

Date: 20071115

Docket: IMM-4700-07

Citation: 2007 FC 1189

BETWEEN:

LAURA CAROLINA LOPEZ DE DONAIRE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

HUGHES J.

[1] The Applicant is an Argentinean single mother of four children, three born in Argentina of an abusive father, the fourth born in Canada, fathered by another man with whom the Applicant has no further relationship but who continues to have a relationship with the child. The Applicant is a hard working person trying to support her children but has limited education and engages only in low paying work. She has been ordered to be removed from Canada and seeks a stay of that removal.

[2] Sympathetic as the Applicant's situation may be, she has for almost three years avoided a previous removal order and an outstanding warrant for her arrest. Until forced to do so, the

materials provided by her solicitors on this motion, who were also her solicitors on the previous removal, failed to disclose these circumstances to the Court.

[3] The Applicant failed in making a refugee claim and was ordered to be removed from Canada to the United States which was the country from which she entered. On June 4, 2004, the Applicant, along with her common-law partner of the time, and her three Argentine born children brought an application for a stay of removal. The same law firm that represents her now represented her then. The motion for stay was dismissed by this Court on June 7, 2004.

[4] This Applicant failed to appear for removal on June 8, 2004 and did not report to the authorities. A warrant for her arrest was issued. It was not until November 3, 2007 when, after a routine traffic violation, the Applicant's whereabouts were discovered. She was detained and, at the time, this motion for stay removal was heard, remains in detention. The whereabouts of her four children remains undisclosed.

[5] In the motion material provided to the Court initially, no disclosure was made of the fact of the previous failed motion to stay removal, or the arrest warrant, or the detention or the fact that the Applicant remains in detention and the whereabouts of her children undisclosed.

[6] This motion was brought some eleven days after the Applicant had been placed in detention and heard one day before the date scheduled for removal. No persuasive evidence has been given as to why the motion could not have been prepared and filed two or three days after the Applicant was

detained on November 3, 2007 even though, apparently, the date scheduled for removal had not yet been fixed.

[7] An applicant seeking equitable relief, such as a stay, on an interlocutory basis such as a motion now before the Court, has a duty, as does Applicant's counsel, to make full and frank disclosure of all relevant facts including those facts that may be detrimental to their case. It is immaterial whether the other side may know of the facts, what is important is that the Court knows all relevant facts. Here, a partial disclosure was made only in an affidavit of the Applicant submitted moments before the hearing if this matter was scheduled to begin and only after the Respondent had submitted its memorandum, by way of a letter and affidavit given the short notice, disclosing the relevant facts to the Court for the first time.

[8] The Applicant, in seeking a stay of removal, submits that it has had an outstanding Humanitarian and Compassionate application for several months. This is the second such application, the first was refused. Counsel for the Applicant says the second is "much stronger" than the first, largely because the Applicant has remained in Canada and become "established" longer. This overlooks the fact that for almost the last three years, the Applicant has avoided removal despite an outstanding arrest warrant.

[9] Applicant's counsel says that the Applicant will suffer irreparable harm if removed to Argentina via the United States. Argument was made that the abusive husband may seek out the Applicant in Argentina but no substantive evidence as to a real risk of this happening has been led.

[10] As to the balance of convenience, no substantial basis for favouring the Applicant has been made out. To the contrary, the failure of the Applicant and the Applicant's counsel to make full and frank disclosure of all relevant facts militates against the grant of equitable relief. As Gibson J. of this Court said in an Order dated February 9, 2007 in *Haynes v. Canada (MPSEP)*, IMM-354-07:

AND the Court further finding that the Applicant approaches the Court equitable relief without providing full disclosure with respect to her immigration history in Canada and, more particularly, by failing to disclose that, prior to her most recent entry into Canada, she had entered Canada on the 12th of July, 1992 on a short term visitor's visa, that she substantially overstayed the term of that visa and worked in Canada, that she was deported from Canada on the 7th of October, 2000, that when she then returned to Canada in March 2001, she did so illegally and only came to the attention of Canadian immigration authorities when she was arrested on the 5th of June, 2004 resulting in the issuance of a deportation order against her on the 17th of September 2004, with the result that the Court cannot find that the balance of convenience favours the granting of a stay of removal in her favour over the interests of the Respondent and of the Canadian public in general, notwithstanding that her removal may entail substantial risk of irreparable harm for herself and her infant child;

[11] Therefore, the motion for a stay is dismissed.

[12] This is an exceptional case in which an award of costs is warranted. I fix them at the amount of \$500.00. I am aware that the Applicant may not have the means to pay such costs and the Respondent may not demand them. Applicant's solicitors may even consider paying such costs on the Applicant's behalf since the solicitors bear a responsibility to ensure full disclosure.

“Roger T. Hughes”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4700-07

STYLE OF CAUSE: LAURA CAROLINA LOPEZ DE DONAIRE v.
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 14, 2007

REASONS FOR ORDER BY: HUGHES J.

DATED: NOVEMBER 15, 2007

APPEARANCES:

Daniel Kwong FOR THE APPLICANT

John Provart FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green & Spigel
Barristers & Solicitors
Toronto, Ontario FOR THE APPLICANT

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