

Federal Court



Cour fédérale

Date: 20100409

Docket: IMM-2614-09

Citation: 2010 FC 365

Ottawa, Ontario, April 9, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

TI-BEB FE-TARI HARRIS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Ti-Beb Fe-Tari Harris came to Canada in 1990 when he was 7 years old. After having been convicted of a series of criminal offences, a deportation order was issued against him in 2006. Mr. Harris appealed the order on humanitarian and compassionate grounds, but the Immigration Appeal Division (IAD) dismissed his appeal in 2009.

[2] Mr. Harris argues that the IAD made three serious errors. He urges me to overturn the decision and order a different panel to reconsider it. However, I cannot find any basis for overturning the IAD's decision and must, therefore, dismiss this application for judicial review.

[3] The issue is whether the IAD made factual errors that rendered its decision unreasonable.

II. Analysis

(a) The IAD's decision

[4] Mr. Harris did not dispute the legal foundation of the deportation order against him. However, he asked the IAD to overturn it on humanitarian and compassionate grounds. The IAD considered a broad range of factors as required by *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.D.D. No. 4 (QL).

[5] The IAD noted that Mr. Harris had been convicted of a number of offences under the *Criminal Code*, as well as an offence under the *Highway Traffic Act*, R.S.O. 1990, c. H-8. The criminal charges involved drug trafficking and firearms. The traffic violation involved driving while suspended.

[6] In its reasons, the IAD stated that:

- to his credit, Mr. Harris had not been convicted of a criminal offence since February 2008;
- Mr. Harris had been granted refugee status in Canada;
- it could not decide whether Mr. Harris was likely to commit other offences.

[7] Mr. Harris contends that the first two statements are erroneous and that the third represents a failure on the IAD's part to discharge its mandate. He submits that these errors justify overturning the IAD's decision.

(b) The IAD's alleged errors

(i) Criminal history

[8] While the IAD noted that Mr. Harris had not been convicted of a crime since February 2008, in fact, he had not been charged with a criminal offence since 2005. This error was included in the portion of the IAD's decision dealing with Mr. Harris's likelihood of committing other crimes.

[9] Mr. Harris acknowledges that the IAD correctly outlined his criminal history in other parts of its decision. However, he claims that the misstatement is serious nonetheless because it may have affected the IAD's treatment of what is arguably the most important consideration in an analysis of humanitarian and compassionate factors in this context – the likelihood of re-offending.

[10] In my view, reading the decision as a whole, the IAD was clearly aware of the particulars of Mr. Harris's criminal record. It set out the details in its reasons. The single erroneous reference to February 2008 was obviously an inconsequential error that could not have affected the IAD's analysis.

(ii) Refugee status

[11] Early in its decision, in describing Mr. Harris's background, the IAD made a parenthetical remark that he had achieved refugee status in Canada in 1993. Clearly this was wrong. It would have prevented him from being deported to Jamaica. The IAD was obviously aware that Mr. Harris could be returned to Jamaica because it discussed in detail whether his return would cause him hardship. Its error appears not to have any impact on the IAD's analysis.

(c) Failure to determine likelihood of re-offending

[12] The IAD did not actually decline to decide whether Mr. Harris was likely to re-offend, as he alleges. In fact, the IAD said that, based on his criminal record, Mr. Harris probably would commit further crimes. However, it went on to discuss Mr. Harris's family connections and, given the uncertainty about the significance of those to him, it could not say whether he would be likely to re-offend.

[13] Admittedly, the IAD's decision is somewhat difficult to follow but it is clear that it did not fail to consider Mr. Harris's likelihood of re-offending. It appears to have concluded that there were

factors suggesting he would likely commit more crimes, as well as another factor whose influence was uncertain. It did not fail to address the question.

III. Conclusion and Disposition

[14] Clearly, the IAD made some errors in its reasons. Further, its reasons could have been clearer. However, the errors were minor and did not affect the IAD's analysis or conclusions. I cannot conclude, therefore, that the IAD's decision as a whole was unreasonable or that its reasons were inadequate. I must, therefore, dismiss this application for judicial review. 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 dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2614-09

STYLE OF CAUSE: TI-BEB FE-TARI HARRIS v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: January 18, 2010

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

DATED: April 9, 2010

APPEARANCES:

Joel Sandaluk FOR THE APPLICANT

Marina Stefanovic FOR THE RESPONDENT

SOLICITORS OF RECORD:

MAMANN SANDALUK FOR THE APPLICANT
Toronto, ON.

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, ON.