

Federal Court



Cour fédérale

Date: 20180202

Docket: IMM-4394-17

Citation: 2018 FC 126

Vancouver, British Columbia, February 2, 2018

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ABBAS, KHAWAJA HASSAN

Applicant

and

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

Respondents

ORDER AND REASONS

[1] Mr. Abbas seeks an order staying the execution of his deportation to Pakistan scheduled for Sunday, February 4, 2018.

[2] The decision that underlies this motion is a negative Pre-Removal Risk Assessment [PRRA].

[3] Mr. Abbas entered Canada with his family from the U.S.A. on February 17, 2009, and made a claim for refugee status. In that claim, he reported that he belonged to the Muhajir Qaumi Movement Altaf Group [MQM-A]. As a result of that membership, on December 21, 2011, Mr. Abbas was reported inadmissible to Canada for security reasons under section 34 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] . On March 16, 2016, the Immigration Division issued a deportation order against Mr. Abbas pursuant to paragraph 34(1)(f) of the Act [the Deportation Order]. An application to judicially review the Deportation Order was dismissed on June 28, 2016.

[4] On March 23, 2015, Mr. Abbas made an application for permanent resident status in Canada as a dependent based on his wife's application for permanent residence as a protected person. On December 9, 2016, his application was denied because of his inadmissibility status.

[5] Mr. Abbas then made an application for Ministerial relief in respect to his inadmissibility status. That application remains outstanding.

[6] On March 1, 2017, Mr. Abbas was offered a PRRA. A negative decision was rendered on September 8, 2017. Leave to review that decision has been granted.

[7] In order to obtain a stay of removal, Mr. Abbas must establish to my satisfaction that a serious issue is raised in the underlying application, that he is likely to suffer irreparable harm between now and the date the underlying application is disposed of if the stay is not granted, and

that the balance of convenience rests with him: *Toth v Canada (Minister of Employment and Immigration)*, (1998) 86 NR 302 (FCA). All three of these components must be met.

[8] The Respondent Ministers concede that a serious issue has been established, but maintain that Mr. Abbas has failed to meet the other two conditions.

[9] Mr. Abbas raised several bases on which he says irreparable harm has been established. I need not discuss them all. This is factually a very unique case. Mr. Abbas's spouse and daughters were accepted to be Convention refugees based on the risk they face in Pakistan from the family of Mr. Abbas, and that they had no internal flight alternative. The reason for that risk appears to extend to Mr. Abbas. I must infer that had Mr. Abbas been able to present his refugee claim, he too would have been successful on that basis. Accordingly, there is clear and non-speculative evidence that he faces a risk to health and life if he is returned to Pakistan at this time; namely the same risk that founded his family's positive refugee determination.

[10] The only assessment made of the risk to Mr. Abbas in Pakistan is the PRRA decision, and it is currently under review. Mr. Abbas has established a business that supports his wife and enabled him to school his daughters. He has no criminal record. I acknowledge the duty of the Ministers to effect compliance with the Act, but in this case, I find that the balance of convenience rests with Mr. Abbas.

[11] The motion succeeds.

[12] It is agreed that The Minister of Public Safety and Emergency Preparedness, the Minister responsible for removals, ought to be added as a respondent for the purposes of this motion.

ORDER

THIS COURT ORDERS that:

1. The Minister of Public Safety and Emergency Preparedness is added as a respondent for the purposes of this motion; and
2. The Applicant's removal to Pakistan is stayed until such time as his application for leave and judicial review of the negative Pre-Removal Risk Assessment is considered and finally determined.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4394-17

STYLE OF CAUSE: ABBAS, KHAWAJA HASSAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION and THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 2, 2018

ORDER AND REASONS: ZINN J.

DATED: FEBRUARY 2, 2018

APPEARANCES:

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Brendan Ward FOR THE RESPONDENTS
Brett J. Nash

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