

**Date: 20070926**

**Docket: IMM-3783-07**

**Citation: 2007 FC 970**

**Ottawa, Ontario, September 26, 2007**

**PRESENT: The Honourable Mr. Justice Mandamin**

**BETWEEN:**

**MOHSIN HAFEEZ MUGHAL**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] **UPON** motion, dated the 19<sup>th</sup> day of September, 2007, on behalf of the Applicant for an Order granting the stay of the deportation of the Applicant that is to take place on Thursday, September 27, 2007. The Applicant is set to be removed to the United States.

[2] **AND UPON** review of the parties' motion records;

[3] **AND UPON** hearing submissions of counsel for the applicant and respondent on September 24, 2007 in Toronto;

[4] The applicant seeks an order for a stay of removal to the United States scheduled until his Application for Leave and, if Leave is granted, until such time as the Judicial Review is finally disposed of by this Court.

[5] The applicant is a citizen of Pakistan who entered Canada from the United States on July 5, 2002. He made a claim for refugee status at the border. He has been married to Shamin Ara Orpieeta, a Canadian citizen since January 13, 2006 and is stepfather to her son.

[6] The applicant's refugee claim was denied on July 14, 2005 and his Pre-Removal Risk Assessment was found to be negative on August 3, 2007. He submitted in Canada Spousal Application for Permanent Residence on September 6, 2007. He is scheduled to be deported on September 27, 2007 and his request to defer removal was denied on September 14, 2007.

### **The Test for Granting Interlocutory Relief**

[7] The Supreme Court of Canada test for granting interlocutory relief in a stay proceeding may be described as follows:

- a. There must be a serious question to be tried in the underlying proceeding;
- b. There must be irreparable harm to the applicant if the stay of removal is not granted;  
and
- c. The balance of convenience must favour the applicant.

*RJR MacDonald Limited v. Canada (Attorney General)*, [1994] 1 S.C.R. 31; *Toth v. Canada (Minister of Employment and Immigration)* (1988) 86 N.R. 302 (F.C.A.).

[8] This application is made at a late stage in the immigration process, arising from a removal officer's refusal to defer removal, and thus, instead of the lower standard of a "serious issue" test set out in *RJR MacDonald* supra, a higher standard relating to whether his underlying application, the request for a judicial review of the removal officer's decision, is to be assessed. The Court must examine whether the underlying application is likely to succeed on its merits: *Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148.

### **Serious Issue**

[9] The applicant raised a number of issues with the removal officer.

[10] The applicant asserted that he remain with and provide needed to support his spouse and stepson. The separation does not raise a serious issue as it is a normal consequence of removal rather than the more compelling consideration required: *Wang*, supra.

[11] The applicant says he will be detained in the United States and ultimately deported to Pakistan. However, the removal to the United States is a consequence of the applicant's own choice not to prepare for that contingency. Any detention in the United States would be transitory pending deportation to Pakistan and the applicant's refugee and PRRA processes found no risk to him should he be returned to Pakistan.

[12] The applicant stated his stepson needed his guidance. However, the stepson had his mother and biological father to provide any necessary support. As the stepson is seventeen and about to enter adulthood, no serious issue arises.

[13] The applicant asserts a serious issue arises on his removal before the date he is summoned to Court to address pending criminal charges. The summons is an appearance notice issued by a peace officer. Section 50(a) of the IRPA specifies that a removal order is stayed if a decision is made in a judicial proceeding. The issuance of an appearance notice by a peace officer is not a judicial proceeding and s.50 (a) is therefore not engaged.

[14] The applicant made a Spousal Application for Permanent Residence on September 6, 2007, approximately 20 months after his marriage and just 20 days before his removal date. The application cannot be considered to have been made in a timely fashion. Since the applicant may make an out-of-country spousal application, no serious issue arises in respect of the spousal application.

### **Irreparable Harm**

[15] The applicant fails on the question of irreparable harm.

[16] There is no irreparable harm in the fact that the applicant faces deportation to the United States. The Federal Court of Appeal found the United States' institutions have a democratic system of checks and balances and, in particular, an independent judiciary and guarantees of due process.

No irreparable harm arises on the applicant having to engage the US immigration system: *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at ¶46.

[17] As noted, the issue of persecution in Pakistan was addressed by the Refugee Board and the PRRA processes which both concluded the applicant is not at risk on return to Pakistan. No issue of irreparable harm arises on this basis.

[18] Finally, the stepson would still have the support of his mother and biological father on the applicant's removal. Again the issue of irreparable harm does not arise.

### **Balance of Convenience**

[19] In the circumstances of this case, the balance of convenience favours the respondent Minister who is responsible for the compliance with the statutory requirements of the immigration legislation.

### **Conclusion**

[20] For the above reasons, the application for a stay of execution of the removal order is dismissed.

**ORDER**

**THIS COURT ORDERS that** the motion for a stay of execution of the removal order is dismissed.

"Leonard S. Mandamin"

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Judge

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-3783-07

**STYLE OF CAUSE:** MOSHIN HAFEEZ MUGHAL v. MPSEP

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 24, 2007

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

**DATED:** September 26, 2007

**APPEARANCES:**

Krassina Kostadinov FOR THE APPLICANT

John Provart FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Waldman & Associates  
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR THE RESPONDENT