

Federal Court



Cour fédérale

**Date: 20130312**

**Docket: IMM-4797-12**

**Citation: 2013 FC 228**

Ottawa, Ontario, March 12, 2013

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**PATRICK RAYDON RICHMOND**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr Patrick Raydon Richmond has lived in Canada for twenty years. He moved here from Guyana when he was 14. Mr Richmond experiences schizophrenia and epilepsy, and has a history of criminal behaviour and substance abuse. He was ordered to be deported in 2008 and lost his appeal of that order. He then applied for a pre-removal risk assessment (PRRA) based on the

unavailability of treatment for mental health issues in Guyana, but the PRRA officer dismissed his application, finding that Guyana has made mental health care a priority.

[2] The officer accepted that Guyana's efforts and plans to provide more resources for the mentally ill showed that Mr Richmond would not be denied treatment on the basis of discrimination. Therefore, he would not experience persecution if he returned to Guyana. Further, Mr Richmond could not claim protection as a result of inadequate medical care given that such a claim is excluded by s 97(1)(b)(iv) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex).

[3] Mr Richmond argues that the officer's conclusions were unreasonable in light of the evidence showing the limited mental health resources, and the stigmatization of the mentally ill, in Guyana. Further, he suggests that the exclusion for medical claims set out in s 97(1)(b)(iv) of the IRPA does not apply. Mental health services are limited in Guyana due to discrimination against the mentally ill, not merely because of a lack of resources. He asks me to quash the officer's decision and order another officer to reconsider his application.

[4] I agree that the officer's decision was unreasonable. The officer referred only to evidence showing that the situation for the mentally ill in Guyana is improving, and did not point to any particular treatment or facility that Mr Richmond could seek out. Further, the evidence suggested that the mentally ill are stigmatized in Guyana, which explains, at least in part, the absence of adequate treatment options. This means that the exclusion in s 97(1)(b)(iv) does not apply because

there is a discriminatory reason why the state of Guyana does not provide adequate medical resources for the mentally ill.

[5] The issues are:

1. Did the officer unreasonably conclude that Mr Richmond could receive appropriate treatment in Guyana?
2. Did the officer unreasonably conclude that Mr Richmond's claim was excluded under s 97(1)(b)(iv)?

## II. The Officer's Decision

[6] The officer recognized that Mr Richmond would experience hardship if he returned to Guyana. However, the officer found that the evidence showed that "the government in Guyana is interested and invested in dealing with the inadequacies of their health care system". Still, its resources are limited. However, a lack of resources is not a basis for a claim for protection according to s 97(1)(b)(iv).

III. Issue One – Did the officer unreasonably conclude that Mr Richmond could receive appropriate treatment in Guyana?

[7] The Minister submits that the officer reasonably found that the government of Guyana was attempting to deal with mental health issues and to augment the resources available to patients.

[8] In my view, this evidence does not show that adequate mental health care is currently available in Guyana. It shows that, in the future, appropriate resources may be available. In fact, the documentary evidence shows that treatment is severely limited; medication is in short supply; the mentally ill are stigmatized, discriminated against, and likely to be homeless; and the police are ill-equipped to deal appropriately with mentally ill persons. Based on this evidence, the officer's conclusion that Mr Richmond would not experience persecution or mistreatment in Guyana was unreasonable.

IV. Issue Two – Did the officer unreasonably conclude that Mr Richmond's claim was excluded under s 97(1)(b)(iv)?

[9] The Minister submits that Mr Richmond's claim under s 97 of IRPA is based, in essence, on the alleged inability of Guyana to provide adequate health care. However, such a claim is specifically excluded by s 97(1)(b)(iv).

[10] In my view, the officer unreasonably concluded that Mr Richmond's claim was excluded under s 97(1)(b)(iv). The evidence before the officer showed that mentally ill persons in Guyana are commonly viewed as "cursed" or experiencing "spirit possession". The mistreatment of patients and the inadequacy of mental health resources derive, at least in part, from discriminatory attitudes

toward those experiencing mental health issues.

[11] The Federal Court of Appeal has recognized that the exclusion in s 97(1)(b)(iv) would not apply where medical care was denied for illegitimate reasons, such as persecutory grounds (*Covarrubias v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365 at para 41). The same, I believe, would be true where there is a discriminatory basis for the denial of health care. There was evidence before the officer that suggested that there was pervasive discrimination against the mentally ill in Guyana. In my view, the officer should have considered whether this explained, at least in part, the few resources provided by the state for the treatment of the mentally ill. Absent that analysis, the officer's treatment of the relevant evidence was incomplete, and unreasonable.

#### V. Conclusion and Disposition

[12] In my view, the officer's treatment of the evidence relating to the availability of mental health care in Guyana and the reasons why it was so limited was inadequate, to the point that the officer's conclusions were unreasonable. Therefore, I must grant this application for judicial review and order another officer to reconsider Mr Richmond's application. 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 allowed;
2. The matter is returned to another officer for reconsideration;
3. No question of general importance is stated.

“James W. O’Reilly”

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Judge

Annex

*Immigration and Refugee Protection Act, SC  
2001, c 27*

*Loi sur l'immigration et la protection des  
réfugiés (LC 2001, ch 27)*

Person in need of protection

Personne à protéger

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

...

[...]

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

...

[...]

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

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

**DOCKET:** IMM-4797-12

**STYLE OF CAUSE:** PATRICK RAYDON RICHMOND  
v  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 19, 2013

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

**DATED:** March 12, 2013

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