Federal Court  Cour fédérale

Date: 20210907

Docket: IMM-5498-21

Citation: 2021 FC 926

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, September 7, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

JOHN MACKENSON BASTIEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] Mr. Bastien is bringing a motion to stay his removal to Haiti, scheduled for tomorrow. Although Mr. Bastien will undoubtedly suffer significant hardship as a result of his removal to Haiti, that hardship does not constitute the kind of irreparable harm that must be demonstrated to obtain a stay. I therefore dismiss Mr. Bastien's motion.

I. Background

[2] Mr. Bastien is a citizen of Haiti. He was born in 1991. After his parents separated and his father left for Canada, he was raised by his mother. Shortly after the 2010 earthquake, he witnessed the violent death of his mother. Sponsored by his father, he obtained permanent resident status in Canada, where he landed in 2012 at the age of 21. His father died a short time later.

[3] In February 2017, Mr. Bastien was found guilty of robbery. He received a suspended sentence with a probation period of 18 months. Since this conviction rendered him inadmissible to Canada on grounds of serious criminality under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], a deportation order was issued against him. The deportation order was confirmed by the Immigration Appeal Division [IAD] of the Immigration and Refugee Board.

[4] In its decision, the IAD noted that Mr. Bastien had been convicted of 27 criminal offences committed between February 2015 and March 2017 and that he was in remand awaiting trial for offences committed in February 2019, including several counts of robbery, sexual assault, extortion and forcible confinement. Before the IAD, Mr. Bastien denied responsibility for the offence underlying the removal order, even though he had pleaded guilty. The IAD also took into account Mr. Bastien's lack of serious efforts to change his behaviour, his lack of establishment in Canada and his tenuous relationship with his family here. The IAD considered

the possibility of granting a stay of removal but found that it would not be appropriate because there was no possibility of rehabilitation for Mr. Bastien.

[5] In July 2020, Mr. Bastien was convicted of a number of offences, including sexual interference and robbery with violence, and was sentenced to 470 days in prison.

[6] In October 2020, Mr. Bastien was transferred to the Secure Treatment Unit at the Brockville Mental Health Centre. In March 2021, when his criminal sentence ended, Mr. Bastien was brought into detention under section 55 of the Act. He was transferred to the Ottawa-Carleton Detention Centre. He remains in detention to this day.

[7] Mr. Bastien then applied for a pre-removal risk assessment [PRRA]. His application was based mainly on his mental health condition, in particular suicidal ideation, and on the scarcity of mental health care in Haiti. In addition, he claimed that people with mental health problems were ostracized and that, being a young man with no family, he would have to engage in criminal activities to survive. In his opinion, he would be subjected to [TRANSLATION] "economic proscription" if he were returned to Haiti, to the point that his physical well-being would be jeopardized. Mr. Bastien also referred to the absence of family in Haiti and the fact that his stay at the Brockville Mental Health Centre had enabled him to seriously engage in rehabilitation.

[8] On July 19, 2021, the application was denied. The officer considered Mr. Bastien's situation under sections 96, 97 and 98 of the Act. He reviewed the reports regarding Mr. Bastien's mental health and noted that Mr. Bastien was described as "mildly ill". He noted

that the reports dated from the time Mr. Bastien was admitted in Brockville and provided no information on progress, no prognosis and no indication of what would happen if he were returned to Haiti. The officer also noted recent developments in mental health services in Haiti. The officer pointed out that there was little evidence of a suicide risk. Although the officer acknowledged that Mr. Bastien had no family in Haiti, he suggested that his family in Canada could send him money, in particular to pay for his treatment. The officer summarized his findings as follows:

> [TRANSLATION]
> Consequently, if the applicant needed treatment in Haiti—which he failed to fully establish—he would face fewer obstacles because his diagnosis is mild, his family would provide financial support, he would be in the city, he is willing to seek mental health care, and there have been improvements in the care available. . . . The applicant was unable to establish either his specific mental health care needs or the lack of such care in Haiti. I find that the applicant would not be persecuted through socioeconomic proscription related to a lack of mental health care and implicit ostracism related to a lack of a family environment.

[9] The officer also found that Mr. Bastien had not provided sufficient evidence of the risk he might face at the hands of the people who had killed his mother and against whom he had allegedly filed a complaint.

[10] Mr. Bastien is now seeking judicial review of the refusal of his PRRA application. As part of this process, he is bringing a motion for a stay of his removal order.

II. Analysis

A. *Analytical framework*

[11] To gain a better understanding of the components of an applicant's burden in a motion for a stay of removal, it is helpful to step back and clarify the legal principles governing the removal of foreign nationals present in Canada and this Court's involvement in that process.

[12] The Act sets out the circumstances in which a person who is not a Canadian citizen may remain in Canada. In some cases, persons present in Canada may lose the right to stay in Canada, for example, if their visa expires, if they become inadmissible or if their claim for refugee protection is rejected. When a person loses the right to stay in Canada, a removal order may be issued under sections 44 to 53 of the Act. Certain categories of persons who are the subject of a removal order may also apply for a pre-removal risk assessment [PRRA] under sections 112 to 116 of the Act.

[13] The processes leading to removal are administrative processes. They do not involve the courts. Therefore, a foreign national may be removed from Canada without the need for authorization from a judge, provided that the process set out in the Act has been followed. Of course, the Act provides for various appeal mechanisms that are available to a person who is the subject of a removal order, including to the various divisions of the Immigration and Refugee Board [IRB].

[14] The administrative decisions leading to removal, including those made by the IRB, are reviewable by the Federal Court, with leave of the Court. However, if the applicant no longer benefits from a statutory stay under sections 231 and 232 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, the removal order could be enforced before the application for judicial review has been decided. In that situation, this Court has the discretion to stay the removal order pursuant to section 18.2 of the *Federal Courts Act*, RSC 1985, c F-7.

[15] In deciding a motion for a stay, this Court relies on the well-known test that applies to interlocutory injunctions: *RJR — MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR*]. This analytical framework was recently summarized by the Supreme Court of Canada in *R v Canadian Broadcasting Corp*, 2018 SCC 5, [2018] 1 SCR 196 at paragraph 12:

> 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.

[16] See also *Toth v Canada (Minister of Employment and Immigration)*, 1988 CanLII 1420 (FCA); *Musasizi v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 5 [*Musasizi*]; and *Singh v Canada (Citizenship and Immigration)*, 2021 FC 846 [*Singh*].

[17] The assessment of the three parts of the test depends on the circumstances of each case, and the ultimate objective is to do justice as between the parties (*Surmanidze v Canada (Public*

Safety and Emergency Preparedness), 2019 FC 1615 at paragraph 28; *Singh* at paragraphs 16–18).

B. *Serious question to be tried*

[18] For the present purposes, I will assume that the application for judicial review of the PRRA decision raises a serious question. At first glance, one may wonder whether some of the generalizations in the decision are consistent with the evidence. However, I need not consider the matter further because, in any event, I am of the opinion that Mr. Bastien failed to demonstrate that his removal to Haiti would cause him irreparable harm. That is the determinative issue in this case.

C. *Irreparable harm*

[19] In a motion for a stay, the applicant must demonstrate that removal will cause irreparable harm. The harm may include a threat to life or limb, as well as "illness or other impediments to removal, the short-term best interests of children, or the existence of pending immigration applications that were made on a timely basis": *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262 at paragraph 50, [2020] 2 FCR 355.

[20] However, removal from Canada usually results in significant hardships for the person being removed: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 23, [2015] 3 SCR 909. The hardships may include separation from family, loss of employment and, in many cases, having to live in a country where social and economic rights are

not realized to the same degree as in Canada. These hardships alone are not considered irreparable harm and do not warrant a stay: *Ghanaseharan 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.

[21] Identifying irreparable harm is also, in a sense, the purpose of the PRRA process. For this reason, this Court usually gives significant weight to a PRRA decision that finds that the applicant will not be subjected to any risk upon removal. In this case, however, given my reservations with respect to the PRRA decision, I will disregard it in considering the issue of irreparable harm.

[22] Mr. Bastien claims mainly that returning to Haiti would cause a serious risk to his life or to his physical or mental well-being. Specifically, he emphasizes that he would have no family support there and that mental health care is virtually non-existent. He also raises the risk that he could decide to take his own life if he is returned.

[23] I will first consider the issue of suicide. It is true that this Court has previously issued stays of removal where applicants presented a serious and imminent risk of suicide (see, for example, *Konaté v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 703 [*Konaté*] and the cases cited therein). However, the evidence on the record does not satisfy me that there is a serious and imminent risk. Although Mr. Bastien described two events that he characterized as suicide attempts, the psychiatrist who examined him in October 2020 did not conclude that he was at significant risk because of these events, which had occurred in earlier years. Moreover,

the evidence regarding Mr. Bastien's condition since that time does not indicate any risk of suicide. In this respect, the evidence in this case differs significantly from that in *Konaté*, where a serious and immediate risk was identified by a number of professionals and officials in the three weeks leading up to the removal.

[24] Mr. Bastien also alleges that his removal would lead to a serious deterioration in his mental health. However, I cannot draw that conclusion from the evidence on the record. The evidence consists primarily of a mental health assessment conducted when he was admitted to the Brockville Mental Health Centre in October 2020. The assessing psychiatrist's report is based on various commonly used standard assessment grids in addition to clinical observations. The assessment grids indicate that Mr. Bastien had moderate mental health problems. He was prescribed four types of medication. On the basis of this information alone, and in the absence of a report dealing explicitly with the impact of removal on treatment options, it is difficult for me to conclude that Mr. Bastien's mental health would deteriorate significantly if he were returned to Haiti.

[25] Mr. Bastien's argument is based largely on the inadequacy of mental health care in Haiti. This inadequacy is allegedly exacerbated by the fact that Mr. Bastien will not have family support and by the fact that people with mental health problems are stigmatized in Haiti. However, concerns about inadequate health care do not constitute irreparable harm: *Adeleye v Canada (Public Safety and Emergency Preparedness)*, 2019 CanLII 22862 (FC). Indeed, subparagraph 97(1)(b)(iv) of the Act provides that an applicant may not rely on a risk caused "by the inability of that country to provide adequate health or medical care". It would be illogical to

consider such a risk to be irreparable harm in the context of a motion for a stay. (I should point out that I am far from persuaded that this risk, which is excluded under section 97, can be covered by section 96, as Mr. Bastien submits.)

[26] Mr. Bastien also draws my attention to recent events in Haiti, including the assassination of the president in July 2021 and the earthquake on August 14, 2021. Without denying the seriousness of these tragic events, I fail to see how they fundamentally change the assessment of the risk to which Mr. Bastien would be personally subjected. Mr. Bastien also states that returnees are ostracized out of fear that they will spread COVID-19. Again, that prejudice does not constitute irreparable harm that would prevent removal.

[27] Indeed, what Mr. Bastien describes as irreparable harm is more in the nature of humanitarian and compassionate considerations that may be relevant at other stages of the process set out in the Act. His counsel asks me to consider the "big picture": Mr. Bastien is a young man with mental health problems who will be returned to a country plagued by political instability and natural disasters, where he no longer has family, where people with mental health problems are ostracized and where adequate services are not available. Admittedly, this "big picture" is one that attracts sympathy. However, the Court's role at the stage of a motion for a stay is not to reconsider the entire situation to decide whether Mr. Bastien deserves a second chance or whether he would lead a happier life in Canada. Rather, the issue is whether there is a sufficiently serious flaw in the process leading to his removal to warrant the Court's intervention.

[28] In any event, Mr. Bastien had the opportunity to put forward humanitarian considerations in his appeal to the IAD. The IAD found that the “big picture” did not justify setting aside the removal order. Mr. Bastien did not seek judicial review of that decision. Although there have been some new developments since then, they do not fundamentally change the “big picture”. In any event, a motion for a stay is not the appropriate way to challenge earlier decisions made under the Act.

[29] Therefore, I am of the opinion that Mr. Bastien has failed to demonstrate that his removal to Haiti will cause him irreparable harm.

D. *Balance of convenience*

[30] Since Mr. Bastien has failed to demonstrate irreparable harm, there is no need for the third step of the analysis, namely weighing the harm suffered by each party.

III. Conclusion

[31] Since the *RJR* test is not met, Mr. Bastien’s motion for a stay will be dismissed.

ORDER in IMM-5498-21

THIS COURT ORDERS as follows:

1. The style of cause shall be amended to describe the respondent as the "Minister of Citizenship and Immigration".

2. The motion for a stay of removal is dismissed.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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