

Date: 200807011

Docket: IMM-4797-06

Citation: 2008 FC 865

Ottawa, Ontario, July 11, 2008

PRESENT: THE CHIEF JUSTICE

BETWEEN:

**TREVOR BRYAN HALL
By his litigation guardian Etta Hall**

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In the often-cited case of *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL) (T.D.), at paragraphs 17 and 21, Justice John Evans confirmed that a decision can be said to have been made “without regard to the evidence” when important relevant personal information pointed to a different conclusion than that of the decision-maker who makes no reference to the evidence.

[2] In this judicial review, the pre-removal risk assessment (PRRA) officer supported the negative finding by relying on statements attributed to Dr. Earl Wright, the Director of Mental

Health Services in Jamaica, which were reported in the April 2006 UK Home Office Country of Information Bulletin concerning proposals to create in-patient acute emergency units.

[3] However, the PRRA officer's decision makes no mention of a letter dated June 6, 2006 written by the same Dr. Wright to the law office representing the applicant, Trevor Hall, in which Dr. Wright stated in part:

Thanks for your letter re forty-nine year old (49yrs) Jamaica man who has been living in Canada for the past thirty one (31) years, with a long history of psychiatric illness with violent behaviour and extensive criminal records. As far as I can ascertain the patient has no support systems in Jamaica.

...

There are NO shelters for individuals with violent behaviour in Jamaica and if violent behaviour is exhibited in a shelter, it is highly likely that the other clients would retaliate with serious consequence to this individual: -

- Psychiatric treatment in prison is in the embryonic stages.
- Mental illnesses are highly stigmatized.
- Protection for ALL individuals fall within the general protection of the legal system.

[text in its original form]

[4] The comments of Dr. Wright go beyond the issue of Jamaica's ability to provide adequate health care within the meaning of subparagraph 97(1)(b)(iv) of the *Immigration and Refugee Protection Act*. His comments suggest that Mr. Hall's non-compliance as a schizophrenic patient will result in his being placed in a Jamaican "shelter", if not some form of custodial environment. There, "other clients would retaliate with serious consequences" to Mr. Hall. The PRRA process must take into account whether this personalized medical information from a credible Jamaican health authority suggests, on a balance of probabilities, the risk of cruel and unusual treatment upon Mr. Hall's return to his country of citizenship.

[5] The officer's failure to consider Dr. Wright's letter, which specifically addresses the applicant's situation, is fatal to the PRRA decision. This matter must be referred for redetermination by a different PRRA officer.

[6] The officer's omission is all the more disconcerting in view of Justice Dolores Hansen's statements in an earlier proceeding concerning Mr. Hall, *Hall v. The Minister of Citizenship and Immigration* (May 29, 2006), Toronto IMM-4837-05 (F.C.). In her order, Justice Hansen urged the applicant to include personal information concerning his "... severe mental disorder which is at the core of his claim to be at risk in Jamaica" in any new PRRA application he might choose to file.

[7] Justice Hansen's order was forwarded to the respondent's officials in Mr. Hall's second PRRA application, together with his newly obtained personalized medical information. Justice Hansen's concern is not reflected in the second negative PRRA decision which makes only passing reference to one of three documents concerning Mr. Hall's personal mental health circumstances.

[8] The respondent's officials will now redetermine Mr. Hall's PRRA application as they consider his pending humanitarian and compassionate request under section 25 of the *Immigration and Refugee Protection Act*.

[9] Mr. Hall, now 51, has been residing in Canada since 1975 when he became a permanent resident. His mother, son, daughter and six siblings are all Canadian citizens. The record discloses Mr. Hall has no immediate family members living in Jamaica, a factor noted in Dr. Wright's letter.

[10] The record discloses that Mr. Hall has been convicted of some twenty offences since 1982. According to counsel, only one of these offences clearly falls within the definition of "serious criminality" in paragraph 36(1)(a) of the Act. Counsel were uncertain whether a 1998 offence, for which Mr. Hall received a suspended sentence came within the ambit of "serious criminality".

[11] In any event, the single conviction referred to in the applicant's deportation order resulted in a sentence of "time served of six months" although the offence was subject to imprisonment for life. Was this conviction the result of a contested trial where Mr. Hall's mental illness was in issue? Or did the conviction result from a plea bargain? Did the interested persons in the criminal justice system understand the immigration law consequences of the conviction?

[12] Mr. Hall's case cries out for a holistic examination of his personal, medical and family situation. Otherwise, neither immigration officials, when they make individual, piecemeal decisions, nor judges of this Court in future judicial reviews, will understand who Mr. Hall is: a schizophrenic with a criminal record caused by his failure to comply with treatment for his mental illness or a criminal for reasons unrelated to his schizophrenia? Is the return to Jamaica of

Mr. Hall, a person who was a permanent resident since 1975, a reasonable outcome, taking into account his personal, medical and family situation, and the circumstances surrounding the conviction and sentencing for the offence which resulted in his inadmissibility?

[13] The Court agrees with counsel that this proceeding raises no serious question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application for judicial review is granted.
2. The decision of the pre-removal risk assessment officer, dated July 27, 2006 is set aside and the matter referred for redetermination by a different officer.

"Allan Lutfy"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Chief Justice Lutfy

DATED: July 11, 2008

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