

Date: 20070807

Docket: IMM-2353-06

Citation: 2007 FC 823

Ottawa, Ontario, August 7, 2007

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**NAGENDRAR MARUTHALINGAM
PONNAMMAH MARUTHALINGAM**

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicants, Nagendrar Maruthalingam and Ponnammah Maruthalingam, were ordered to report for deportation to Sri Lanka on May 12, 2006. On May 4, 2006, an Enforcement Officer refused the Applicants' request that their removal from Canada on May 12, 2006 be deferred.

[2] After the deferral request was denied, the Applicants then filed a notice of application for leave and judicial review of the Enforcement Officer's decision and brought a motion for a stay of

their removal until the Court had disposed of the application for judicial review. By Order dated May 8, 2006, the motion for a stay was granted. As a result, the Applicants were not removed on May 12, 2006. Thus, by the time this judicial review application was heard by this Court, the serious issues identified in the stay motion were, in practical terms, academic.

[3] This case is on all fours with the decision of Justice Frederick Gibson in *Higgins v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 516, 2007 FC 377 where a similar application was dismissed on the ground of mootness (see also *Solmaz v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 819). For the reasons expressed by Justice Gibson, I conclude that this application for judicial review should be dismissed.

[4] At this point in time, as a result of the stay, there is no effective removal order. (In passing, I note that this fact would not change even if I were to allow the judicial review application.) Accordingly, a removal could only take place if a new removal order is issued or new travel arrangements are made and communicated to the Applicants. In this regard, I endorse the comments of Justice Gibson on the continuing rights of the Applicants (*Higgins*, at para. 18):

Further, it is beyond question that, if the Respondent remains determined to remove the Applicant before his humanitarian and compassionate grounds application is determined, it would be open to the Applicant to request a new deferral of removal, based on all of the current circumstances and evidence and, if that request is denied, a further application for leave and for judicial review would be open to him together with a further motion before this Court seeking a stay of removal pending the final determination of that new application for leave and for judicial review.

[5] In seeking to have me consider the merits of this application, the Applicants argue that failing to rule on the substance of the application may result in repetitive stay motions. I do not agree. Once the initial removal date has passed without removal, new arrangements for deportation must be made. The right of an applicant to request a deferral and seek judicial review and a stay of the refusal of an enforcement officer to defer removal will arise whenever new arrangements are made. In cases such as that before me, whether this Court has ruled on the merits of the original deferral request or not does not change this right.

[6] The Applicants raised the issue of whether the Court should still rule that the issue was moot where it was asked to stay the removal until the outcome of another process. In this decision, I am not opining on whether the Court could grant a remedy to the Applicants on a free-standing basis. More specifically, I am not expressing a view on whether this Court could order that the Applicants not be removed until the final determination of their outstanding application on humanitarian and compassionate grounds. There is no need to address this argument; such a remedy was not sought by the Applicants whose sole request was that the matter be referred to another enforcement officer for reconsideration.

[7] The Applicants request that I certify the same question as that certified by Justice Gibson in *Higgins*, above (by Order dated April 17, 2007). Although the Respondent opposes the certification of any question, I believe that the issue of mootness is one of general importance that is determinative of this application for judicial review. Accordingly, I will certify the following question:

Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed; and
2. The following question is certified:

Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?

“Judith A. Snider”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2353-06

STYLE OF CAUSE: NAGENDRAR MARUTHALINGAM ET AL v.
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario.

DATE OF HEARING: July 24, 2007

**REASONS FOR ORDER
AND ORDER:** Snider J.

DATED: August 7, 2007

APPEARANCES:

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Mr. Bernard Assan FOR THE RESPONDENT

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