

Date: 20080919

Docket: IMM-4108-08

Citation: 2008 FC 1060

BETWEEN:

IMRE GORZSAS

Applicant

and

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

Respondent

REASONS FOR ORDER

PHELAN J.

[1] These are the brief reasons for the stay of execution issued late on September 18, 2008.

[2] The Applicant is a gay male of Roma background from Hungary. He had been unsuccessful on his first PRRA where he claimed fear of persecution because he was both gay and a Roma. He failed to appear for removal and a warrant was issued.

[3] The Applicant claimed that he had moved and neglected to advise authorities which resulted in him not receiving that PRRA decision and notice of removal.

[4] In March 2008, the Applicant was diagnosed HIV positive. On June 18, 2008, the Applicant submitted a second PRRA application based upon the new evidence of his medical condition and this, combined with his sexual orientation and ethnicity, made him an even greater target of persecution in Hungary. That PRRA application is still outstanding.

[5] On Tuesday, September 16, 2008, the Applicant was arrested and his removal scheduled for Thursday, September 18, 2008. He filed a deferral request on Wednesday, September 17, 2008, which was denied on September 18, 2008. The motion for this stay was heard while the Applicant was awaiting his flight.

[6] The Respondent has no explanation for the haste in removing the Applicant nor for the failure to deal with his second PRRA application which has been pending for three months.

[7] The powers of a Removals Officer have been held to be very limited. This is particularly so when all the available rights have been exhausted. Indeed, Removals Officers have been held not to have expertise or obligations to deal with H&C or PRRA matters.

[8] However, Justice Mosley held in *Wong v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 783, that where a PRRA has not been done, some assessment

of risk must be undertaken when removal precedes a PRRA. Canada is obliged not to return failed immigration claimants to places where they face persecution, torture or death.

[9] The deferral request was denied. The central focus of that decision was the availability of medical treatment for HIV; personal risk was at best a minor consideration. The decision also makes assumptions about the right of Hungary's citizens to freely move within the EU which are not substantiated.

[10] I am satisfied that on the *Wang (Wang v. Canada (Minister of Citizenship and Immigration))*, 2001 FCT 148) standard, the Applicant has raised a serious issue.

[11] That being said, he has also established irreparable harm sufficient for purposes of a stay. One consequence of his removal is to render his three-month old PRRA moot. There is nothing to suggest that this PRRA is opportunistic.

[12] Finally, the balance of convenience flows from the serious issue and irreparable harm findings. While the Applicant failed to appear for his first removal, it is hard to say, as alleged, that he had gone "underground" when he was sufficiently "above ground" to file his second PRRA application arising from his AIDS condition.

[13] A stay of removal has been issued to at least allow for the full and fair assessment of risk claimed in the Applicant's pending PRRA application.

Ottawa, Ontario
September 19, 2008

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4108-08

STYLE OF CAUSE: IMRE GORZSAS

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Ottawa, Ontario (teleconference)

DATE OF HEARING: September 18, 2008

REASONS FOR ORDER: Phelan J.

DATED: September 19, 2008

APPEARANCES:

Mr. John Norquay FOR THE APPLICANT

Ms. Laoura Christodoulides FOR THE RESPONDENT

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