1)(c), the latter

provision contemplates a determination of whether sufficient H&C considerations warrant special relief, in light of *all the circumstances of the case*.

[30] Within this framework, the IAD must specifically consider the factors that were identified in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL) [*Ribic*]. Those factors are the following:

i. the seriousness of the offence(s) that led to the deportation order;

ii. the possibility of rehabilitation;

iii. the length of time spent in Canada, and the degree to which the appellant is established in this country;

iv. the appellant's family in Canada and the dislocation to that family that the deportation of the appellant would cause;

v. the family and community support available to the appellant; and

vi. the degree of hardship that would be caused to the appellant by his return to his country of nationality.

(*Canada (Citizenship and Immigration) v Stephenson*, 2008 FC 82, at paras 21–27).

[31] Mr. Santiago submits that, in reconsidering a decision to stay a removal from Canada pursuant to subsection 68(3), the IAD can only reverse its initial decision if the IAD provides "clear and compelling" reasons for doing so. In support of that submission, Mr. Santiago relies

upon *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2004 FCA 4, at paras 9–13. However, that case concerned a detention review decision under the IRPA. Pursuant to section 57(2) of the IRPA, detention review decisions must be reviewed within seven days of an initial decision, and then at least once during each 30-day period following each previous review. In that context, where subsequent decisions are made within a very short period of time following the previous decision, the rationale for imposing a high threshold before a decision-maker can effectively reverse an immediately preceding decision is very strong. In my view, that rationale weakens considerably as the time period between the reconsideration and the decision that is being reconsidered increases to many months or years. In this case, that time period was six years.

[32] In a context in which reconsideration decisions can take place many months or years following an initial decision, the IAD should have more flexibility in reconsidering the merits of the matter. Put differently, it should not be as highly constrained by the "footprint" established by the decision being reconsidered as is the case in detention reviews that are conducted after a very short period of time. In my view, it should be reasonably open to the IAD to depart from a prior decision to stay the removal of someone from Canada, provided that it gives a cogent explanation for doing so, and provided that its decision as a whole is reasonable.

[33] This is consistent with the approach that was taken in *Bailey v Canada (Citizenship and Immigration)*, 2009 FC 733, at para 21, where this Court held that the IAD was required to provide "some rationale" for reversing its prior decision to stay the removal of the applicant from Canada.

[34] This approach is also consistent with that which has been taken in respect of other types of decisions under the IRPA, where decision-makers have reached a conclusion opposite to that which was reached by a prior decision-maker, in respect of a specific issue. In each of the cases referred to below, this Court concluded that, while the subsequent decision-maker was not bound by the initial decision, it was obliged to explain the basis for the different conclusion it subsequently reached regarding the issue.

[35] Specifically, in *Osagie v Canada (Citizenship and Immigration)*, 2007 FC 852, at para 32 [*Osagie*], this Court held that the Refugee Protection Division was obliged to explain why it departed from a prior decision of the Immigration Division regarding the authenticity of the applicant's national identity card.

[36] Likewise, in *Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2007 FC 6, at paras 17–19 [*Siddiqui*], this Court held that it was unreasonable for the Board to have failed to provide an explanation for departing from a contrary conclusion that had been reached by another panel of the Board, on the basis of "the same package of documents," regarding whether there were reasonable grounds to believe that a particular organization had been engaged in terrorism.

[37] *Osagie* and *Siddiqui* were subsequently followed in *Rusznyak v Canada (Citizenship and Immigration)*, 2014 FC 255, at paras 55–57, where this Court held that the Board was required to review and explain why it had reached a decision regarding the availability of state protection in

Hungary, which was contrary to another decision that it had reached based upon the same information package.

[38] In summary, when reconsidering a prior decision to stay the removal of an individual from Canada, it is reasonably open to the IAD to reverse that prior decision and lift the stay, provided that it gives a cogent reason for departing from that earlier decision, and provided that its decision as a whole is reasonable.

B. *Assessment of the Decision*

(1) Failure to Engage with its Initial Decision

[39] Mr. Santiago submits that the IAD erred by failing to engage with its initial decision to grant him a temporary stay of removal, and then by failing to provide clear and compelling reasons for departing from that initial decision. In response, the Minister acknowledges that the IAD should take account of a previous panel's decision in reconsidering a stay of removal. However, the Minister maintains that a reconsideration proceeding is a *de novo* hearing, in which the IAD is required to take account of "all the circumstances" of the case, and is not under any obligation to find clear and compelling reasons before it can depart from its prior decision.

[40] For the reasons set forth in part V.A. of these Reasons for Judgment, I agree that the IAD was not required to provide clear and compelling reasons for departing from its initial decision. However, I also agree with Mr. Santiago that the IAD erred by failing to engage meaningfully with that initial decision. For the reasons that I have explained, the IAD was required to provide

a cogent explanation for reversing its initial decision to grant a stay of removal to Mr. Santiago. Its failure to do so was fatal, and provides a sufficient basis to set the Decision aside and remit the matter back to the IAD for redetermination by another panel.

[41] Notwithstanding the foregoing, I will address two of the other errors that have been alleged by Mr. Santiago, to assist the IAD in its redetermination of the matter, and hopefully, to avoid similar errors being the subject of additional litigation between the parties before this Court.

(2) Unreasonable Assessment of Establishment in Canada

[42] Mr. Santiago submits that the IAD's consideration of his establishment in Canada was unreasonable because it was tainted by a factual error and placed inordinate weight on his lack of investments and property ownership. I agree.

[43] At the outset of its consideration of this factor, the IAD quoted the following passage from its initial decision in 2010:

> [32] In looking at the length of time the appellant spent in Canada and the degree to which he is established, I find the totality of the evidence adduced at the hearing leads me to conclude that the appellant was continuously employed since coming to Canada, he was running the cement finishing business with his brother-in-law and he working [*sic*] as an independent contractor. The appellant entered into a relationship with his wife in 2001 and he fulfilled his spousal and parents [*sic*] obligations until the couple's separation in July 2007. The appellant has no investments; he does not own property or assets in Canada. I have considered the appellant's age and the fact that he has been in Canada for nine years. I note that during most of his time he was gainfully employed and he was in a long term relationship with the mother

> of his son. Based on the totality of evidence before me, I find that while not exceptional, the appellant has ties to Canada and his establishment is meaningful. Though he does not have a significant financial establishment, I find his age, the length of time he is Canada, his employment history and has a son out of his union from his wife, to be positive factors in this appeal.

[44] The IAD then stated: "Fast forward five and a half years, and I find that the establishment factors have changed for the appellant." However, the only factor that it identified as having changed, relative to the situation that prevailed at the time of its initial decision, was the fact that Mr. Santiago "is no longer in a relationship with the mother of his son." Yet, as indicated in the quote immediately above, that was true at the time of the IAD's initial decision. Nothing had changed in that regard.

[45] The Respondent maintains that what had changed was that, whereas at the time of the initial decision Mr. Santiago had been in a stable relationship for most of the time that he had spent in Canada, that was no longer the case, because he had not been in a stable relationship during the entire period since his separation from his spouse, prior to the initial decision. That may well have been a concern for the IAD, but if it was, it was not expressed or implied in the Decision.

[46] The IAD then noted that Mr. Santiago had demonstrated "some degree of ongoing employment, and has a positive letter of reference from an employer." It is difficult to see how this information reasonably could have supported or contributed to the IAD's decision to accord strong negative weight to the establishment factor. I would simply add that it is not apparent from the face of the IAD's assessment of the establishment factor that there had been any

negative development in respect of Mr. Santiago's employment since the time of the IAD's initial decision in 2010.

[47] The only other things discussed by the IAD in its treatment of Mr. Santiago's establishment were his lack of investments and property ownership in Canada. The Minister maintains that the IAD implicitly considered this to have been a more significant factor than it may have been at the time of its initial decision to grant him a stay of removal from Canada.

[48] To the extent that this was the principal consideration relied upon by the IAD to find a "lack of establishment" in Canada for Mr. Santiago, and to then conclude that this factor was "a strong negative factor in this appeal," this was unreasonable. Such an approach would hold Mr. Santiago to a much higher standard for establishment than is met by the large number of Canadian citizens who have no investments and do not own property in this country. It would also make it difficult for many individuals to receive a positive assessment of the establishment factor, even if they have a reasonably good record of employment and have established some significant links in their community.

[49] If Mr. Santiago's lack of investments and property ownership in Canada was not the principal consideration relied upon by the IAD in its assessment of the establishment factor, then the Decision was not appropriately justified, transparent or intelligible.

[50] Either way, the errors made in the IAD's assessment of the establishment factor warrant its decision being set aside and remitted to another panel. In short, given the significant negative

weight that the IAD gave to the establishment factor, and given that its overall balancing of the *Ribic* factors led it to conclude that there was only "a slight balance in favour of the negative factors," it is entirely possible that the errors made in its assessment of the establishment factor had an impact on the overall conclusion that it reached.

(3) Breach of Stay Condition

[51] At the end of its analysis, the IAD stated that an additional stay was not warranted because of Mr. Santiago's "inability to meet the conditions of his prior stay." The Court was required to read the Certified Tribunal Record and counsel's submissions to understand that the "conditions" in question was the condition that required Mr. Santiago to engage in or continue psychotherapy or counselling after his probation period had been completed.

[52] In and of itself, the IAD's decision to lift the stay on the basis of the breach of one or more of the conditions of the initial stay would have been reasonably open to the IAD to make. Conditions of a stay are just that, conditions. The breach of any one of them can justify the lifting of a stay. In addition to constituting a violation of the very basis for a stay, a breach also constitutes an important "circumstance of the case," as contemplated by subsection 68(1) and paragraph 67(1)(c).

[53] However, the bald conclusion expressed by the IAD, in a lengthy decision that discusses other matters entirely, was unreasonable. In short, it did not form part of a *process of articulating reasons* that was appropriately justified, transparent or intelligible. This is particularly so given

that the IAD then proceeded to state its overall conclusion and did not mention this matter in summarizing its analysis.

[54] I acknowledge that Mr. Santiago made significant efforts to obtain the required counselling and treatment after being reminded of the condition in question. However, it is very troubling that he apparently was unaware of that condition. It will be up to the IAD to decide, in the exercise of its broad discretion, whether to accept Mr. Santiago's explanation and actions in the circumstances.

[55] Mr. Santiago questions the significance of the condition that he breached, on the basis that its purpose was to assist him to demonstrate that he could live in Canada without committing further offences. I acknowledge that Mr. Santiago in fact appears not to have committed further offences, and that he therefore appears to have availed himself of the "second chance" that he was given when the initial stay was granted. However, it bears reiterating that when a stay is granted on conditions, any breach of those conditions is a serious matter. It cannot be left to the individuals whose removal from Canada has been stayed pursuant to the exercise of discretion in their favour, to decide which conditions of the stay they may or may not honour. In Mr. Santiago's case, the condition in question went to the heart of both the risk that he posed to one of the most vulnerable segments of society, and the rehabilitation issue that was the basis for the IAD's initial issuance of a stay of his removal from this country. This will be another matter for the IAD to consider on redetermination.

VI. **Conclusion**

[56] For the reasons set forth above, this application will be granted. It is unnecessary to address the other issues that have been raised on this application by Mr. Santiago.

[57] In summary, the Decision was unreasonable for three reasons. First, it failed to provide a cogent explanation for effectively reversing the IAD's prior decision to stay Mr. Santiago's removal from Canada. Second, the IAD's assessment of his establishment in Canada contained an important factual error and appears to have placed undue emphasis on the fact that he had no investments and owned no property in Canada. If, in fact, this was not the principal reason why it concluded that his establishment in Canada was a "strong negative factor in this appeal," then this important part of the Decision was not appropriately justified, transparent or intelligible. Finally, the IAD erred when it baldly stated, after its assessment of the factors that it was required to consider, and without any additional discussion whatsoever, that the stay of removal would not be extended because of Mr. Santiago's inability to meet the conditions of his stay.

[58] At the end of the hearing of this application, counsel for Mr. Santiago proposed what is in essence the following question for certification:

> In reconsidering a stay of removal pursuant to subsection 68(3) of the IRPA, is the IAD's hearing held on a *de novo* basis, or is the IAD required to provide clear and compelling reasons before it can reverse its initial decision to issue a stay?

[59] Pursuant to paragraph 74(d) of the IRPA, an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, this Court certifies that a serious question of general importance is involved and states the question.

[60] In my view, the question proposed by Mr. Santiago's counsel is not a question of general importance. This is because, as counsel to both parties recognized, it appears that the issue has not been raised before, or may only have been seldom raised before, in proceedings before this Court; and neither of those counsel suggested that there might be a material number of future proceedings that might turn on this issue. In my view, the issue of the nature of the IAD's hearing on a reconsideration under subsection 68(3) would benefit from further assessment in this Court before it might appropriately be characterized as a question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. The IAD's decision, dated March 22, 2016, in which it decided not to extend its stay of Mr. Santiago's removal from Canada, is set aside and remitted to be considered by a different panel of the IAD in accordance with the Reasons for Judgment set forth above.

3. There is no question for certification.

"Paul S. Crampton"
Chief Justice

APPENDIX I

***Immigration and Refugee Protection Act,* SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés*, LC 2001, c 27**
Serious criminality	**Grande criminalité**
36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for:	36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	*a)* être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
Right to appeal — visa refusal of family class	**Droit d'appel : visa**
63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	63. (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.
Right to appeal — visa and removal order	**Droit d'appel : mesure de renvoi**
(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision to make a removal order against them made under subsection 44(2) or made at an admissibility hearing.	(2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise en vertu du paragraphe 44(2) ou prise à l'enquête.
Right to appeal removal order	**Droit d'appel : mesure de renvoi**
(3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision to make a removal order against them made under subsection 44(2) or made at an admissibility hearing.	(3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise en vertu du paragraphe 44(2) ou prise à l'enquête.

Right of appeal — residency obligation

(4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.

Droit d'appel : obligation de résidence

(4) Le résident permanent peut interjeter appel de la décision rendue hors du Canada sur l'obligation de résidence.

Right of appeal — Minister

(5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.

Droit d'appel du ministre

(5) Le ministre peut interjeter appel de la décision de la Section de l'immigration rendue dans le cadre de l'enquête.

Appeal allowed

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

(a) the decision appealed is wrong in law or fact or mixed law and fact;

(b) a principle of natural justice has not been observed; or

(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Fondement de l'appel

67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;

b) il y a eu manquement à un principe de justice naturelle;

c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

Effect

(2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision maker for reconsideration.

Effet

(2) La décision attaquée est cassée; y est substituée celle, accompagnée, le cas échéant, d'une mesure de renvoi, qui aurait dû être rendue, ou l'affaire est renvoyée devant l'instance compétente.

Removal order stayed

68. (1) To stay a removal order, the

Sursis

68. (1) Il est sursis à la mesure de renvoi sur

Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

Effect

(2) Where the Immigration Appeal Division stays the removal order

(a) it shall impose any condition that is prescribed and may impose any condition that it considers necessary;

(b) all conditions imposed by the Immigration Division are cancelled;

(c) it may vary or cancel any non-prescribed condition imposed under paragraph *(a)*; and

(d) it may cancel the stay, on application or on its own initiative.

Effet

(2) La section impose les conditions prévues par règlement et celles qu'elle estime indiquées, celles imposées par la Section de l'immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d'office ou sur demande.

Reconsideration

(3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division.

Suivi

(3) Par la suite, l'appel peut, sur demande ou d'office, être repris et il en est disposé au titre de la présente section.

Termination and cancellation

(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.

Classement et annulation

(4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est révoqué de plein droit si le résident permanent ou l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.

Dismissal

69. (1) The Immigration Appeal Division shall dismiss an appeal if it does not allow the appeal or stay the removal order, if any.

Rejet de l'appel

69. (1) L'appel est rejeté s'il n'y est pas fait droit ou si le sursis n'est pas prononcé.

Minister's Appeal

(2) In the case of an appeal by the Minister respecting a permanent resident or a protected person, other than a person referred to in subsection 64(1), if the Immigration Appeal Division is satisfied that, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, it may make and may stay the applicable removal order, or dismiss the appeal, despite being satisfied of a matter set out in paragraph 67(1)*(a)* or *(b)*.

Appel du ministre

(2) L'appel du ministre contre un résident permanent ou une personne protégée non visée par le paragraphe 64(1) peut être rejeté ou la mesure de renvoi applicable, assortie d'un sursis, peut être prise, même si les motifs visés aux alinéas 67(1)*a)* ou *b)* sont établis, sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

Removal order

(3) If the Immigration Appeal Division dismisses an appeal made under subsection 63(4) and the permanent resident is in Canada, it shall make a removal order.

Mesure de renvoi

(3) Si elle rejette l'appel formé au titre du paragraphe 63(4), la section prend une mesure de renvoi contre le résident permanent en cause qui se trouve au Canada.

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	VANCOUVER, B.C.
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APPEARANCES:

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