Immigration and
Refugee Board of Canada

Immigration Appeal Division

Commission de l'immigration
et du statut de réfugié du Canada

Section d'appel de l'immigration

IAD File No. / N° de dossier de la SAI : VB3-01350

Client ID no. / N° ID client : 6152-1226

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	Michel Clarel FERRY	**Appelant(e)(s)**
Respondent	The Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	September 25, 2014	**Date(s) de l'audience**
Place of Hearing	Heard by videoconference in Calgary, AB Vancouver, BC	**Lieu de l'audience**
Date of Decision	January 6, 2015	**Date de la décision**
Panel	**Sterling Sunley**	**Tribunal**
Counsel for the Appellant(s)	Massood Joomratty Barrister and Solicitor	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Designated Representative(s)	N/A	**Représentant(e)(s) Désigné(e)(s)**
Counsel for the Minister	Natalie Holden	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in the appeal of Michel Clarel FERRY (the "appellant") pursuant to s. 63(2), from a deportation order made against him by an officer of Citizenship and Immigration Canada ("CIC") on December 27, 2012.[1] He was determined to be a person described in s. 36(2)(a) of the *Immigration and Refugee Protection Act* (the "*Act*").[2] The respondent in this matter is the Minister of Public Safety and Emergency Preparedness (the "respondent").

BACKGROUND

[2] The appellant is 37 years of age and arrived in this country in 2009 from his native Mauritius. He is employed full-time and his primary responsibilities are the management of contracts relating to his employer. The appellant has two children – both daughters – aged six and nine years; his wife and the aforementioned children live in Mauritius. The appellant lives in Calgary, Alberta.

[3] The appellant was convicted[3] on December 18, 2012 in Strathmore, Alberta of violating s. 253(1)(b) of the *Criminal Code*.[4] He has not been pardoned for this offence. It was this offence which, being an indictable offence, led to the issuance of a removal order by CIC.

ISSUE

[4] The appellant did not argue the legal validity of the removal order made against him.

[5] Accordingly, the issue before the IAD is whether, taking into account the best interests of a child directly affected by this decision, sufficient humanitarian and compassionate

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[1] Record, p. 2.
[2] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[3] Record, p. 9.
[4] *Criminal Code* (R.S.C., 1985, c. C-46).

considerations warrant special relief in light of all of the circumstances of the case. This relief may take the form of allowing the appeal and cancelling the removal order, or issuing a stay of the removal order with conditions. Absent sufficient humanitarian and compassionate considerations, the appeal will be dismissed.

EVIDENCE

[6] I had before me a copy of the Record. Single documentary disclosures were proffered by the appellant and the respondent, and were entered into evidence as Exhibits A1 and R1, respectively. The appellant also gave *viva voce* evidence on his own behalf and was examined and cross-examined accordingly.

DECISION

[7] In light of paragraph four, above, and based on the evidence before me, I find that the removal order is valid in law.

[8] When all of the evidence is considered, I find that the appellant has met the onus placed on him to demonstrate that, on the balance of probabilities, taking into account the best interests of a child directly affected by this decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all of the circumstances of the case. The special relief in this case shall be a stay of the removal order for a period of two years with conditions.

ANALYSIS

[9] The decision in *Ribic*,[5] approved by the Supreme Court of Canada in *Chieu*,[6] provides guidance in identifying those factors to be considered in the exercise of the IAD's discretionary

[5] *Ribic, Marida v. M.E.I.* (I.A.B. 84-9623), Davey, Benedetti, Petryshyn, August 20, 1985.
[6] *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3.

authority. In the context of a removal order appeal, these factors include, but are not limited to the following:

- the seriousness of and the circumstances surrounding the offence which resulted in the removal order;
- the degree of remorse shown by the appellant;
- the extent to which the appellant has sought rehabilitation, and the progress of that rehabilitation, if any;
- the length of time spent in Canada and the degree to which the appellant is established here;
- the appellant's family in Canada and the impact to the family that removal would cause;
- the support available to the appellant from his family and the community-at-large;
- the degree of hardship that would be caused to the appellant by his removal from Canada, including conditions of the likely country of removal; and
- the best interests of any children directly affected by the decision.

[10] In general, I found the appellant to be credible. His testimony was fulsome and direct, and he did not appear to be evading questions put to him about any aspect of his past, present or future. His testimony was consistent with the documentary evidence in this case, including the exhibits entered on behalf of the respondent.

[11] Having pleaded guilty to the offence, the appellant was convicted of operating a motor vehicle after consuming alcohol in such a quantity that the concentration in his blood exceeded 80 milligrams of alcohol in one hundred millilitres of blood; the appellant's blood alcohol content was 170 milligrams, *i.e.* more than twice the legal amount. The level of the appellant's impairment while driving makes this a serious offence.

[12] I am mindful, however, that apart from the foregoing conviction, the appellant has not been convicted of any further offence(s). His punishment - a $2,500 fine[7] and a $375 victim fine surcharge - reflected the nature of his crime, namely having driven a motor vehicle while intoxicated, thereby putting innocent persons in jeopardy. The appellant was also prohibited from operating a motor vehicle anywhere in Canada for a period of one year.

[13] The appellant testified that he "felt terrible" when he viewed photographs of the cyclist who was injured in what the appellant described as a "near accident." He told the panel that he drove to Strathmore and attempted to enlist the Royal Canadian Mounted Police's ("RCMP") assistance in tracking down the cyclist; he sought to apologize to him in person and to offer him his own bicycle. For privacy reasons, the appellant was unable to make personal amends to the victim. I find that this attempt on the part of the appellant - which, given the involvement of the RCMP, is unlikely to have been fabricated by the appellant - demonstrates genuine remorse, and I find that he was credible and believable when showing regret for his criminal offence. This is a positive factor in this appeal.

[14] The appellant's application for a "bridging open work permit" following the expiration in December 2013 of his authorization to work in Canada was refused by CIC on May 23, 2014.[8] He is, consequently, without a driving license, public health care insurance, Canadian passport or other government-issued ID. It was not disclosed at the hearing whether or not the appellant is in possession of a Mauritian passport. He is only able to work because of the latitude being afforded to him by Canada Border Services Agency ("CBSA") during the appeal period, i.e. before the present decision is issued.

[15] The absence of any evidence indicating that the appellant has had any further charges or convictions, his credible contrition and his composure at the hearing, lead me to find, on a balance of probabilities, that it is unlikely that the appellant will commit additional crimes; he is aware of the consequences, namely that any convictions would likely hamper what he referred to as his "dream" of having his family reunited in Canada; this will, in my view, provide strong

[7] The appellant elected to perform community service in lieu of the $2,500 fine.
[8] Exhibit R1, pp. 2-7.

motivation for the appellant to stick to the straight and narrow, and is a positive factor in this appeal. While the appellant testified regarding his efforts to refrain from the use of alcohol, there is no specific evidence of ongoing efforts at rehabilitation such as voluntarily participating in seminars, workshops, or attending meetings to help him to understand the seriousness of impaired driving and why it is not tolerated in Canada.

[16] While the appellant has been in Canada for five years, he has provided little evidence of financial establishment. He has no real or invested assets, provided no tax returns or Notices of Assessment ("NOA"), provided no bank or employment records. Apart from a cousin in Montreal, he has no family in Canada; his family ties are virtually all to his native Mauritius. Against this evidence of the appellant's lack of establishment in Canada must be weighed the letters of support before me from his employer, friends, co-workers and the landlord of his rented accommodation. The appellant has, it would appear from his testimony and these letters, put down some roots in his community and can count on the support of a number of people and organizations including the Catholic Immigration Society. The letters at Exhibit A1 are, as one would expect, positive affirmations of the appellant's character and employability, although the extent to which the writers of these letters were aware of the circumstances surrounding the appellant's deportation order is unclear. On balance, I find the evidence of establishment to be marginal. The appellant's degree of establishment, therefore, is a neutral factor in my decision.

[17] While the appellant testified that his preference is to remain in Canada, he did not submit any documentary evidence with respect to country conditions in Mauritius or to corroborate the particular hardships which he claimed in his oral testimony. The appellant testified that he would be unable to find suitable employment in Mauritius, partly because he is part of the country's Creole minority. He added that prior to coming to Canada he had been employed in a low-paying labour job. He explained to the panel that the police regularly visit his house in Mauritius to monitor his brothers-in-law, who have been previously convicted for drugs-related offences. The appellant testified that there is rampant corruption in Mauritius. His most recent return trip to Mauritius was in 2012. It may be inferred, however, that the appellant felt it was sufficiently safe for him to return to Mauritius. Nor do I have before me documentary evidence showing country conditions in Mauritius or how the Creole minority is treated. It is, of course, self-evident that if

deported to Mauritius, the appellant would be returned to the very country from which he had, for many reasons, sought to leave. In Mauritius, however, the appellant would be reunited with his wife and his children; this would significantly lessen the blow of being removed from Canada. Based on the evidence before me, I find it likely that the appellant's removal would be equally bitter *and* sweet for him. I find that the absence of evidence corroborating the extent of the physical and emotional hardship which could befall the appellant were he to be removed to Mauritius lessens the positive weight I am able to assign to this aspect of his *viva voce* evidence.

[18] The appellant's wife and children have never been to Canada and have no ties to Canada other than the appellant's presence here. According to the appellant, his family are all hoping to be reunited with their father in Canada to begin a new life in a new country. While I am mindful that it was the appellant himself who put these plans at risk by his actions, the appellant claimed that if he were removed to Mauritius he would be unable to provide sufficient income for his wife and children to maintain a reasonable standard of living. There was, however, no evidence before me to corroborate the appellant's testimony, i.e. what would be the direct impact on his children's education, their food and housing options, and their health were he to be removed to Mauritius. While it is generally accepted that it is in the best interests of children for their family to remain together, in the circumstances of this case I find on a balance of probabilities that it is in the best interests of the children for their father to remain in Canada, where, according to the appellant's uncorroborated testimony, his is able to earn an income that supports a good quality of life for them in Mauritius. The weight I am able to assign his oral evidence is limited, however, by the lack of documentary evidence regarding employment opportunities in Mauritius. On balance, I find that it is in the best interests of the appellant's children for their father to be allowed to remain in Canada working to support them with an eye to possibly reuniting in Canada; in my view, this warrants significant weighting in my decision.

[19] It was argued before me that the appellant received faulty immigration advice at the time he pleaded guilty to the charges of which he now stands convicted. There is, however, no evidence before me to corroborate this assertion, nor has the person who allegedly gave him this

advice been afforded an opportunity to refute the allegations of malpractice made against him. Accordingly, I find that the appellant's accusation should bear no weight in my decision.

[20] While, as noted above, I find that the appellant is unlikely to reoffend, nor was there any evidence of subsequent drug or alcohol abuse, in my view there are sufficient negative factors in this case to warrant a stay of the removal order for a period of two years. In addition to the legally-mandated conditions, the appellant shall make reasonable efforts to ensure that he maintains full-time employment and immediately report any change in his employment to the Canada Border Services Agency ("CBSA"). Another condition being added is that the appellant will keep the peace and be of good behaviour.

DECISION

[21] I find the removal order made against the appellant to be legally valid.

[22] After considering all of the relevant evidence in this case, and having applied those factors which have been set down by the Federal Court for my guidance, I find that, taking into account the best interests of the children directly affected by this decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all of the circumstances of the case. In light of my finding, the removal order is stayed for a period of two years with the following conditions.

NOTICE OF DECISION

The removal order in this appeal is stayed. The stay is made on the following conditions:

[1] The appellant must inform the Canada Border Services Agency (the "Agency") and the Immigration Appeal Division (the "IAD") in writing in advance of any change in your address.

The address of the Agency is:
Canada Border Services Agency
Room 170
220-4th Avenue S. E.
Calgary, AB
T2G 4X3

The address of the IAD is:
Immigration Appeal Division
1600 - 300 West Georgia Street,
Vancouver, BC
V6B 6C9

[2] Provide a copy of your passport or travel document to the Agency or, if you do not have a passport or travel document, complete an application for a passport or a travel document and to provide the application to the Agency.

[3] Apply for an extension of the validity period of any passport or travel document before it expires, and provide a copy of the extended passport or document to the Agency.

[4] Not commit any criminal offences.

[5] If charged with a criminal offence, immediately report that fact in writing to the Agency.

[6] If convicted of a criminal offence, immediately report that fact in writing to the Agency and the IAD.

[7] Provide all information, notices and documents (the "documents") required by the conditions of this stay to the Agency by hand, by regular or registered mail or by courier to the Agency at this address **Canada Border Services Agency, Room 170, 220-4th Avenue S. E., Calgary, AB T2G 4X3.** It is the responsibility of the appellant to ensure that the documents are received by the Agency within any time period required by a condition of the stay.

[8] Provide all information, notices and documents (the "documents") required by the conditions of the stay by regular mail to the Immigration and Refugee Board at this address **Suite 1600 – 300 West Georgia Street, Vancouver, British Columbia V6B 6C9**; or by fax to the IAD at (604) 666-3043. Include your IAD file number. It is the responsibility of the appellant to ensure that the documents are received by the IAD within any time period required by a condition of the stay.

[9] Make reasonable efforts to seek and maintain full-time employment and immediately report any change in employment to the Agency.

[10] Keep the peace and be of good behaviour.

FINAL RECONSIDERATION

Take notice that the IAD will reconsider the case on or about the **14th day of November, 2016** or at such other date as it determines, at which time it may change or cancel any non-prescribed conditions imposed, or it may cancel the stay and then allow or dismiss the appeal. Until your final reconsideration is decided (or your stay is otherwise ended), your stay remains in effect and you must comply with the conditions of your stay, including advising the Agency and the IAD in writing before any change in your address.

The IAD may contact you by letter in advance of final reconsideration to ask you to provide written confirmation that you have complied with the conditions of stay.

IMPORTANT WARNING

This stay of removal is cancelled and your appeal is terminated by operation of law and you may be removed from Canada if you are convicted of another offence referred to in subsection 36(1) of the *Immigration and Refugee Protection Act* (sentence of more than six months imposed or punishable by term of imprisonment of at least ten years) before your case has been finally reconsidered.

(signed) **"Sterling Sunley"**

Sterling Sunley

January 6, 2015

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.