Federal Court  Cour fédérale

Date: 20190924

Docket: IMM-5507-19

Citation: 2019 FC 1213

Ottawa, Ontario, September 24, 2019

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

FUNDU NSUNGANI

Applicant

and

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

Respondents

ORDER AND REASONS

I. OVERVIEW

[1] The applicant is a citizen of the Democratic Republic of the Congo [DRC]. Facing imminent removal to that country, on September 9, 2019, he requested that his removal be deferred (at the time, it was scheduled for September 14, 2019). An Inland Enforcement Officer with the Canada Border Services Agency [CBSA] refused this request on September 10, 2019. The applicant served and filed an application for leave and judicial review of this decision on

September 11, 2019. On September 12, 2019, he served and filed a motion to stay his removal pending the determination of this application for leave and judicial review. On September 13, 2019, I granted an interim interlocutory stay of removal to give the respondents a fair opportunity to respond to the stay motion and to give the Court time to deal with the matter properly (see 2019 FC 1172).

[2] In accordance with that order, the respondents' record was served and filed on September 17, 2019. The stay motion was heard by way of teleconference on September 18, 2019. I reserved my decision.

[3] For the reasons that follow, I am dismissing the motion.

II. BACKGROUND

[4] It is necessary to set out some additional background to this matter before addressing the merits of the applicant's request for a stay of removal pending the disposition of the judicial review application.

[5] The applicant was born in the DRC in August 1988. He arrived in Canada in or around August 2002 at the age of 14 with his younger brother. While the circumstances under which they travelled to Canada are unclear, it appears an older brother who had been caring for them in the DRC made arrangements for a third-party to bring them here. The applicant's older sister and some other family members were already in Canada at the time.

[6] In September 2002, the applicant made a claim for refugee protection along with his sister and other members of his family. It appears that the claim was based on the allegation that one of the applicant's brothers was wanted for the murder of DRC President Laurent Désiré Kabila in January 2001. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] refused the claim as having no credible basis on January 5, 2004. The same day, a stay of removal was put on the applicant's file because a Temporary Suspension of Removals to the DRC was in effect.

[7] The applicant states that he attended high school in Toronto but eventually dropped out in or around 2006. He worked in a warehouse for a few months. He also found work through a temporary staffing agency.

[8] On November 28, 2007, the applicant pled guilty to a charge of robbery. He received a sentence of 30 days in jail and one year probation. He was 19 years of age at the time. At some point after he was released from jail, the applicant moved from Toronto to Calgary, where his older sister and younger brother were living. He worked at a variety of jobs there.

[9] On August 4, 2010, the applicant was reported under section 44 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for serious criminality under section 36(1) of the *IRPA* because of the robbery conviction. On February 8, 2011, he was found to be inadmissible and a deportation order was issued. The applicant had the right to appeal this decision to the Immigration Appeal Division of the IRB (the sentence he received fell well below the statutory cut-off that was in place at the time) but there is no indication that he did so.

[10] Being inadmissible for serious criminality, the applicant no longer benefited from the Temporary Suspension of Removals to the DRC (see *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 230(3)(c)). He was, however, eligible to make an application for a pre-removal risk assessment [PRRA] under section 112(1) of the *IRPA*. The applicant submitted a PRRA application but it was refused on December 4, 2012. (The reasons for this decision are not in the record on this motion.) The applicant was not removed, however, because CBSA was unable to obtain a travel document for him from the DRC.

[11] Arrangements were finally put in place for the applicant's removal on December 6, 2017. The applicant submitted a request to defer this removal but it was refused on December 1, 2017. The applicant had attended several interviews with CBSA in advance of removal but he did not appear on December 6, 2017. Instead, he left Calgary for Toronto. An immigration warrant for his arrest was issued.

[12] While the details are sketchy, it appears that some other criminal charges against the applicant (two counts of assault and one count of failure to attend) were stayed by the Crown sometime in late 2017, apparently in contemplation of the applicant's pending removal from Canada.

[13] In late November or early December 2017, the applicant submitted a second PRRA application with the assistance of a Calgary lawyer. (It appears that this application was prepared prior to the applicant's departure for Toronto.) He maintained that he was at risk in the DRC because of the accusations against his brother, because he left the DRC using a false

passport, and because he was now a failed asylum seeker. The application was refused in April 2018. The officer found that the applicant's claims were largely the same as those that had been rejected previously by the RPD. The officer concluded that the applicant had not demonstrated that he would be at risk in returning to the DRC.

[14] The applicant sought judicial review of this decision on several grounds. His application was dismissed by Justice Southcott on January 25, 2019 (*Nsungani v Canada (Citizenship and Immigration)*, 2019 FC 107). Justice Southcott concluded that the PRRA officer did not breach procedural fairness by relying on extrinsic evidence concerning conditions in the DRC, the officer did not err in analyzing the country condition documentation, and the officer did not err by failing to analyze the applicant's risk profile as a deportee with a criminal record in Canada. With respect to the last point, Justice Southcott found that, although the officer's reasons did not refer to this profile as a component of the risk that the applicant was asserting and did not expressly analyze that risk, there was no basis to conclude that the decision was unreasonable. This was because the applicant himself had not framed his PRRA application in terms of risk arising from his criminality in Canada; rather, he had focused on his past criminality in the DRC. Justice Southcott noted that there was evidence before the officer suggesting that returnees to the DRC could face a risk of persecution arising from past criminality there. The officer did address the one allegation of DRC criminality raised by the applicant, namely that he had used a fraudulent passport to leave the country in 2002. In Justice Southcott's view, the applicant had failed to show that the officer's determination was unreasonable. As for the broader concern the applicant had raised in his application for judicial review, the evidence before the officer also

suggested that returnees to the DRC do not face real risk of persecution arising from criminality other than criminality in the DRC.

[15] After leaving Calgary for Toronto instead of reporting for removal, the applicant remained undetected until he came to the attention of the police on May 5, 2018, due to an unrelated matter. He was arrested on the immigration warrant and remained in detention until September 20, 2018. He was not removed in the meantime because CBSA could not obtain visas for the escorting officers.

[16] When the applicant was ordered released on September 20, 2018, he was required to live at the home of his sister and brother-in-law in Strathmore, Alberta. However, on November 23, 2018, the applicant's brother-in-law contacted CBSA to say that the applicant had left the residence and had not lived there for some time. On November 23, 2018, another warrant for the applicant's arrest was issued. He was arrested a few days later, on November 26, 2018.

[17] The applicant remained in immigration detention again until January 30, 2019, when he was ordered released on terms and conditions. Apart from missing one reporting date, it appears that the applicant's release was uneventful. However, after notifying the applicant on September 6, 2019, that his removal would be taking place on September 14, 2019, a CBSA officer formed grounds to believe that he would not report for removal and placed him under arrest. The applicant's detention was continued following reviews by the Immigration Division of the IRB. He remains in detention at this time.

[18] In early April 2019, the applicant tested positive for HIV. Since then, he has sought medical consultations in relation to this diagnosis and he has been prescribed an antiretroviral medication. As of early August 2019, the treatment plan was to continue with the antiretroviral medication for another four months and then reassess the applicant after that. The expectation is that the applicant will continue on antiretroviral medication for the rest of his life. Apart from the HIV-positive diagnosis, the applicant appears to be generally in good health.

[19] On or about May 30, 2019, the applicant submitted an application for permanent residence on humanitarian and compassionate [H&C] grounds under section 25 of the *IRPA*. A first-stage decision on eligibility is not expected until mid-2021 at the earliest.

[20] As noted above, on September 9, 2019, counsel for the applicant submitted a request to defer the applicant's removal to the DRC. The request was supported by detailed written submissions, an affidavit from the applicant, and a comprehensive package of country condition documentation, among other things. Distilled to its essence, the deferral request was based on two grounds: the applicant's pending H&C application and the risk to the applicant's life and well-being in the DRC.

[21] On September 10, 2019, an Inland Enforcement Officer with CBSA refused the request. The officer's reasons for the decision are exceptionally thorough and detailed.

[22] As also noted above, the applicant has filed an application for leave and judicial review of the officer's decision. He now seeks a stay of his removal pending the final disposition of that application.

III. ANALYSIS

A. The test for a stay pending judicial review of a refusal to defer removal

[23] An order by this Court to stay a person's removal from Canada is extraordinary equitable relief. The test for whether to grant such an order is well-known. The moving party must demonstrate three things: (1) that the application for judicial review raises a "serious question to be tried;" (2) that the moving party will suffer irreparable harm if a stay is refused; and (3) that the balance of convenience (i.e. the assessment of which party would suffer greater harm from the granting or refusal of the stay pending a decision on the merits) favours granting the stay. See *Toth v Canada (Employment and Immigration)* (1988), 86 NR 302, 6 Imm LR (2d) 123 (FCA); *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12; *Manitoba (Attorney General) v Metropolitan Stores Ltd*, [1987] 1 SCR 110; and *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334 [*RJR-MacDonald*]. All three parts of the test must be satisfied for a stay to be warranted.

[24] With respect to the first part of the test – "serious question to be tried" – the threshold is generally low. Typically, the issues raised in the underlying application must simply be shown to be neither frivolous nor vexatious (*RJR-MacDonald* at 335 and 337). However, when the underlying decision is that of an Inland Enforcement Officer refusing to defer removal, an elevated standard applies and a more extensive review of the merits of the case must be

undertaken. This is because the stay order, if granted, effectively grants the relief sought in the underlying application – namely, the setting aside of the refusal to defer removal. While this elevated standard has been expressed in different ways, the core idea is that the Court must be satisfied, after a hard look at the grounds advanced, that the application for judicial review is likely to succeed: 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) [*Baron*]; and *RJR-MacDonald* at 338-39.

[25] That being said, the Court must be mindful that this determination is being made in the context of an interlocutory proceeding (*RJR-MacDonald* at 337). While the moving party must always put his or her best foot forward, the assessment of the merits of the underlying application may be based on a record and submissions that had to be prepared under significant time pressures, the exposition of the grounds for judicial review may necessarily be only a preliminary one, and the Court may not have much time for reflection.

[26] If the moving party does meet this elevated threshold at the first stage of the test, the anticipated result on the merits should be borne in mind when the second and third stages of the test are considered (*RJR-MacDonald* at 339). If the moving party fails to meet this threshold, the request for a stay can be refused on this ground alone.

[27] When the decision at issue is that of an Inland Enforcement Officer to refuse to defer removal, the strength of the grounds for judicial review must be assessed in light of the fact that

the standard of review of the officer's decision is reasonableness (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 43 [*Lewis*]; *Forde v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029 at para 28 [*Forde*]). The reviewing court's role will be to assess whether the decision is justified, transparent and intelligible and whether the officer's refusal of the request for a deferral of removal falls within the range of possible, acceptable outcomes which are defensible in law and on the particular facts of the applicant's case (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). The officer's decision is owed deference from the reviewing court. It is not the role of the reviewing court to reweigh the evidence or to substitute its opinion for that of officer (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

[28] The strength of the grounds for judicial review must also be assessed in light of section 48(2) of the *IRPA* – which provides that an enforceable removal order "must be enforced as soon as possible" – and the very limited discretion available to an officer to defer enforcement (*Lewis* at para 54). In *Toney v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1018 [*Toney*], Justice Walker provided the following helpful summary of the leading jurisprudence concerning the nature and scope of this discretion (at para 50):

> 1. An enforcement officer's discretion to defer removal is very limited and, ultimately, an officer is required to enforce a removal order in accordance with subsection 48(2) of the IRPA (*Baron* at paras 51, 80: *Lewis* at para 54; *Forde* at para 36);
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> 2. In the exercise of their discretion, an officer cannot defer removal to an indeterminate date (*Baron* at para 80: *Forde* at paras 36-37, 43);
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> 3. An officer's discretion is not only limited temporally but is also focused on serious, short-term issues relating to the safety of an applicant, ability to travel, immediate medical issues,

> impending births and deaths and, in the case of children, such considerations as finishing the school year, whether care has been arranged if they are remaining in Canada, or the need for special medical care in Canada (*Baron* at para 51; *Lewis* at paras 55, 83; *Forde* at para 36). The often-quoted language from *Baron* (at para 50) which situates the tone of the inquiry is that deferral should be reserved for those situations involving "the risk of death, extreme sanction or inhumane treatment" to the applicant;
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> 4. The existence of an outstanding H&C or spousal application in Canada is not a bar to removal absent special considerations. Both the timeliness of filing and the imminence of any decision on the application are important considerations for an officer (*Baron* at paras 51, 80; *Lewis* at paras 55-58, 80; *Forde* at paras 35-40). As stated in *Forde* (at para 36), even "in such 'special situations,' as discussed below, there are important temporal limits on a removal officer's discretion to defer removal."

[29] Further, since deferrals are intended to be temporary, the considerations that may warrant a deferral must be temporary as well (*Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286 at para 45 [*Shpati*]; *Newman v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 888 at para 33 [*Newman*]; *Forde* at para 40).

B. The test applied

[30] The applicant's Notice of Application sheds little light on the grounds he intends to argue in his application for leave and judicial review of the officer's decision. His written and oral submissions in support of the motion for an interlocutory stay of removal are much more helpful. As I understand his position, the applicant intends to challenge the officer's decision on the following three grounds:

(a) the officer erred in her assessment of the risk to the applicant in the DRC as a failed asylum seeker and criminal deportee;

(b) the officer erred in her assessment of the risk to the applicant in the DRC given his HIV-positive status; and

(c) the officer erred in refusing to defer the applicant's removal pending a decision on the H&C application.

[31] In my view, the applicant has failed to establish that any of these grounds are likely to succeed.

[32] Looking first at the issue of the risks the applicant claimed he would face in the DRC as a failed asylum seeker and a criminal deportee, as the officer noted, these risks are largely the same as were relied upon in the second PRRA application. That application failed and the PRRA officer's decision was upheld on judicial review. While the applicant has framed the present submission more clearly with respect to his status as a criminal deportee than he did in the earlier PRRA application, it is still the case that there is little, if any, evidence to support his fears for his personal well-being in this regard.

[33] The officer noted that the applicant had provided several documents demonstrating that the DRC is currently in a state of unrest. The officer did not doubt the veracity of any of the country condition evidence. The officer concluded, however, that there was insufficient evidence to show that the applicant himself would be exposed to a risk of death, torture or cruel and unusual treatment or punishment if removed to the DRC. She found the applicant's concerns to be "speculative and hypothetical." The applicant has not established that he is likely to succeed in demonstrating that this conclusion is unreasonable.

[34] The applicant also relied on a videotape of a 2011 demonstration against the government of the DRC in which he took part. The applicant has not established that he is likely to succeed in demonstrating that it was unreasonable for the officer to conclude that there is nothing in the public record that links the applicant to this video.

[35] In considering the grounds advanced by the applicant in his deferral request, the officer took the additional step of contacting a Senior Program Advisor with Removal Operations for the Intelligence and Enforcement Branch of CBSA. The officer asked the Senior Program Advisor the following question:

> I have a question in regards to the subjects we've removed to DRC. Do you have any comment to make about persecution or mistreatment once they arrive in Kinshasa? I have received a deferral request and counsel is submitting that criminal deportees/failed asylum seekers are treated inhumanely upon arrival in DRC and are sometimes detained for weeks/months until a bribe is paid. They have included country conditions which seem more appropriate for an H&C application, but, I would like to respond intelligibly about the suggestion that NSUNGANI will be detained upon arrival and will only be released if a bribe is paid by a family member.

[36] The Senior Program Advisor responded that her office had not "been made aware of any problems encountered by deportees when they return to the DRC." She added that the Canadian Mission in Kinshasa has not reported any problems and neither had Global Affairs Canada.

[37] I pause to note that the respondents filed an affidavit from the Senior Program Advisor on this motion which confirmed the information she provided to the officer. The affidavit also added further details about the number of citizens of the DRC removed from Canada since 2014. Since these additional details go beyond the information that was before the officer when she

made her decision, I have not considered it in assessing the merits of the proposed grounds for judicial review. On the other hand, this new information could have been probative of the question of irreparable harm since my determination on that question is not restricted to the information that was before the officer. However, given my conclusion with respect to the first part of the test, it is not necessary to address the question of irreparable harm.

[38] The applicant submits that there is no evidence that CBSA, the Canadian Mission in Kinshasa or Global Affairs Canada actually made any inquiries about deportees or followed their cases once they were back in the DRC. This is true but at most it goes to the weight the officer should have given to the information from the Senior Program Advisor. The same holds for a May 2019 report from the Migration Policy Institute, which discusses cases of Congolese returnees facing detention and extortion, including an individual who was deported from Canada in 2015. This individual appears to have had a much higher public political profile than the applicant has ever had. On this motion, the applicant has not established that he is likely to succeed in demonstrating that it was unreasonable for the officer to weigh the evidence as she did, or to place the reliance that she did on the information from the Senior Policy Advisor, in concluding that the risk the applicant alleged he faced as a failed asylum seeker and criminal deportee did not warrant deferral of his removal.

[39] Turning to the applicant's HIV-positive status, this gives rise to very difficult issues, especially in the context of a deferral decision. However, after careful consideration, I have concluded that the applicant has not established that he is likely to succeed in demonstrating that the officer's treatment of these issues is unreasonable, either.

[40] The evidence before the officer clearly showed that the treatment available for persons with HIV/AIDS in the DRC falls well-short of what is available in Canada. The officer accepted that this was the case. However, the officer concluded that the applicant had failed to establish that he would not be able to obtain antiretroviral medication there. At the moment, this is the only course of treatment that has been recommended for the applicant. The officer recognized that there would be a period of adjustment for the applicant as he sought out medical care in the DRC. To ensure that there was a reasonable bridge between the treatment the applicant had been receiving in Canada and that which he would secure in the DRC, the officer took the step of obtaining a four-month supply of Genvoya, the antiretroviral drug currently prescribed for the applicant. As the officer stated in her reasons, this "will allow [the applicant] some peace of mind when he arrives in the DRC and it will give him time to find a doctor who is able to establish a treatment plan for him." The officer also noted that the applicant's family in Canada had offered to continue to support him after he returned to the DRC.

[41] At one point in her reasons the officer states that "[w]hile it may not be as easy to seek and receive treatment in the DRC as it is in Canada, it is not impossible." This comment is concerning as it could suggest that the officer imposed an unreasonably heavy burden on the applicant. However, read in the context of the reasons as a whole, in my view it is clear that the officer understood that the question before her was whether the applicant had established that, realistically, he would not receive the medication that he needs. The officer accepted that in the DRC it will be more difficult for the applicant to obtain the care and treatment he requires than it would be in Canada but she concluded that he had not established that he would not be able to obtain it. Having regard to the evidence before the officer and her detailed reasons, the applicant

has not established on this motion that he is likely to succeed in demonstrating that this conclusion is unreasonable.

[42] Moreover, as the officer goes on to discuss in her reasons, deferral is meant to address temporary impediments to removal. Neither the applicant's HIV-positive status nor his need for medication is temporary.

[43] This brings me to the applicant's H&C application.

[44] That application was submitted on May 30, 2019. The submissions provided in support of it are not before me on this motion. However, since it post-dates the applicant's HIV-positive diagnosis, I am prepared to assume that this is one of the grounds relied upon in seeking H&C relief. This diagnosis is doubtless a material circumstance. However, the applicant has not persuaded me that he is likely to succeed in demonstrating that the officer's consideration of the fact that he has an outstanding H&C application based on this circumstance and others is unreasonable.

[45] As noted in the summary from *Toney* quoted in paragraph 28, above, it is not within the scope of an enforcement officer's discretion to grant what would in effect be a deferral of indeterminate duration. Generally speaking, the mere fact of an outstanding H&C application is not a basis to defer removal. However, it is open to an officer to grant a deferral when a decision on an H&C application appears to be imminent. Moreover, even if a decision is not imminent, deferral can be warranted when a timely H&C application was made but it has not been

determined due to a backlog in the system (*Baron* at para 49; *Lewis* at para 81). Conversely, where an H&C application was not made in a timely way, it can be a reviewable error for the deferral officer to fail to take into account why this was the case before drawing an adverse conclusion (cf. *Newman* at para 32).

[46] The applicant had been facing an enforceable removal order since December 2012 – that is, for some six and a half years – before he submitted his H&C application. The HIV-positive diagnosis is arguably a material development for that application but the applicant has said little about this in the materials before me. Importantly, he has not suggested that this was why he finally submitted the application when he did. Instead, the applicant submitted to the enforcement officer that for several of the intervening years, he was simply not aware of the option of making an H&C application. Why he finally applied when he did is otherwise left unexplained.

[47] In addressing the applicant's explanation (such as it is) for the late-arriving H&C application, the officer observed that the applicant "could have made this application in any of the years since his removal order was issued." The officer also noted that two of the applicant's brothers had submitted H&C applications in 2012. One of these brothers was granted permanent residence status in 2014, the other in 2016. One of the two, Ngandu, is the younger brother with whom the applicant arrived in Canada in 2002. The evidence suggested that they have remained close since their arrival in Canada. Further, the officer also noted that the PRRA officer who rejected that second PRRA application had observed in the decision that at least some of the grounds on which the applicant was relying were "more of an H&C matter."

[48] The applicant states in his affidavit in support of the deferral request that it was only when he retained the Refugee Law Office in Hamilton, Ontario, that he was advised of the option of submitting an H&C application. The applicant does not actually say when this retainer occurred but it appears that it was sometime after his May 2018 arrest on the immigration warrant. The applicant states that, even having been advised of the H&C option, he believed that he could avoid removal from Canada under the PRRA process alone. Having regard to the evidence before her, the officer gave the applicant's claim that for many years he did not know about the option of submitting an H&C application little weight. In any event, even taking the applicant's claim at face value, it still does not explain why he waited a year after learning of the second negative PRRA decision to submit an H&C application.

[49] As a result of the applicant's failure to submit an H&C application earlier, the enforcement officer was faced with a request to defer removal that was both open-ended and which would exceed the well-established temporal limitations on such decisions by a significant margin. Finding that the applicant had not provided a sufficient explanation for why he did not submit his H&C application earlier, the officer determined that there was no basis to make an exception for him. The applicant has failed to establish on this motion that he is likely to succeed in demonstrating that the officer's decision in this respect is unreasonable.

[50] The applicant has failed to establish any other sufficiently strong ground for review in relation to the officer's treatment of the H&C application. Enforcement officers deciding deferral requests are not H&C officers and it is not their role to assess the merits of an outstanding H&C application (*Shpati* at para 45). Still, they must consider whether there is a

serious immediate or short-term threat to someone's life or safety or any other special consideration linked to that person's removal that warrants deferral, even if those same factors are also relied on in an H&C application (*Baron* at para 51; *Shpati* at para 43; *Newman* at paras 28-37). In my view, having regard to the officer's findings discussed above in connection with the other two proposed grounds for judicial review, the applicant has not established that he is likely to succeed in demonstrating that it was unreasonable for the officer to conclude that there was no threat to his life or personal safety or any other special considerations that warranted deferral of removal pending the H&C decision.

[51] It would not be appropriate for me to comment on the merits of the applicant's H&C application at this stage, even if the application had been included in the materials before me. However, it bears noting that it will continue to be processed even if the applicant is removed. As the officer states in her decision, if his application is successful, the applicant "will be made whole by readmission to Canada."

[52] In summary, the applicant has failed to establish grounds for judicial review of the officer's refusal to defer his removal that are likely to succeed. He therefore fails to meet the first part of the test for obtaining a stay. Since all three parts must be met, it is not necessary to address the other two.

[53] This outcome may appear harsh to some. The applicant arrived in Canada seventeen years ago, when he was fourteen years of age. He has little, if any, family or other support in the DRC. Conditions there are difficult, to say the least. However, the applicant has known since

2011 that he was facing deportation because of serious criminality and that he no longer benefited from the Temporary Suspension of Removals. The deportation order has been enforceable since December 2012, when the first PRRA application was rejected. Unfortunately for the applicant, he failed to take timely and effective steps that could have secured his status in Canada (as other members of his family have done). Instead, he let the clock run down until his last hope for a reprieve was a deferral of his removal. This was denied. The applicant's grounds for challenging this decision are not sufficiently strong to satisfy the first part of the test for a stay. As a result, there is no legal basis for this Court to stand in the way of the enforcement of the removal order.

ORDER IN IMM-5507-19

THIS COURT ORDERS that the motion is dismissed.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5507-19
STYLE OF CAUSE:	FUNDU NSUNGANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA ET AL

MOTION HELD VIA TELECONFERENCE ON SEPTEMBER 18, 2019 FROM OTTAWA, ONTARIO AND TORONTO, ONTARIO AND CALGARY, ALBERTA

ORDER AND REASONS:	NORRIS J.
DATED:	SEPTEMBER 24, 2019

APPEARANCES:

Jatin Shory	FOR THE APPLICANT
Maria Green	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Shory Law Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS