

Federal Court



Cour fédérale

Date: 20181210

Docket: IMM-2734-18

Citation: 2018 FC 1239

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, December 10, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

GUY ROBERT GERVÉ

Applicant

and

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

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated May 30, 2018, by an enforcement officer [the officer] who rejected the request to defer the applicant's removal to Haiti. On June 19, 2018, my colleague Justice Locke stayed the removal order (*Gervé v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 635).

[2] At first glance, any issue concerning the reasonableness of the refusal to defer the removal appears to be moot. Not only are the circumstances different today, but also more than five months have passed since the Court's stay granting the applicant what he was seeking at that time. It would be pointless to ask another officer to reconsider the initial removal request when there is nothing preventing the applicant from making a new request to defer his removal to allow consideration of his current circumstances, developments in his sponsorship application, and fresh evidence, such as the letter from Immigration Refugees and Citizenship Canada dated November 28, 2018, mentioning that the applicant's spouse meets federal eligibility requirements for guarantors, which was not before the officer in May 2018.

[3] In any event, in retrospect, it must be noted that the officer's decision to reject the request to defer removal was not unreasonable. I agree with the respondent that the evidence filed by the applicant in support of his request to defer removal does not show that the approval in principle of his sponsorship application, and the automatic statutory stay that would come with it, is imminent. Indeed, to this day, no positive or negative decision has been rendered regarding the sponsorship application, and the applicant has not received an approval in principle.

[4] As regards the short-term best interests of the four minor children of the applicant's spouse, here too, the officer's conclusions are reasonable. The burden was on the applicant to provide persuasive evidence to support his general assertions in this regard (*Schleicher v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 482 at para 59). As a general rule, family hardship, without more, is not sufficient harm to warrant a deferral of removal (*Nguyen v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 225 at para 24; *Joseph v Canada*

(Public Safety and Emergency Preparedness), 2018 FC 812 at paras 22-24). In this case, based on the evidence on record, the officer could reasonably conclude that the loss of the applicant's financial contribution, and of his presence in general, would not cause any hardship beyond the difficulties that ordinarily result from a removal or that could not be remedied by subsequently readmitting the applicant to Canada (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 51).

[5] Finally, although the four major children of the applicant's spouse, ranging in age from 19 to 22 at the time of the decision, are currently studying, it was not unreasonable to conclude that they can contribute to the household finances and upkeep. The adult children's studies do not preclude them from helping out with the minor's children's care. These factors are not mutually exclusive.

[6] The application for judicial review is therefore dismissed. Counsel agree that there is no question of general importance to be certified.

JUDGMENT in docket IMM-2734-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified.

“Luc Martineau”

Judge

Certified true translation
This 31st day of December, 2018.

Michael Palles, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2734-18

STYLE OF CAUSE: GUY ROBERT GERVÉ v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 5, 2018

JUDGMENT AND REASONS: MARTINEAU J.

DATED: DECEMBER 10

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