

Date: 20071109

Docket: IMM-5938-06

Citation: 2007 FC 1168

Ottawa, Ontario, November 9, 2007

PRESENT: The Honourable Madam Justice Snider

PRESENT:

ALI HASSAN MADANI

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, Ali Hassan Madani, was ordered to report for deportation to Lebanon on November 14, 2006. On November 2, 2006, an Enforcement Officer refused the Applicant's request that his removal from Canada on November 14, 2006 be deferred pending the processing of a Humanitarian and Compassionate (H&C) application submitted October 26, 2006.

[2] After the deferral request was denied, the Applicant then filed a notice of application for leave and judicial review of the Enforcement Officer's decision and brought a motion for a stay

of their removal until the Court had disposed of the application for judicial review. On November 10, 2006, Justice Barnes ordered a stay of removal pending final determination of the judicial review. As a result, the Applicant was not removed on November 14, 2006. Thus, by the time this judicial review application was heard by this Court, the serious issues identified in the stay motion and the underlying judicial review were, in practical terms, academic.

[3] This case is on all fours with the decision of Justice Gibson in *Higgins v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 377 where a similar application was dismissed on the ground of mootness (see also *Solmaz v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 607 and *Maruthalingam v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 823). The parties before me acknowledge that the matter is moot.

[4] Nevertheless, the parties submit that the Court should exercise its discretion and consider the merits of this application for judicial review. I can see no purpose in doing so. The removal arrangements made for November 2006 are no longer relevant. No removal arrangements in respect of the Applicant are currently in place. If a new removal date is scheduled for the Applicant, it would again be open to him to request a deferral based on the facts that exist as of that time. The Applicant would have this right whether or not I rule on the merits of this judicial review.

[5] In the circumstances, I decline to exercise my discretion to hear the application on its merits.

[6] As Justice Gibson did in *Higgins*, above, and in *Vu v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1109 and as I did in *Maruthalingam*, above, I will certify the following question:

Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?

ORDER

This Court orders that:

1. The application for judicial review is dismissed; and
2. The following question is certified:

Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?

“Judith A. Snider”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5938-06

STYLE OF CAUSE: ALI HASSAN MADANI v. THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 1, 2007

**REASONS FOR ORDER
AND ORDER BY:** Snider J.

DATED: November 9, 2007

APPEARANCES:

Mr. Gregory J. Willoughby FOR THE APPLICANT

Ms. Margherita Braccio FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Gregory J. Willoughby FOR THE APPLICANT

John H. Simms, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada