

Date: 20080402

Docket: IMM-1447-08

Citation: 2008 FC 416

Toronto, Ontario, April 2, 2008

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**MUHAMMAD ASLAM
MAH RUKH ASLAM
MUHAMMAD AWON ASLAM
MUHAMMAD HASEEB ASLAM
MUHAMMAD ZAIN ASLAM**

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER AND ORDER

[1] There are two competing motions before the Court in this proceeding. The first is a motion by the Applicants for a stay of their deportation to Pakistan which is scheduled for April 15, 2008. The Applicants' underlying application for leave and for judicial review is a challenge to a decision deemed by the Applicants to have been made by an Enforcement Officer refusing their request for a deferral of deportation. Notwithstanding the fact that no decision has actually been made by the Respondent with respect to this deferral request, the Applicants allege that it is, or will be, a

negative decision made unlawfully and unreasonably and, inter alia, without appropriate regard to the interests of the affected children.

[2] The Respondent has countered the Applicants' motion with a motion to strike the underlying application for leave and for judicial review on the ground that, in the absence of an actual decision, the application cannot be sustained.

[3] The facts which underlie these motions are not in dispute. The Respondent initiated the process for the removal of the Applicants in 2006. The Applicants applied for a pre-removal risk assessment in July, 2006 and that application was denied on September 13, 2006. An application for judicial review from that decision was denied by this Court on December 19, 2007. On February 27, 2008 the Applicants were served with a Direction to Report for Removal on April 15, 2008.

[4] On March 10, 2008, counsel for the Applicants wrote to the Respondent requesting a deferral of their removal and demanding a decision by noon on March 19, 2008. The letter went on to state that a failure to respond by the stipulated deadline would be treated by the Applicants as a "constructive refusal" which would support a motion for a stay. Apparently, no response was received and the Applicants' motion for a stay was filed on March 27, 2008 and argued before me on March 31, 2008.

[5] The Respondent has filed an affidavit by Karen Mendonca indicating that the Applicants' deferral request is "sitting in queue" with other outstanding deferral requests and that "every effort is made to provide a decision in a timely manner."

[6] The Applicants' motion was initially framed as a request for a full stay of deportation on the merits until the final disposition of their application for leave and for judicial review. When the matter was argued before me the claim to relief was reduced to a temporary stay of removal for two weeks following the delivery of the deferral decision. Counsel for the Applicants argued that this relief was justified by fairness and due process concerns.

[7] In support of their claim to relief the Applicants rely on the Order of Justice Frederick Gibson in *Katwaru v. The Minister of Public Safety and Emergency Preparedness*, IMM-475-07 (unreported) and the decision of Justice James Russell in *Ragunathan v. The Minister of Public Safety and Emergency Preparedness*, 2006 FC 963. In *Katwaru*, Justice Gibson was dealing with a motion for a stay where a deferral decision had not been made and where the deportation was scheduled for the following day. Not surprisingly he granted a temporary stay for 72 hours following the rendering of the pending decision and the motion was otherwise adjourned *sine die*.

[8] In *Ragunathan* the motion for a stay of deportation was brought before the rendering of the deferral decision but it was argued after the decision was made. Justice Russell, therefore, had before him an actual decision and relevant submissions by the parties. In my view, the ruling in *Ragunathan* should be confined to its own set of unique facts and it should not be extended to a situation like this one where no decision has yet been made. Where the Respondent fails or refuses to make a timely decision, the type of temporary relief granted by Justice Gibson in *Katwaru* is available and, of course, this Court has the resources to deal with such matters on an urgent basis when required. In my view, however, the Applicants' motion for temporary relief is premature. The Applicants' scheduled deportation is two weeks away. It is a waste of scarce judicial resources

to bring this motion where an expectation remains that a timely decision will be rendered and where the outcome of that process is presently unknown.

[9] The Court has enough urgent stay motions before it dealing with actual decisions that it cannot be burdened with premature motions of this sort. In appropriate cases where fairness and due process require a temporary stay order, the Court has the authority to preserve the status quo until a decision has been made or to allow a party enough time to put a proper evidentiary record before the Court. It is not appropriate for an applicant to deem a decision to have been made because the Respondent has failed to respond by a deadline which the applicant unilaterally imposed. The Respondent is under no legal obligation to respond to such demands and it is entitled to process these types of requests in a fair and orderly manner. Indeed, the kinds of demands for early deferral decisions that applicants appear now to be making would, if followed by the Respondent, create an unfairness for those already in the queue who would thereby have their deferral requests delayed in favour of those coming later into the system. In other words, it is up to the Respondent to prioritize these matters in a way that is fair to all and efficient and it is unreasonable that a few litigants should seek to elevate their interests over others who may thereby be adversely affected.

[10] Although the Respondent has requested costs, I do not think that this is an appropriate case for such an award. However, if these types of premature motions continue to be brought, awards of costs may be an appropriate means of curbing the practice.

[11] Having dismissed the Applicants' stay motion no utility would be served at this time by dealing with the Respondent's dismissal motion and that motion will be dismissed by separate Order.

ORDER

THIS COURT ORDERS that this motion is dismissed.

“R.L. Barnes”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1447-08

STYLE OF CAUSE: MUHAMMAD ASLAM, MAH RUKH ASLAM,
MUHAMMAD AWON ASLAM, MUHAMMAD HASEEB
ASLAM, MUHAMMAD ZAIN ASLAM v.
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 31, 2008

**REASONS FOR ORDER
AND ORDER BY:** BARNES J.

DATED: April 2, 2008

APPEARANCES:

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Lisa Hutt FOR THE RESPONDENT

SOLICITORS OF RECORD:

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