

Federal Court



Cour fédérale

Date: 20130702

Docket: IMM-11390-12

Citation: 2013 FC 743

Winnipeg, Manitoba, July 2, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ISMAEL AZADI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER

UPON reading the Applicant's motion for an Order that the decision of the Immigration Division dated October 23, 2012, that the Applicant be detained, be quashed;

AND UPON reading the Applicant's motion record of the same date, and the letter of counsel for the Respondent dated June 14, 2013, consenting to the order sought by the Applicant;

Pursuant to section 248 of the *Immigration and Refugee Protection Regulations* [Regulation], an Immigration Division member must consider all the factors set out in section 248

in deciding whether or not to continue the Applicant's detention. This consideration specifically includes the length of the detention.

The Federal Court's decision in *Kamail v Canada (MCI)*, 2002 FCT 381 [Kamail] does not alter the applicability of the Regulation 248 factors. In particular, even where a person is causing delay in their removal, the length of detention remains a relevant consideration. Whether and when the detention should be considered to have become indefinite is a matter for a member of the Immigration Division of the Immigration and Refugee Board to consider, to determine in any given case when considering the relevant factors.

In the October 23, 2012 decision ordering the Applicant's continued detention, Immigration Division member King found that, per *Kamail*, above, the Applicant's refusal to sign a travel document made any other considerations irrelevant. Such a finding is contrary to section 248 of the Regulations. As such, the decision was based on a reviewable error.

THIS COURT ORDERS that:

1. The decision of the Immigration Division dated October 23, 2012 that the Applicant be detained is therefore quashed and the matter is remitted for reconsideration by a different member.
2. No costs are awarded to either party.

"Michael D. Manson"

Judge