

Federal Court



Cour fédérale

Date: 20151030

Docket: IMM-4803-15

Citation: 2015 FC 1235

Ottawa, Ontario, October 30, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

AVTAR SINGH

Applicant

and

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

Respondent

ORDER AND REASONS

[1] Mr. Singh is a failed refugee claimant. He is scheduled to be returned to India this coming weekend. He asked the Removals Officer for a deferral as he has a heart condition and his doctor said he should not fly for at least four months.

[2] The Removals Officer sent that report and Mr. Singh's medical records to a doctor in Ottawa hired by the Minister to review these matters. Although invited to do so, the doctor did

not consult with Mr. Singh's own doctor. After reviewing the records, which indicate that Mr. Singh has heart issues, he said:

In the absence of any objective medical evidence indicating any significant ongoing pathology, it is reasonable to conclude that Mr. Singh's recent history of chest pain complaints would not preclude him from travelling via commercial airliner.

[3] With that report in hand, the Removals Officer simply said there were not sufficient reasons to postpone Mr. Singh's removal. He rubber-stamped the opinion without analysis.

[4] Mr. Singh has filed an application for leave and judicial review of the decision of the Removals Officer and, in the interim, seeks a stay of removal pending the outcome of that application. This is why I have granted the stay.

[5] The bases of a stay of removal are well known. It is upon the applicant to establish a serious issue, that irreparable harm would be suffered if the stay were not granted and that the balance of convenience favours him (*Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA), [1988] FCJ No 587 (QL); and *RJR-MacDonald v Canada (Attorney General)*, [1994] 1 SCR 311).

[6] One should also keep in mind that in cases such as *RJR-MacDonald* it was noted that the judge in first instance is often required to make immediate decisions on an incomplete record.

[7] In my opinion, Mr. Singh's health is a serious issue. He may suffer irreparable harm such as a heart attack or death in taking two flights to get from Montréal on November 1st to Delhi on

November 3rd. The balance of convenience favours him. On the one hand there is no great inconvenience to the Government to await the outcome of Mr. Singh's follow-up tests; while on the other hand it is most inconvenient to be dead.

[8] During oral argument, I made reference to two decisions of mine which are somewhat similar, and in both cases stays were granted. See *Solmaz v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 951 and *Tobin v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 325. This is truly a case in which it is preferable to maintain the *status quo ante* until the results of Mr. Singh's scheduled stress test are known.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The motion is granted.

2. The removal of Mr. Singh scheduled for November 1, 2015 is stayed pending the outcome of his application for leave and, if granted, judicial review of the decision of the removals officer not to grant an administrative stay.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4803-15
STYLE OF CAUSE: AVTAR SINGH v MPSEP
PLACE OF HEARING: OTTAWA, ONTARIO
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