Date: 20071004

Docket: IMM-3964-07

Citation: 2007 FC 1098

Toronto, Ontario, October 4, 2007

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

MIRIAM ELISABETH PEREA DE FARIAS,
MARCELO FABIAN FARIAS and
MATIAS EZEQUIEL FARIAS

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

UPON motion, dated the 26th day of September 2007, on behalf of the applicants for an Order staying the execution of the deportation order of the applicants now scheduled to be executed on October 11, 2007;

[1] The applicants seek an order for a stay of removal to Argentina until their application for leave, and if granted, for judicial review of the refusal to grant permanent residence in Canada on humanitarian and compassionate grounds (H&C) is dealt with.

[2] The applicants are a family consisting of a husband and wife and two children, a 14 year old son and a 6 year old daughter. The daughter was born in Canada. The applicants say they fled Argentina because of a vendetta against them by a family involved in illegal drug trafficking. They came to Canada in 1999 and applied for refugee protection. That application was rejected by the Immigration and Refugee Board (IRB) in December 2003. They applied for permanent residence within Canada based on humanitarian and compassionate grounds which was denied in August 2007. They have applied for leave and judicial review of the H&C decision and are now applying for a stay of the removal order scheduled for October 11, 2007.

The Test for Granting Interlocutory Relief

[3] The test for granting injunctive relief in a stay proceeding was set out by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.) and may be described in relation to the applicants as follows:

a. the applicants must demonstrate that there is a serious issue to be tried;

b. the applicants would suffer irreparable harm if the requested order was not granted; and

c. the balance of convenience, considering both parties, favours the applicants.

[4] The test is conjunctive, that is, every branch of the test must be satisfied to warrant granting a stay of their removal.

[5] The core of this application is the question of irreparable harm. The applicants have said they will suffer irreparable harm in that:

a. the applicants will face personal risk as a result of the continuation of the vendetta;
b. the children will suffer as a result of a removal to Argentina;
c. the applicants' removal will result in expense and loss of their Canadian business and jeopardize their capacity to support themselves;
d. the applicants' removal will adversely affect their ability to continue with their application for judicial review and impact their sponsorship by Canadian family members.

Personal Risk

[6] The applicants expressed concern for their personal safety because of a vendetta against them. Absent evidence to the contrary, nations are presumed to be capable of protecting their citizens. *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, S.C.J. No. 74

[7] The affidavit of the applicant Miriam Perea De Farias reveals that the principal person responsible for the vendetta was convicted and incarcerated for four years during which period the incidents ceased. Her affidavit also discloses that the two individuals responsible for what she says were deliberate motor vehicle attacks were charged and convicted. Given these outcomes and the documentation showing the availability of adequate state protection in Argentina, I do not find that the applicants are exposed to irreparable harm for want of state protection in Argentina.

Best Interests of the Children

[8] The applicants contend that their children will be harmed as a result of the return to Argentina and the consequent disruption of their education. However, the best interests of children usually involves remaining with their parents. *Owusu v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 139, 2003 FCT 94

[9] The 14 year old son was six when the family left Argentina and speaks Spanish. Given his eventual success in adapting to Canadian education, it would appear that he can be expected to similarly adapt to school in Argentina. The six year old daughter is Canadian-born but because of her tender years would likely remain with her parents. She is just starting school. Both children have the strong support from their parents and with that support can be expected to adjust to new circumstances in Argentina.

Economic Considerations

[10] The applicants contend their removal will result in expense and the loss of their business and thus jeopardize their ability to support themselves. In *Melo*, Pelletier J. said this of irreparable harm on deportation:

> These are all unpleasant and distasteful consequences of deportation. But if the phrase irreparable harm is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak. There is nothing in Mr. Melo's circumstances which takes it out of the usual consequences of deportation. *Melo v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 403 (underlining added)

[11] The applicants have demonstrated that they are resourceful and have business skills and experience. Moreover, they have family and friends in Argentina who have stayed in contact with them who would likely to provide support.

[12] The dislocation on removal they would experience is not different than that which would ordinarily arise when the refugee immigration process comes to a negative outcome.

Current and Possible Future Applications

[13] The applicants are entitled to continue with their application for leave and judicial review from outside Canada. Moreover, they are may also apply to immigrate to Canada with the support of family members who live in Canada.

[14] I find that the applicants have not proven that they will suffer irreparable harm if they are removed to Argentina. Consequently they have not met the necessary requirement for securing a court ordered stay of their removal.

Conclusion

[15] The application for a stay of the execution of the deportation order is hereby dismissed.

ORDER

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

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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