Federal Court  Cour fédérale

Date: 20220311

Docket: IMM-2017-22

Citation: 2022 FC 336

Ottawa, Ontario, March 11, 2022

PRESENT: Mr. Justice Norris

BETWEEN:

PERRY MARKLYN ACTI

Applicant

and

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

Respondents

ORDER AND REASONS

I. OVERVIEW

[1] Perry Marklyn Acti, the applicant, is a citizen of Barbados who has been found inadmissible to Canada on grounds of criminality and ordered deported. On March 3, 2022, he

requested that the Canada Border Services Agency ("CBSA") defer his removal, then scheduled for March 7, 2022.

[2] Although (understandably) he had not yet received a decision on his deferral request, on March 4, 2022, the applicant commenced an application for judicial review in relation to that request. He also brought a motion for interlocutory relief. That same date, the Court ordered an interim stay of the applicant's removal. Given the particular circumstances of this case, this order was made to provide time for a decision on the deferral request to be made and, in the event that it was negative, to give the parties a reasonable opportunity to bring and respond to a motion for an interlocutory stay of the applicant's removal and to give the Court a reasonable opportunity to hear and determine any such motion.

[3] The deferral request was refused by an Inland Enforcement Officer with the CBSA on March 5, 2022. The applicant's motion for a stay of his removal pending the final determination of his application for leave and judicial review of that decision was heard by way of videoconference on March 9, 2022. I reserved my decision.

[4] For the reasons that follow, I am dismissing the motion for a stay. I am also vacating the interim stay of removal ordered on March 4, 2022.

II. PRELIMINARY MATTERS

[5] It is necessary first to address two preliminary matters – the scope of the relief sought in this motion and whether the Minister of Citizenship and Immigration is properly named as a respondent in the underlying application.

[6] As will be discussed further below, in October 2006, the applicant received a positive decision on an application for a pre-removal risk assessment ("PRRA") based on his claim that, as a gay man, he would be at risk in Barbados. However, this decision was vacated in May 2018 when a Senior Immigration Officer concluded that it had been obtained by misrepresentation about the applicant's sexual orientation. To date, the applicant has not challenged that decision directly, although he does appear to intend to attempt to re-open the question of his entitlement to a PRRA on the basis that he is actually bisexual. Thus, among the relief he seeks in the underlying judicial review application is an order of *mandamus* "directing the respondents to allow the Applicant an opportunity to make an application to reinstate his previous PRRA application and decision and amend it to being bisexual and have the vacation of his previous PRRA vacated." The applicant also seeks the same relief on the present motion. As well, he seeks a stay of his removal pending a final decision on this renewed PRRA application.

[7] The applicant has named both the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness as respondents in the underlying application for judicial review. This would appear to be because of the hybrid nature of that

application, which purports to both challenge the negative deferral decision and seek an order of *mandamus*, as described above.

[8] Counsel for the respondents submits that the Minister of Citizenship and Immigration is not a proper respondent in this matter because the underlying decision is the CBSA's refusal to defer the applicant's removal to Barbados and this does not involve the Minister of Citizenship and Immigration. While this is true as far as it goes, it does not account for the fact that *mandamus* is sought against the Minister of Citizenship and Immigration.

[9] I make no comment one way or the other about how the underlying application has been framed and whether the two discrete forms of relief can be combined in a single application. However, in the absence of a motion to strike the request for *mandamus*, in my view both Ministers must remain as respondents, at least for the time being.

[10] That being said, this Court has no jurisdiction at this stage to order *mandamus*, nor does it have jurisdiction to order a free-standing stay of removal pending a new PRRA decision. As I made clear at the hearing of this motion, the only issue properly before me at this time is the request for an interlocutory stay of removal pending the final determination of the application for leave and judicial review of the negative deferral decision. Notwithstanding how the motion was originally framed, counsel for the applicant acceded to this view.

III. BACKGROUND

[11] The applicant was born in Barbados in April 1978. He entered Canada on March 29, 2005, as a visitor. He has remained here ever since despite having no legal status once his visitor status lapsed.

[12] Beginning in 2010, the applicant has amassed a criminal record containing dozens of convictions. While many of the convictions are for arguably less serious offences (e.g. there are numerous entries for failure to comply with a recognizance and failure to comply with probation), and while generally the applicant has received relatively short sentences, other convictions are much more serious. The applicant's most recent convictions (dated July 23, 2021) were for break and enter and commit an indictable offence (sexual assault) and forcible confinement. These offences were committed in June 2017. The applicant received concurrent sentences of three years on both counts (although he was credited with the equivalent of 797 days of pre-sentence custody).

[13] As noted above, in October 2006, the applicant received a positive decision on a PRRA application based on his claim that, as a gay man, he would be at risk in Barbados. As a result of the positive decision, the exclusion order that had been made against the applicant for having overstayed his visitor status could not be enforced. However, in May 2018, the PRRA decision was vacated on the basis of information suggesting that the applicant is not gay, including that he had been in several relationships with women and that he was the father of one child in Canada. In November 2017, Citizenship and Immigration Canada ("CIC") had sent the

applicant a procedural fairness letter ("PFL") notifying him that consideration was being given to vacating the earlier PRRA decision. The PFL explained why this step was being considered, provided disclosure of relevant information obtained by CIC, and offered the applicant an opportunity to respond.

[14] The applicant did not provide any submissions or information in response. According to the applicant, he did not receive the PFL because he had failed to update his address and the PFL was sent to an address at which he no longer lived.

[15] On the present motion, the applicant does not dispute that he has been in romantic relationships with women since he has been in Canada. He even adds that he has a second Canadian-born daughter. Rather, his position is that he is now bisexual as opposed to gay and, as such, he is still at risk in Barbados.

[16] As will be discussed below, an important issue in this case is when the applicant first learned that the positive PRRA decision had been vacated.

[17] The applicant was directed to appear for an interview on June 18, 2018. It appears that the purpose of this interview was to provide the applicant with the May 2018 decision vacating the earlier PRRA decision. The applicant failed to appear for this interview and the CBSA issued a warrant for his arrest. The arrest warrant was executed on October 5, 2018, and the applicant was detained in custody. He was released on conditions on October 19, 2018.

[18] Also in October 2018, the applicant was reported for inadmissibility to Canada due to criminality on the basis of a conviction for an indictable offence, namely obstruct peace officer. A deportation order was made at that time. Since the earlier positive PRRA decision had been vacated, there was no legal impediment to the applicant's removal from Canada.

[19] On April 11, 2019, the applicant failed to appear for an interview and another warrant for his arrest was issued. The applicant was eventually arrested in May 2019. At least part of the reason the applicant was not removed at this time was the criminal charges the applicant was facing in relation to the June 2017 allegations.

[20] These criminal charges were resolved in July 2021 when the applicant entered pleas of guilty to break enter and commit an indictable offence (sexual assault) and forcible confinement. He was transferred to immigration detention on February 7, 2022, when he completed the sentences imposed for these offences. Arrangements for the applicant's removal were finally made and he was scheduled to be removed on March 7, 2022.

[21] On March 4, 2022, the applicant submitted a request to the CBSA for a deferral of his removal. As set out in his counsel's written representations, the request was based on two grounds. First, the applicant is currently receiving Methadone treatment, this drug is not available in Barbados, and a sudden cessation of the treatment would have serious adverse health consequences for him. Second, as a gay or bisexual man, the applicant would be at risk if he was removed to Barbados. In summary, counsel for the applicant submitted as follows:

> Given the serious health issues Mr. Acti faces without the availability of Methadone and other proper care and his being

> targeted as a gay or bisexual man as well as the risk to his life in Barbados, he would be at great risk and difficulty if he is removed at this time, we submit that it is not reasonable to remove him at this time and that a deferral of his removal is warranted.

[22] The deferral request was supported solely by a letter from counsel for the applicant together with a letter from a physician describing Methadone treatment generally and the potential adverse health effects of discontinuing Methadone abruptly, including the risk of relapse. Counsel also referred to the earlier positive PRRA decision. Counsel acknowledged in her letter that that decision had been vacated but maintained that "in actual fact, it was all true."

[23] In a decision dated March 5, 2022, an Inland Enforcement Officer with the CBSA refused the deferral request. With respect to the alleged unavailability of Methadone in Barbados, the Officer concluded as follows: "I do not find that sufficient evidence has been provided to this office to show that Methadone, an alternative or medical treatment is not available to Perry Acti upon his removal to his home country of Barbados." Indeed, the Officer's own research suggested that Methadone treatment is available in Barbados. With respect to the risk the applicant alleged he would face as a gay or bisexual man, the Officer concluded as follows: "Insufficient evidence has been submitted to this office demonstrating how Perry Acti will be targeted for being a member of the LGBTQI2S community. Insufficient evidence has been submitted to this office explaining the risk to Perry Acti's life upon his return to Barbados."

[24] The applicant has applied for leave and judicial review of this decision.

IV. ANALYSIS

A. *The Test for a Stay of Removal*

[25] The applicant seeks a stay of his removal from Canada pending the final determination of his application for leave and judicial review of the decision refusing to defer his removal. The purpose of interlocutory relief like an injunction or a stay is to preserve the subject matter of the litigation so that effective relief will be available when the underlying litigation is ultimately heard on the merits: see *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 24.

[26] The decision whether to grant or refuse interlocutory relief like this is a discretionary exercise: see *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 27. In determining whether the applicant is entitled to this relief, the fundamental question is whether the granting of a stay is just and equitable in all of the circumstances of the case. This will necessarily be a context-specific determination: see *Google Inc* at para 25.

[27] The test for obtaining an interlocutory stay of a removal order is well-known. The applicant must demonstrate three things: (1) that the underlying application for judicial review raises a "serious question to be tried;" (2) that he will suffer irreparable harm if the stay is refused; and (3) that the balance of convenience (i.e. the assessment of which party would suffer greater harm from the granting or refusal of the injunction pending a decision on the merits of the judicial review application) favours granting the stay. See *Toth v Canada (Employment and Immigration)* (1988), 86 NR 302, 6 Imm LR (2d) 123 (FCA). More generally, see also *Canadian Broadcasting Corp* at para 12; *Manitoba (Attorney General) v Metropolitan Stores*

Ltd, [1987] 1 SCR 110; and *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334. Each part of the test is important, and all three must be met for a stay to be warranted.

B. *The Test Applied*

(1) Serious Issue

[28] Typically the threshold for establishing a serious issue is a low one. An applicant only needs to show that at least one of the grounds raised in the underlying application for judicial review is not frivolous or vexatious: see *RJR-MacDonald* at 335 and 337; see also *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 at para 11 and *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 25.

[29] However, the Supreme Court of Canada has held that one exception to the usual rule that this low threshold applies in the first part of the test is "when the result of the interlocutory motion will in effect amount to a final determination of the action" (*RJR-MacDonald* at 338). In such circumstances, the moving party must meet an elevated threshold to be entitled to interlocutory relief.

[30] This is the case here. If granted, a stay of removal effectively grants the relief sought in the underlying judicial review application – namely, the setting aside of the refusal to defer removal: see *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FC 682, 2001 FCT 148 (CanLII) at para 10, and *Baron v Canada (Minister of Public Safety and Emergency*

Preparedness), 2009 FCA 81, [2010] 2 FCR 311 at paras 66-67 (per Nadon JA, Desjardins JA concurring) and para 74 (per Blais JA). In such circumstances the Court must undertake "a more extensive review of the merits" (*RJR MacDonald* at 339). In the specific context of a motion for a stay of removal, the judge must be satisfied, after a hard look at the grounds advanced, that at least one ground carries with it a likelihood of success in the underlying application: again, see *Wang* and *Baron*.

[31] If the applicant meets this elevated threshold at the first stage of the test, the anticipated result on the merits should be borne in mind when the second and third stages of the test are considered: see *RJR-MacDonald* at 339. If the applicant fails to meet this threshold, the request for a stay can be refused on this ground alone.

[32] The strength of the grounds for judicial review in this case must be assessed in light of subsection 48(2) of the *IRPA* – which provides that an enforceable removal order "must be enforced as soon as possible" – and the very limited discretion available to an Inland Enforcement Officer to defer enforcement: see *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 54-61; see also *Toney v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1018 at para 50 and *Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075 at paras 15-19.

[33] The strength of the grounds for judicial review must also be assessed in light of the fact that the standard of review of the Officer's decision is reasonableness: see *Lewis* at para 43. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis

and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). Thus, at this stage, the onus is on the applicant to establish that he is likely to be able to demonstrate in the underlying application that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[34] The applicant contends that the Officer's determinations with respect to risk in Barbados due to the lack of access to Methadone and due to the applicant's sexual orientation are unreasonable. I am not persuaded that the applicant's challenge to either of these determinations meets the elevated threshold that applies here.

[35] The Officer concluded that the applicant had presented insufficient evidence to support the request for a deferral. In my view, a reviewing court is unlikely to find this conclusion unreasonable. The simple fact is that the applicant provided little, if any, evidence to support his request.

[36] On this motion, counsel for the applicant emphasized the difficulty of compiling the necessary evidence given that the applicant is detained in custody and given the imminence of the removal date. However, this was not flagged as a factor for the Officer to consider when evaluating the deferral request and, as a result, the Officer cannot be faulted for not addressing it. Nor did the applicant request a brief deferral to afford him the time he required to compile the necessary materials. Instead, he was content to proceed on the scant information provided to the

Officer. While it is usually preferable – and sometimes essential – for an Officer's reasons refusing a deferral request to be less conclusory than the ones given here (cf. *Vavilov* at paras 133-35), given the paucity of evidence supporting the request, it is difficult to imagine what more the Officer could have said besides that what had been provided was insufficient to warrant deferral.

[37] Moreover, as the Officer observed in the decision, deferral of removal "is meant to be a temporary measure intended to alleviate exceptional circumstances." A reviewing court is unlikely to conclude that the Officer unreasonably determined that the applicant had failed to provide sufficient evidence to bring his case within the limited discretion under the law to defer removal.

[38] It also bears noting that while it may have been implicit in the deferral request that the applicant intended to attempt to re-open the issue of his entitlement to a PRRA, there was no explicit request to defer removal so that he could do so. It is therefore not surprising, and a reviewing court is likely to find that it was not unreasonable, that the Officer did not address this in the decision.

[39] The applicant's failure to establish that he has raised a serious issue in the underlying application for judicial review is a sufficient basis to dismiss the motion for a stay. However, in the particular circumstances of this case, in my view it is appropriate to address the other two parts of the test as well.

(2) Irreparable Harm

[40] Under the second part of the test for a stay, "the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicant['s] own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application" (*RJR-MacDonald* at 341). This is what is meant by describing the harm that must be established as "irreparable". It concerns the nature of the harm rather than its magnitude (*ibid.*).

[41] To establish irreparable harm, the applicant must show that there is "real, definite, unavoidable harm – not hypothetical and speculative harm" (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 24). He must adduce clear and non-speculative evidence that irreparable harm will follow if the stay is refused. Unsubstantiated assertions of harm will not suffice. Instead, "there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result" unless the stay is granted: *Glooscap Heritage Society* at para 31; see also *Canada (Attorney General) v Canada (Information Commissioner)*, 2001 FCA 25 at para 12; *International Longshore and Warehouse Union, Canada v Canada (Attorney General)*, 2008 FCA 3 at para 25; *United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200 at para 7.

[42] That being said, the assessment of the threshold the applicant must meet to discharge his onus under this part of the test must take into account that the injunctive relief is directed to a harm which has not happened yet but is only apprehended and expected to occur at some future

time if the applicant is removed from Canada. As Justice Gascon stated in *Letnes v Canada (Attorney General)*, 2020 FC 636, "The fact that the harm sought to be avoided is in the future does not necessarily make it speculative. It all depends on the facts and the evidence" (at para 57). See also *Delgado v Canada (Citizenship and Immigration)*, 2018 FC 1227 at paras 14-19; and *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 136.

[43] The risk of harm in Barbados the applicant relies on under the second part of the test is the same as that assessed by the Officer on the deferral request. As Justice Grammond observed in *Gill*, in such a case, "given that the CBSA officer's role is to assess the harm flowing from the removal of the applicant, the first two prongs of the *RJR* test overlap significantly" (at para 22). This overlap can cut both ways. On the one hand, the Court may be persuaded that the Officer's determination deserves some weight – perhaps even significant weight – in its own independent assessment of irreparable harm. On the other hand, if persuaded under the first part of the test that there is a serious flaw in the Officer's determination, the Court can be expected to give much less weight, if any, to that determination in its assessment of irreparable harm.

[44] As I have already explained, I have not been persuaded that there is a serious question raised regarding the reasonableness of the Officer's decision. On the contrary, I find that the Officer's conclusions are reasonably supported by the available evidence. Consequently, I am prepared to give some weight to the Officer's conclusion that the applicant would not be at risk of irreparable harm if he is removed to Barbados.

[45] On the other hand, there is little to support the applicant's argument that he would be at risk in Barbados. The applicant has not provided any evidence that he would not be able to access Methadone treatment there. The Officer found that "there appears to be several clinics in Barbados" that will offer the medical treatment the applicant requires for his drug addiction. One of these is the Strong Hope clinic. On this motion, the applicant filed a screenshot of an email dated March 7, 2022, from someone who is said to be connected somehow to Strong Hope. The email states that the facility "is no longer operational." No affidavit evidence was provided to authenticate this email and, as a result, I am not prepared to give it any weight. In any event, even assuming for the sake of argument that Strong Hope is no longer operational, the applicant has not provided any basis for concluding that there are no other resources in Barbados that could provide him with the treatment he requires.

[46] Similarly, there is little to support the applicant's argument that, as a gay or bisexual man, he would be at risk in Barbados.

[47] The only support the applicant offers for this assertion is the positive 2006 PRRA decision. That decision, however, was vacated in 2018. Counsel for the applicant submits that I should accept the correctness of the 2006 PRRA decision yet she provides no basis for me to completely disregard the 2018 decision that vacated it.

[48] I acknowledge that the May 2018 decision to vacate the positive PRRA decision was made without any input from the applicant. He claims that he never received the November 2017 PFL. If this is so, the applicant has only himself to blame. And even if this is

so, I am satisfied that the applicant was made aware of the vacation decision shortly after it was made.

[49] The applicant was in regular contact with the CBSA from October 2018 onwards, including being arrested several times. Absent any evidence to the contrary, I find that the applicant would have been informed about the vacation decision. At the very least, there is no doubt that the applicant was aware of the decision in February 2021. As reflected in notes made by CBSA officers who had attempted to interview the applicant in custody then, the applicant spoke about his unhappiness with the decision to vacate the earlier PRRA. Significantly, the applicant's affidavit in support of the stay motion is silent about when he first learned that the PRRA had been vacated. The affidavit is also silent about why he took no steps to address what he contends is an erroneous determination until the eve of his removal despite knowing about the decision for over a year or, probably, longer.

[50] In such circumstances, there is no basis for me to simply disregard the 2018 decision to vacate the earlier PRRA decision or to doubt the soundness of its conclusions. As a result, I give no weight to the earlier positive decision.

[51] Further, and in any event, the earlier PRRA decision was based on conditions in Barbados in 2006. The applicant has provided no evidence to support his assertion that the same adverse conditions continue to prevail today, more than 15 years later.

[52] In short, the applicant makes nothing but unsubstantiated assertions about the risks he would face in Barbados. This is insufficient to meet the second part of the test for a stay.

(3) Balance of Convenience

[53] Under the third part of the test, the applicant must establish that the harm he would suffer if the stay is refused is greater than the harm the respondents would suffer if the stay is granted. This weighing exercise is neither scientific nor precise: see *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2020 FCA 181 at para 17. But this is not to say it is unprincipled. On the contrary, it is at the heart of the determination of what is just and equitable in the particular circumstances of the case at hand.

[54] At this stage, it is important to bear in mind that, while each part of the test is important, and all three must be met, they are not discrete, watertight compartments. Each part focuses the Court on factors that inform its overall exercise of discretion in a particular case: see *Wasylynuk* at para 135. The test should be applied in a holistic fashion where strengths with respect to one factor may overcome weaknesses with respect to another: see *RJR-MacDonald* at 339; *Wasylynuk* at para 135; *Spencer v Canada (Attorney General)*, 2021 FC 361 at para 51; and *British Columbia (Attorney General) v Alberta (Attorney General)*, 2019 FC 1195 at para 97 (rev'd on other grounds 2021 FCA 84). See also Robert J Sharpe, "Interim Remedies and Constitutional Rights" (2019) 69 UTLJ (Supp 1) at 14.

[55] In assessing the balance of convenience, the impact of refusing the stay on the applicant's private interests must be considered. Since this case involves actions by a public authority, the public interest must also be taken into account: see *RJR-MacDonald* at 350.

[56] The applicant is subject to a valid and enforceable removal order. This order was made pursuant to statutory and regulatory authority. It is therefore presumed that it was made in the public interest. The effective enforcement of this order is also presumed to be in the public interest. Further, as noted above, under subsection 48(2) of the *IRPA*, a removal order "must be enforced as soon as possible" once it is enforceable.

[57] It is also presumed that an action that suspends the effect of an order made in the public interest (as would an interlocutory stay) is detrimental to the public interest: see *RJR-MacDonald* at 346 and 348-49.

[58] Further, there is a strong public interest in the removal of someone like the applicant who is inadmissible to Canada because of criminality: see, among many other cases, *Thanabalasingham v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 486 at paras 17-19. The applicant's persistent recidivism and disregard for Canadian law, including the serious criminal offences committed in 2017 (to which he pled guilty in 2021), weigh heavily in the respondents' favour on this motion. There is nothing in the record before me to mitigate the applicant's blameworthiness for his conduct, even if most (although certainly not all) of his offences fall at the lower end of the scale of seriousness. I accept the applicant's evidence that he became addicted to heroin and is now taking Methadone. There is, however, no

evidence from the applicant linking his criminal conduct to his drug addiction. Unhelpfully, the applicant's only comment about his criminal history in his affidavit is that it "looks worse than it is."

[59] The applicant's prolonged and repeated failures to comply with his obligations under Canadian immigration law also weigh heavily in the respondents' favour on this motion.

[60] While these factors all weigh against granting a stay, they are not necessarily determinative. In principle, they could be outweighed if the moving party has met the other two parts of the test. For example, there is a clear public interest in ensuring that justice is done in the underlying application for judicial review. This includes providing an applicant with a meaningful remedy and effective relief should they succeed in their challenge to the refusal to defer their removal. This is an especially important consideration when, as in this case, an elevated standard is applied under the first part of the test. As noted above, the anticipated result on the merits should be borne in mind at this stage of the test. If it is expected to be favourable to an applicant, this can weigh heavily in favour of a stay. Equally, private and public interests also coincide when it comes to avoiding exposing an applicant to a risk of irreparable harm should they be removed. Thus, having met the second part of the test can also be expected to weigh heavily in an applicant's favour when assessing the balance of convenience.

[61] In the present case, however, neither of these factors favour the applicant. As I have already explained, the grounds of review advanced do not meet the elevated threshold applicable here. Consequently, there is little risk of remedial injustice to the applicant if he is removed.

Nor has the applicant established that he is at risk of irreparable harm if he is removed to Barbados.

[62] Given the strong public interest favouring enforcement of the removal order and the absence of sufficient countervailing considerations, the balance of convenience favours the respondents and, as a result, the applicant has not met the third part of the test.

V. CONCLUSION

[63] For these reasons, the applicant’s motion for a stay of his removal is dismissed.

ORDER IN IMM-2017-22

THIS COURT ORDERS that

1. The request to remove the Minister of Citizenship and Immigration as a respondent is refused without prejudice to the right of the respondents to renew it at a future date.
2. The interim stay of the applicant's removal ordered on March 4, 2022, is vacated.
3. The motion for a stay of removal pending the final determination of the underlying application for leave and judicial review is dismissed.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2017-22
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