Federal Court  Cour fédérale

Date: 20111213

Docket: IMM-8849-11

Citation: 2011 FC 1470

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 13, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JEAN-BERNARD DEVILMÉ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] It is clear that the applicant does not come before the Court with clean hands. He has anything but clean hands and this creates a major obstacle to obtaining the equitable remedy he is seeking:

> [4] It is well established law that the issuing of a stay is an equitable remedy that will only be granted where the applicant appears before the court with clean hands. See *Khalil v. Canada(Secretary of State) [1999] 4 F.C. 661 para 20, Basu v. Canada [1992] 2 F.C. 38, Ksiezopolski v. M.C.I. & S.G.C. [2004] F.C.J. No. 1715*.
>
> [5] In this case the applicant has anything but clean hands. She has shown a constant and persistent disregard for Canadian family law, criminal law and immigration law. It would be encouraging illegality, serve a detrimental purpose and be contrary to public policy if the court were to grant her the relief sought.
>
> [6] Accordingly, given the circumstances of this case, the court is not prepared to exercise any equitable jurisdiction in respect of the applicant. [Emphasis added.]

(*Brunton v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 33)

II. Introduction

[2] The applicant, a citizen of Haiti, is bringing before this Court a motion for a stay of a removal order issued against him, which is to be enforced on December 15, 2011. He is to be deported to the United States.

[3] This stay motion is incidental to an application for leave and judicial review (ALJR) challenging the decision to issue a removal order dated December 2, 2011, by an officer of the Minister of Citizenship and Immigration in accordance with subsection 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

III. Amendment of the style of cause

[4] The applicant brought his proceeding only against the “Minister of Citizenship and Immigration”. Because the “Minister of Public Safety and Emergency Preparedness” is the Minister responsible for the enforcement of removal orders, he should also be named as a respondent.

Consequently, the style of cause is amended to add the Minister of Public Safety and Emergency Preparedness as a respondent in addition to the Minister of Citizenship and Immigration.

IV. Facts

[5] The applicant, Jean-Bernard Devilmé, is a citizen of Haiti and a permanent resident of the United States.

[6] The Court reiterates the summary with respect to the applicant in Canada from the pre-removal risk assessment (PRRA) decision:

> [TRANSLATION]
>
> Immigration history in Canada
>
> **August 10, 1989**, Mr. Devilmé became a permanent resident of the United States.
>
> **January 29, 1994**, the applicant tried to enter Canada; a section 20 report was issued because the officer was not convinced that his visit was in good faith.
>
> **October 16, 2002**, a section 44 report was issued indicating that Mr. Devilmé was admitted to Canada around December 1, 2001, and stayed beyond the period allowed. The report also indicated that the applicant had been working illegally on a farm since September 2002.
>
> **January 8, 2003**, a section 44 report was issued on inadmissibility under paragraph 36(2)(*a*) of the IRPA, indicating that the applicant had been convicted of wilfully obstructing a peace officer in the execution of his duty, an offence described in paragraph 129(*a*)(*e*) of the Canadian *Criminal Code*. That same day, he was also convicted of failing to comply with a condition, an offence described in paragraph 145(3)(*b*) of the Canadian *Criminal Code*.
>
> **June 16, 2003**, he was convicted of possession of property obtained by crime. The record indicates that Mr. Devilmé did not appear in Court on June 13, 2003.
>
> **May 26, 2005**, an arrest warrant was issued by the Canada Border Services Agency.
>
> **April 5, 2007**, Mr. Devilmé was arrested by the police.

May 16, 2007, Mr. Devilmé claimed refugee protection.

December 17, 2008, he was convicted in Drummondville of theft under $5,000, an indictable offence liable to imprisonment for a term not exceeding two years, an offence described in paragraph 334(*b*) of the Canadian *Criminal Code*. He was also convicted of "personating with intent", a criminal offence liable to imprisonment for a term not exceeding ten years described in paragraph 403(*a*) of the Canadian *Criminal Code*.

February 17, 2010, the Canada Border Services Agency confirmed that the applicant still had legal status in the United States.

August 16, 2010, the Refugee Protection Division (RPD) found that the refugee claimant was excluded from the definition of Convention refugee and person in need of protection under Article 1E of the Convention.

The refugee claim was rejected; the RPD found that Mr. Devilmé is not a refugee or a person in need of protection.

June 1, 2011, the PRRA application was offered to Mr. Devilmé.

[7] The applicant did not submit an ALJR against the decision by the Refugee Protection Division (RPD) or the PRRA decision.

[8] In his letter sent to the Canada Border Services Agency (CBSA) on November 30, 2011, requesting that his removal be deferred, the applicant indicated at the outset that he had not yet submitted an application for permanent residence (APR) in Canada on humanitarian and compassionate (H&C) grounds, but that he intended to do so shortly.

[9] During his meeting on November 23, 2011, with the enforcement officer, the applicant was given a choice: he could return to the United States or to Haiti.

[10] The applicant indicated that he wished to return to the United States and the officer therefore scheduled his removal to that country for December 15, 2011.

V. Analysis

[11] The Court agrees with the respondents that the applicant does not have clean hands.

[12] It is established that a motion for a stay is a discretionary remedy, and that, according to the rules of equity, those who come to the Court seeking a discretionary remedy must have clean hands (*Chavez v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 830 at paragraph 13; also, *Adams v Canada (Minister of Citizenship and Immigration)*, 2008 FC 256 at paragraph 2).

[13] The respondent submits that this Court should dismiss the motion on the ground that the applicant violated criminal law and demonstrated a flagrant lack of respect for immigration laws and obligations.

[14] The following examples appear in the RPD's decision:

- The applicant admitted that he had been on the run from 2003 to 2007, that is, until he was arrested by the Canadian authorities;
- He worked illegally in Canada;
- He misrepresented himself as someone else twice;
- He was convicted of several criminal offences under Canada's *Criminal Code*.

[15] This situation therefore justifies the Court using its discretion to refuse to hear this motion or, at minimum, to dismiss it. The applicant had several opportunities to assert his rights. Despite this, he acted in disregard of the law and the system during his stay in Canada.

[16] The Federal Court of Appeal recently reiterated this principle in *Moore v Canada (Minister of Citizenship and Immigration)*, 2009 FC 803:

> [1] An applicant for an equitable remedy must come before the Court with clean hands.
>
> The well established principle "he is who has committed Iniquity ... shall not have Equity." *Jones v. Lenthal* (1669) 1 Ch. Ca. 154 needs to be applied in this case. I see no reason to extend equity to the Applicant in light of his deeds. It follows as a logical corollary that where the Applicant does not come with clean hands, the balance of convenience does not tilt his way.
>
> It is obvious to me that the Court in exercising its discretion must have regard and must take into account a number of factors not the least of which is the public interest. Public policy dictates that I bar the plaintiff's claim. The maxim that "no one should take benefit from his own wrong" has been adopted and followed for centuries. This principle was enunciated quite succintly in *Cleaver v. Mutual Reserve Fund Life Association* . . . , where Fry, L.J., said:
>
> > It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person....This principle of public policy, like all such principles, must be applied to all cases to which it can be applied without reference to the particular character of the right asserted or the form of its assertion.
>
> (Reference is made to *Khalil v. Canada (Secretary of State)*, [1999] 4 F.C. 661, [1999] F.C.J. No. 1093 (QL) (C.A.); *Ksiezopolski v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1402, [2004] F.C.J. No. 1715 (QL); *Basu v. Canada*, [1992] 2 F.C. 38, [1991] F.C.J. No. 1272 (QL) (T.D.)).
>
> . . .
>
> [4] Mr. Moore is not entitled to the Court's discretion on the merits of the matter as he has come to Court with unclean hands due to serious criminality and disregard for Canada's immigration laws.

[17] Therefore, this Court is not exercising its equitable jurisdiction in respect of the applicant.

[18] Granting the applicant a stay would further undermine the integrity of the system.

VI. Conclusion

[19] In light of the foregoing, because the applicant does not have clean hands, this Court is not exercising its equitable jurisdiction in respect of the applicant, and, therefore, his application for a stay of the removal order is dismissed.

JUDGMENT

THE COURT ORDERS that the application for a stay of the removal order against the applicant be dismissed.

"Michel M.J. Shore"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8849-11
STYLE OF CAUSE:	JEAN-BERNARD DEVILMÉ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION HEARD BY CONFERENCE CALL ON DECEMBER 13, 2011, BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC

REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	December 13, 2011

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