Federal Court Cour fédérale

Date: 20210331

Docket: IMM-1008-21

Citation: 2021 FC 277

Ottawa, Ontario, March 31, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

SAMER ABU ALDABAT

Applicant

and

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

Respondents

ORDER AND REASONS

[1] Mr. Abu Aldabat is seeking a stay of his removal to Jordan, scheduled for April 5, 2021. I am dismissing his motion, essentially because he failed to prove that his removal would expose him to irreparable harm.

[2] These reasons are somewhat longer than usual for a motion of this kind. This is because, in his written submissions and in oral argument, Mr. Abu Aldabat addressed a wide range of topics. I have taken the time to explain why a large portion of his submissions are not relevant to the narrow issues I have to decide.

I. Background

[3] Mr. Abu Aldabat is a citizen of Jordan. For a number of years, he lived in the United States. He entered Canada in 2019. As a result of criminal offences committed in the United States, he was inadmissible to Canada and his claim for asylum was accordingly dismissed. Nevertheless, he was allowed to apply for a pre-removal risk assessment [PRRA].

[4] In his PRRA application, he argued that he would be at risk in Jordan due to his sexual orientation and conversion to Christianity, in particular because of threats made by family members. His PRRA application was denied on February 2, 2020. The PRRA officer reviewed evidence regarding the treatment of the LGBTQ community in Jordan as well as the treatment of persons converting from Islam to Christianity. The officer found that while such persons may face discrimination and social stigma, this would not give rise to a fear of persecution. Mr. Abu Aldabat applied for leave and judicial review to this Court. On January 19, 2021, I dismissed his application.

[5] Since he arrived in Canada, Mr. Abu Aldabat was detained a number of times pursuant to the provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. On one occasion, he was released under the condition of wearing an electronic bracelet. Mr. Abu

Aldabat has made a number of complaints regarding his conditions of detention, in particular because of infections he developed to his legs because of the bracelet.

[6] Moreover, on December 7, 2020, Mr. Abu Aldabat filed an application for relief on humanitarian and compassionate [H&C] grounds. On February 15, 2021, he launched the present application for judicial review, seeking an order of *mandamus* requiring the Minister to make a decision on his application.

[7] On March 12, 2021, Mr. Abu Aldabat met with a removal officer and was informed that his removal would take place on April 5. On March 24, he filed the present motion for a stay of his removal.

[8] At the same time, Mr. Abu Aldabat applied for an administrative deferral of his removal. In a decision dated March 26, but apparently issued on March 28, the removal officer denied the deferral. Mr. Abu Aldabat brought another application for leave and judicial review against this decision.

II. Analysis

A. *Motions for Stay of Removal*

[9] Given the manner in which the case was argued, it is necessary to step back and to explain certain basic features of motions for stay of removal and the analytical framework for deciding them, including the impact of fundamental rights and the doctrine of clean hands.

(1) Purpose and Scope

[10] A motion for stay of removal is not a stand-alone judicial proceeding. It is a temporary measure aimed at preserving the rights of the parties until another recourse, which is usually called the "underlying application," is finally decided. It is neither a permanent measure nor a manner of obtaining the right to reside in Canada: *Lion v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 77 at paragraph 6.

[11] Moreover, by their own nature, motions for stay of removal are brought, argued and decided on an urgent basis.

[12] Thus, the issues that fall to be decided on such motions are narrow and circumscribed. The focus is on the consequences of the applicant's removal to a foreign country. It is simply not possible to perform a full review of the applicant's immigration history or to scrutinize in detail the reasons given by previous decision-makers, if this is not directly relevant to the consequences of removal.

[13] In particular, Mr. Abu Aldabat makes wide-ranging arguments about his mistreatment at the hands of officers of the Canada Border Services Agency [CBSA] and the lack of valid grounds for his detention. I do not wish to minimize his concerns. These issues, however, simply cannot be fairly considered within the narrow confines of a motion for stay of removal. A detailed and careful review of a considerable amount of evidence, beyond what the parties have

been able to file over the last few days, would be required. In any event, these issues are not directly related to the consequences of Mr. Abu Aldabat's removal to Jordan.

(2) Analytical Framework

[14] Motions for stay of removal are decided on the basis of the well-known three-part test for interlocutory injunctions: *RJR – Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, and *R v Canadian Broadcasting Corp*, 2018 SCC 5, [2018] 1 SCR 196. The Court must determine whether: (1) the applicant has shown that the underlying application raises a serious issue; (2) the applicant will suffer irreparable harm if the stay is not granted; and (3) whether the balance of convenience favours the applicant.

[15] In *Musasizi v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 5 [*Musasizi*], and in *Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075 [*Gill*], I reviewed how this three-part test is applied in the context of motions for stay of removal. I will not repeat here what I have said in these cases; I will make specific reference to them where useful.

(3) Motions for Stay of Removal and Fundamental Rights

[16] Mr. Abu Aldabat insists heavily on fundamental rights protected by the *Canadian Charter of Rights and Freedoms* and by international human rights instruments. He argues that this is a matter of life and death.

[17] There is no doubt that refugee protection is closely linked to the protection of fundamental rights, most importantly the right to life and the protection against torture. Subsections 3(2) and 3(3) of the Act state as much. In this regard, section 7 of the Charter protects from removal to a country where one would be tortured*: Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraph 44, [2002] 1 SCR 3; *Farhadi v Canada (Minister of Citizenship and Immigration)* (2000), 257 NR 158 (FCA). The Act was carefully crafted to provide protection against such a possibility: *Sylla v Canada (Minister of Citizenship and Immigration)*, 2004 FC 475 at paragraph 6; *Chirivi v Canada (Citizenship and Immigration)*, 2015 FC 1114 at paragraph 33. In particular, this protection results from the PRRA process: *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 at paragraph 67, [2014] 3 SCR 431; *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at paragraph 75, [2015] 3 SCR 704.

[18] However, there may be circumstances where the risk to which a person facing removal would be exposed has not been properly assessed, or not assessed at all. In these cases, a motion for stay of removal acts as a "safety valve" preventing any breach of section 7 of the Charter. In *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262 at paragraph 51, [2020] 2 FCR 355, Justice Yves de Montigny of the Federal Court of Appeal gave the following explanation:

> Upon judicial review of a decision by an enforcement officer not to defer removal, the Federal Court is empowered to (and in my view must) assess any risk of harm that has been overlooked by the enforcement officer in order to determine whether the rights protected by section 7 of the Charter are engaged (see *Shpati*, at paras. 49-51; *Atawnah v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FCA 144, [2017] 1 F.C.R. 153 at paras. 18-23; *Savunthararasa v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FCA 51, [2017] 1 F.C.R. 318 at para. 26 [*Savunthararasa*]).

[19] Consideration of a potential breach of section 7 is not an additional step in the three-part test for deciding motions for stay of removal. It is integrated in each step. An officer's decision to refuse deferral where the applicant would face a risk to life would raise a serious issue. The same would occur where a serious flaw appears to be present in a PRRA decision. In these cases, a finding of irreparable harm usually follows: *Gill*, at paragraph 22.

[20] In the context of a motion for stay of removal, applicants have the burden of proving a risk to their lives or safety. The burden is not reversed merely because one alleges a Charter breach.

[21] At the hearing, counsel for Mr. Abu Aldabat argued that PRRA and removals officers lack the independence required to decide cases involving Charter issues or situations of life and death. Making such arguments in the context of a motion for stay of removal simply draws the attention away from the real issues at stake. Moreover, administrative decision-makers are often entrusted with deciding matters involving fundamental rights. Courts review their decisions with deference even where fundamental rights are at stake: *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395. In the context of removals from Canada, Parliament assigned the task of ensuring compliance with Charter rights to PRRA officers. Absent a constitutional challenge, courts cannot change this basic feature of the system. They must simply play the role of safety valve that I alluded to earlier.

(4) Clean Hands

[22] A stay of removal is an equitable and discretionary remedy. It may be refused for a number of reasons, including the applicant's objectionable conduct. The expression "clean hands" is often used to describe this discretionary factor. This may include situations where the applicant has a serious criminal record, has attempted to evade immigration authorities or has failed to disclose relevant information in his motion record: see, for examples, *Bentamtam v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 984; *Pierre v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 887 [*Pierre*]; *Gracia v Canada (Citizenship and Immigration)*, 2021 FC 158.

[23] In certain circumstances, invoking the clean hands doctrine may have the effect of considerably widening the scope of the matters in dispute. On a motion for stay of removal, the Court may not be in a position to review fully the impugned conduct of the applicant. The applicant may also try to justify his conduct. This is what happened here. The Minister argues that Mr. Abu Aldabat does not have clean hands because he breached the conditions of his release. Deciding this issue, however, would require me to engage in a thorough review of the decisions of the Immigration Division regarding Mr. Abu Aldabat's detention or release. As I am able to decide the motion on other grounds, I will not discuss the clean hands issue further.

B. *Application to Mr. Abu Aldabat's Case*

(1) Serious Issue

[24] Mr. Abu Aldabat's first application for leave and judicial review is an application for *mandamus*, declaratory judgment and Charter relief with respect to the processing of his H&C application and request for a temporary residence permit. In simple terms, such an application seeks to force a public official to make a decision. However, such an application cannot be used to "jump the queue," as it were, and to request a decision to be made quicker than the usual processing time. The usual processing time of H&C applications is currently just above two years. Mr. Abu Aldabat filed his H&C application in December 2020 and his application for leave and judicial review in February 2021. Clearly, it does not raise a serious issue.

[25] While the present motion was initially made within the first application, I directed that it also be considered in the context of the application challenging the refusal of Mr. Abu Aldabat's request for deferral. When the motion for stay of removal pertains to a request for deferral, the threshold is higher: the applicant must not only show a "serious issue," but "quite a strong case:" *Gill*, at paragraph 21; *Musasizi*, at paragraph 15.

[26] The removal officer considered four grounds raised by Mr. Abu Aldabat for a deferral of his removal: (1) his pending H&C application; (2) the complaint he made regarding his mistreatment by CBSA officials; (3) family separation; (4) the risk of persecution and torture in Jordan. She rejected each of these grounds and accordingly refused to defer Mr. Abu Aldabat's removal from Canada.

[27] Mr. Abu Aldabat has not demonstrated "quite a strong case" that the officer's decision is unreasonable. As to the first three grounds, the officer applied well-established case law. Family separation is a sad, but inevitable consequence of someone's losing the right to remain in Canada: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 23, [2015] 3 SCR 909; *Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at paragraph 13; *Tesoro v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148 at paragraphs 30-45, [2005] 4 FCR 210. Likewise, filing a last-minute H&C application is not grounds to defer removal: *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paragraph 53, [2010] 2 FCR 311; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paragraphs 56-57, [2018] 2 FCR 229. The same logic would apply to Mr. Abu Aldabat's complaint regarding the actions of CBSA officials, especially as the outcome of the investigation would not afford him a right to remain in Canada.

[28] The fourth ground is the risk to which Mr. Abu Aldabat would be exposed in Jordan. As the issue is intertwined with that of irreparable harm, I will consider it under that heading.

(2) Irreparable Harm

[29] The crux of the case, indeed, is whether a stay of removal is necessary to protect Mr. Abu Aldabat from irreparable harm, namely, a risk of death, torture or other serious threat to his personal safety.

[30] The starting point of the analysis is the recent consideration of the issue by a PRRA officer. In a decision rendered on January 30, 2020, the officer analyzed the risks faced by gays and bisexuals, on the one hand, and by apostates, on the other hand, in Jordan.

[31] With respect to gays an bisexuals, the officer summarized the evidence in the national documentation package [NDP] as follows:

> The National Documentation Package publication concerning the sexual minorities in Jordan, reports that gays and bisexuals are, nonetheless, sometimes exposed to blackmail, outing, and violence, which often stems from the use of dating applications. The report also mentions that the source of violence and discrimination against LGBTQ people emerges from that individual's socioeconomic status, his family connections and/or his tribe lineage. In other words, the violence and discrimination against a LGBTQ person comes from his family and immediate circle, not from the state. In fact, despite being a Muslim country and governed by the Sharia Law, there are no mention, of any state persecution, legal sanctions, fines or penalties that can be enforced under the Jordanian criminal law for same-sex sexual conduct or relationships. One activist specifically mentions in the report that LGBTQ people: "are normally called into the police station, and released after a few hours."

[32] The officer also reviewed another report submitted by Mr. Abu Aldabat and summarized it as follows:

> The report also demonstrates that the Jordanian government are not only aware of existence of a dynamic LGBTQ community in Jordan, but that they are extremely tolerant. The report describes a few incidence in which there was a state intervention, however, none of these interventions amount to persecution.

[33] With respect to conversion from Islam to Christianity, the officer reviewed the contents of the NDP and one additional article submitted by Mr. Abu Aldabat. He concluded as follows:

> I conclude that the general country conditions documentation mentions no issues with the state when it comes converting. However, there may be social stigma, ostracism and exclusion from family members when it comes to apostasy, and the Sharia courts can disinherit or nullify the marriage of someone declared to be apostate. Other than these issues, the general documentation does not refer to any other consequences.

[34] Based on these findings, the officer found that Mr. Abu Aldabat would not be at risk of death, torture or persecution—the kinds of risks mentioned in sections 96 and 97 of the Act. Accordingly, he dismissed the PRRA application. As I mentioned above, I dismissed Mr. Abu Aldabat's application for leave and judicial review of this decision. Thus, it is now final.

[35] A motion for stay of removal is not the appropriate forum to reargue risks that have been adequately assessed by previous decision-makers: *Goshen v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1380 at paragraph 6; *Lebrun v Canada (Citizenship and Immigration)*, 2018 FC 663 at paragraph 15; *Pierre*. In any event, beyond repeating several times his view that gays' and bisexuals' lives are at risk in Jordan, Mr. Abu Aldabat has not identified any specific error in the PRRA decision.

[36] Mr. Abu Aldabat, however, asserts that he has new evidence that he did not submit to the PRRA officer. This evidence consists of two letters from his father and brother, threatening to kill him because of his homosexuality, and a letter from his mother attesting to the threats he received from his father's family. The letters from the father and brother date back to 2015 and 2014, respectively. The mother's letter is undated. They are in Arabic and a certified English translation was obtained in November 2020. According to Mr. Abu Aldabat, this evidence would call into question the conclusions of the PRRA officer, who noted:

> The Applicant states that his family threatened him when they learned that he converted but he did not submit evidence of these treats. [*sic*]

[37] For the following reasons, however, these three letters do not persuade me that Mr. Abu Aldabat would suffer irreparable harm if he were removed to Jordan.

[38] First, I have no information as to the source of these letters nor any explanation as to why they only recently emerged. They are addressed to Mr. Abu Aldabat and they date from 2014 and 2015. He has been in Canada for almost two years. Although I recognize that his detention may have made it more difficult for him to obtain evidence, there is no reason why it would have taken almost two years to obtain these letters. Moreover, he signed a detailed affidavit on March 24, 2021, for the purposes of this motion. In this affidavit, he merely states that he has received death threats from close family members. He does not mention the letters; they are simply appended to his H&C application, which is an exhibit to his affidavit. He does not say when he initially received these letters nor try to explain why he was unable to file them until recently. In his PRRA submissions, he repeatedly mentions threats received from his family. Yet, he does not mention that these threats were made in writing; rather, he says they were made by phone. If these letters were so crucial to his case, he would surely have provided these explanations in his affidavit and in his submissions to the PRRA officer.

[39] Second, there is no indication that Mr. Abu Aldabat's family would necessarily learn of his return to Jordan. In his PRRA submissions, he states that he has cut off all ties with everyone in Jordan, including his family.

[40] Third, I have reviewed the NDP and found no mention of honour killings or of any risk of death or torture to which gays and bisexuals would be exposed on the part of non-state actors. This is a relevant factor in assessing the seriousness of the threats that were allegedly made. To be sure, the reports mention social and family ostracism; but the PRRA officer took this into account and did not find a risk of persecution, torture or death.

[41] Thus, these letters do not change anything to the PRRA officer's assessment of the risk to which Mr. Abu Aldabat would be exposed upon returning to Jordan. Consequently, Mr. Abu Aldabat has failed to prove that he would suffer irreparable harm if he were removed to Jordan. In other words, there is no factual basis for his assertion that returning to Jordan would put his life at risk or expose him to torture or persecution.

(3) Balance of Convenience

[42] The third part of the test for granting a stay is the balance of convenience. As Mr. Abu Aldabat has not demonstrated a serious issue nor irreparable harm, it is not necessary to address this issue.

III. Conclusion

[43] Because Mr. Abu Aldabat fails to meet the three-part test for granting a stay of removal, his motion will be dismissed.

ORDER in IMM-1008-21

THIS COURT ORDERS that:

1. The style of cause is amended to add the Minister of Public Safety and Emergency Preparedness as a respondent.

2. The applicant's motion for stay of his removal to Jordan is dismissed.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1008-21
STYLE OF CAUSE:	SAMER ABU ALDABAT v THE MINISTER OF CITIZENSHIP AND IMMIGRATION, THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC
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DATED:	MARCH 31, 2021

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