Date: 20081028

Docket: IMM-424-08

Citation: 2008 FC 1201

BETWEEN:

KAREN RACQUEL HENRY

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER

GIBSON D.J.

Introduction

[1] Ms. Karen Racquel Henry (the "Applicant") is a citizen of Grenada. She arrived in Canada from Grenada in March of 2001. She unsuccessfully claimed Convention refugee or like status. A Pre-Removal Risk Assessment determined her not to be at risk if she were returned to Grenada. Applications for leave and judicial review of both the Convention refugee determination and the PRRA assessment were both dismissed at the leave stage.

[2] The Applicant was scheduled for removal from Canada in May of 2007. Despite the fact that she had obtained a passport for her young Canadian-born son so that he could travel with her, she did not attend for removal.

[3] On the 26th of January, 2008, the Applicant was arrested and placed in detention pending her rescheduled removal which was set for the 30th of January. She applied for deferral of her removal. That application was denied and the judicial review of that denial underlies the hearing in this matter held at Toronto on the 22nd of October, 2008.

[4] Justice De Montigny granted a stay of removal of the Applicant from Canada pending the determination of the underlying application for judicial review. In effect, he granted the relief that the Applicant was seeking by her application for judicial review. At the hearing of this matter, mootness was raised as a preliminary issue. Counsel for both the Applicant and the Respondent urged that the judicial review is not moot and that, if the Court determines it to be moot, the Court should nonetheless hear and determine the application and provide a decision and reasons as guidance for both removal officers and counsel.

Analysis

[5] The Applicant's principle arguments center on the best interests of the Applicant's Canadian-born child, the child's and her own health issues and the availability of adequate and affordable medical care in Grenada for them both, and the lack of resolution to the issues of custody of her son as between herself and the boy's father. Some nine months have elapsed since the

scheduled removal date which may have been effectively utilized to clarify or resolve the issues. Quite properly, there is no evidence before the Court as to whether the issues have effectively been dealt with. In effect, the granting of the stay of removal has provided both the Applicant and the Respondent with a substantial opportunity to clarify or resolve the issues.

[6] There is substantial and recent authority from this Court, some of which is my own, to the effect that in circumstances such as those here before the Court, the application for judicial review is moot notwithstanding that a substantial issue may well remain outstanding between the parties[1]. If such an issue is outstanding, the factual underpinning on which the issue might be determined is not the same as the factual underpinning that is here before the Court.

[7] In the foregoing circumstances, I am satisfied that this application for judicial review is moot.

[8] The remaining question is whether the Court should exercise its discretion to decide this application notwithstanding that it is moot. Once again, counsel urged that I should do so. I decline to do so. Considering the relevant criteria (see: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342), there does remain, in a general sense, an adversarial relationship between the parties, but I do not think the interests of judicial economy would be served by deciding this case. The law governing the discretion available to enforcement officers is well-settled. (See: *Kovacs v. Canada*

[1] See, for example : *Higgins v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 377; *Baron et al v. Canada (Minister of Public Safety and Emergency Preparedness*), 2008 FC 341; and *Palka et al v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 342.

(Minister of Public Safety and Emergency Preparedness), 2007 F.C. 1247). I am satisfied that the facts before me do not present an occasion to advance the law or provide guidance to other officers and to counsel even though, to do so, would not take the Court outside of its proper role.

Conclusion

[9] For the foregoing brief reasons, this application for judicial review will be dismissed. Counsel were advised of the outcome at the close of hearing. Neither counsel recommended certification of a question. The issue of mootness of applications for judicial review such as this is now before the Federal Court of Appeal. In such circumstances, I am not satisfied that any purpose would be served by certifying a question in this particular matter. No question will be certified.

"Frederick E. Gibson"
Deputy Judge

OTTAWA, ONTARIO
October 28, 2008

FEDERAL COURT

SOLICITORS OF RECORD

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