**Date: 20070716**

**Docket: IMM-2824-07**

**Citation: 2007 FC 751**

**Montreal, Quebec, July 16, 2007**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**SYED WAJID ALI**

**Applicant**

**and**

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

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

## OVERVIEW

[1] The Applicant alleges that the Enforcement Officer relied on incorrect information regarding the processing of a spousal sponsorship application in circumstances where an application for rehabilitation is also needed.

[2] The Enforcement Officer relayed correct information regarding the processing of the Applicant's application and clearly stated, in his affidavit, that, even if the Applicant could theoretically file for an internal spousal application, it could not be studied until a decision was

rendered on his rehabilitation application, which would take some time due to a recognition that two counts of sexual abuse in the second degree of minors had occurred in the United States (U.S.), all of which could not simply be ignored.

**INTRODUCTION**

[3] On July 12, 2007, the Applicant filed an Application for Leave against the decision of the Enforcement Officer rendered on July 9, 2006, whereby he refused the Applicant's request to stay his removal pending the decision of the Applicant's application for judicial review of the impugned Enforcement Officer's decision.

[4] The Officer's refusal to defer the removal was not unreasonable. Moreover, the reasons provided in support of his decision were sufficient. Indeed, decisions rendered by removal officers do not require a formal decision with reasons.

[5] The removal of the Applicant to Pakistan should take place as scheduled on July 17, 2007 at 9 a.m.

**BACKGROUND**

[6] The following facts emerge from the affidavit of the Enforcement Officer.

[7] The Applicant claimed refugee protection on March 7, 2003.

[8] On August 22, 2005, the Refugee Division of the Immigration and Refugee Board (IRB) rejected the Applicant's refugee claim.

[9] On October 24, 2005, the Federal Court rejected the Application for Leave related to the negative IRB decision wherein the Applicant was deemed to be a national of Pakistan but his identity as a Shia was considered problematic and culminated in a credibility issue; the Applicant downplayed serious allegations and discrepancies which were evident in regard to his admission in respect of police reports of two counts of sexual abuse in the second degree of minors in the U.S.

[10] On May 10, 2007, the Applicant's Pre-Removal Risk Assessment (PRRA) application was rejected.

[11] On April 28, 2006 the Applicant's spousal sponsorship (H&C application) was refused.

[12] On August 29, 2006 the Federal Court rejected the Application for Leave related to an internal spousal application.

[13] On May 30, 2007 the Enforcement officer met with the Applicant to transmit his negative PRRA decision and the Applicant indicated to him that **he preferred to return to Pakistan**

**instead of to the U.S**. **The Applicant never raised the issue of risk against a removal to the U.S. or to Pakistan during the course of the interview.**

[14] On June 1, 2007, the **Enforcement Officer** received a request from his counsel to defer the Applicant's removal and **granted, that same day, a deferral of the removal until the first week of July**, pending receipt of a copy of his paid airline ticket and itinerary by June 4, 2007.

[15] On June 4, 2007 the Enforcement Officer received a copy of the flight itinerary of the Applicant to Pakistan for **a departure on July 10, 2007**. The Applicant was instructed to forward a copy of his paid airline ticket.

[16] On July 5, 2007 the Applicant's counsel submitted **another request to defer** his removal to Pakistan. **That request was granted until July 17, 2007** in order for it to be given consideration on the merits.

[17] On July 10, 2007, the Enforcement Officer denied the Applicant's request, dated July 5, 2007, to defer his removal. A copy of the officer's reasons accompanied the negative decision that was sent to the Applicant. The Removal was set for July 17, 2007 at 9:00 a.m. to Pakistan.

**ISSUE**

[18] Does the Applicant meet the tri-partite test established by this Court to decide motions to stay the execution of removal orders?

**ANALYSIS**

[19] In order to be granted a stay removal, the Applicant must demonstrate that he meets all three criteria of the tri-partite test established by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.): (1) a serious issue to be tried; (2) that the Applicant will suffer irreparable harm if the deportation order is executed; and (3) that the balance of convenience favours the Applicant instead of the Minister. (Reference is also made to: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.)

**SERIOUS ISSUE**

[20] The Applicant argues that the Removal Officer did not provide sufficient reasons in support of his decision not to defer his removal.

[21] The Applicant argues that the Removal Officer failed to consider important aspects of his case, namely the best interest of his children and the medical report regarding his wife.

[22] The history in the Applicant’s file shows that he asked for a first deferral of his removal on June 1, which was granted, to allow him to remain in Canada until his stepson finished grade 6. The Enforcement Officer was well aware of the Applicant’s family situation and he considered the interest of his children to grant a first deferral.

[23] Moreover, the Applicant was granted a second deferral of his removal on July 5, which was also granted.

[24] When his second request for deferral was studied on the merits, by the Enforcement Officer, the Applicant was not granted a third deferral.

[25] The impugned decision dated, July 10, 2007, states the following: “I refer to your CBSA has an obligation under section 48(2) of the immigration and Refugee Protection Act to carry out removal orders as soon as reasonably practicable. **Having considered your request**, I do not feel that a deferral of the execution of the removal order in the **circumstances of this case**.”

[26] The duty of removal officers was canvassed in *Boniowski v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1161 (T.D.), [2004] F.C.J. No. 1397 (QL) at paras. 11-12. This Court has determined that there is no higher level of formal, written reasons that is required for this sort of administrative reasons.

[27] Although in the *Hailu v. Canada (Solicitor General)*, 2005 FC 229, [2005] F.C.J. No. 268 (QL) decision, Justice Conrad von Finckenstein confirms categorically that the decisions rendered by removal officers do not require a formal decision with reasons, the Enforcement Officer, in the case at bar, conscientiously followed up the case and kept notes on file. He

indicated that keeping notes was “useful and ought to be encouraged, it is however not an absolute requirement”.

[28] Moreover, in the case at bar, the Enforcement Officer provided the Applicant with his notes relating to the request for deferral. In addition to his notes, the Enforcement Officer has confirmed, in his affidavit, that he considered the Applicant’s wife’s medical report and that he was well aware that he had one stepson and one biological child in Canada, for which, he, nevertheless, never saw a birth certificate.

[29] The Applicant also alleges that the Enforcement officer relied on incorrect information regarding the processing of an H&C application in circumstances where an application for rehabilitation is also needed.

[30] The Enforcement Officer relayed correct information regarding the processing of the Applicant’s application and clearly stated, in his affidavit, that, even if the Applicant could theoretically file for an internal spousal application, it could not be studied until a decision was rendered on his rehabilitation application, which would take some time, due to a recognition that two counts of sexual abuse in the second degree of minors in the U.S., could not simply be ignored.

[31] In light of the foregoing, it is clear that the reasons provided by the removal officer, in the present case, are more than sufficient and his refusal to defer was not unreasonable given the circumstances of this case.

**IRREPARABLE HARM**

[32] The second requisite element of the tri-partite test for the granting of a stay of removal is whether the Applicant would suffer irreparable harm if the application were refused. The Applicant has not shown that this part of the test has been met. (*RJR-MacDonald*, above; *Toth*, above.)

[33] The Applicant must demonstrate that removal will result in a reasonable likelihood of harm before there can be a finding that removal will result in irreparable harm. (*Soriano v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 414 (F.C.T.D.).)

[34] The notion of irreparable harm has been defined by this Court, as follows:

> [22] In *Kerrutt v. M.E.I.* (1992), 53 F.T.R. 93 (F.C.T.D.) Mr. Justice MacKay concluded that, for the purposes of a stay application, irreparable harm implies the serious likelihood of jeopardy to an applicant's life or safety. This is a very strict test and I accept its premise that irreparable harm must be very grave and more than the unfortunate hardship associated with the breakup or relocation of a family.

(*Calderon v. Canada (Minister of Citizenship and Immigration)* (1995), 92 F.T.R. 107, (1995) F.C.J. No. 393 (QL) (F.C.T.D.)

[35] Irreparable harm is more substantial and more serious than personal inconvenience. It implies the serious likelihood of jeopardy to an Applicant's life, liberty or security of the person, or an obvious threat of ill treatment in the country to which removal will be effected. (*Mikhailov v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 642 (F.C.T.D.) (QL); *Frankowski v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 935 (F.C.T.D.) (QL); *Louis v. Canada (Minister of Citizenship and Immigration),* [1999] F.C.J. No. 1101 (F.C.T.D.) (QL).)

[36] A conclusion that the Applicant will suffer irreparable harm if removed cannot be based on speculation or mere possibility. The evidence supporting such a finding must be clear and non-speculative. (*Chen v. Canada (Minister of Citizenship and Immigration),* 2004 FC 464, [2004] F.C.J. No. 567 (F.C.) (QL); *Atakora v. Canada (Minister of Employment and Immigration)* (1993), 68 F.T.R. 122 (F.C.T.D.), [1993] F.C.J. No. 826 (QL); *John v. Canada (Minister of Citizenship and Immigration),* [1999] F.C.J. No. 915 (F.C.T.D.) (QL).)

[37] The Applicant has not evoked any risk to his life relating to his return to Pakistan.

[38] Moreover, the Applicant did not contest his negative PRRA decision before this Court.

[39] The separation or relocation of the Applicant's family is not a sufficient basis upon which to find that the Applicant will suffer irreparable harm if removed. (*Mallia v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 369 (F.C.T.D.) (QL); *Mikhailov v. Canada*

*(Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 642 (F.C.T.D.) (QL)*; Aquila v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 36 (F.C.T.D.) (QL).)

[40] Lastly, the Applicant alleges that a separation from his family will be detrimental to their well being; he, nevertheless, did not adduce any evidence to support his allegation apart from a letter from Dr. Shariff.

**BALANCE OF CONVENIENCE**

[41] Pursuant to section 48 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, the Respondent has a duty to execute an enforceable removal order "as soon as is reasonably practicable":

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| **48.** (1) A removal order is enforceable if it has come into force and is not stayed. | **48.** (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis. |
| (2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable. | (2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent. |

[42] It is trite law that the public interest must be taken into consideration when considering this last criterion.

[43] In order to demonstrate that the balance of convenience favours the Applicant, he should have shown that there is a public interest not to remove him as scheduled. (*RJR-MacDonald*, above; *Blum v. Canada (Minister of Citizenship and Immigration)*, (1994) 90 F.T.R. 54, [1994] F.C.J. No. 1990 (QL).)

[44] As stated by Justice John Sopinka in *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] S.C.R. 711 (though dealing with an extradition case):

> The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the country.

[45] The Applicant has not demonstrated that the balance of convenience favours him.

**CONCLUSION**

[46] For all the reasons stated above, the Applicant’s application for a stay of removal is denied.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for a stay of removal be dismissed.

"Michel M.J. Shore"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2824-07 |
| **STYLE OF CAUSE:** | SYED WAJID ALI<br>v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | Montreal, Quebec |
| **DATE OF HEARING:** | July 16, 2007 |
| **REASONS FOR JUDGMENT:** | SHORE J. |
| **DATED:** | July 16, 2007 |

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