Federal Court Cour fédérale

Date: 20151113

Docket: IMM-1514-15

Citation: 2015 FC 1269

Ottawa, Ontario, November 13, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

AUSTIN ALPHONSO LEWIS

Respondent

JUDGMENT AND REASONS

[1] Mr. Lewis has not been an ideal citizen. Indeed, he is not a Canadian citizen at all, which is at the heart of his problem. He has been a permanent resident since 1975, but remains a Jamaican citizen.

[2] Over the years, he has been convicted of various drug and other offences. He was ordered deported in 2006. He appealed. In 2009, the Immigration Appeal Division of the Immigration

and Refugee Board of Canada stayed his removal provided Mr. Lewis abided by various conditions. That stay was extended both in 2013 and 2014, with substantially the same conditions remaining in place.

[3] This is the judicial review of the February 2015 order of a member of the Immigration Appeal Division. The Minister asked that the stay be extended another year as there were fresh outstanding criminal charges against him. However, the Member set aside the removal order, which has the effect of allowing him to come and go as he pleases. The Minister focuses on paragraphs 22 and 23 of the decision which read:

> [22] The question for me is whether given the positive factors that I have articulated, foremost amongst which is 40 to 43 years in Canada, seven years of no convictions and since 1998 no reportable offense, whether I should nonetheless extend this stay as a direct consequence of his breaches of existing conditions. And I have determined that it makes little economic sense to do so at this stage. If the appellant is convicted of that offense, assuming it falls within the reportable provision, the Minister will determine what the Minister wants to do.
>
> [23] If the appellant commits further criminal offences, I'm sure his very able counsel has informed him of the changes to the *Immigration and Refugee Protection Act*, that any sentence in excess of six months gets him an automatic ride to the airport; automatic, no appeal. If that does not serve to dissuade this appellant, it is what it is. However, given the positive factors, to keep this matter going at the expense of both the Immigration Appeal Division, Canada Boarder Services Agency and seemingly Legal Aid, makes little sense to me. Therefore I am going to allow this appeal.

[4] The Member noted that Mr. Lewis was in technical default of the conditions imposed upon him. He considered all was outweighed by the so-called "Ribic factors", arising from an earlier decision of the Immigration Appeal Division in *Ribic v Canada (Minister of Employment*

and Immigration, [1985] IABD No 4, which has set the standard for stays of removal and has been approved by the Supreme Court in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 SCR 84.

[5] The Board had stated that in exercising its discretion it had to consider all the circumstances of the case, including a) the seriousness of the offence or offences leading to the deportation; b) the possibility of rehabilitation; c) the failure to meet the conditions of admission, which led to the deportation order; d) the length of time spent in Canada; e) the degree to which the applicant is established; the support available; and f) the degree of hardship which would be caused by his return to his country of nationality.

[6] Although these matters are reviewed on the reasonableness standard, in this case it is not necessary to decide whether the decision was otherwise reasonable. There is an issue of procedural fairness which is outside the scope of judicial review in the sense that no deference is owed to the decision maker. One might say that the standard of review is correctness (*Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 SCR 539).

[7] It is acknowledged that the economics of the process were not raised by Mr. Lewis or by the Minister, or by the Member prior to rendering the decision.

[8] Natural justice requires that the Minister be given a fair opportunity to meet the case against him. Indeed, he did not even know that there was a case, because economic factors were

not on the table. Counsel for Mr. Lewis valiantly pointed out that under subsection 162(2) of the *Immigration and Refugee Protection Act* the Board has to deal with all proceedings before it "as informally and quickly as the circumstances and the considerations of fairness and natural justice permit". This equation of efficiency with economics does not sit well. One only has to consider the "certificate" cases which have drawn millions of dollars out of the public purse.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the decision of the Immigration Appeal Division, of the Immigration and Refugee Board of Canada, dated February 11, 2015, is granted.

2. The matter is remitted back to a differently constituted panel of the Immigration Appeal Division for reconsideration.

3. There is no serious question of general importance to certify.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1514-15
STYLE OF CAUSE:	MCI v AUSTIN ALPHONSO LEWIS
PLACE OF HEARING:	TORONTO, ONTARIO
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