Federal Court  Cour fédérale

Date: 20191214

Docket: IMM-7466-19

Citation: 2019 FC 1615

Ottawa, Ontario, December 14, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MERAB SURMANIDZE

Applicant

and

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

Respondents

JUDGMENT AND REASONS

[1] The Applicant seeks a stay of his removal to Georgia, which is scheduled for December 16, 2019.

[2] As will be explained in more detail below, the Applicant was not able to submit a refugee claim, and his Pre-Removal Risk Assessment (PRRA) was deemed abandoned, and so was not considered on its merits. He made a request for deferral of his removal, which was denied on

December 11, 2019. The Applicant has filed two applications for leave and judicial review: the first relates to the decision finding that his PRRA has been abandoned, and the second relates to the decision to refuse to defer his removal.

[3] The Applicant has also filed a motion seeking an Order staying his removal from Canada, pending the outcome of the two applications for leave and judicial review. The motion was filed on December 12, 2019, and was heard on December 13, 2019.

[4] For the reasons set out below, I am granting the application for a stay.

I. Context

[5] The Applicant arrived in Canada on August 6, 2019 as a crew member on the ship MI Astra. He was not on the ship when it left port, as was required by paragraph 184(2)(b) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227 [*IRPR*], and on August 9, 2016 an arrest warrant was issued for his failure to board the ship.

[6] The Applicant claimed that he left the ship because he wanted to claim refugee status, and he attended the office of Citizenship and Immigration (CIC) on August 16, 2019 in order to make his claim. He was advised that he was ineligible to submit a refugee claim because an arrest warrant had been issued for him. The Applicant was arrested and taken into detention by officers of the Canada Border Services Agency (CBSA).

[7] While the Applicant was in detention, he was notified that he could submit a PRRA application. On September 16, 2016, he filed written submissions in support of his PRRA. He

alleged that if he returned to Georgia he would be harmed or killed, and set out his narrative in an affidavit, including allegations that he had been tortured on two occasions, that his wife had been physically assaulted and that his family home had been burned down.

[8] The Applicant was held in detention because he had been deemed a flight risk, because he had no money, fixed address or family in Canada. On September 22, 2016, the Toronto Bail Program agreed to provide the Applicant with supervision on conditions. The Applicant signed a form setting out these conditions, and he was released from detention on October 7, 2019. On October 20, 2019, the Toronto Bail Program advised CBSA that they were withdrawing their supervision of the Applicant because he was in breach of his conditions of release. A warrant was issued for his arrest on October 24, 2016.

[9] For reasons which will become clear, it is significant that one of the conditions of the Applicant's release was that he would reside at a shelter located at: 101 Ontario Street, Toronto Ontario, M5A 2V2. He did not abide by this condition, and the Toronto Bail Program indicated that they could not reach the Applicant or his lawyer. This was one of the reasons the Bail Program withdrew its supervision of the Applicant.

[10] Meanwhile, his PRRA continued to be processed by CIC, who made efforts to contact the Applicant to advise him that he was required to attend a PRRA interview on May 28, 2019. A letter of invitation was sent to the Applicant's counsel, but he replied that he no longer represented the Applicant. That lawyer provided the name of the new law firm, and advised that he would forward the correspondence to the new lawyer. However, the Applicant had not filed a Use of Representative form for this new lawyer, and so CIC did not contact the firm.

[11] CIC sent a second letter of notification to the last known address of the Applicant. The letter was sent to: 505-101 Ontario Street, Toronto ON, M5A 2V2. The Applicant did not receive the letter because he was no longer residing at that address (in breach of his release conditions), and he had not provided an updated address to CIC or CBSA.

[12] Since the Applicant did not attend the hearing, his PRRA was declared abandoned on September 11, 2018. The decision letter advising him of this was forwarded to CBSA, so that it could be provided to the Applicant when he was called in for a pre-removal interview, but that did not occur because CBSA had no means of contacting the Applicant. It should be noted here that the street address for the Applicant on this letter from CIC was inverted (but the postal code and other details were correct). It was addressed to: 101-505 Ontario Street, Toronto ON M5A 2V2. However, the CIC letter was never sent; in accordance with their policies, it was given to CBSA, and CBSA instead sent a letter to the Applicant requesting his personal attendance at their offices to pick up his PRRA decision. The CBSA letter was sent to the last known address for the Applicant, and the correct address is shown on that letter. Once again, the Applicant did not receive it because he was no longer residing at that address.

[13] The Applicant next came to the attention of immigration authorities following an interaction he had with the York Regional Police, who noted the outstanding arrest warrant for him and informed CBSA. The Applicant was arrested on November 30, 2019. He was then given the letter informing him of the decision by CIC that his PRRA had been abandoned. It should be noted that the Applicant was subsequently released from detention, on conditions.

[14] On December 9, 2019, the Applicant was notified that his removal to Georgia had been scheduled for December 16, 2019. He filed a request for deferral of this removal, which was denied on December 11, 2019.

[15] Finally, it should also be noted that during his time in Canada, the Applicant has entered into a common law relationship with a permanent resident of Canada, and they have a child who is now eight months old.

[16] As indicated earlier, the Applicant has filed applications for leave and judicial review in regard to the decision declaring his PRRA to be abandoned, and refusing to defer his removal. He has also sought a stay of removal pending the determination of both of these applications.

II. Issues

[17] The only issue is whether a stay of removal should be granted in these circumstances.

III. Analysis

[18] This case brings into sharp relief two fundamental principles that guide this Court in assessing applications for stays of removal. First, the applicant comes before the Court seeking extraordinary discretionary relief of an equitable nature. This brings into play the obligation to make full and frank disclosure to the Court, which is particularly important in these types of matters because they are usually brought with very short notice and are dealt with based on a limited record. It also engages the concept that an applicant must come to Court with "clean hands". Both elements are engaged in this case, as will be described below.

[19] A second fundamental consideration arises because the Applicant's core claim is that his risk of being returned to Georgia has never been examined on its merits, and removing him before this is done will violate his rights to life, liberty and security of the person as guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11**.** Risk assessment before removal has been found to be a "constitutional imperative" and the Applicant contends that this must be the overriding consideration in this case.

[20] I will address the issues of disclosure and clean hands at the outset; the risk assessment issue is dealt with in the analysis of serious issue below.

A. *Does the Applicant come to Court with clean hands, and has he made full and frank disclosure?*

[21] The Respondent argues that the Applicant's conduct is woven through the consideration of all the elements of this case, and that he should be denied relief because he does not come to Court with clean hands. Related to this is the fact that key elements of the Applicant's immigration history were not disclosed in his materials filed in support of this motion, and the picture that was painted of his history in Canada was inaccurate to the point of being misleading.

[22] This argument rests on three core facts: the Applicant's breach of his release conditions and failure to inform authorities of his new address; his evasion of authorities for three years during which his whereabouts and activities remain unknown; and his failure to reveal his breach of conditions, or the fact that the reason he did not know his PRRA had been denied is that he no

longer resided at the only address he had provided to authorities. The Applicant's materials make much of the inversion of the address on one letter, but fail to mention that the basic address was one that he had provided.

[23] The Respondent contends that this should disentitle the Applicant to discretionary relief. This is often dealt with in assessing the balance of convenience, the third element of the test for a stay, but in this case, it is woven throughout the piece.

[24] The Applicant does not seek to refute or explain many of these facts. He denies that he had any reason to evade authorities, because once he filed his PRRA, he benefitted from a statutory stay of removal. Counsel for the Applicant did not represent him previously, and notes that his interactions with his client have been limited because the Applicant was in detention until recently. The Applicant also argues that the notices of the PRRA interview were inadequate, and did not comply with the legal requirements set out in the *IRPR*. Therefore, the decision deeming the PRRA to have been abandoned is fundamentally flawed. In addition, the decision to refuse to defer his removal did not assess his risks in any meaningful way. The Applicant submits that the clean hands and disclosure considerations cannot override these fundamental considerations.

[25] I have decided to exercise my discretion to deal with the stay on its merits, despite my grave misgivings about the Applicant's conduct. The starting point for this analysis is that the Applicant comes to the Court seeking extraordinary, interlocutory equitable relief. Each of those words is important in this context.

[26] A stay of removal is extraordinary because it interrupts the status quo, in the sense that it stops a removal that has been arranged and is generally imminent. A stay is granted in the face of a statutory imperative that persons with no legal right to be in Canada (*Canada (Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711) are removed "as soon as possible." (*Immigration and Refugee Protection Act*, SC 2001, c 27, subsection 48(2) [*IRPA*]). This is not just a matter of convenience – as discussed below under the "balance of convenience" branch of the test, the prompt removal of persons who have no right to be in Canada is an element in maintaining the integrity of the immigration and refugee system, and public confidence in it.

[27] A stay of removal is interlocutory in the sense that it is granted before a full hearing on the merits of the underlying claim. It is often dealt with on very short notice, as this case demonstrates. The record before the Court is often quite limited in comparison with that which will be submitted when the merits of the application for leave and judicial review is dealt with. This increases the importance of full and frank disclosure to the Court: *Donaire v Canada (Citizenship and Immigration)*, 2007 FC 1189.

[28] The grant or denial of a stay is an exercise of equitable jurisdiction. Inherent in this is the concept that equity is flexible, and seeks to do justice as between the parties. As the Supreme Court of Canada recently stated, in considering the three elements of the test for an interlocutory injunction: "Ultimately, the question is whether granting the injunction would be just and equitable in all the circumstances of the case." (*Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 [*Google*] at para 1). One of the safeguards imposed by Courts to protect against inappropriate use of this remedy is the obligation to make full and frank disclosure. This is at its highest when

the relief is sought *ex parte*, without notice to the other party. But it is not limited to that situation.

[29] There is support in the jurisprudence for either refusing to hear a matter, or refusing to grant the relief sought, based on a finding that the applicant does not come before the Court with clean hands. The often-cited case of *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 sets out the criteria to be considered in assessing this at paragraphs 9-10:

> [9] …[I]f satisfied that an applicant has lied, or is otherwise guilty of misconduct, a reviewing court may dismiss the application without proceeding to determine the merits, or even though having found reviewable error, decline to grant relief.
>
> [10] In exercising its discretion, the Court should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights. The factors to be taken into account in this exercise include: the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.
>
> (emphasis in original)

[30] These factors are applied by this Court in the context of applications for judicial review in immigration and refugee matters, and in applications for a stay of removal: see, for example *Khasria v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 773, *Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332, *Wu v Canada (Citizenship and*

Immigration), 2018 FC 779, and *Mahuroof v Canada (Public Safety and Emergency Preparedness),* 2019 CanLII 36998 (FC).

[31] In *Canada (National Revenue) v Cameco Corporation,* 2019 FCA 67, the Federal Court of Appeal recently clarified at para 37 that "for past conduct to justify a refusal of relief, the conduct must relate directly to the very subject matter of the claim." This passage was cited by Justice Norris in *Nsungani v Canada (Citizenship and Immigration),* 2019 FC 1172, and he went on to find that the applicant's prior criminal conviction and more recent failure to meet his obligations under the immigration process did not disentitle him from seeking the equitable relief of a stay (at para 13). In that case, Norris J. found that: "(h)earing the stay motion on its merits could not reasonably be seen as condoning the applicant's earlier misconduct or rewarding him for it."

[32] On balance, applying the factors set out above, while I am troubled by the Applicant's behaviour, it is also pertinent that the Applicant's main claim raises the question of his possible removal to torture or persecution in Georgia. In addition, the fact that this risk has never been assessed on its merits is a relevant consideration. Finally, I note that in the end, though late in the day, the full record was put before the Court by the Respondent and I was able to assess the application against a more complete picture of the background facts.

[33] As will be discussed below, the fact that it appears that the Applicant has been the author of much of his own misfortune, and has deliberately flouted Canadian law by failing to abide by his release conditions and then taking no steps to regularize his situation during the past several years does not, in this particular case, bar him from obtaining the constitutional protection of his

fundamental rights. I have therefore decided to exercise my discretion to deal with the stay application on its merits.

B. Should a stay of removal be granted?

[34] In considering whether to grant a stay of removal, this Court applies the same test as for interlocutory injunctions. The Supreme Court of Canada recently restated the test as follows:

> At the first stage, the application judge is to undertake a preliminary investigation of the merits to decide whether the applicant demonstrates a "serious question to be tried", in the sense that the application is neither frivolous nor vexatious. The applicant must then, at the second stage, convince the court that it will suffer irreparable harm if an injunction is refused. Finally, the third stage of the test requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits.
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> (*R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12, references omitted)

[35] This three-pronged test is well-known. It had been set out in earlier decisions of the Supreme Court: *Manitoba (Attorney General) v Metropolitan Stores Ltd.*, [1987] 1 SCR 110; *RJR — MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR — MacDonald*]. It was also applied in the immigration context in *Toth v Canada (Minister of Employment and Immigration)*, (1988) 86 NR 302, 1988 CanLII 1420 (FCA). Of course, the application of this test is highly contextual and fact-dependent. It bears repeating that the Supreme Court of Canada has recently emphasized that "[u]ltimately, the question is whether granting the injunction would be just and equitable in all the circumstances of the case." (*Google,* at para 1).

(i) *Serious issues*

[36] In many cases, the serious issue branch of the test is not a high threshold. However, in cases where the stay is requested following a refusal to defer removal, it has been found that a higher threshold applies, which requires the Applicant to demonstrate a "likelihood of success" or "quite a strong case" in regard to the underlying application for leave and judicial review (*Wang v Canada (Minister of Citizenship and Immigration),* 2001 FCT 148, [2001] 3 FC 682 [*Wang*]; and *Baron v Canada (Minister of Public Safety and Emergency Preparedness),* 2009 FCA 81 at para 67 [*Baron*]*; Lewis v Canada (Public Safety and Emergency Preparedness),* 2017 FCA 130 at para 43).

[37] In this case, the Applicant has launched two applications for judicial review, and so his stay application rests on both the challenge to the PRRA decision (which is assessed against the usual lower threshold of whether the claim appears to be "frivolous or vexatious"), as well as the challenge to the deferral decision (which is assessed against the higher standard of "quite a strong case"). It is not clear from the jurisprudence whether the higher or lower threshold should govern in such cases, or whether the approach is simply to consider them sequentially. I do not need to resolve this question, because I have found that the Applicant has met the higher threshold in regard to the deferral decision.

[38] The Applicant bears the burden of demonstrating a serious issue in relation to the officer's refusal to defer his removal. This must be assessed in the context of the legal framework within which the officer made that decision. The relevant principles have recently been summarized in a concise manner by Justice Walker, in *Toney v Canada (Public Safety and Emergency Preparedness),* 2019 FC 1018, at paragraph 50. The essential points for the purposes of this case include the limited nature and scope of the discretion, the focus on short-term issues

of timing rather than the merits of the underlying claim, and the often-quoted language from *Baron* (at para 51, citing *Wang*) 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.

[39] The Respondent submits that the Applicant has failed to establish a "strong case" against the officer's decision. The discretion of the officer is limited, and it was exercised in a reasonable manner here. The conclusions of the officer are supported in the evidence and it is clear that all of the relevant facts were considered.

[40] The core of the Applicant's challenge to the deferral decision rests on two arguments: first, the officer erred in law in failing to consider the risks the Applicant alleges he faces if he is returned to Georgia; second, the officer ignored and misapprehended the evidence as the harm to the Applicant's wife and child.

[41] On the question of risk, the officer traces the Applicant's immigration history, including his arrest and release in 2016, and states that the Applicant "evaded the CBSA for approximately 3 years." He then notes that the Applicant "did not attend his oral [PRRA] hearings while he was deliberately evading the CBSA." This background leads to the officer's analysis and conclusion on the risk aspect:

> I must note that Mr. Sumanidze's immigration history establishes that he had the opportunity to have his risk allegations assessed before a competent decision maker; however he failed to follow appropriate procedure. It is clear that Mr. Surmanidze had a full and due process with respect to his risk allegations.

> It is important to note that this decision is a written exercise of my discretion to defer removal; it should not be interpreted as an adjunct risk assessment. I do not have delegated authority to conduct risk assessments. I am tasked with assessing whether compelling evidence has been presented to justify the delay of removal for the assessment. I do not find that Mr. Sumanidze's removal from Canada should be deferred to permit for the request to re-open the determined abandoned PRRA decision.

[42] The Applicant argues that the officer made an error in law by stating "I do not have delegated authority to conduct risk assessments." This is precisely what the officer is bound to do in this case, most particularly because the Applicant's risks have never been assessed previously.

[43] When read in its totality, I am not persuaded that the officer made the error alleged by the Applicant. In light of the statements that precede and follow the phrase that the Applicant has seized upon, I find that the statement is simply a reminder that the officer is not to undertake a full-blown PRRA assessment. That is a correct statement of the law. However, the sentence itself may be a somewhat inelegant way of expressing the idea, and at best it is an incomplete statement of the officer's duties.

[44] First, the officer is clearly a delegated official. Second, while the officer is not delegated to conduct PRRA assessments, he or she is obliged to assess the risks that the Applicant faces – as stated in *Baron,* an essential aspect of the discretion to defer removal is whether it would expose the applicant to "the risk of death, extreme sanction or inhumane treatment." This has been confirmed in a multitude of subsequent cases. Third, as discussed below, the jurisprudence is clear that the officer is obliged to undertake a more fulsome assessment of risk in cases where the person's risks have not been assessed on their merits by other competent decision-makers.

[45] In this case, the officer's main conclusion on risk is that the Applicant's removal should not be deferred to permit consideration of his application to re-open his PRRA application. That, on its own, may well be a reasonable conclusion. However, the officer fails to then assess, in any meaningful or substantive way, the actual risks that the Applicant has alleged. I find that the Applicant has met the higher threshold of raising "quite a strong case" in relation to this aspect of the decision.

[46] Since this question may be considered on its merits if leave is granted for the underlying application for judicial review, I will not discuss the argument and jurisprudence in detail. I simply note that it is not disputed that the Applicant has alleged serious risks of harm based on his past experience in Georgia. The Respondent argues that the evidence relates to events several years ago, but it must be noted that the alleged torture and violent attacks occurred between 2014 and 2016, so they are not ancient history. In addition, the Applicant alleges that the problems continued after he left the country. I hasten to note that none of this evidence has been questioned, challenged or assessed – these are simply the allegations of the Applicant. But these allegations are contained in a sworn affidavit, prepared with the assistance of counsel, and so they must be given some credence at this stage.

[47] The Applicant points to the jurisprudence of this Court and the Federal Court of Appeal which has found that the obligation on Canada to assess a person's risks prior to removal is a constitutional imperative, and that "'a risk assessment and determination conducted in accordance with the principles of fundamental justice is a condition precedent to a valid determination to remove an individual' from Canada." (*Atawnah v Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FCA 144 at para 12 [*Atawnah*], citing *Faradi v*

Canada (Citizenship and Immigration), [2000] FCJ No. 646, 257 NR 158 at para 3). This has been confirmed in a series of subsequent decisions, including some very recent decisions of this Court: see *Fraige v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1217; *Thuo v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 48 [*Thuo*]; *Abdulrahman v Canada (Public Safety and Emergency Preparedness*), 2018 FC 842.

[48] The Respondent submits that the officer's decision is reasonable, because the constitutional obligations are to provide the opportunity for such a risk assessment, and this was done in this case. Here, the Applicant disobeyed his release conditions, evaded immigration and enforcement authorities for several years, and did not take any steps to pursue the PRRA hearing which was offered to him and which was his opportunity to vindicate his constitutional rights. The Court should not ignore this behaviour. The Respondent contends that the Applicant's claims that his risks have never been assessed should be rejected because the only reason his PRRA hearing did not happen was because of his own deliberate and unexplained behaviour. If this did not amount to a formal waiver of his constitutional rights, at the very least it is conduct which should not be ignored.

[49] While I have sympathy for the arguments of the Respondent, I find that the constitutional imperative in this particular circumstance must be the overriding consideration. The Applicant has alleged that he faces serious risks if he is returned to Georgia, and he bases those fears in relatively recent events which he says amounted to torture. These facts have never been examined on their merits, and I find that the Applicant has raised a serious issue as to whether the officer's failure to do so in assessing the deferral request was reasonable.

[50] In light of my findings on this issue, it is not necessary to consider the other arguments about the deferral decision, or the separate issue of whether a serious issue has been raised regarding the PRRA decision. This leads to the second element of the test for a stay of removal.

(ii) *Irreparable Harm*

[51] Irreparable harm refers to harm which cannot be compensated in money; it is the nature rather than the magnitude of the harm which is to be examined: *RJR — MacDonald*, at p. 135. In the context of a stay of removal, the harm usually relates to the risk to the individual of harm upon removal from Canada. It may also include specific harms that are demonstrated in regard to any persons directly affected by the removal, and who will be remaining in Canada: *Tesoro v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148.

[52] There is considerable overlap between the evidence and arguments on the first issue and those relating to irreparable harm, and I will not repeat my earlier analysis. The law requires that irreparable harm be established based on evidence, not assertions or speculation: *Atwal v Canada (Citizenship and Immigration)*, 2004 FCA 427. In this case, the affidavit evidence filed by the Applicant sets out a narrative which, if true, supports a conclusion that he is at risk of suffering harm if he is returned to Georgia. Nothing more is required at this stage, and it is not the role of this Court to assess the credibility of this evidence: see *Atawnah* at paras 31-32; *Thuo* at paras 26-27.

[53] I would note, however, that the evidence in support of irreparable harm in relation to the situation of the wife and son is much less detailed, and it may well not have sustained this aspect of the claim if it stood on its own. The medical evidence about the wife's current condition is

lacking in detail, and the Applicant's submissions regarding it amounted to extrapolation and speculation going beyond what the evidence said. The same may be said about the situation of the child.

[54] However, I find that the Applicant's evidence on the alleged risks he faces if he is returned to Georgia is "a credible risk supported by evidence" (*per* Grammond J. in *Thuo* at para 21), and that this is sufficient to meet this element of the test.

(iii) *Balance of Convenience*

[55] In view of the findings above, I find that the balance of convenience weighs in favour of the Applicant.

[56] There can be no doubt that Canada has an interest in the prompt removal of persons whose refugee claims have not been upheld (as articulated in s. 48(2), *IRPA* cited above), and that this is not merely a matter of administrative convenience, it goes to the wider public interest in ensuring confidence in the integrity of the immigration program as a whole: *Vieira v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 626; *Selliah v Canada (Citizenship and Immigration)*, 2004 FCA 261 at para 22.

[57] On the other hand, Canada has an important interest in ensuring that it respects fundamental rights and freedoms, including the fundamental right to have one's risks assessed in a manner that respects the principles of fundamental justice. This includes ensuring the fulfillment, in a substantive and meaningful way, of the obligations Canada has undertaken both through the *Canadian Charter of Rights and Freedoms* and by its adherence to international

human rights obligations, most particularly here the *Convention Relating to the Status of Refugees*.

[58] That is done, in the circumstances of cases such as this, by an officer assessing the risks alleged in the context of a deferral decision. That is a legal requirement on officers where the risks have not been assessed by a prior decision-maker. It was not done here. The balance of convenience lies with the Applicant.

[59] The conduct of the Applicant could have had the effect of barring him from relief; it could also reasonably have been a consideration for the officer in the overall assessment of the claim of risk, insofar it may affect an assessment of his credibility for example. His behaviour does not, however, constitute – in the particular circumstances of this case – a waiver of his fundamental rights. I agree with the Respondent that there is a public interest in finality, and that evading authorities and displaying a fundamental disregard and disrespect of Canadian law are serious considerations that weigh against the Applicant. These do not, however, override the legal requirement to assess his risks before he is removed from Canada, because those risks have never been assessed before.

[60] I am therefore granting a stay of removal.

JUDGMENT in IMM-7466-19

THIS COURT'S JUDGMENT is that the application for a stay of removal pending the determination of the Applicant's application for judicial review is granted.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7466-19
STYLE OF CAUSE:	MERAB SURMANIDZE v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS and THE MINISTER OF CITIZENSHP AND IMMIGRATION
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