

Federal Court



Cour fédérale

**Date: 20130507**

**Docket: IMM-9085-12**

**Citation: 2013 FC 477**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, May 7, 2013**

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

**BETWEEN:**

**CARLOS SANTANA**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This decision is in response to an application for judicial review following the rejection, by the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB), of the applicant's appeal of a removal order against him.

[2] The applicant is inadmissible on grounds of serious criminality, under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), and he did not challenge the validity of his removal order. The applicant's arguments are based on humanitarian and compassionate considerations.

[3] The applicant is a person described in paragraph 36(1)(a) of the IRPA as a permanent resident who is inadmissible on grounds of serious criminality, after he was convicted of an offence punishable by a maximum term of imprisonment of at least ten years.

[4] The Supreme Court of Canada has already decided that the standard of judicial review in these types of cases is reasonableness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 60).

[5] The applicant was previously involved in violent crimes. He states that he was under the influence of alcohol and that he attempted to resist his arrest by police.

[6] His criminality began when he was 24 years old and already an adult.

[7] The applicant was convicted of evasion and, two years after that, of break and enter.

[8] Given his background of multiple convictions, including trespassing at night, obstruction, break and enter and obstruction, failure, six breaches of conditions and possession of drugs and

substances (cannabis and crack), the panel reasonably concluded that the applicant was not in a situation of having committed an isolated act, but that he was guilty of multiple convictions.

[9] According to the applicant, there is no connection between himself and Venezuela, his country of origin; nonetheless, he admitted that he has a basic knowledge of Spanish. He did not submit evidence that his psychiatric condition could not be treated in Venezuela.

[10] He does not have strong ties to his family home (*Khosa*, above); therefore, there are insufficient humanitarian and compassionate grounds.

[11] The factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IADD No. 4 (QL/Lexis) were considered according to *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 SCR 84, at paragraph 66, as well as *Khosa*, above, at paragraph 60.

[12] The applicant has not re-offended since 2008, but he was unable to demonstrate that he is on the road to rehabilitation, given that he continues to consume drugs and alcohol (see CHUM report dated August 22, 2011 – decision at para 23).

[13] The applicant's degree of establishment in Canada and the effects on his family in Canada are of lesser significance, based on the facts, than those in *Khosa* (above).

[14] The arguments with respect to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982 (R-7)*, being Schedule B to the *Canada Act (U.K.)*, 1982, c 11, are premature, as is the matter of his removal, which is moot and has yet to be decided. That is for a stage which has yet to be reached by the decision-maker.

[15] Furthermore, the respondent himself has noted that the applicant will have an opportunity to apply for a pre-removal risk assessment under section 112 of the IRPA.

[16] It is not for this Court to re-weigh the evidence; this has already been done in a reasonable way by specialized decision-makers.

[17] For all of these reasons, the Court dismisses the applicant's application for judicial review.

**JUDGMENT**

**THE COURT ORDERS** the dismissal of the applicant's application for judicial review;  
there is no question of general importance for certification.

“Michel M.J. Shore”

---

Judge

Certified true translation  
Sebastian Desbarats, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-9085-12

**STYLE OF CAUSE:** CARLOS SANTANA v THE MINISTER  
OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 7, 2013

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

**DATED:** May 7, 2013

**APPEARANCES:**

Stewart Istvanffy FOR THE APPLICANT

Michel Pépin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Stewart Istvanffy FOR THE APPLICANT

Counsel

Montréal, Quebec

William F. Pentney FOR THE RESPONDENT

Deputy Attorney General of Canada

Montréal, Quebec