Federal Court  Cour fédérale

Date: 20190710

Docket: IMM-3583-19

Citation: 2019 FC 905

Ottawa, Ontario, July 10, 2019

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

DONALD PAA ASANTE

Respondent

ORDER AND REASONS

[1] On Friday, June 7, 2019, the Minister filed an urgent motion on short notice seeking an interim stay of the order of a member of the Immigration Division of the Immigration and Refugee Board of Canada [the Member], rendered that afternoon, ordering the release from detention of Mr. Asante on certain terms and conditions.

[2] Counsel for Mr. Asante informed the Court that his client was prepared to consent to a "short interim stay to allow the Minister to compile a proper motion record." After discussing the matter with the parties, Madam Justice Heneghan on Friday, June 7, 2019, issued an interim order staying the release of Mr. Asante from detention for 72 hours and referred the matter to the Toronto Duty Judge on Monday, June 10, 2019, for directions about a hearing date. As the assigned Duty Judge, this matter came before me and I ordered that a hearing on a full record was to be held on Thursday, June 13, 2019. The interim stay was extended until the final disposition of the motion.

[3] Following the hearing of the motion on Thursday, June 13, 2019, I dismissed the motion and vacated the earlier stay order. I indicated to the parties that these reasons would follow.

[4] Mr. Asante is a citizen of Ghana and entered Canada as a visitor on January 27, 2019, on a false passport. He subsequently initiated a claim for refugee protection; however, it was discovered that he had a criminal record making him inadmissible to Canada under paragraph 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [the Act]. When he reported again on February 15, 2019, to continue the processing, he was arrested by an officer without warrant and was detained on the basis that he was unlikely to appear for his admissibility hearing.

[5] At the 48-hour detention review, the continued detention of Mr. Asante was ordered based on a determination that Mr. Asante was a flight risk pursuant to paragraph 58(1)(b) of the Act. Four subsequent detention review hearings were held and each ordered the continued

detention of Mr. Asante pursuant to paragraph 58(1)(b) of the Act. In the fifth detention review, the decision under review in this application, the Member also found Mr. Asante to be a flight risk and thus unlikely to report for removal if he were released without condition. However, unlike the earlier decisions, after addressing the factors set out in section 248 to the *Immigration and Refugee Protection Regulations*, SOR/2002-227, the Member found that release was appropriate because his release on specific conditions, as an alternative to detention, would ensure on the balance of probabilities that Mr. Asante would cooperate with lawful efforts to remove him from Canada. He was ordered released on conditions imposed by the Member.

[6] The Minister challenges the Member's finding that there was an alternative to detention. Mr. Asante submits that the alternative to detention finding was reasonable as the Member "carefully assessed the evidence, clearly identified an intelligible and transparent reasoning chain, and reached a decision that is justifiable with respect to the law and the facts." Both parties accept the finding that Mr. Asante is a flight risk if released without condition.

[7] As one would expect, there was agreement that in order for the Minister to obtain a stay of the release order, he had to satisfy the Court that:

a. There is a serious issue to be tried;

b. The applicant will suffer irreparable harm if the stay is not granted; and

c. The balance of convenience favours the applicant.

This tripartite test for the granting of a stay is set out by the Supreme Court of Canada in *Manitoba (Attorney General) v Metropolitan Stores (MTS) Ltd*, [1987] 1 SCR 110, and is

described by the Supreme Court of Canada in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*] at 334, as follows:

> First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious issue to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[8] In *RJR-MacDonald*, it was made clear at 335 that the judge must make a preliminary assessment of the merits of the case to see if there is a serious question to be tried and this is an assessment of whether the application is neither frivolous nor vexatious. This may be described as the usual threshold for serious issue determination.

[9] As was recently noted by the Supreme Court of Canada in *R v Canadian Broadcasting Corp*, 2018 SCC 5 [*CBC*] at para 13, the court in *RJR-MacDonald* identified two exceptions to using the usual threshold for serious issue determinations. These were (1) "when the result of the interlocutory motion will in effect amount to a final determination of the action," and (2) "when the question of constitutionality presents itself as a simple question of law alone." In these exceptional cases the judge must make "an extensive review of the merits at the first stage of the analysis" [emphasis added] to determine whether the applicant has shown a strong *prima facie* case. This may be described as the elevated threshold for serious issue determination.

[10] It has not been suggested that these are the only exceptions to situations requiring analysis on the usual threshold for serious issue determination. Indeed, in *CBC*, the Supreme Court of Canada held that the elevated threshold is to be used when an applicant seeks to obtain a

mandatory interlocutory injunction. It so held because of the potentially severe consequences for a defendant faced with a mandatory injunction. In that case, the CBC was faced with a motion for an order directing it to remove certain information from its website. The court further held at paragraph 17 that where the elevated threshold is used, the motions judge "must be satisfied that there is a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice" [emphasis in original].

[11] On the motion before the Court, the Minister submitted that the "threshold test for a serious issue is low: the Applicant need only raise one issue that is not frivolous or vexatious." Mr. Asante's counsel submitted that "the Minister must satisfy the Court that there is a serious issue on the elevated strong *prima facie* case standard." It was argued that the elevated standard is required because the result of the interlocutory motion, in effect, will amount to a final determination of the action, and because there are compelling policy reasons related to the *Charter* protection of liberty at stake, which warrant requiring that the Minister establish more than a non-vexatious issue.

[12] It was noted that there appears to be conflicting jurisprudence in this Court on the standard to be applied when assessing if a serious issue has been made out when the Minister seeks an order staying a decision of the Immigration Division releasing a person from immigration detention. That, coupled with the divergent position of these parties, leads me to examine whether on motions to stay release orders, the motions judge is to use the usual threshold or the elevated threshold when determining whether a serious issue has been made out.

[13] As noted above, in *RJR-MacDonald*, the Supreme Court of Canada identified two exceptions to the usual threshold being applied; however, while it did not foreclose there being other exceptions, it did state that exceptions to the usual threshold are "rare" occurrences.

[14] An important application of the first exception noted in *RJR-MacDonald,* where the result of the interlocutory motion will in effect amount to a final determination of the action, was Justice Pelletier's decision in *Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 [Wang].

[15] Justice Pelletier was ruling on a motion by an applicant to stay the execution of a removal order made against him until the final disposition of the application for leave and for judicial review. That application challenged a decision of an enforcement officer not to administratively defer the removal. Justice Pelletier held that the usual threshold of serious issue was not appropriate because the stay, if granted, would effectively amount to a determination of the issue under review. That is to say, an applicant receiving the stay would effectively be granted the relief sought in the application. He stated at paragraph 8:

> But where the motion for a stay is in relation to a refusal to defer removal, the fact of granting the stay gives the applicant that which the removal officer refused him/her. Since the decision in issue in the application for judicial review is the refusal to defer removal, granting the stay gives the applicant his/her remedy before the merits of the application for judicial review have been addressed. It is in this sense that one can say that the disposition of the motion for a stay of execution decides the underlying application for judicial review.

[16] This reasoning was approved by the Federal Court of Appeal in *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 [*Baron*]. Ever since,

this Court has applied the elevated threshold to serious issue determinations on motions seeking to stay removal where the decision under review is an officer's refusal to administratively stay the removal.

[17] After *Baron*, there appears to have been little detailed examination as to whether the applicable serious issue standard is the normal one or the elevated one when ruling on a stay of an order releasing a person from immigration detention, until my decision in *Canada (Minister of Citizenship and Immigration) v B479*, 2010 FC 1227 [*B479*]. Therein, the respondent argued for the elevated threshold and referenced a September 17, 2010 unreported order of Justice de Montigny, who on such a motion stated "[I]f the stay were granted the Minister would, for all intents and purposes, be granted the remedy that he is seeking in the underlying application for judicial review:" *Canada (Minister of Citizenship and Immigration) v XXXX*, Court Dockets IMM-5368-10, IMM-5359-10, IMM-5360-10, IMM-5361-10.

[18] In *B479*, I disagreed with that assessment. My view has not changed and I cannot improve upon the reasons I gave then at paragraphs 20 to 26:

> [20] With the greatest of respect, granting a stay of an order releasing a person from immigration detention does not effectively grant the Minister the relief sought in the underlying judicial review application challenging the order to release. It merely preserves the *status quo*.
>
> [21] The Federal Court of Appeal in *Baron* endorsed the view of Justice Pelletier, as he then was, in *Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 where he held, on the facts before him, that when considering the motion to stay an order for removal the Court ought not merely consider whether the applicant had raised an issue that was not frivolous or vexatious but "go further and closely examine the merits of the underlying application." The fundamental reason why Justice Pelletier so held was because the decision underlying the application for judicial

review was not the order for removal, but was a decision of a removal officer refusing to defer removal.

[22] Justice Pelletier noted that there were two different situations that may give rise to motions to stay removal. The first situation is where the motion to stay the removal order is brought within an application for judicial review that challenges the removal order itself. The second situation is where the motion to stay the removal order is brought within an application for judicial review that challenges the refusal of an officer to defer removal. *Wang* was an example of the second situation. Mr. Wang's refugee claim had been dismissed and thus he was subject to removal. When he was informed that he was to be removed to China, he asked the officer to defer his removal pending the disposition of his recently filed H&C application. The officer refused and it was the officer's refusal to defer that was challenged in the judicial review application; it was not the earlier order for removal.

[23] Justice Pelletier held that where an application challenging the validity of the removal order itself was the underlying application, then the "not frivolous or vexatious" test for serious issue was appropriate and applicable because staying the implementation of the removal order "did not effectively grant the relief sought in the underlying judicial review application because it was in relation to another decision [namely, the removal order]." However, where what was challenged in the underlying judicial review application is the decision refusing to defer enforcement of the removal order, then granting a stay of enforcement "gives the applicant that which the removal officer refused." A stay granted by the Court on an application to review the refusal to defer removal grants the applicant exactly the remedy he or she sought from the officer and grants it before the merits of the application are heard. As Justice Pelletier observed, "It is in this sense that one can say that the disposition of the motion for a stay of execution decides the underlying application for judicial review."

[24] The situation here is not parallel to that in *Wang*. Here the decision subject to the judicial review application is the decision of the Board releasing B479 from immigration detention. The Minister is challenging the legality of that decision in the underlying application. A stay of that decision pending a hearing on the merits does not decide the underlying application and it does not, in the sense described in *Wang*, give the Minister the relief sought before the merits of his application are determined. *Wang* would only be parallel to the situation facing B479 if there was some mechanism available by which the Minister could seek a

> deferral from the Board of the release and, if refused, seek judicial review of that refusal. In that case, a stay of release from detention pending the Court's determination of the refusal to defer release would grant the Minister exactly the remedy he sought but had been denied.
>
> [25] Admittedly, a stay of release from detention does grant the Minister that which was sought at the hearing - the continued detention of B479; however, that is no different a situation than that which arises in every stay application which, by definition, seeks to maintain the *status quo* pending a decision on the merits.
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> [26] For these reasons, I am of the view that the serious issue test is to be measured on the standard set out by the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 and *RJR*-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311, namely whether "there is a serious question to be tried as opposed to a frivolous or vexatious claim."

[19] It would appear that until recently, the Court consistently applied the usual threshold for serious issue determinations on motions to stay release orders.

[20] Recently, some colleagues have expressed the view that the Court should apply the elevated threshold for serious issue determinations on motions to stay release orders.

[21] The first instance appears to be the decision of Justice Norris in *Canada (Minister of Public Safety and Emergency Preparedness) v Allen*, 2018 FC 1194 [*Allen*]. He held at paragraph 15 that "there are weighty considerations that warrant imposing the more onerous test of requiring the Minister to demonstrate a strong *prima facie* case with respect to the grounds for judicial review where, as here, the Minister seeks to stay an order releasing an individual from detention." I note that "strong *prima facie* case" is the term used by the Supreme Court of

Canada in *RJR-MacDonald* to describe the elevated threshold. Justice Norris offers two considerations to warrant this higher standard.

[22] The first he describes as follows:

> [I]f the motion for a stay were to succeed, the judicial review application could be rendered moot in short order if Mr. Allen were ordered detained at a subsequent detention review. This risk disappears if the stay is not granted.

[23] With respect, I am unable to accept that this is a valid consideration when examined in the context in which such motions are brought and decided by the Court.

[24] Motions by the Minister to stay a release order are launched as soon as possible after the order is rendered. They are brought the day of or the day following the release order, and only exceptionally at a later date. This is because once the terms of the release order have been complied with and the individual released, there is nothing to stay: the order has been spent.

[25] Even prior to the filing of the motion, the Minister, as in this case, alerts the Court that an urgent hearing will be required on short notice. This alerts the party opposite, the Court Registry, and the Duty Judge, that the matter will require urgent attention. It is frequently the case, as it was here, that an interim short-term stay will be granted, often on consent, so that the Minister can assemble a proper motion record. The motion is argued in full on a proper record within days of the making of the release order. In this case, the hearing was held six calendar days after the late Friday afternoon order. It would be an exceptional case where the motion would not be heard within a week of the order being made. Where the Minister is suggesting a

longer period to prepare the record, the burden will always be on the Minister to provide evidence why it cannot be done sooner. The Court's policy is to hear such motions on an urgent basis, and the Chief Justice has assigned Duty Judges who are available 24/7 for that reason.

[26] If the stay order is granted, there are two events which will occur. First, barring any changed circumstances, the individual will have a subsequent detention hearing no later than 30 days from the hearing that ordered the release. Second, there will be a judicial review hearing. Importantly, it is the Court's policy to set a date for the hearing of the judicial review application that underlies the stay motion on an urgent basis. I, and others who have granted stays in this circumstance have, coincident with granting the stay order, granted leave and set a hearing date for the application such that it will be heard and determined before the next scheduled detention review: See as an example *Canada (Public Safety and Emergency Preparedness) v Mukenge*, 2016 FC 331 [*Mukenge*].

[27] There is a practical basis for the Court's policy. If the stay is ordered and the application for judicial review dismissed, then the release order is effective, and no subsequent detention review will be undertaken. On the other hand, if the application for judicial review is granted and the member's release decision set aside, the next detention review will occur as scheduled.

[28] On this practical basis, I reject the premise in *Allen* that if the stay is granted, the judicial review application could be rendered moot by a subsequent detention review. I am not aware of any instance where a stay was granted and the judicial review application was not determined prior to the next detention review.

[29] The second consideration offered in *Allen* for applying the elevated serious issue threshold is "that staying an order for release means depriving Mr. Allen of a significant benefit granted to him by the expert tribunal with primary responsibility for deciding such matters – namely the restoration of his liberty (albeit conditionally)." Here two ideas appear to me to be intertwined. The first is that the motion seeks to stay an order made by the expert tribunal with primary responsibility for making the decision. The second appears to be that the order made restores the individual's *Charter* right to liberty.

[30] As to the first, I note that there are many instances where courts grant orders enjoining the enforcement of orders made by competent tribunals and it has never been suggested or held that this should be done on anything but the usual threshold for serious issue determination. See, for example, stay motions brought against the decisions of labour relations boards, such as the Canada Industrial Relations Board: *Teamsters Local Union 847 v Canadian Airport Workers Union*, 2009 FCA 44. Labour relations boards "exemplify a highly specialized type of administrative tribunal": *ILWU, Local 514 v Prince Rupert Grain Ltd*, [1996] 2 SCR 432 at para 24. As observed by the Supreme Court in *RJR-MacDonald* at 348:

> The fact that an appellate court has granted leave in the main action is, of course, a relevant and weighty consideration, as is any judgment on the merits which has been rendered, although neither is necessarily conclusive of the matter. A motions court should only go beyond a preliminary investigation into the merits when the result of the interlocutory motion will in effect amount to a final determination of the action, or when the constitutionality of a challenged statute can be determined as a pure question of law.
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> [emphasis added]

[31] As to the fact that the order being stayed restores a *Charter* right to liberty, I note that in *RJR-MacDonald*, the Supreme Court held that the usual threshold for serious issue should be applied even in *Charter* cases. Additionally, as discussed previously, if after a hearing on the merits of the application, the release order is found reasonable and the application dismissed, the restriction on the liberty of the individual will be short. I agree with Justice Norris that liberty is a precious right; however, all rights are subject to restrictions and limitations. In this context two considerations apply. First, this restriction must be weighed against the consequences of flight risk or danger to the public. It cannot be assessed in isolation from the context. As the Supreme Court noted in *RJR-MacDonald*: "A careful balancing process must be undertaken." Second, in my view, the restriction on the liberty of the detainee is a matter more properly considered when examining balance of convenience than when considering serious issue.

[32] In *Canada (Minister of Public Safety and Emergency Preparedness) v Mohammed*, 2019 FC 451 [*Mohammed*], Justice Norris built on his observations in *Allen*. He writes at paragraph 13:

> [T]here is an important sense in which staying a release order effectively sets aside the disposition ordered by the ID, the very relief sought in the underlying judicial review application. Indeed, it can also be said that the stay effectively provides the Minister with the disposition of the detention review which he sought unsuccessfully from the ID – namely, the detainee's continued detention. In my view, this is analogous to the situation that obtains when a stay of a removal order is sought pending judicial review of a refusal to defer the removal. In this latter context, it is well-established that an elevated standard applies on the first branch of the test, and that the moving party must demonstrate that the underlying application is likely to be successful: see *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FC 682, 2001 FCT 148 (CanLII) at para 10; *Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paras 66-67 (per Nadon JA, Desjardins JA concurring) and para 74 (per Blais

> JA). I find that the same rationale for an elevated standard on the first part of the test for a stay also applies in the present context.

[33] Again, and with utmost respect to the view expressed by my colleague, this reasoning fails to consider the expedited manner in which such underlying applications are determined by this Court. Granting the stay does not grant the Minister the very relief sought in the underlying application because, if the stay is granted, the Minister will still have to persuade the Court in the expedited judicial review hearing that the release decision was unreasonable and must be set aside. As I stated in *B479*, all the stay order does is maintain the *status quo*.

[34] This situation is not akin to that in *Wang*. In *Wang* situations, if the stay is granted, the individual cannot be removed until after the judicial review hearing—but that hearing is not expedited. Requests for administrative deferrals of removal always ask for a brief period of deferral until some future event. Given the Court's docket in the past, it was not infrequent that the judicial review applications in those contexts were not heard until at least one year or more had passed from the date of the stay order. Even with the current improved state of the Court's docket, judicial review hearings in immigration and refugee matters are unlikely to be determined until some six to nine months after the stay order has been granted. It will often be heard after the deferral date requested in the administrative deferral request.

[35] There are other recent decisions of this Court applying the elevated serious issue test: *Mukenge*; *Canada (Public Safety and Emergency Preparedness) v Baniashkar*, 2019 FC 729; *Canada (Public Safety and Emergency Preparedness) v Berrios Perez*, 2019 FC 452; *Canada (Public Safety and Emergency Preparedness) v Faarah*, 2019 CanLII 19232 (FC).

[36] Each of these applied the elevated threshold to the serious issue test, based on the judge being of the view that granting the relief sought in the stay motion will give the applicant the relief sought in the underlying application for judicial review. For the reasons explained above, that is not a position I accept.

[37] Justice Norris in *Mohammed* seems to disagree with my view in *B479* principally because: "A detainee who has been ordered released by the ID should not be required to wait in custody for the next detention review and then have to try to obtain release again unless there are clear and compelling reasons to think that the release order is likely to be set aside on judicial review." I might agree with his assessment if a detainee were actually required to await the next detention review, but as explained above, that is not the case. It will be the extremely rare case where a detainee in the situation of Mr. Mohammed or Mr. Asante will remain in detention under a stay order issued by the Court until the next detention review.

[38] Justice Norris in *Mohammed* correctly notes that *CBC* demonstrates that "the tripartite test is a flexible one which must be responsive to the equities engaged by the particular relief sought." He further observes: "While an order staying an order for release does preserve the *status quo* pending the underlying judicial review application, this is not something that should ever be done lightly when liberty is at stake." I agree. Moreover, no order of any court in any circumstance should be made lightly. I do not accept that stay orders made on the usual threshold of serious issue can be said to have been lightly made.

[39] Where the order under review before the Court orders release on condition, but otherwise finds the individual to be a flight risk or a danger to the public, then that finding will invariably lead to a finding of irreparable harm. That harm is only ameliorated by the conditions imposed in the release order. Accordingly, if the Minister persuades the Court that there is a serious issue relating to the conditions for release, the Minister will also have persuaded the Court that irreparable harm will result if the stay is not granted.

[40] I have previously stated, in a different context, that when the moving party is seeking a stay and the usual threshold for serious issue applies, and it is argued that the irreparable harm and balance of convenience flow from the serious issue, that the Court "must exercise vigilance … to satisfy itself that the issues raised by an applicant are truly serious issues and not issues that merely have the appearance of seriousness:" *Cardoza Quenteros v Canada (Minister of Citizenship and Immigration)*, 2008 FC 643. As I observed in that case at paragraph 13:

> The threshold cannot automatically be met simply by formulating a ground of judicial review which, on its face, appears to be arguable. It is incumbent on the Court to test the grounds advanced against the impugned decision and its reasons, otherwise the test would be met in virtually every case argued by competent counsel.

[41] In so stating, I was reflecting the observation of the Supreme Court of Canada in *RJR-MacDonald* that the "judge on the application must make a preliminary assessment of the merits of the case." The judge need not conclude that it is likely that the applicant on the merits will succeed on the issues raised, but must be satisfied that those issues truly are serious issues.

[42] The case at bar is a good example of a situation where the Minister alleges numerous issues in the underlying decision which, on their face, appear to be serious but when tested against the decision and its reasons, are not so.

[43] Here the Minister advances the following as serious issues: (1) that the Member ignored or failed to consider the totality of the evidence, (2) that the Member failed to provide any reason to depart from pervious findings that detention of 8-10 weeks was not lengthy, (3) that the Member failed to provide reasons for departing from previous findings regarding the appropriateness of the bondsperson, (4) that the Member generally failed to provide clear and compelling reasons for departing from previous decisions to continue detention, and (5) that the Member incorrectly interpreted section 3.1.7 of the Chairperson Guidelie 2. Each has a patina of seriousness; however, when tested against the reasons for decision, none are serious.

[44] I agree with the following observation of counsel for Mr. Asante:

> [T]hese are not just reasonable reasons, these reasons are an exemplar of intelligibility and transparency. At each point where the ID deviates from a previous finding, there is an explanation. For every specific conclusion, the ID identifies what evidence it relies upon. For its overall decision, the ID offers a clear and identifiable reason why it concludes that the proposed alternative is adequate to offset the legitimate Ministerial interest in detention.

[45] The record before the Court shows that the Member conducted the detention review over two days: June 4, 2019 and June 7, 2019. The Member received opening submissions from counsel for the Minister and Mr. Asante. Mr. Asante and the proposed bondsperson were examined by both counsel and the Member. The transcripts of the hearings are more than 130 pages long. This was a detailed and considered hearing process.

[46] As to the first alleged serous issue, the Minister's complaint appears to be centred on the Member paying insufficient attention to the manner in which Mr. Asante entered Canada. However, even if this is so, the manner of entry goes primarily to whether the detainee is a flight risk, and Mr. Asante was found to be such. Perhaps this evidence goes to credibility, but the Member observed that while Mr. Asante's evidence differed from the allegations made by the Minister, "we don't have specifics." The Member turned her mind to this and the allegation that this is a serious issue is without merit. It is frivolous when one examines the record.

[47] The second alleged serious issue is also frivolous. The most recent prior decision held that the period of detention was not lengthy; however, the decision under review took place 4 weeks later. Mr. Asante was awaiting his Pre-Removal Risk Assessment [PRRA] determination and could not be removed until it was completed. The Member noted the Minister's acknowledgement as to the likely time that would pass before that decision was made. The Member's assessment was that a period of detention of some four to five months until the PRRA decision "could be a lengthy amount of time in total in detention." The Member's reason for departing from earlier assessments is explained by the different manner of looking at the period of detention.

[48] The third alleged serious issue is also frivolous when one examines the decision and the record. The Member conducted an extensive examination of the proposed bondsperson. Each of the members who examined her found, as did the Member, that she was credible, trustworthy and honest. She increased the amount pledged and offered to have Mr. Asante reside with her on release. Moreover, the Member noted that the proposed bondsperson and Mr. Asante had

frequent contact while he was in detention and concluded that they had a "close relationship." The Member found on the balance of probabilities, based on her examination of the evidence, that Mr. Asante would not jeopardize the bondsperson's financial status because she needed the money pledged for surgery she required, and because she had contact with Mr. Asante's family, if he harmed her that would impact him. While others may have reached a different conclusion, the Member gave clear reasons why she departed from earlier findings regarding the suitability of the proposed bondsperson, and why she was satisfied that the conditions to be imposed satisfied her that Mr. Asante would appear for removal.

[49] Lastly, the Member made only a passing reference to the SOGIE Guidelines as Mr. Asante claimed to be bisexual. This was not a serious or material consideration and the Minister's suggestion that this reference shows a serious issue is frivolous.

[50] In short, when one tests the grounds advanced here as serious issues against the decision and its reasons, one must conclude, as I have, that while facially they seem to be serious issues, in reality they are frivolous or vexatious. In so concluding, I have not engaged in an "extensive review of the merits" of the underlying application to determine whether the Minister has shown a strong *prima facie* case; rather, I have reviewed the issues raised against the record and made a preliminary assessment of whether the issues raised are frivolous and vexatious. I have found none to be serious.

[51] As the Minister has failed to show any serious issue in the underlying decision, this motion must be dismissed.

ORDER IN IMM-3583-19

THIS COURT ORDERS that the motion for a stay of the release of the respondent is dismissed.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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