

Federal Court



Cour fédérale

Date: 20220106

Docket: IMM-7903-19

Citation: 2022 FC 13

Ottawa, Ontario, January 6, 2022

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ALEKSANDAR SOSIC

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Susic [Applicant] applies for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of an Immigration Officer's [Officer] December 31, 2019 decision [Decision] refusing to grant a deferral of the Applicant's removal.

[2] For the reasons that follow, the application for judicial review is moot.

II. Background

[3] The Applicant is a citizen of Bosnia and Herzegovina and Croatia. He came to Canada in 2010 and made a refugee claim in either June or July of 2010. That claim was declared abandoned in 2013 because he and his lawyer failed to show up at the hearing. His refugee claim was ultimately reinstated but was refused in 2017. The Applicant subsequently married a Canadian citizen and submitted an application for permanent residence as a member of the Spouse or Common Law Partner in Canada Class [Spousal Application] in July of 2018.

[4] The Applicant has worked for most of his time in Canada. He established a renovation business in 2011 and he employs one to two full-time employees and two to three subcontractors. His last work permit expired in February 2019. He claims he tried to apply for a new work permit but his documents were not accepted online so he gave up. He also claims he has business assets he needs to sell and lease agreements he needs to terminate before leaving Canada.

[5] The Applicant was scheduled for removal on January 6, 2020. On December 27 and December 30, 2019, the Applicant requested a deferral of his removal until a decision on his Spousal Application was rendered or a deferral for six months so he could attend his spouse's medical appointment on February 19, 2020 and wind down his business affairs in Canada, whichever was sooner.

[6] On December 31, 2019, the Officer refused the Applicant's deferral request. On the same day, the Applicant sought leave and judicial review of the Decision. On January 2, 2020, the Applicant filed a motion to stay his removal. The stay motion was granted on January 3, 2020, until the application for leave and judicial review was disposed of.

[7] The Applicant submits that the application for judicial review is not moot and that the Decision is unreasonable. The Respondent makes no submissions on mootness and submits that the Decision is reasonable.

III. Decision under Review

[8] In the Decision, the Officer noted his statutory obligation, pursuant to subsection 48(2) of *IRPA*, to enforce the removal order against the Applicant "as soon as possible" as well as his limited discretion to defer removal. The Officer then considered the three grounds for deferral: the Applicant's Spousal Application; the best interests of the child; and the time required to wind down the Applicant's business.

[9] The Officer noted that the Spousal Application was not an impediment to removal. Furthermore, the Officer found that there was no evidence to show that the application could not be pursued from outside of Canada or that a decision on the application was imminent. The Officer noted that the Applicant had previously benefitted from a 60-day administrative deferral because he had submitted his application before he was deemed removal ready.

[10] With regard to the best interests of the child, the Officer quoted two passages from the Applicant's deferral request that outlined his spouse's medical condition and stated that he is a role model to his spouse's son. The Officer noted that the Applicant's spouse and stepchild are Canadian citizens with access to Canadian social programs such as social assistance, healthcare, and education. The Officer stated that the Applicant's spouse and stepchild will have the care and assistance they require with access to these programs. The Officer also acknowledged that separation of family is an inherent part of the removals process.

[11] The Officer stated that on August 1, 2019, the Applicant was notified that he would not be granted a stay of removal and his order would become enforceable if he did not submit a pre-removal risk assessment [PRRA] within 15 days. The Officer also noted that the Applicant was informed that once the order was enforceable he would have two to three weeks to confirm his departure from Canada. The Applicant did not submit a PRRA.

[12] The Officer was satisfied that the Applicant had sufficient time to wrap up his business affairs in Canada as he had been aware of his imminent removal for five months prior to submitting his deferral request.

IV. The Decision to Stay the Applicant's Removal

[13] This Court granted the Applicant's motion to stay his removal until the underlying judicial review application was disposed of on January 3, 2020.

V. Issues and Standard of Review

[14] The issues are:

1. Is the application for judicial review moot?
2. Was the Decision reasonable?

[15] The issue of mootness is a threshold question, given that the Applicant sought to defer his removal and the removal date has passed.

[16] The only other issue is whether the Decision was reasonable. The parties agree that the standard of review is that of reasonableness, as none of the circumstances that rebut the presumptive standard arise in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). I agree that the standard of review applicable to the merits of an officer's decision is reasonableness.

VI. Analysis

A. *Is the application for judicial review moot?*

[17] The Applicant's December 30, 2019 deferral request stated:

We are asking that removal be deferred

1. Until Aleksandar's application for permanent residence as a member of the family class is decided; or
2. For six months so that Aleksandar can wind down his business; accompany his wife to her medical appointment on February 19, 2020 and provide her with emotional support should she have to undergo surgery.

whichever is sooner.

[Emphasis added.]

[18] The Applicant submits that the application is not moot because, although the removal date has passed, the Applicant's permanent residence application has not been decided. Therefore, there is still a live issue.

[19] The Applicant also states that the application's factual basis has not disappeared, an adversarial context persists, and the granting of the judicial review application will have a practical effect on the Applicant. The Applicant relies on *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 [*Baron*] for the proposition that his application is not moot. In that case, the Federal Court of Appeal considered the following certified question at paragraph 1:

Where an applicant has filed an application for leave and judicial review challenging a refusal to defer removal pending a decision on an outstanding application for landing, and a stay of removal is granted so that the person is not removed from Canada, does the fact that a decision on the underlying application for landing remains outstanding at the date the Court considers the application for judicial review maintain a 'live controversy' between the parties, or is the matter rendered moot by the passing of scheduled removal date?

[20] The Respondent made no submissions on the issue of mootness.

[21] In my view, this application is moot. The determination of mootness depends on the proper characterization of the controversy that exists between the parties (*Baron* at para 29). In *Baron*, the Court clarified that the passing of a removal date is not determinative in finding an

application moot. Rather, “it is the passing of events in respect to which the applicant was seeking a deferral of his removal” that renders an application moot (*Baron* at para 37).

[22] The Applicant submits that, although the date of removal has passed, a live controversy exists between the parties because his permanent residence application has not been decided. While his permanent residence application has not been determined, a considerable period of more than six months has passed since the Applicant sought a deferral. This six-month period was the earlier of the two requested reasons for the deferral, as set out above in the deferral request. The Applicant has received the remedy he was seeking.

[23] The outcome of this application for judicial review will have no practical effect on the Applicant because the Decision was based on the Applicant’s request to defer removal to a time or event that has already happened (*Adesemowo v Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FC 249 [*Adesemowo*]). This Court considered the same circumstance in *Adesemowo* and ultimately found the application for judicial review moot. At paragraph 55 of *Adesemowo* the Court stated:

As noted above, as a result of the Court’s Order which stayed the Officer’s decision pending the determination of this Application for Judicial Review, the Applicant’s removal was in fact deferred. Now, both the event for which deferral was requested – the determination of the dismissed PRRA – and the determination of this Application for Judicial Review have occurred.

[24] In the present matter, the request for deferral included a qualification with the words “whichever is sooner.” There is no evidence that the Spousal Application has been processed or that it will be processed imminently. The second event, the six-month deferral, is the sooner of

the two requested reasons for deferral. As stated, the circumstances of the second alternate request have since passed.

[25] I find that this application for judicial review is clearly moot. There is no reason to exercise my discretion to consider the merits. Furthermore, since the matter is moot, there is no need to assess the reasonableness of the Decision.

VII. Conclusion

[26] This application is moot because the Applicant has received the remedy he sought in his deferral request. The Court declines to exercise its discretion to hear the matter on its merits.

JUDGMENT in IMM-7903-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is moot.
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7903-19

STYLE OF CAUSE: ALEKSANDAR SOSIC v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: JULY 7, 2021

JUDGMENT AND REASONS: FAVEL J.

DATED: JANUARY 6, 2022

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