

Federal Court



Cour fédérale

Date: 20191104

Docket: IMM-1946-19

Citation: 2019 FC 1062

Ottawa, Ontario, November 4, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JEYLANI SHARIF MOWLANA

Applicant

and

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

Respondents

ORDER

UPON motion on behalf of the Applicant for a stay of removal, scheduled for tomorrow, August 9, 2019, pending the determination of an application for leave and judicial review of a Pre-removal Risk Assessment decision;

AND UPON having read and considered the written submissions, as well as having heard the oral submissions of both parties;

Subsequent to consideration of the tripartite conjunctive criteria of the *Toth v Canada* test (*Toth v Canada (Minister of Employment and Immigration)*, (1988) 86 NR 302 (FCA));

RECOGNIZING the consequences of the Applicant's crime of absconding food stamps, worth \$200,000 committed in 2004 and for which he was convicted in 2011 (food stamps used in his store by which customers did benefit as did he with exchanges for the food stamps, in contravention of the food stamp scheme; the Applicant was sentenced to three years of probation and monthly restitution of food stamp value, which he made in monthly payments until his departure from the United States, when the Applicant was informed that he will be removed to his country of origin, Somalia); all of which the Court weighed against the background of serious peril to the Applicant's life and limb, if he is returned to his country of origin. (Reference is specifically made to the U.K. Home Office Report of 2017 in respect of Mogadishu in Somalia, also the Danish Immigration Service Report of 2017 in respect of returnees as well as the UNCR Report of June 14, 2016, also in regard of returnees.)

CONSIDERING this is an exceptional case unto itself in regard to its context;

ACKNOWLEDGING the potential of irreparable harm to life and limb of the Applicant as clearly demonstrated in stark potential in the objective and subjective evidence when all country condition documentation is read in context with the subjective evidence of the Applicant on file;

AND FURTHER RECOGNIZING that the family of the Applicant is in a refugee camp in Kenya, subsequent to fleeing peril;

THUS, CONSIDERING that the balance of convenience favors the Applicant when analyzing the fulsome serious nature of the Applicant's situation as to the jeopardy to his life, duly noting that his mother and sister were killed and his immediate family was forced to flee to save their lives; all of which must be considered in context of the country conditions of his country of origin;

THEREFORE, THIS COURT ORDERS that the stay be granted until the Court finally disposes of the pending application for leave and judicial review.

“Michel M.J. Shore”

Judge