Federal Court  Cour fédérale

Date: 20091112

Docket: IMM-1685-09

Citation: 2009 FC 1154

Ottawa, Ontario, November 12, 2009

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ISMAEL OMAR AWALEH

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application submitted by the Minister of Citizenship and Immigration (the Minister), pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision rendered by the Immigration Appeal Division of the Immigration and Refugee Board (the IAD) to continue the stay of a removal order issued against the respondent, Mr. Awaleh (the impugned decision).

[2] The Minister asserts that the IAD's decision is an unreasonable exercise of their discretion, having regard to the facts and the materials which were before it. For the reasons that follow, the application for judicial review must fail.

I. Background

[3] Mr. Awaleh is a permanent resident who was born in Somalia on January 1, 1982, and who landed in Canada on October 21, 1996, at the age of fourteen. His mother died when he was only four years of age and he has little to no contact with his father, who resides in Toronto, or his brother, who resides in Calgary. He is the father of two young boys, one of which was just recently born, both of whom are under the age of five, and he has been in a common-law relationship with the mother of his children for approximately five years. Mr. Awaleh has admittedly struggled with an addiction to drugs for many years, and since 2002 he has had a number of interactions with law enforcement, as well as immigration, officials as a result of his criminal behaviour. Mr. Awaleh has also participated in various drug rehabilitation and anger management programs with some level of success.

[4] On March 8, 2007, the Immigration Division of the Immigration and Refugee Protection Board (the ID) issued a removal order against Mr. Awaleh pursuant to subsection 36(1)(a) of the Act, which provides that a permanent resident is inadmissible to Canada if they have been "convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years." The basis of the removal order issued against the respondent is a

conviction, registered on June 2, 2004, for robbery and for theft over $5,000 pursuant to sections 344 and 334(a) of the *Criminal Code*, R.S.C. 1985, c. C-46.

[5] Mr. Awaleh appealed this removal order pursuant to subsection 63(3) of the Act. At no time has the validity of the removal order been challenged. The appeal brought by the respondent sought to have the removal order dismissed or stayed on humanitarian and compassionate grounds.

[6] On May 12, 2008, the IAD granted Mr. Awaleh a stay of three years with terms and conditions. This means that while Mr. Awaleh is not compelled to leave to country, his appeal of the removal order has not been conclusively determined. The decision to grant a conditional stay was based on a joint recommendation made by the Minister and Mr. Awaleh's counsel, as well as on a finding that there were "sufficient humanitarian and compassionate considerations, taking into account the best interest of the child directly affected by its decision, warranting special relief in light of all the circumstances of the case".

[7] In granting the stay, the IAD considered the following factors, set out in *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4 at paragraph 14 (*Ribic*), and confirmed by the Supreme Court of Canada in *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3: the seriousness of the offences leading to the deportation order; the possibility of rehabilitation; the length of time spent in Canada and the degree to which the appellant is established here; the family in Canada and the dislocation to the family that deportation would

cause; support available to the appellant, within the family and within the community; and potential foreign hardship the appellant would face in the likely country of removal.

[8] The IAD noted that Mr. Awaleh was "drug and alcohol free," that he had made efforts to rehabilitate himself, that he was working and that he had developed strong ties to his child and common-law wife. In addition, however, the IAD noted a few of Mr. Awaleh's flaws, such as his previous criminal charges, which include: failure to comply with probation orders, escape from custody and obstruction of a police officer as well as a charge of assault against his common-law wife from July 2006. The IAD noted that the root of Mr. Awaleh's legal problems is found in his addiction to alcohol and crack cocaine.

[9] The terms and conditions of the stay included, *inter alia*, not committing any criminal offences; keeping the Canadian Border Services Agency (CBSA) and the IAD informed of any changes in address, criminal charges or criminal convictions; reporting to the CBSA, monthly, with updates on employment, marital status and any attendance or participation in therapy or rehabilitation programs; respecting all parole conditions and court orders and keeping the peace and being of good behaviour.

[10] The events which culminated in the decision under review are as follows:

[11] Sometime around late May 2008, Mr. Awaleh was kicked out of the home he shared with his common-law wife. In June 2008, Mr. Awaleh was charged for possession and trafficking of

crack cocaine as well as three counts of breaching his undertakings given with respect to his criminal convictions.

[12] On July 7, 2008, as a result of the charges filed in June 2008, Mr. Awaleh was remitted for detention by the ID for breach of his stay conditions. On August 8, 2008, the ID upheld the decision to detain Mr. Awaleh preventatively given a concern that he could be a flight risk, but in so concluding, the Member noted that "the main problem that seems to cause all the other problems is …[Mr. Awaleh's] relation with drugs".

[13] Mr. Awaleh was offered the opportunity to be released from detention in September 2008 on the condition that he attend the Anchorage rehabilitation program. Due to the program being located in an area of the city Mr. Awaleh was prohibited, by the criminal courts, from frequenting, he was unable to attend the program and therefore unable to take advantage of his release. A subsequent detention review hearing was held on October 16, 2008, wherein the Member sitting for the ID ordered Mr. Awaleh to be released to the Ottawa Mission, an organization that offers a drug treatment program, on condition that, *inter alia*, his common-law wife post a cash bond; he did not consume any controlled substance unless prescribed by a physician; he agreed to undergo a 30-day stabilization program conducted by the Ottawa Mission; if found eligible, he agreed to complete a five-month rehabilitation program at Life House; and finally, if not found eligible for Life-House, he agreed to notify CBSA immediately.

[14] Mr. Awaleh agreed to the above conditions. Upon release in mid October 2008, he completed the stabilization program and then attempted to enrol in the Life House rehabilitation program. At that time the Life House was fully booked, so Mr. Awaleh enrolled in Sobriety House, a residential program for addicts, which was a temporary solution while he waited for an opening in the Life House program.

[15] On December 12, 2008, Mr. Awaleh successfully completed the 28 day Sobriety House program, after which he moved back in with his common-law wife.

[16] On December 23, 2008, Mr. Awaleh celebrated the successful completion of his rehabilitation programs by consuming alcoholic beverages. This resulted in him blacking out and incurring additional charges for assault, uttering threats, break and enter and mischief. As a result of these charges, Mr. Awaleh was again detained.

II. The Impugned Decision

[17] In November 2008, at the request of the Minister, an oral review hearing date was set for January 15, 2009 to reconsider the stay granted on May 12, 2008. On March 13, 2009 the IAD issued their decision, which ordered a continuation of the stay of the execution of the removal order for one year.

[18] In so concluding, the IAD explicitly referred to the *Ribic* factors, and made the following findings:

[12] [With regard to the seriousness of the offence leading to the deportation order]...the specific offence identified in the deportation finding was a conviction for robbery in June 2004 pursuant to Section 344 of the *Criminal Code of Canada*. There are a number of additional convictions since that date which include a conviction in June 2008 for trafficking in crack cocaine, possession of property obtained by crime and failure to comply with release conditions.

…

[15] While the panel acknowledges that there are outstanding charges, the registered convictions against Mr. Awaleh represent serious crimes, some of which carry a threat to the general public. This is a negative consideration. In making this finding, the panel also notes that the June 2008 offences constitute a breach of the conditions contained in the May 12, 2008 stay order.

…

[17] [With regards to the possibility for rehabilitation, Mr. Awahleh] … attended Sobriety House for 30 days and exited on December 12, 2008. He then "celebrated" his success at the rehabilitation programs by drinking "several cups of wine". It was the drinking that he says precipitated the outstanding criminal charges against him. He also says that he did not think of himself as having any problem with alcohol and that as long as he was not taking drugs then it was "OK".

[18] This is a negative factor in this review hearing given his history. Yet, the appellant testified that he was off "the drugs" and intended to stay away from alcohol as well. He testified that he had made considerable effort to contacting rehabilitation programs which evidence the panel accepts, that the Life House program was fully-booked and he did attend two programs in late 2008. He also testified that when he is released from detention he will continue to pursue rehabilitation at the Life House program. The panel accepts these statements of intention bearing in mind his demeanour at the hearing which was candid and embarrassed at the non-compliance.

[19] …In the circumstances, his connection to his partner, her concern for him and her approach to dealing with him indicate that rehabilitation is a real possibility in his life. This, therefore, is a positive factor.

[20] [With regards to the length of time and establishment in Canada,] …[t]he appellant came to Canada when he was 14 years old and testified that he has no connection whatsoever with Somalia,

his country of origin. He has worked in Canada at three jobs, resided here since his arrival and established a family…

[21] [With regards to the impact in the event of his removal,] …[w]hile there was no corroborative evidence, the testimony of the appellant was that his departure would be detrimental to this family placing an undue burden on his partner and depriving his son and imminent son of a father. Counsel for the Minister suggested that his presence in the family unit could be a negative factor keeping in mind the best interests of the children, however the panel notes the appellant's remorse and intention to rehabilitate himself. While his family has been getting by without him for some time now, the panel finds that his departure via deportation would have a negative impact on his family in light of the expected rehabilitation which he is to undergo.

[22] The panel also finds that the impact on the appellant of his deportation would be unknown…His return, therefore, is a neutral factor, even keeping in mind that he has no family there.

[23] [Family support] … is crucial for the appellant as the evidence shows that as long as he is with his partner, he does well. The problems arise, in his own words, when he leaves the care of his immediate family. While Ms. McRae did not testify at the review hearing, she did so at the criminal bail review hearing held on January 9, 2009 and offered evidence in support of his release. This is positive in terms of her willingness to maintain contact with him and to maintain vigilance over him. Assuming that this happens, the family support here is a positive factor. The expectation that he act as a positive role model for his two sons and what the panel found to be his love for his children are also positive factors.

[24] [With regards to community support]… [t]he appellant has been supported by his counsel throughout and has established working contacts with personnel in the rehabilitation field. There is some evidence, therefore, that he has support in this area.

[25] Counsel for the Minister argued at the hearing that Mr. Awaleh had breached virtually all of the conditions attached to his stay order. The panel finds that this is indeed the case. Some of the conditions are obviously more serious than others. On the one hand, the conditions relating to not committing any offences or being charged with offences are serious. The appellant has explained these as being related either to his drug addiction or his alcohol problem.

> The panel finds that there is such a direct correlation. At the same time, the panel finds that he has stayed away from drugs since June 2008 and intends to stay away from drugs and alcohol further to enrolling in additional rehabilitation programs.
>
> [26] The remaining stay conditions are reporting conditions… [and] [b]asically, every one of these conditions has been breached.
>
> [27] The appellant's responses to questions posed to him on these breaches were honest and direct. Yet, his answers also illustrated clearly to the panel that while he understood the chronologies of the various events of the past year, he does not entirely understand all of the details or expectation which they place on him….He also testified that he felt that if he was in jail, he could not report to CBSA on address matters or provide other related information. Ordinarily, this would not be an adequate answer to such breaches. But, in this case, the panel acknowledges that the appellant, while a well-spoken man, is not sophisticated in terms of comprehending the significance of the matters affecting his life. This is compounded by his inability to read English well and his low level of formal education… If safeguards are in place to help him in the future, and these would include his continuing involvement with his partner and attending rehabilitation, then his vulnerability can be overcome or at least managed.
>
> [28] There have been significant breaches of the stay order conditions which while not excused have been explained in the difficult circumstances of this case. There are sufficient humanitarian and compassionate factors, taking into account the best interests of a child directly affected by the decision, to continue the stay order presently in effect subject to the terms and conditions therein.

[19] Those are the reasons which support the decision whose legality is questioned by the Minister in light of the principles applicable to a decision of the IAD to grant or continue a stay of removal.

III. Analysis

[20] The IAD is bestowed with a great deal of discretion in conducting appeals of removal orders. Pursuant to subsections 67(1)(c) and 68(1), the IAD may allow an appeal or stay a removal order where they are satisfied, "taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case."

[21] As noted by the Supreme Court in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 57 (*Khosa*), the IAD is left with the discretion to determine, not only what constitutes "humanitarian and compassionate considerations", but the "sufficiency" of those considerations as well.

[22] While the decision under review is not the original grant of the stay, the IAD must consider the same factors upon reconsideration of the stay, as they consider in granting it. According to *Canada (Minister of Citizenship and Immigration) v. Stephenson,* 2008 FC 82 at paragraph 25 (*Stephenson*), "the *Ribic* factors continue to be the factors that the IAD is required to consider when reconsidering a decision pursuant to subsection 68(3) of the Act."

[23] Finally, it is important to reiterate that the impugned decision does not determine the respondent's appeal of his removal order. The IAD may review the stay at any time and vary the conditions or reject his appeal (see section 68 of the Act). The rejection of the appeal would affirm the removal order and result in the respondent being evicted from Canada.

[24] In light of the Supreme Court's decisions in both *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 62 (*Dunsmuir*) and *Khosa*, above, at paragraph 58 reasonableness is the appropriate standard of review in the present application.

[25] Reasonableness requires the "existence of justification, transparency and intelligibility within the decision-making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at paragraph 47). What is particularly important to highlight, is that "there might be more than one reasonable outcome" (*Khosa*, at paragraph 59).

Application of the Ribic factors

[26] As in *Khosa*, it is the IAD's determination on the sufficiency of humanitarian and compassionate considerations which is being challenged. There is no dispute that the IAD considered the *Ribic* factors, however the Minister has organized his arguments with reference to these factors, therefore, for ease of reference, I will do the same.

[27] The Minister does not contest the IAD's assessment of the evidence with respect to the length of time the respondent has been in Canada and the degree to which he is established here. Nor does the Minister contest the IAD's conclusion that if respondent were to be deported to Somalia, where he has no family, the impact is "unknown": "while [Mr. Awaleh] says that his return to Somalia would amount to a "death sentence", it is not clear to the panel why this is so. His return, therefore, is a neutral factor, even keeping in mind that he has no family there".

The possibility of rehabilitation

[28] The Minister submits that the IAD's conclusion as to the respondent's rehabilitation efforts is not reasonable based on the evidence. The Minister claims that the IAD failed to adequately consider the evidence of the two failed attempts at rehabilitation and a history of failing to abide by terms and conditions of release. In support of his position, the Minister focuses on the fact that shortly after completing the second rehabilitation program in December 2008, the respondent celebrated by drinking, resulting in more criminal charges being laid. The Minister further alleges that the respondent was contradictory with regard to the evidence concerning the amount of alcohol consumed prior to the December 2008 incident.

[29] First, with regard to the contradictory evidence, in its decision, the IAD specifically notes that there were "several cups of wine" consumed. This resolves the contradiction pointed out by the Minister, namely, that the respondent originally claims to have drank a cup or a little wine and later admits to having numerous cups.

[30] Next, at paragraph 17 of the March 13, 2009 decision, the IAD notes the incident which took place in December 2008 and which led to the most recent criminal charges being laid. In fact, the IAD comments that "this is a negative factor in [the] review hearing." Only after noting this does the IAD Member go on to state that he accepted the respondent's evidence at the hearing, which concerned both the efforts he made in contacting rehabilitation programs and his intention to continue to pursue the Life House rehabilitation program. The IAD accepted this testimony "bearing in mind his demeanour … which was candid and embarrassed at the non-compliance." The Member

also noted that the positive influence on the respondent by his partner made "rehabilitation … a real possibility in his life" (at paragraph 19).

[31] It was not for the IAD to determine whether the respondent was in fact rehabilitated, nor whether he would in fact become rehabilitated. The determination concerns only the IAD's belief that there was a *possibility of rehabilitation* (*Kanagaratnam v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 295 at paragraphs 10, 13 & 14). In light of this, it must be noted that the Minister has not challenged the credibility findings of the IAD. Since there is no dispute as to the credibility of the respondent, it seems reasonable for the IAD to have found that there was a possibility of rehabilitation. At the very least, it was opened to the IAD to come to this conclusion, and as stated by the Supreme Court of Canada in *Khosa*, above, at paragraph 61, "… it is [not] the function of the reviewing court to reweigh the evidence".

The family in Canada and the dislocation to the family that deportation would cause

[32] With regard to the impact on the respondent's family if he were to be deported, the Minister submits that the IAD did not adequately consider that the respondent represents a potential burden on his family and a negative influence on his children. The Minister further submits that the IAD did not refer to any corroborative evidence concerning the positive role the respondent plays in his family and that the IAD unreasonably focused on the respondent's expected efforts at rehabilitation to support a finding that his deportation would be detrimental to the family. Finally, the Minister submits that the children are not being deported, therefore dislocation would not occur.

[33] The IAD, at paragraph 21 of the decision, specifically refers to the Minister's argument concerning the potential burden created by the respondent. The Member also acknowledges that there is no new corroborative evidence from the respondent's family. In making his determination, however, the Member accepts the respondent's testimony that his departure would be detrimental to his family by placing an undue burden on his partner and depriving his sons of a father. The Member admits that fundamental to this conclusion is his belief that the respondent intends to rehabilitate himself. This logic seems reasonable in light of the evidence contained in the Tribunal Record, upon which the original Member of the IAD relied in granting the initial stay, which established that while the respondent was not using drugs, he worked to support his family financially and developed strong ties to his children and common-law wife. Again, since the Minister has not raised any credibility issues, and the Member determined that there is a possibility of rehabilitation, it seems open to the Member to have made these conclusions.

[34] Finally, while the children themselves are not subject to the removal order, it would disrupt the family makeup to have their father removed from the country. While the respondent has recently been absent from his family, a point which was noted by the Member at paragraph 21 of the decision, it cannot be said that no dislocation would occur were he to be permanently deported.

Interests of the child

[35] As mentioned above, the Minister claims that the IAD did not adequately consider that the respondent's presence may not be in the interests of his children. The Minister submits that the

IAD's conclusion concerning an "expectation that [the respondent] act as a positive role model for his two sons" is unfounded on the evidence.

[36] In the Tribunal Record there is evidence that Mr. Awaleh played a positive role in his elder son's life. According to letters sent by his partner, his partner's mother and the Children's Aid Society, Mr. Awaleh dedicated a lot of time to caregiving for his child and put a lot of effort into being a good father. Based on his past actions, it is not unreasonable that the IAD found that the respondent cared a great deal for his children and that there was an expectation that he act as a positive role model.

Support available to the respondent within the community

[37] The Minister argues that the Member unreasonably concluded that the respondent's legal counsel and rehabilitation contacts constituted community support.

[38] The respondent admits that having access to a lawyer is not necessarily equivalent to having support within the meaning of the *Ribic* factors. That said, the respondent submits that he has benefited from having counsel that is able to help secure access to rehabilitation programs, a service which constitutes support.

[39] It is clear that throughout his legal and immigration battles the consensus has been that the respondent's problems are rooted in his addictions. On at least one occasion, the respondent's previous counsel made significant efforts to get him help. As noted by the ID during his first

detention review in August 2008, the respondent's previous counsel did work to try to have Mr. Awaleh enter the Drug Court system which would offer the "kind of support system that could give the best chance as possible for [Mr. Awaleh] to get his life back in order…" Therefore, the conclusion that the respondent's legal counsel provides him with support is hardly unreasonable.

[40] The Minister argues that the Member's reference to the respondent having contacts in the rehabilitation field is so vague that it suggests nothing more than the respondent being aware of rehabilitation programs in general.

[41] While the choice of words may have been poor, it is noted that the respondent submits that he had completed two drug rehabilitation programs, in addition to an anger management program, during the course of which he undoubtedly met counsellors and other individuals in a position to offer him support. In fact, at the hearing the respondent referred to a counsellor he met while attending the rehabilitation program at Sobriety House. Again, the IAD's conclusion cannot be said to be unreasonable.

Family Support

[42] The Minister argues that the IAD erred in finding that the respondent's family support was a positive factor. Specifically, the Minister submits that the IAD erred in considering the fact that the respondent's partner was present during a bail hearing in January 2009 since there was no evidence of the substance of her input and no evidence before the IAD with regard to her support of the respondent.

[43] At paragraph 23 of the decision, the IAD acknowledges the Minister's point that the respondent's partner did not provide the IAD with any evidence since the original appeal hearing in February 2008. The IAD Member notes, however, that there is evidence to support the fact that when the respondent is with his partner, "he does well." The Minister does not contradict this finding. The Member goes on state that "assuming [the respondent's partner is willing to maintain contact with him and to maintain vigilance over him] … the family support here is a positive factor." In support of his decision to find in favour of family support the Member notes the presence at the bail hearing as evidence of a "willingness to maintain contact" with the respondent; the Member does not hypothesize as to the nature of the statements given at the bail hearing as the Minister seems to suggest. In light of the evidence, it cannot be said that the Member's finding with regard to family support is unreasonable in that it is unjustifiable or unintelligible.

Breaches of conditions

[44] The Minister also submits that the IAD placed no weight on the repeated breaches of conditions and erred in finding that due to the respondent misunderstanding his conditions, he was not responsible for breaching them. The Minister further submits that it was unreasonable for the Member to find, at paragraph 25 that the respondent had stayed away from drugs and alcohol since June 2008, because between July and October the respondent was incarcerated.

[45] At paragraph 25 of the decision, the Member does note that "virtually all of the conditions attached to [the] stay order" were breached, but that the respondent adequately explained these

breaches by demonstrating a direct relationship between his behaviour and his drug and alcohol addictions. At paragraph 27, the Member then directly refers to the Minister's argument concerning the respondent's lack of understanding by stating that while a lack of understanding is not usually an adequate explanation for breach of conditions, in this case, the respondent's lack of sophistication, low level of education and inability to read English mitigate the seriousness of the breaches; contrary to what the Minister suggests, the IAD does not excuse the respondent's conduct.

[46] Furthermore, while it is correct that the respondent was in jail between the months of July and October 2008, there is no evidence that he sought to use drugs at any point during or after his rehabilitation, which makes the Member's statement perfectly reasonable. Finally, as noted by the respondent, the Member never claimed that Mr. Awaleh had refrained from consuming alcohol.

[47] Finally, the Minister submits that the findings made by the Member with regard to the respondent are contradictory. The Member found him to be a well-spoken, honest and direct person, while at the same time finding that the respondent did not understand the nature of his conditions. The Member also noted that the respondent "is not sophisticated in terms of comprehending the significance of matters affecting his life… [which] is compounded by his inability to read English well and his low level of formal education" (paragraph 27).

[48] It seems perfectly reasonable that a person may be honest and direct in their account of the situation, but display a lack of understanding with regard to the implication of various events. Furthermore, having read the transcript from the hearing, I cannot accept the Minister's argument.

There seemed to be a significant amount of confusion concerning the conditions imposed on the respondent and whether or not he was ever fully aware of them. Given the respondent's low level of formal education and English literacy, this confusion is not surprising.

[49] With respect to all of the Minister's allegations outlined above, the essence of their argument is that the IAD failed to accord a sufficient degree of weight to the respondent's criminal activities and the breaches of his conditions. As stated by this Court in *Bhalru v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 777 at paragraph 1 (*Bhalru*), "[i]t is for the Immigration Appeal Division (IAD) of the Immigration and Refugee Board to determine the weight that it attributes to each and every factor. The Court, in judicial review, can only determine whether the IAD did, or did not, give reasonable consideration to the evidence. If reasonable consideration is given, it is for the Court, in judicial review, to conduct itself with sensible deference and, thereafter, not to weigh evidence anew."

Overall conclusion not unreasonable

[50] There is no evidence that the IAD failed to consider all of the relevant factors. In fact, there is reference to the respondent's criminality and breach of conditions at numerous points in the decision. The IAD specifically addresses many of the issues raised by the Minister and the fact that the IAD did not agree with the Minister, or does not accord what the Minister argues is the correct weight to certain factors, is not inherently unreasonable. The applicant's argument that the IAD's findings were contradictory must also be rejected.

[51] The ruling in *Bhalru* is particularly significant in the current situation where, as mentioned above, the appeal brought by the respondent against the removal order has not been conclusively determined. As a result of the March 13, 2009 decision, the respondent is entitled to stay in Canada for another year, *subject to terms and conditions*. The IAD maintains a supervisory role and can cancel the stay or vary the conditions at any time (see subsection 68(2) of the Act and *Medovarski v. Canada (Citizenship and Immigration)*, 2005 SCC 51 at paragraph 37).

[52] It must be reiterated that the weight to be accorded to any of the *Ribic* factors varies, depending on the particular circumstances of each case (*Dhadwar v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 482 at paragraph 17). The only provision which requires the stay of removal to be cancelled is subsection 68(4) which provides:

> 68 (4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.
> (Emphasis Added.)

[53] There has been no evidence presented that the respondent has been convicted of a crime that would bring him under this provision. Furthermore, I have been unable to find any authority in law which *requires* the IAD to cancel a stay where the permanent resident is *charged* with a crime or has breached his conditions of stay. The reality is quite the opposite. The IAD has the discretion to consider the totality of the circumstances and determine whether, despite the existence of factors

warranting removal, there are sufficient humanitarian and compassionate grounds to enable the permanent resident to stay.

[54] In essence, the Minister's position comes to say that the respondent was granted a last chance to remain in Canada last May 2008 and by his recent behaviour just showed that he could not be trusted anymore. However, the presiding member who heard the matter in January 2009 and rendered the impugned decision felt differently and, having balanced all the *Ribic* factors, decided to continue the stay. It may be that another panel would have weighed these factors differently and therefore would have accepted the Minister's position, but this is not the point. While it may have been open for the IAD to cancel the stay, that is not the test. Indeed, there may be more than one reasonable outcome. This is such a case.

[55] Ultimately, "[w]hether [the Court] agree[s] with a particular IAD decision or not is beside the point. The decision was entrusted by Parliament to the IAD, not to the judges" (*Khosa*, above, at paragraph 62). The impugned decision is defensible, transparent and intelligible and I find that it falls within the range of reasonable outcomes.

[56] For the foregoing reasons, the judicial review shall be dismissed.

[57] Neither of the parties submitted a question of general importance to be certified and none is raised in the present case. There were no requests for costs, therefore none will be awarded.

JUDGMENT

THIS COURT ADJUDGES AND ORDERS that the application for judicial review be dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE:	**THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. ISMAEL OMAR AWALEH**
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