Date: 20060207

Docket: IMM-7079-05

Citation: 2006 FC 156

Calgary, Alberta, February 7, 2006

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

KHALID MUHAMMAD

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for staying the removal of the Applicant, currently scheduled for February 9, 2006, until such time as the underlying applications for leave and for judicial review of the negative decisions on the PRRA and on the humanitarian and compassionate applications have been dealt with.

[2] The Applicant claimed to have entered Canada via Blackpool, Quebec, without proper documentation on September 20, 1998.

[3] On September 28, 1998, the Applicant made a refugee claim at CIC Calgary stating that he has a wife and two children still living in Pakistan. On August 30, 1999, the Applicant was found not to be a refugee by the Immigration and Refugee Board. The Federal Court dismissed his application for leave and judicial review of that decision on December 10, 1999.

[4] On September 20, 1999, the Applicant submitted a Post Determination of Refugees in Canada Class application.

[5] On June 7, 2002, an application for permanent residence based on humanitarian and compassionate grounds was received at Case Processing Centre, Vegreville.

[6] On July 29, 2002, the Applicant's departure order became a deemed deportation order.

[7] On January 3, 2003, the Applicant's Pre-Removal Risk Assessment application was initiated. This included his PDRCC submission from 1999.

[8] On September 12, 2005, a negative decision was made on the Applicant's PRRA application. On the same day, his application for permanent residence based on humanitarian and compassionate grounds was also refused. These decisions were delivered to the applicant in person on November 14, 2005.

[9] On November 23, 2005, the Applicant filed two separate applications for leave and judicial review in respect of each negative decision. The Respondent has never been served with either of those applications, and as a result, the Applicant's counsel has had to file a motion for extensions of time that is still pending.

[10] On November 24, 2005, the Applicant was given a removal letter for travel on December 12, 2005, which subsequently had to be cancelled as the airlines had a moratorium on deportees traveling through Hong Kong during the Christmas season.

[11] On January 17, 2006, a second removal letter detailing new travel arrangements for February 9, 2006 was delivered to the Applicant's home.

[12] Despite the fact that this motion seems to be premised on two separate judicial review applications, counsel for the Respondent has waived his objection to the jurisdiction of this Court based on section 18.2 of the *Federal Courts Act*. I also understand that he does not object to this motion being entertained despite the fact that the motions for an extension of time to file the Applications for judicial reviews have not yet been granted.

[13] Counsel for the Respondent is correct, nevertheless, in objecting to an application for a stay pending the attendance of the Applicant at the rehabilitation centre and his recovery from his injury. This Court's jurisdiction is indeed limited by statute so that a stay may only be granted pending the final disposition of the leave application, as opposed to any other external event.

[14] In order for the Applicant to succeed, he must satisfy all three branches of the test developed by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)*, 86 N.R. 302. In other words, the Court must be satisfied that the Applicant has raised a serious issue, that he will suffer irreparable harm if removed from Canada, and that the balance of convenience favours him.

[15] Counsel for the Applicant raised two issues with respect to the decision on the application for permanent residence based on humanitarian and compassionate grounds. First,

she submitted that when there has been an unreasonably lengthy delay in making a decision (in this case, two years and seven months), fairness demands that the Applicant be notified that a decision is about to be made so that he is given one last opportunity to make further submissions and present updated material. Secondly, she contended that the Immigration officer in his H & C decision made no mention of his injury and of the fact that the Applicant's ability to work in Pakistan and provide for his family would be impaired if deported to Pakistan before he had fully recovered.

[16] Unfortunately for the Applicant, I am not convinced that these issues are serious enough to satisfy the first leg of the *Toth* test. I am mindful of the fact that on this first aspect of the test, the threshold is quite low. On the other hand, it must be borne in mind that the standard of review of an H & C decision is quite high, i.e. the standard of reasonableness *simpliciter*. In other words, this Court will not interfere with an immigration officer's decision unless there is no line of analysis that could reasonably lead the officer from the evidence submitted to the conclusion. As for the PRRA decision, the standard of review is even higher, i.e. the standard of patent unreasonableness. Having carefully reviewed the two decisions of the Immigration officer in the PRRA and H & C applications, I am far from convinced that he erred in any reviewable way; his reasons are cogent and thorough, and appear robust enough to sustain a probing review along the standards just outlined.

[17] I need not prejudge the outcome of the two judicial review applications, however, as I am of the view that the Applicant would not suffer any irreparable harm were he to be removed to Pakistan. As the Federal Court of Appeal stated in *Atwal* v. *Canada (M.C.I.)*,

2004 FCA 427, irreparable harm must be more than a series of speculation. In the present case, the Applicant has failed to provide any objective evidence that his life is still in danger in Pakistan; he failed to provide any explanation as to why he did not make any further submissions in his H & C application after February 2004, if he felt that they would have been pertinent to that application and ought to have been before the H & C officer prior to a decision being made.

[18] As for the consequences for his health, there is no evidence that his injury, for which he has already had surgery, cannot be taken care of in Pakistan, or that rehabilitation cannot be provided to him. It may be that he will not be able to sustain himself or his family, economically speaking, as well as he would in Canada, or that his possibilities of employment will be more limited for a short while. But all of this is speculative, and is somehow offset by the fact that he will be able to rely on his whole family in Pakistan instead of being all by himself in Canada. And again, all of these consequences are inherent in the notion of deportation itself.

[19] Finally, the removal of the Applicant will not render his leave applications moot. He may continue to be represented if he is removed from the country, and if he is eventually successful in his judicial review applications, he may return to Canada at the Minister's expense (*Immigration and Refugee Protection* Act, S.C. 2001, c. 27, s. 52(2)).

[20] For all the above reasons, I come to the conclusion that the balance of convenience favors the Minister. The two first criteria of the *Toth* test not having been met, staying the removal would not be in the public interest It is now more than seven years since the Applicant first arrived in Canada. He has had three negative administrative decisions. In those circumstances, and failing any clear evidence of irreparable harm resulting from his

removal, the Minister is under a statutory obligation to ensure that the removal is carried out as soon as possible. As the Federal Court of Appeal stated, "this is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control" (*Selliah* v. *Minister of Citizenship and Immigration*, 2004 FCA 261).

ORDER

THIS COURT ORDERS that:

The motion for a stay of execution of the removal order against the Applicant is dismissed.

"Yves de Montigny"
JUDGE