

**Date: 20071113**

**Docket: IMM-5642-06**

**Citation: 2007 FC 1150**

**Ottawa, Ontario, November 13, 2007**

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

**BETWEEN:**

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

**Applicant**

**and**

**COLIN ANTHONY NEWMAN**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Newman came to Canada from Jamaica in 1987. He became a permanent resident here in 1995. In 2002, Mr. Newman was ordered to be deported from Canada after having been convicted of welfare fraud, attempting to obstruct justice and failing to appear. In 2003, the Immigration Appeal Division (IAD) granted Mr. Newman a stay of his deportation for three years on certain conditions. In 2006, the IAD decided that the original deportation order should be quashed.

[2] The Minister of Public Safety and Emergency Preparedness argues that the IAD's decision was not supported by the evidence before it. The Minister asks me to order a new hearing before a

different panel of the IAD. Mr. Newman did not appear at the hearing of this application for judicial review. Having reviewed the record, I agree that the IAD's decision was out of keeping with the evidence before it and, therefore, I will order a new hearing.

## I. Issue

[3] Was the IAD's decision supported by the evidence?

## II. Analysis

### (a) The IAD's Decision

[4] The IAD correctly identified the criteria that should be considered when deciding whether a person in Mr. Newman's circumstances should be allowed to remain in Canada. In summary, those criteria include the seriousness of the original crime; the possibility of rehabilitation; the degree of establishment in Canada; the impact on the person's family, including the best interests of any children; the person's support in the community; and the hardship the person would suffer if removed from Canada (see *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] S.C.J. No. 1 (QL)).

[5] In general, the IAD concluded that little had changed since the stay of deportation was granted in 2003 and, therefore, that the relevant factors continued to favour allowing Mr. Newman

to remain in Canada. However, the Minister strenuously disputes one of the IDA's findings – that Mr. Newman presents a low risk of re-offending.

[6] The IAD was well aware of the fact that Mr. Newman had failed to comply with the conditions that accompanied his stay of deportation. Indeed, the IAD stated that Mr. Newman had failed to take those conditions seriously and it characterized his conduct as egregious. The IAD was also aware that Mr. Newman had committed numerous driving offences, had failed to pay his fines, and had been sentenced to a term of imprisonment for driving while suspended (his license had been permanently suspended in 1993). Still, the IAD emphasized the fact that Mr. Newman had not committed any criminal offences in the preceding five years. Accordingly, it concluded that the criterion of rehabilitation continued to weigh in Mr. Newman's favour.

[7] I agree with the Minister that the IAD failed to explain how the evidence relating to Mr. Newman's conduct over recent years supported a finding of rehabilitation. The IAD stated that it could not infer from Mr. Newman's lengthy list of driving offences, unpaid fines and failure to make restitution for his previous crime, that he would commit another criminal offence. It also stated that it was relying on its own reasoning in an earlier case (*Simas v. Canada (Public Safety and Emergency Preparedness)* (IADT99-11275)) in arriving at that conclusion. In *Simas*, the IAD found that the appellant had failed to show rehabilitation where there was evidence that he had refused to abide by the conditions of his stay, had been convicted of several provincial offences (under the *Liquor License Act of Ontario*, R.S.O. 1990 c. L. 19 and the *Highway Traffic Act of Ontario*, R.S.O. 1990 c. H. 8), and had failed to pay his fines. It imposed on the appellant a burden

to show that the rehabilitation factor had “clearly crossed the scales into the positive territory” (at para. 13) and found that, in light of his contumacious conduct, he could not do so. I am at a loss to see how the IAD’s conclusion regarding Mr. Newman’s rehabilitation squares either with the evidence before it or the analysis set out in the precedent on which it purported to rely.

[8] Accordingly, I must allow this application for judicial review and order a new hearing before a different panel of the IAD. No question of general importance will be stated.

**JUDGMENT**

**THIS COURT'S ORDER IS that**

1. The application for judicial review is allowed;
2. The matter is referred back to the Immigration Appeal Division for a new hearing before a different panel;
3. No question of general importance is stated.

“James W. O’Reilly”  
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Judge

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

**DOCKET:** IMM-5642-06

**STYLE OF CAUSE:** THE MINSITER OF CITIZENSHIP AND  
IMMIGRATION v. COLIN ANTHONY NEWMAN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** October 29, 2007

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

**DATED:** November 13, 2007

**APPEARANCES:**

Mr. Stephen H. Gold FOR THE APPLICANT

No appearance FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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