

Federal Court



Cour fédérale

**Date: 20100713**

**Docket: DES-6-08**

**Citation: 2010 FC 742**

**Ottawa, Ontario, July 13, 2010**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**IN THE MATTER OF a certificate signed pursuant  
to section 77(1) of the *Immigration and Refugee  
Protection Act (IRPA)*;**

**AND IN THE MATTER OF the referral of a  
certificate to the Federal Court pursuant to  
section 77(1) of the *IRPA*;**

**AND IN THE MATTER OF  
MAHMOUD ES-SAYYID JABALLAH**

**SUPPLEMENTARY REASONS FOR ORDER**

[1] On May 11, 2010, reasons issued (2010 FC 507) with respect to, among other things, Mr. Jaballah's request for relief under subsection 82(4) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. Mr. Jaballah had sought changes to his current conditions of release, including the right to remain in his home without a supervisor. The conditions were varied in some respects.

[2] However, with respect to Mr. Jaballah's request to not be supervised while in his residence, the Court found necessary evidence to be lacking. This was explained the following

way at paragraphs 163 to 165 of the reasons:

163. What is unknown is whether there is internet access (see: Transcript December 14, 2009 at page 270) or a landline in the separate basement apartment. If so, that risk would have to be addressed by installing contact switches on the doors of the apartment that would alert CBSA if those doors were opened while Ahmad and his wife were absent.

164. If there is no internet access or landline in the basement apartment, and it was agreed that no cell phones or devices with wireless internet capability would be left in the basement apartment when Ahmad and Zahra were not home, and that the apartment would be locked so that Mr. Jaballah could not enter the apartment when they were away, contact switches would not be required. Agreement would also be required that no landline or internet access would later be installed without advance notice to the CBSA.

165. Mr. Jaballah's refusal to adduce a proper evidentiary basis leaves the matter at an impasse that, in my view, can only be addressed by the parties providing an agreed statement of fact about the communication facilities in the basement apartment (allowing for the removal, if sought by Ahmad and Zahra, of any equipment now there in order to address the Court's concerns). In the absence of agreement, this matter must await a further hearing at which proper evidence is adduced. Best efforts should be made to reach agreement on the objective facts as to whether there is a telephone landline and either wireless or other internet capability in the basement apartment. It may be necessary for Ahmad and Zahra to consent to an inspection of the apartment in order to facilitate such an agreement. [Emphasis added.]

[3] At paragraph 189 of the reasons, the Court stated that no order would issue at that time because of the lack of evidence about internet access in the basement apartment. The parties were given 14 days to file an agreed statement of facts on this point. The 14-day deadline was later extended at the joint request of parties.

[4] An agreed statement of fact has now been provided. Among other things, it is agreed that the basement apartment has access to four wireless internet signals. One signal is unsecured and available to anyone with a wireless device. Four wireless internet capable devices are in the basement including a laptop computer and a PlayStation 3.

[5] One week after the agreed statement of fact was received, unsolicited written submissions on behalf of Mr. Jaballah were received. This was followed by responding correspondence from the Ministers and reply correspondence on behalf of Mr. Jaballah.

[6] Essentially, Mr. Jaballah sought to address the agreed statement of fact and submitted that whenever the basement residence was not occupied by Mr. Jaballah's son Ahmad or Ahmad's wife Zahra, they would put any wireless capable devices that were to be left in the apartment in a locked box. Only Ahmad and Zahra would have keys to open the box.

[7] The Ministers opposed this proposal on the following three grounds. First, they submitted it is inappropriate to propose a new condition in the absence of sworn evidence and the opportunity for cross-examination. Second, the Court should not impose additional responsibilities on Ahmad Jaballah or Zahra Malek when the Court had recently found that their complacency as supervisors had led to two breaches of the existing conditions of release. Finally, at paragraph 164 of its reasons, quoted above, the Court had set out the three

requirements that were to be met for contact switches not to be required. The Ministers submitted that the Court should not be asked to revisit that conclusion.

[8] As acknowledged by Mr. Jaballah’s counsel in their letter of June 21, 2010, the Court has been impeded from making a formal order by the lack of a proper evidentiary record concerning the communication facilities in the basement. The Court sought to remedy this deficiency by allowing the parties to provide an agreed statement of fact. That has been done.

[9] However, as set out in paragraph 164 of the Court’s earlier reasons, the Court was prepared to dispense with the requirement of contact switches on the doors of the basement apartment if no devices with internet capability were left in the basement apartment when it was unoccupied. This is not the case, nor is it proposed that this will be the case in the future. It follows that the requirement for contact switches on the doors to the basement apartment will remain.

[10] An order will issue embodying the Court’s earlier reasons and these supplementary reasons.

“Eleanor R. Dawson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** DES-6-08  
**STYLE OF CAUSE:**

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**WRITTEN SUBMISSIONS:** June 14, 2010, June 21, 2010  
June 22, 2010, June 23, 1010.

**SUPPLEMENTARY REASONS FOR ORDER BY  
THE HONOURABLE MADAM JUSTICE DAWSON**

**DATED:** July 13, 2010

**APPEARANCES:**

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Ms. M. Edwardh

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Mr. J. Provart  
Ms. Caroline J. Carrasco  
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For the Minister of Citizenship and  
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Mr. John Norris

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