

Federal Court



Cour fédérale

Date: 20111214

Docket: IMM-7408-11
IMM-9229-11

Citation: 2011 FC 1471

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 14, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SARINO MACRI

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] The granting of an application for a stay of a removal order by this Court is an exceptional measure that should not be based on considerations of fairness:

[22] This Court does not have original equitable jurisdiction to decide, generally speaking, whether it is fair or unfair to remove someone from Canada. This Court can only intervene in defined circumstances by applying proper legal principles

which, in this case, place upon the applicants the burden of meeting the tripartite test for granting stays. [Emphasis added.]

(*Jordan v MCI*, IMM-3316-00)

[2] In 2008, the applicant claimed refugee status, alleging a fear of the Italian mafia based on an entirely different account than the one used in his original efforts in Rome in 2000, when he relied on purely economic reasons in order to better his situation.

II. Introduction

[3] The applicant is asking the Court to stay the removal order until a definitive decision is made on his applications for leave and judicial review (ALJR) concerning the rejection of his pre-removal risk assessment (PRRA) application and the refusal of his application based on humanitarian and compassionate (H&C) grounds.

III. Preliminary comment

[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. For this reason, the style of cause in this case must be amended to add the Minister of Public Safety and Emergency Preparedness, in addition to the Minister of Citizenship and Immigration.

IV. Facts

[5] The applicant, Sarino Macri, is a citizen of Italy.

[6] In 2000, he applied for permanent residence in Canada at the Canadian embassy in Rome for purely economic reasons, but without success.

[7] The applicant arrived in Canada on May 13, 2003, as a temporary resident with authorization to stay until June 15, 2003.

[8] On May 28, 2003, he submitted an application for an extension of his temporary resident status.

[9] On June 19, 2003, the extension application kit was returned to him because he had failed to include the processing fees.

[10] On September 8, 2003, the applicant applied for the reinstatement of his temporary resident status. That application was refused on May 12, 2004.

[11] On October 18, 2006, the applicant submitted an initial application for permanent residence based on H&C grounds. In support of his application, the applicant alleged that he was unable to find work and that his family had rejected him. The application contained no reference to a fear of return, to the mafia or to the fact that he had purportedly witnessed an attempted murder.

[12] The application was refused on February 25, 2008.

[13] On March 12, 2008, the applicant claimed refugee status, alleging a fear of the mafia based on an entirely different account than the one used in his original efforts in Rome in 2000, which were for purely economic reasons because he wanted to improve his standard of living.

[14] On April 6, 2010, the applicant submitted a second application for permanent residence based on H&C grounds, this time alleging a fear of return.

[15] On August 18, 2010, a hearing was held before the Refugee Protection Division of the Immigration and Refugee Board (RPD).

[16] On October 14, 2010, the RPD rejected the applicant's refugee claim and found that the applicant had an internal flight alternative (IFA) in Rome. The applicant did not submit an ALJR against that decision.

[17] On March 12, 2011, the PRRA notice was sent to the applicant.

[18] On June 28, 2011, the applicant's PRRA application was rejected.

[19] On November 25, 2011, the applicant's second application for permanent residence based on H&C grounds was refused.

[20] On October 25, 2011, the applicant submitted an ALJR against the PRRA decision dated June 28, 2011.

[21] On December 12, 2011, the applicant submitted an ALJR against the decision dated November 25, 2011, on the application for permanent residence based on H&C grounds.

[22] On December 12, 2011, the applicant asked the Court to stay the removal order scheduled for December 15, 2011.

[23] The applicant has been without status since June 15, 2003. His removal is scheduled for December 14, 2011.

V. Issue

[24] Did the applicant establish that he met each of the three criteria permitting him to obtain a judicial stay of his removal order?

VI. Analysis

[25] The Court agrees with the respondents.

[26] To grant a stay of the removal order, the Court must apply the tripartite test. More specifically, the Court must be satisfied that:

- a. the main proceeding in which the stay motion is introduced raises a serious issue;
- b. the applicant has established that he would suffer irreparable harm during the period preceding the decision of the Court on his main proceeding in the absence of a stay of the removal; and,

c. the balance of convenience favours him.

(Toth v Canada (Minister of Employment and Immigration) (1988), 86 NR 302 (FCA))

[27] An applicant must establish that he or she has met each of the three components; failure to do so will result in the dismissal of the stay motion (*Iwekaogwo v Canada (Minister of Citizenship and Immigration)*, 2006 FC 782).

[28] Furthermore, the granting of an application for a stay of a removal order by this Court is an exceptional measure that should not be based on considerations of fairness:

[22] This Court does not have original equitable jurisdiction to decide, generally speaking, whether it is fair or unfair to remove someone from Canada. This Court can only intervene in defined circumstances by applying proper legal principles which, in this case, place upon the applicants the burden of meeting the tripartite test for granting stays. [Emphasis added.]

(Jordan, above)

[29] Even on its face, given the modification of the applicant's account and the way in which he carried out his efforts over time, the applicant completely failed to meet the criteria for the test established by the jurisprudence. Consequently, his stay motion is dismissed.

VII. Conclusion

[30] In light of the foregoing, the applicant did not establish that he met any of the criteria for obtaining a stay and, consequently, the application for a stay is dismissed.

JUDGMENT

THE COURT ORDERS the dismissal of the application for a stay of the order to remove the applicant.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7408-11 and IMM-9229-11

STYLE OF CAUSE: SARINO MACRI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

**MOTION CONSIDERED BY CONFERENCE CALL ON DECEMBER 14, 2011,
BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC**

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: December 14, 2011

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