

Federal Court



Cour fédérale

Date: 20110329

Docket: IMM-5089-10

Citation: 2011 FC 386

Toronto, Ontario, March 29, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ANTONIO CARLOS VENTURA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a decision of the Immigration Appeal Division of the Immigration and Refugee Board (IAD) to deny the Applicant's motion for an adjournment of his humanitarian and compassionate appeal.

[2] At the time of making his application for an adjournment, the Applicant had consulted, but not yet retained, a lawyer. Nevertheless, the IAD declined to grant the adjournment based on the

opinion that the Applicant had not pursued his right to counsel with due diligence, and as a result, the appeal was heard with the Applicant representing himself. However, in addition, the following highly contextual finding was made about the merits of his appeal:

Finally, the Panel considered the nature and complexity of the matter to be heard, which is not complex; the appellant has to persuade the Panel that, taking into consideration the best interests of a child directly affected by the decision, there are sufficient humanitarian and compassionate factors in all the circumstances of his appeal to warrant the granting of special relief.

(Decision, paragraph 10)

[3] With respect to complexity, it is worth noting from the Tribunal Record that the transcript of the hearing runs some 70 pages, the transcription of the oral argument presented at the hearing by Counsel for the Minister is accomplished in 17 fact-laden lengthy paragraphs, and the decision rendered by the IAD on the merits is seven pages in length. All this effort addressed the humanitarian and compassionate considerations involved in the deportation of the Applicant. In response, all the Applicant could muster by way of a response during the course of the hearing are these words:

CLAIMANT: What she is true because I break the law, because I (inaudible) myself to change the address and I should call them and make sure...call the guys and change the address, stuff like that, so it is a mistake and I... the only mistake I did that that I recalled. So that is about it, I do not know what to say anymore.

(Tribunal Record, pp. 217 – 218)

[4] In my opinion, it was unfair for the IAD not to have granted the Applicant an adjournment. The IAD well understood, and particularized, that the Applicant was a 30 year-old man with a low level of education, an unstable work history, a criminal record, a history of drug and alcohol abuse, and control and responsibility issues (Decision, paragraph 38). On the basis of these facts, he should

have been considered to be someone who would be incapable of representing himself on such an important appeal. This itself should have been considered as a prime factor in the IAD's determination. Nevertheless, the IAD took a hard line on the Applicant's failure to retain counsel. In my opinion, the statement that a hearing set to consider humanitarian and compassionate considerations is "not complex" is exceptionally unreasonable. It is hard to imagine a more complex subject than removing a father from his children, or, rather, removing the children from their father, regardless of his past conduct.

[5] As a result, I find the decision under review is unreasonable.

ORDER

The decision under review is set aside, the matter is referred back to a differently constituted panel for redetermination on the direction that the redetermination be held on the evidence as it exists on the date of the redetermination.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5089-10

STYLE OF CAUSE: ANTONIO CARLOS VENTURA
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 28, 2011

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

DATED: MARCH 28, 2011

APPEARANCES:

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