

Federal Court



Cour fédérale

Date: 20130326

Docket: IMM-2182-12

Citation: 2013 FC 302

Ottawa, Ontario, March 26, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

VITO CAMILLO BAILEY RICKETTS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Vito Camillo Bailey Ricketts, originally from Jamaica, has been a permanent resident of Canada since 1998. In 2009, Mr Ricketts was convicted of possession of a restricted firearm, carrying a concealed weapon, and drug possession. A panel of the Immigration Division (ID) found Mr Ricketts inadmissible to Canada for serious criminality. He appealed that finding to the Immigration Appeal Division (IAD).

[2] Mr Ricketts was unrepresented by counsel before IAD. His lawyer had previously removed himself as counsel of record, although he failed to notify Mr Ricketts directly. When he first appeared before the IAD in September 2011, Mr Ricketts requested and was granted an adjournment, on a peremptory basis, to January 2012. In the interim, Mr Ricketts met with his former counsel and paid some of his outstanding fees. He believed that his lawyer would represent him at the January hearing. However, three days before the hearing, the lawyer sent Mr Ricketts a letter stating that he would not be appearing and noting that he was no longer counsel of record.

[3] Mr Ricketts appeared at the hearing and the IAD dealt with his appeal, ultimately dismissing it. The only issue before the IAD was whether there were sufficient humanitarian and compassionate factors in Mr Ricketts' favour to warrant a reprieve from his removal. The IAD considered all the relevant factors and concluded that there were insufficient humanitarian and compassionate circumstances to justify special relief.

[4] Mr Ricketts argues that the IAD treated him unfairly by not adjourning the hearing. He also submits that he was prejudiced by the conduct of his former counsel. In my view, Mr Ricketts had a fair hearing before the IAD. Therefore, I must dismiss his application for judicial review.

[5] The issue is whether Mr Ricketts was treated unfairly.

II. Did the IAD treat Mr Ricketts unfairly by proceeding in the absence of counsel?

[6] Mr Ricketts argues that he was treated unfairly in four respects. First, the IAD refused to adjourn the hearing. Second, the IAD erred by treating the hearing as peremptory. Third, he was prejudiced by the absence of counsel. Fourth, the hearing itself was unfair because he had only a brief opportunity to review the documents before the IAD and had no chance to ask for a stay of his removal.

[7] There is no evidence that Mr Ricketts ever asked the IAD for an adjournment. At his September 2011 hearing, Mr Ricketts had requested an adjournment and presumably could have done so again. He had been informed that the hearing was peremptory, but that did not mean that an adjournment would be denied even if circumstances justified it. Given the absence of a specific request, Mr Ricketts cannot argue that the IAD treated him unfairly by going ahead with the hearing.

[8] Mr Ricketts was aware that the hearing was to be treated as peremptory, and he had been told at his September 2011 hearing what that meant – that the next hearing would proceed whether he had retained counsel or not. Again, I can see nothing unfair about the IAD's decision to proceed.

[9] Mr Ricketts learned on January 9, 2012 that he would not be represented at the hearing. He told the IAD that he was ready to proceed, although he would have preferred having a lawyer with him. He was made aware in September 2011 that his lawyer would no longer be representing him, but tried to retain him again in December 2011. This attempt turned out to be unsuccessful; according to the lawyer's letter, this was due to the lawyer's inability to contact Mr Ricketts and Mr

Ricketts' failure to attend scheduled meetings. In my view, Mr Ricketts was given an adequate opportunity to obtain legal representation. On the day of the hearing, he brought his witnesses with him and indicated his readiness to proceed. I cannot see any unfairness arising from the fact that he was unrepresented.

[10] At the hearing, the IAD afforded Mr Ricketts half an hour to review 30 pages of documentation. The documents related to Mr Ricketts' criminal behaviour, so it is likely that he was already aware of their contents. He did not ask the IAD for more time. Nor did he make any request for a stay of removal, even though he was aware of this possibility and the IAD informed him that he could make submissions on that point. In the circumstances, I cannot see any unfairness to Mr Ricketts in the manner in which the IAD handled the hearing. Further, in the absence of a specific request, it was not obliged to consider granting Mr Ricketts a stay.

[11] Accordingly, I cannot find any support for Mr Ricketts' contention that he was treated unfairly.

III. Conclusion and Disposition

[12] Mr Ricketts was provided ample opportunity to secure counsel to represent him before the IAD. In any case, however, he did not request an adjournment. He felt ready to proceed, brought two witnesses with him, and was provided a fair opportunity to participate in his hearing. In my view, he was treated fairly. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2182-12

STYLE OF CAUSE: VITO CAMILLO BAILEY RICKETTS
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 22, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 26, 2013

APPEARANCES:

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A. Leena Jaakkimainen FOR THE RESPONDENT

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