

Date : 20000127

Docket : IMM-331-00

BETWEEN:

VICTOR HERNANDEZ-ANDASOL

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

[Delivered from the Bench at Ottawa, Ontario
on Thursday, January 27, 2000]

McGILLIS, J.

[1] The applicant is a Convention refugee who came to Canada in 1989 from El Salvador under the protection of the United Nations High Commissioner for Refugees. He is a landed immigrant in Canada. In 1995, he was convicted of sexual assault and sentenced to three years imprisonment. In September 1997, the Minister of Citizenship and Immigration determined under subsection 70(5) and 46.01 of the *Immigration Act*, R.S.C. 1985, c. I-2 as amended, that the applicant was a danger to the

public. In November 1989, following his release from prison in Alberta, the applicant was scheduled for removal from Canada. He failed to appear for removal and went into hiding in Toronto, Ontario.

[2] In June 1999, the applicant was arrested in Toronto on an immigration warrant. He has remained in custody since that time. His removal to El Salvador is imminent and he has applied on an urgent basis to stay the execution of the removal order.

[3] At the outset of the hearing, counsel for the respondent fairly and properly conceded that the application raises a serious issue to be tried.

[4] With respect to the question of irreparable harm, the applicant has adduced ample evidence to establish that his life would be in danger and that he would therefore suffer irreparable harm by reason of his deportation to El Salvador.

[5] The difficult question to determine in the present case is the balance of inconvenience.

Counsel for the respondent has advanced a compelling argument that the public interest favours the applicant's removal from Canada given his criminal record. However, that strong argument must be weighed against other considerations, including the fact that there is a serious issue to be tried in this matter and that the applicant is a Convention refugee who would suffer irreparable harm by reason of

his removal to his country of origin. In weighing all of the relevant factors, I have determined that the balance of inconvenience lies in favour of the applicant. In the circumstances, the applicant should therefore not be removed from Canada until his application is decided on the merits.

[6] Given the concession made by counsel for the respondent that the application raises a serious issue to be tried, it would appear that, in due course, the application for leave will likely be granted. In the event that the application for leave is granted, the Court will expedite the hearing of the application for judicial review at Ottawa, Ontario. The application can therefore be heard on the merits within a relatively short period of time.

[7] For these reasons, the motion for a stay of execution of the removal order is granted.

D. McGillis

Judge

OTTAWA
January 27, 2000