

Federal Court



Cour fédérale

Date: 20111025

Docket: IMM-7271-11

Citation: 2011 FC 1221

Montreal, Quebec, October 25, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

TROY DEAN HALLET

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Hallet has run afoul of the Immigration Authorities. He is an American citizen who eleven years ago married a Canadian and resides with her in Hemmingford, Quebec. For some time, he worked as a long-distance truck driver, regularly passing through the border. More recently, he has worked for a Canadian company. In August of this year, he was the subject of two inadmissibility reports for violation of sections 29(2) and 30(1) of the *Immigration and Refugee*

Protection Act in that he did not leave Canada by the end of his authorized stay and worked here without authorization. As a result, a deportation order was issued.

[2] He waived, which he was not obliged to do, his right to apply for a pre-removal risk assessment. He is now scheduled to leave Canada 28 October 2011 via Champlain, New York.

[3] By letter dated 11 October 2011, he asked that his removal be deferred to January 2012. He alleged that his wife suffers from panic and anxiety disorder; that he has now filed for landed immigrant status; that he accepts his pending deportation and has decided to relocate to northern New York State close to Hemmingford. He asked for a little extra time to relocate and to arrange employment and housing.

[4] The officer refused. This refusal is the subject of an application for leave and for judicial review. In the meantime, he has asked that his removal be deferred pending the outcome thereof.

[5] The officer noted that no documentation had been submitted to support the proposition that Mr. Hallet's wife suffered from a panic and anxiety disorder. However, such documentation has been provided to the Court. It seems to me that there was an undue rush to judgment in that Mr. Hallet was not given sufficient opportunity to make his case.

[6] As to Mr. Hallet establishing himself in northern New York State, the officer said she saw no reason why his wife could not accompany him. The officer had no basis in fact to suppose his

wife could immediately accompany him. Apart from her current job, she does not have a passport at this point in time and must obtain one before she can go to the United States.

[7] It is certainly arguable that due consideration was not given to the Hallet's situation. It is simply not true that the irreparable harm must be suffered by the deportee. See *Toth v Canada (Minister of Employment and Immigration)* (1988), 6 Imm LR (2d) 123.

[8] It is correct that the removals officer's discretion under section 48 of the *Immigration and Refugee Protection Act* to grant an administrative stay of a pending removal is severely limited. It must be kept in mind that "it must be enforced as soon as is reasonably practicable." As noted by Mr. Justice Nadon, as he then was, in *Simoes v Canada (Minister of Citizenship and Immigration)*, 7 Imm LR (3d) 141, [2000] FCJ No 936 (QL), the officer does have discretion when it comes to travel arrangements. As per *Toth*, above, the refusal to take into account Mr. Hallet's personal situation, and that of his wife, raises a serious issue, the sudden wrenching away of Mr. Hallet from his home raises the spectre of irreparable harm, and given the number of years husband and wife have shared bed and board, the balance of convenience certainly favours Mr. Hallet.

[9] As the French pleadings had to be translated for Mr. Hallet, to expedite matters these reasons are first issued in English.

ORDER

THIS COURT ORDERS that:

1. The motion is granted.

2. The removal of Mr. Hallet to the United States, scheduled for Friday, 28 October 2011, is stayed pending the outcome of the application for leave and, if granted, the outcome of the underlying application for judicial review.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7271-11

STYLE OF CAUSE: TROY DEAN HALLET v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 24, 2011

REASONS FOR ORDER: HARRINGTON J.

DATED: OCTOBER 25, 2011

APPEARANCES:

Vincent Desbiens FOR THE APPLICANT

Andrea Shahin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Monterosso Giroux s.e.n.c. FOR THE APPLICANT
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec