

Federal Court



Cour fédérale

**Date: 20110211**

**Docket: IMM-6220-09**

**Citation: 2011 FC 168**

**Ottawa, Ontario, February 11, 2011**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**Q.A.**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This is an application for judicial review of the Applicant's request for deferral of removal pending the Children's Aid Society of Toronto's (CAS) application of Crown wardship in the face of a possible H&C application or through adoption.

## II. BACKGROUND

[2] The Applicant was 17 years old at the time he was placed in the care of CAS. He had arrived in Canada from St. Lucia when he was 14 having been put on the airplane by his family in the apparent hope that he would somehow be able to stay in Canada.

[3] The Applicant lived with his older brother who was also in Canada illegally. The brother was deported in March-April 2008 and the Applicant was placed in the care of CAS.

[4] Since that time CAS has been resisting the Applicant's removal without success. The latest effort to prevent removal was based on a pending wardship application.

[5] Mainville J. (as he then was) granted a stay of removal. To some extent this judicial review has become academic or moot. The Applicant, by now, is or shortly will be 18 years old and an adult.

## III. ANALYSIS

[6] The standard of review for a deferral decision is reasonableness with deference owed and a recognition of the limited discretion given to removals officers.

[7] This is a case unlike most of the precedents in this Court concerning removal of children. This is the case of an abandoned child where returning the child to the very family who had abandoned him to Canada poses some challenging considerations. In that regard this case is unlike the precedents in this Court.

[8] The Removals Officer was correct to reject the argument that the immigration process must be secondary to the Children's Aid processes. At best, CAS stands in the place of a parent. However, what is unique is that this is a case where removal affects the child but the notional "parent" remains in Canada.

[9] The Court is not satisfied that the Removals Officer was alert to the unique features of this case. The assumptions concerning the Applicant's ongoing care once back in St. Lucia were highly speculative.

#### IV. CONCLUSION

[10] Therefore, this judicial review will be granted, the deferral decision quashed and the removal order set aside without prejudice to issuing a new removal order.

[11] The Applicant asked to certify a question as to the requirement of a removals officer to review the best interests of an unaccompanied child in the context of Canada's international obligations, the principles of fairness and the Charter.

[12] Given the result, the Applicant likely does not seek certification nor would it be granted. The question as framed does not really arise here and is largely settled in such decisions as *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81.

[13] There is no question for certification.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is granted, the deferral decision is quashed and the removal order is set aside without prejudice to issuing a new removal order.

“Michael L. Phelan”

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Judge

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

**DOCKET:** IMM-6220-09

**STYLE OF CAUSE:** Q.A.

and

THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 29, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** February 11, 2011

**APPEARANCES:**

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FOR THE APPLICANT

Ms. Jocelyn Espejo Clarke  
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FOR THE RESPONDENT

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