

**Date: 20080926**

**Docket: IMM-3846-08**

**Citation: 2008 FC 1079**

**BETWEEN:**

**SEGUNDO GUILLERMO MENDOZA AMBIADO**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION and  
MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondents**

**REASONS FOR ORDER**

**TANNENBAUM D.J.**

[1] The applicant is seeking the stay of a removal order to be executed September 19, 2008. The undersigned has ordered that the removal be deferred until a decision is rendered on the stay application.

[2] The applicant, a citizen of Chile, arrived in Canada on May 27, 1989, and was granted a work permit and temporary residence until December 31, 1991.

[3] Since December 31, 1991, the applicant has been living in Canada without status.

[4] On September 3, 2003, the applicant made a claim for refugee protection. This application was dismissed on September 24, 2004.

[5] On June 12, 2006, an H & C application was filed and an exemption was requested to permit the application to proceed in Canada.

[6] The grounds of the application are set forth in detail in the applicant's motion record.

[7] By letter dated August 18, 2008, the applicant was informed that the exemption requested would not be granted, and on September 2, 2008 the applicant filed an application for leave and for judicial review of that decision.

[8] In refusing the request for an exemption the immigration officer, to whom deference must be accorded, considered and weighed all of the evidence in arriving at the conclusion to refuse the request. This court will not re-weigh the evidence that was submitted.

[9] Moreover, it is the opinion of the undersigned that the tri-partite test has not been met.

[10] The applicant has been denied status in Canada notwithstanding attempts made in virtue of the immigration legislation. He has been living illegally in Canada and has been ordered deported.

This will not put an end to his H& C request for permanent residency. He can pursue this request from his country of origin.

[11] The application for a stay of the removal order is dismissed.

"Louis S. Tannenbaum"

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Deputy Judge

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

**DOCKET:** IMM-3846-08

**STYLE OF CAUSE:** Segundo Guillermo Mendoza Ambiado v. MCI and MPSEP

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September xx, 2008

**REASONS FOR ORDER:** TANNENBAUM D.J.

**DATED:** September 26, 2008

**APPEARANCES:**

Joseph S. Farkas FOR THE APPLICANT

Manuel Mendelzon FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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Toronto, Ontario

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Deputy Attorney General of Canada