

Deportee can stay to change religion

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Declaring "everyone has the right to change religion," a federal court judge is allowing a failed refugee claimant who was ordered out of Canada after a criminal conviction to remain in the country to continue a religious conversion.

Federal Court of Canada Judge Sean Harrington stopped this Saturday's deportation of a Christian man from Brazil so he can complete his conversion to Judaism alongside his Jewish wife and his sponsoring rabbi.

The ruling, in favour of Diogo Cichaczewski, is believed to be the first of its kind.

"While Canada's focus is on removing an individual who has no legal status here, an unfortunate repercussion is that his conversion would be delayed; in other words, arguably impaired," Judge Harrington ruled.

"How can the harm arising from a roadblock in Mr. Cichaczewski's right to celebrate the religion of his choice be measured?"

Championing the freedom to change religion as a right to be protected by the courts strikes some as a misapplication of the Charter of Rights and Freedoms.

"The Charter guarantees freedom of religion and freedom to practise that religion and express that religion in a public way. But there is nothing in Canada's legislation or in the Charter that guarantees the completion of a private religious process or guarantees one can do that in a particular place," said Sergio Karas, a Toronto immigration lawyer.

"I would argue that a religious conversion is intrinsically a private act between an applicant and the clergy. Nothing would prevent him from completing his conversion in Brazil.

"This is an enormous stretch from what the Charter says," Mr. Karas said.

Mr. Cichaczewski, 24, came to Canada in 2002 and claimed refugee status, saying he feared revenge from a drug dealer who was convicted in Brazil because of information he supplied to police, according to the ruling.

His refugee claim was later declared abandoned.

In 2004, Toronto police charged Mr. Cichaczewski after an undercover officer spotted what he thought was a drug deal taking place on a street corner.

Instead, police say they found stolen credit cards and duplicate cards made from stolen personal

information being sold.

He was convicted of several misdeeds, including possession of stolen property, possession of the proceeds of crime and credit card and computer fraud offences. He received a suspended sentence and one year's probation on each.

Last year Mr. Cichaczewski married a Toronto woman who is Jewish, and he began the process of converting to Judaism.

In the meantime, the government moved to send Mr. Cichaczewski back to Brazil and he made two appeals for reconsideration. Both of his appeals were refused and he was scheduled for removal on Saturday.

Mr. Cichaczewski filed two more legal actions; one is a request for a judicial review of his removal and the other asking the court to allow him to remain in Canada pending the outcome of that review. It was that second request that Judge Harrington has ruled on.

"I have decided to grant the stay on religious grounds," Judge Harrington writes in his ruling.

"Everyone has the right to believe, or not to believe. Everyone has the right to be a member of an organized religion, subject to the tenets of that faith, or not. Everyone has the right to give public witness to faith. Everyone has the right to change religion," he writes in his ruling.

Mr. Cichaczewski has completed the classes necessary to convert to Judaism, which typically lasts a full year. Usually a conversion would then require circumcision, if a male applicant was not already circumcised, a ceremonial bathing and an appearance before a council of rabbis to be complete.

"His sincerity has not been put into question. It is important to emphasize that this is not an opportunistic conversion," Judge Harrington writes.

"The [immigration hearing] officer was of the view that nothing prevented Mr. Cichaczewski from converting to Judaism while back in Brazil. That may be so, but at the very least his conversion would be interrupted and delayed."

Canada Border Services Agency now await the outcome of Mr. Cichaczewski's remaining judicial appeal, which is based on humanitarian and compassionate grounds.

"We are obliged to abide by the court's decision," said Anna Pape, a CBSA spokeswoman. Mr. Cichaczewski's lawyer, Barbara Jackman, could not be reached yesterday.