Date: 20090428

Docket: IMM-1623-09

Citation: 2009 FC 425

Ottawa, Ontario, April 28, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JORGE FABIAN Rafael Domingo

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The applicant has used all the remedies that he is entitled to in Canada, and all his applications have been dismissed until now. The balance of convenience, therefore, lies in favour of the Minister. The fact that the applicant supports himself and does not pose a danger to Canada does not tip the balance of convenience in his favour, according to the teachings of this Court:

> [TRANSLATION]
> [42] The applicant states that he is able to support himself and that he does not pose a danger to the public.

> [43] In *Selliah*, above, the Federal Court of Appeal stated that criteria of this nature do not demonstrate that the balance of convenience favours the applicant.
>
> . . .
>
> > [22] I do not agree. They have had three negative administrative decisions, which have all been upheld by the Federal Court. It is nearly four years since they first arrived here. In my view, the balance of convenience does not favour delaying further the discharge of either their duty, as persons subject to an enforceable removal order, to leave Canada immediately, or the Minister's duty to remove them as soon as reasonably practicable: IRPA, subsection 48(2). This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control.

(*Salazar v. Canada (Minister of Public Safety and Emergency Preparedness*), 2009 FC 56, [2009] F.C.J. No. 77 (QL)).

[2] The applicant has failed to discharge his burden of demonstrating that there is a serious issue to be tried. Consequently, the application should be dismissed on this ground alone:

> [36] I am not persuaded that Mr. Cardoza Quinteros has raised any serious issue that would warrant the grant of a stay of the removal order. Having failed to meet one of the branches of the tripartite test, this application for a stay will be dismissed. It is not necessary that I examine whether the Applicant has met the other two branches of the *Toth* tripartite test. (Emphasis added.)

(*Quinteros v. Canada (Minister of Citizenship and Immigration*), 2008 FC 643, [2008] F.C.J. No. 812 (QL)).

[3] There is no evidence to support the applicant's allegation:

> [32] The onus is on the applicant to demonstrate, through clear and convincing evidence of irreparable harm, that the extraordinary remedy of a stay of removal is warranted. Irreparable harm must constitute more than a series of possibilities and cannot be simply based on assertions and speculation (*Atwal v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427).

(*Petrovych v. Canada (Minister of Public Safety and Emergency Preparedness*), 2009 FC 110, [2009] F.C.J. No. 113 (QL)).

[4] No irreparable harm has been made out regarding a non-credible story of persecution.

II. Introduction

[5] On April 2, 2009, the applicant filed an application for leave and judicial review (ALJR) of the decision by the removals officer dated March 31, 2009.

[6] In that decision, the officer refused to defer the applicant's removal to the Dominican Republic scheduled for April 30, 2009.

[7] Incidental to the ALJR, the applicant filed a motion, on April 15, 2009, for a stay of enforcement of his removal to the Dominican Republic.

[8] The applicant has not demonstrated a serious issue with respect to the decision by the Minister's delegate.

[9] In addition, his removal to the Dominican Republic will not cause irreparable harm, and the balance of convenience favours the public interest in ensuring that the process under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) follows its course.

III. Facts

[10] The applicant, Mr. Rafael Domingo Jorge Fabian, is a citizen of the Dominican Republic.

[11] In 2005, the applicant submitted a visa request in Port-au-Prince for Canada, which was accepted on August 1, 2005.

[12] On September 11, 2005, the applicant arrived in Canada, in Toronto, falsely stating that he had come to participate in a sporting competition.

[13] On February 3, 2006, the applicant filed an application to extend his stay in Canada. In that application, he said that he wanted to stay in Canada because he enjoyed his work. The application for an extension was granted.

[14] The applicant's sworn declaration, attached to the application, stated that he wanted to extend his stay in Canada as a temporary worker only, with no other intention.

[15] On September 13, 2006, the applicant submitted a refugee claim. In the document "Information on Individuals Seeking Refugee Protection", the applicant stated that his two children were living in the Dominican Republic. He said that he feared police officers and government officials.

[16] On October 10, 2006, during an interview with an immigration officer, the applicant said that he had learned that he could claim refugee status in order to obtain a work visa.

[17] In his Personal Information Form (PIF), the applicant alleged that a police officer had tried to assault his wife. The police officer struck him and took the applicant into custody. After several people intervened, including two journalists, the applicant was released. He filed a complaint against the police officer, who was relocated to another area. The applicant stated that he had received threatening telephone calls.

[18] The PIF also indicated that the applicant's children live in the Dominican Republic.

[19] The Refugee Protection Division (RPD) heard the refugee claim on April 1, 2008, at which time the applicant was represented by counsel.

[20] The RPD denied the refugee claim, finding that the applicant had absolutely no credibility. In a detailed and well-reasoned decision, the RPD noted many contradictions, omissions, additions and inconsistencies regarding the fundamentals of the applicant's story.

[21] The RPD also noted that the applicant had entered Canada on the basis of false information, that his reason for coming to Canada was economic and that he waited a very long time before claiming Canada's protection, all of which showed no fear of persecution.

[22] In the alternative, the RPD also determined that the applicant had not rebutted the presumption that the Dominican Republic was capable of adequately protecting him. This finding was based on the general objective documentary evidence. In addition, the RPD noted that when the applicant filed a complaint following the attack, the authorities took action, and that he did not file a complaint about the threats he subsequently received.

[23] The applicant filed an ALJR of this decision, which was dismissed on October 14, 2008, by Chief Justice Allan Lutfy.

[24] On January 27, 2009, the applicant met with an immigration officer who told him that he could submit an application for a pre-removal risk assessment (PRRA) no later than February 11, 2009. The applicant advised the officer that a sponsorship application had been sent on February 23, 2009.

[25] The PRRA application was received late, on February 13, 2009. The application stated that the applicant's children lived in the Dominican Republic.

[26] In support of his application, the applicant alleged that a police officer had tried to assault his wife. The officer struck the applicant and took him into custody. After several people intervened, including two journalists, the applicant was released. He filed a complaint against the police officer, who was relocated to another area. The applicant stated that he had received threatening telephone calls and that the police officer was still searching for him.

[27] The applicant's only evidence in support of his PRRA application was a marriage certificate.

[28] On March 17, 2009, the applicant was informed that his PRRA application had been rejected: the PRRA officer determined that the applicant had not demonstrated that he would be at risk should he return to the Dominican Republic.

[29] On March 31, 2009, at a meeting with a removals officer, the applicant presented a ticket dated April 30, 2009, although he had been advised that his ticket should be dated April 17, 2009.

[30] The applicant asked that his removal be deferred, indicating to the officer that he was awaiting the result of his sponsorship application and that his wife was going to give birth to their child in June.

[31] Since the officer found that these grounds were insufficient to justify deferring the removal, he refused to defer it.

[32] That decision is the subject of the ALJR underlying the stay motion. The removal is scheduled for April 30, 2009.

IV. Issue

[33] Has the applicant met the three requisite criteria for obtaining a judicial stay of enforcement of a removal order?

V. Analysis

[34] To obtain a judicial stay of enforcement of a removal order, the applicant must meet the following three cumulative criteria set out in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302, 11 A.C.W.S. (3d) 440, and consistently endorsed since then:

a. he has raised a serious issue to be tried;

b. he will suffer irreparable harm if the order is not granted; **and**

c. the balance of convenience, considering the total situation of both parties, favours granting the order.

(For example, see *Castillo v. Canada (Public Safety and Emergency Preparedness*), 2008 FC 172, [2008] F.C.J. No. 216 (QL) at paragraph 10).

A. Serious issue

[35] The applicant must show that his application is not frivolous or vexatious. The Court must conduct a preliminary review of the merits of the case to determine the merits of the issue to be considered:

> [18] Granting this motion would effectively grant the relief which the Applicant seeks in the underlying application for leave and for judicial review (i.e. deferring removal). This Court must, therefore, engage in a more extensive review of the merits of the application. . . . (Emphasis added.)

(*Patterson v. Canada (Minister of Citizenship and Immigration*), 2008 FC 406, 166A.C.W.S. (3d) 300).

[36] None of the issues raised by the applicant in his submissions constitute a serious issue.

[37] A removals officer is required to enforce any validly issued removal order. Nonetheless, subsection 48(2) of the IRPA grants some discretion to the officers in carrying out their duties:

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.

[38] Thus, officers have the discretion to stay a removal order **if it is not reasonably practicable to enforce the removal**.

[39] However, the scope of this discretion is **extremely narrow**. Indeed, the jurisprudence of this Court has established that a removal should only be stayed in cases where there is a serious, practical impediment to the removal:

> [7] As my colleague Mr. Justice Barnes noted in *Griffiths v. Canada (Solicitor General)*, [2006] F.C.J. No. 182 at paragraph 19, a deferral is "a temporary measure necessary to obviate a serious, practical impediment to immediate removal". (Emphasis added).

(*Uthayakumar v. Canada (Minister of Public Safety and Emergency Preparedness*), 2007 FC 98, 161 A.C.W.S. (3d) 466).

[40] It is settled law that the person who seeks to defer the removal has the onus of adducing **evidence** showing that this is justified (*Duran v. Canada (Minister of Public Safety and Emergency Preparedness*), 2007 FC 738, [2007] F.C.J. No. 988 (QL)).

[41] Accordingly, to justify deferring the removal, the applicant had the onus of demonstrating to the officer that there was a serious impediment (for example, a physical condition, the end of the school year or the lack of travel documents) to returning him to the Dominican Republic. He failed to do so. As this Court has stated:

> [19] The validity of the removal order is not in doubt. Removal officers have a statutory duty to remove persons subject to valid removal orders from Canada as soon as reasonably practicable. (*Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), ss. 48(2).)
>
> [20] The discretion which a removal officer may exercise is very limited, and in any case, is restricted as to when a removal order will be executed. In deciding when it is "reasonably practicable" for a removal order to be executed, an officer may consider various factors such as illness, other impediments to travelling, and pending H&C applications. (*Simoes v. Canada (Minister of Citizenship and Immigration)* (2000), 187 F.T.R. 219; *Wang*, above.) (Emphasis added.)

(*Patterson*, above).

[42] The Court must show deference to the officer's refusal to defer the removal:

> [5] While there is some divergence in the jurisprudence with respect to the applicable standard of review, the preponderance of authority appears to be to the effect that the appropriate standard of review of an officer's refusal to defer removal

> is patent unreasonableness. See, for example, *Zenunaj v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 2133, and the pragmatic and functional analysis at paragraph 21. Counsel for the parties agreed that this is the appropriate standard of review, at least where the question is essentially one of fact. I am prepared to apply that standard of review to the decision.

(*Uthayakumar*, above).

[43] The applicant states in his affidavit that his counsel contacted the officer to request a stay of removal, indicating that a sponsorship application was pending, that the applicant's wife was pregnant and that the stay would be in the best interests of his children.

[44] It appears, however, from the officer's notes and affidavit that the only factors the applicant referred to were a sponsorship application and his wife's pregnancy. The children's interests **were not argued before** the officer to justify deferring the removal. In reality, the applicant's file shows that his children are in the Dominican Republic.

[45] In addition, the applicant did not provide **any evidence** to the officer to support his allegations.

[46] As Ms. Suzanne Alary stated in her affidavit, a sponsorship application regarding the applicant was, in fact, submitted in January 2009.

[47] At that time, since the applicant had not signed the undertaking, the kit was sent back to the applicant and the processing fee was not cashed. Accordingly, at that point, no sponsorship application involving the applicant had been submitted for review.

[48] Nonetheless, the legislation does not provide for a stay pending the review of a sponsorship application for the spouse or common-law partner in Canada (*Immigration and Refugee Protection Regulations*, S.O.R./2002-227, sections 230 to 234 (Regulations)), and it is settled law that a sponsorship application does not constitute an impediment to removal:

> [TRANSLATION]
> [24] It is settled law that a pending sponsorship application is not, in itself, an impediment to removal.
>
> > [52] Turning to the issue in the underlying judicial review, the Removal Officer's refusal to defer the removal pending the disposition of the H&C application, I find no serious issue with regard to the Removal Officer's conduct. As set out above, a pending H&C application on grounds of family separation is not itself grounds for delaying a removal. To treat it as such would be to create a statutory stay which Parliament declined to enact. *Green v. Canada* (*Minister of Employment and Immigration*), [1984] 1 F.C. 441 (C.A.), (1983) 49 N.R. 225, cited in *Cohen v. Canada* (*Minister of Citizenship and Immigration*), [1995] F.C.J. No. 589, (1995), 31 Imm. L.R. (2d) 134, per Noël J. (as he then was).
>
> (*Wang*, above; See also: *Banwait v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 522, paras. 17 to 19 (T.D.) (QL).) (Emphasis added).

(*Salazar*, above).

[49] A spouse may apply to sponsor an applicant, even though the spouse is outside Canada (Regulations, section 117).

[50] The applicant claims that the officer should have deferred the removal because he told the officer that his wife was pregnant. However, no other information was provided to the officer, nor was he given **any document** about the pregnancy.

[51] In the absence of evidence, it was reasonable for the officer to refuse to defer the removal because the applicant did not demonstrate any "special or compelling" circumstances. The mere fact that the applicant's wife was pregnant, in and of itself, was not a special or compelling circumstance (*Hwara v. Canada (Minister of Public Safety and Emergency Preparedness*), 2006 FC 1035, 151 A.C.W.S. (3d) 896).

[52] The agent did not have before him any reason to defer the removal. The applicant had the onus of providing evidence to justify deferring the removal, but he did not do so. As this Court explained:

> [2] The applicant did not demonstrate that she had submitted to the removals officer evidence that could constitute sufficient justification for the officer to exercise his discretion, which is limited to deferring the removal **by reason of special or compelling circumstances**:
>
> > [45] The order whose deferral is in issue is a mandatory order which the Minister is bound by law to execute. **The exercise of deferral requires justification for failing to obey a positive obligation imposed by statute**. That justification must be found in the statute or in some other legal obligation imposed on the Minister which is of sufficient importance to relieve the Minister from compliance with section 48 of the *Act [Immigration and Refugee Protection Act,* R.S.C. (1985), c. I-2]. (Emphasis added)

> (*Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148, [2001] F.C.J. No. 295, paragraph 45 (QL).)

(*Duran*, above).

[53] Thus, absent any evidence, the refusal to defer the removal was completely reasonable. The applicant failed to satisfy the test of "special or compelling circumstances".

[54] Furthermore, this Court recently established that it is not incumbent on the removals officer to examine humanitarian and compassionate considerations (H&C) where the applicant has not filed an H&C application, which is the case here:

> [13] The third alleged error is that the enforcement officer did not consider the best interests of the child. There is authority holding that the limited discretion of the enforcement officer does not extend to considering the best interests of the child, since that is the purpose of the H & C application: *John v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 420, F.C.J. No. 583; *Banik v. Canada (Minister of Citizenship and Immigration)* IMM-4861-03; *Robin v. Canada (Minister of Citizenship and Immigration)* IMM-5796-03. That question does not arise on these facts. The enforcement order did have regard to the emotional and financial impact on Mr. Padda's step-daughter. The child's interests were weighed together with the other factors and the officer concluded that when viewed in totality, the circumstances did not militate in favour of deferral. Again, what the applicant seeks is for the court to re-weigh the factors. That cannot be done and there is no serious issue here. (Emphasis added).

(*Padda v. Canada (Minister of Citizenship and Immigration*), 2003 FC 1081, 125 A.C.W.S. (3d) 686; also, *Sheechoria v. MPSEP*, (IMM-853-09; February 27, 2009), Justice Russell – stay denied).

[55] It is clear from the officer's affidavit and interview notes that the applicant did not pursue the best interests of the children argument to justify deferring the removal.

[56] **No evidence** to this effect was submitted to the officer. On the contrary, it is clear from the documents in the record that the children are in the Dominican Republic. It also appears that the applicant only purchased a one-way plane ticket.

[57] Even if the applicant had made submissions about the children's interests, which he did not do, absent any evidence, the officer would have had to nonetheless refuse to defer the removal:

> [4] In this case I am not persuaded that the underlying application has a likelihood of success for these reasons:
>
> 1. The removals officer was not under an obligation to consider the best interests of the child in this case. His discretion to defer removal is limited. The case of *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 does not, in my view, extend to the discretion of a removals officer, particularly where there is no clear evidence before the officer as to the impact of the removal on the child (*Simoes v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 936 (T.D.) (QL); *John v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 420, [2003] F.C.J. No. 583 (QL)). In this case, even if I assume that no specific request was required, there was no evidence put before the officer other than the existence of a child and family. (Emphasis added.)

(*Buchting v. Canada (Minister of Citizenship and Immigration*), 2003 FC 953, 124 A.C.W.S. (3d) 1116).

[58] In order for the Court to grant the applicant's stay motion, he must demonstrate that there is a reasonable chance of succeeding on his main application, i.e. the ALJR of the officer's refusal to defer the removal (*Duran*, above).

[59] **The first argument** relates to the fact that the applicant's wife was pregnant, which could lead to complications. However, no evidence in this regard was submitted to the officer. The documents that are attached to the applicant's record were not provided to the officer.

[60] It is, therefore, clear that the officer cannot be criticized for not considering this factor:

> [22] As to the allegation of danger as a baptized Sikh, the applicant never maintained that he was a victim of an incident of any kind as the result of being a baptized Sikh. The panel cannot be blamed for not ruling on a ground which he did not allege and which did not significantly emerge from the evidence as a whole: *Guajardo-Espinoza v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] F.C.J. No. 797 (QL). This situation is different from *Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 732, [2007] F.C.J. No. 977 (QL), where the question concerned a conclusion as to a minimum basis for the applicant's claim and where the risk as a baptized Sikh had been specifically raised at the first hearing. (Emphasis added).

(*Singh v. Canada (Minister of Citizenship and Immigration*), 2008 FC 453, [2008] F.C.J. No. 574 (QL)).

[61] Consequently, there is no serious issue in this regard.

[62] The applicant's **second argument** concerns the interests of the children. It appears that the applicant **did not make this argument** to the officer, who thus could not have erred by not considering the interests of the children. On the facts of this case, as stated previously, the documents in the record show that the applicant's children are in the Dominican Republic.

[63] The applicant's **third argument** concerns the sponsorship application. It appears that there is **no outstanding sponsorship application involving the applicant** because the one that was submitted was returned since it was incomplete.

[64] The applicant's **fourth argument** relates to the ALJR of the PRRA decision, which is pending. This Court has established and confirmed that a pending application before the Court does not constitute a serious issue that could justify a stay (*Kante v. Canada (Minister of Public Safety and Emergency Preparedness*), 2007 FC 109, [2007] F.C.J. No. 260 (QL)). The PRRA issue is addressed in docket IMM-1570-09.

[65] In light of the foregoing, the applicant did not discharge his burden of demonstrating that there is a serious issue. Accordingly, the application should be dismissed on that ground alone:

> [36] I am not persuaded that Mr. Cardoza Quinteros has raised any serious issue that would warrant the grant of a stay of the removal order. Having failed to meet one of the branches of the tripartite test, this application for a stay will be dismissed. It is not necessary that I examine whether the Applicant has met the other two branches of the *Toth* tripartite test. (Emphasis added.)

(*Quinteros*, above).

B. Irreparable harm

[66] In the case of *Kerrutt v. Canada (Minister of Employment and Immigration)* (1992), 53 F.T.R. 93, 32 A.C.W.S. (3d) 621, the Court defined irreparable harm as returning a person to a country where **his or her safety or life would be in jeopardy**. In the same decision, the Court also

found that normal personal inconvenience or the separation of family members does not constitute irreparable harm.

[67] That decision has been cited repeatedly, in particular, by Madam Justice Sandra Simpson in *Calderon* v. *Canada (Minister of Citizenship and Immigration)* (1995), 92 F.T.R. 107, [1995] F.C.J. No. 393 (QL), where she stated the following about the definition of irreparable harm in *Kerrutt*, above:

> [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. (Emphasis added.)

(Also, *Lewis v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1271, 126 A.C.W.S. (3d) 842 at paragraph 9).

[68] The onus is on the applicant to adduce clear evidence regarding the harm he or she alleges:

> [23] The evidence in support of harm must be clear and non-speculative. (*John v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 915 (QL); *Wade v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 579 (QL).)
>
> . . .
>
> [25] Moreover, to demonstrate irreparable harm, the Applicants must demonstrate that if removed from Canada, they would suffer irreparable harm between now and the time at which any positive decision is made on their application for leave and for judicial review. The Applicants have not done so. (*Reddy v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 644 (QL); *Bandzar v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 772 (QL); *Ramirez-Perez v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 724 (QL).)

(*Adams v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 256, [2008] F.C.J. No. 422 (QL)).

[69] The applicant has not established that he would suffer irreparable harm as a result of his removal to the Dominican Republic.

[70] The applicant claims that he will have to face his assailant should he be returned to the Dominican Republic.

[71] There is **no evidence** to support this allegation. The RPD did not find his story credible, and the PRRA officer, in turn, concluded that the applicant would not be at risk.

[72] In any event, it is settled law that applicants must present clear evidence to demonstrate the irreparable harm they will supposedly suffer. The harm cannot be based on conjecture: it implies the serious likelihood of jeopardy to the applicant's life or safety (*Zabala v. Canada (Minister of Citizenship and Immigration*), 2008 FC 415, 166 A.C.W.S. (3d) 301).

[73] The applicant's memorandum does not set out any harm whatsoever that he might suffer. He merely states that he will face his alleged agent of persecution. **This non-credible information has already been rejected.**

[74] Accordingly, this argument has no merit and must be disregarded **because there is no evidence** to corroborate the applicant's allegation:

> [32] The onus is on the applicant to demonstrate, through clear and convincing evidence of irreparable harm, that the extraordinary remedy of a stay of removal is warranted. Irreparable harm must constitute more than a series of possibilities and cannot be simply based on assertions and speculation (*Atwal v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427).

(*Petrovych*, above).

[75] Therefore, no irreparable harm has been made out regarding a non-credible story of persecution.

[76] The applicant submits that his children's development will be affected by their return to the Dominican Republic. **No evidence** was led to support this allegation. In addition, the documents show that the children are in the Dominican Republic.

[77] Accordingly, there is no irreparable harm in this regard.

[78] The applicant argues that his separation from his wife will cause him irreparable harm. However, the separation of spouses is part of the normal and inherent consequences of the applicant's situation:

> [33] Federal Court jurisprudence also establishes that irreparable harm must be something more than the inherent consequences of deportation. As Mr. Justice Pelletier stated in *Melo v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 403:

> . . . [I]f the phrase irreparable harm is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak. (Emphasis added).

(*Petrovych*, above).

[79] The applicant submits that his sponsorship application will be closed once he leaves Canada. There is no outstanding sponsorship application involving the applicant. In any event, a pending sponsorship application does not constitute an impediment to removal (*Salazar*, above).

[80] The applicant claims that his wife is experiencing difficulties relating to her pregnancy. There is **no evidence** in the record on this point. The documents in the applicant's file (which were not provided to the officer) do not demonstrate that the pregnancy is high-risk.

[81] In fact, the doctor simply states that the due date is June 30, 2009. If it were a complicated pregnancy, it is reasonable to think that the doctor would have said so. Nor is there any indication that his wife cannot work. In addition, the order attached to the record has no name or date, and therefore has no probative value.

[82] As for the document asking the applicant's wife to go for a screening test for gestational diabetes, there is nothing to indicate that she had the test. Nor is there any evidence that she suffers from gestational diabetes. The test is routine, and all pregnant women must have it.

[83] Hence, there is nothing in the record to support the allegation that the applicant's wife is experiencing pregnancy complications. Since the allegation is not supported by any evidence, it cannot establish irreparable harm:

> [17] The applicant stated that if he is removed from Canada his wife could suffer an abortion if she is deprived of husband's assistance, which is inconsistent with the evidence considered in this matter.
>
> [18] First, the evidence filed with the application is insufficient to establish that the applicant, himself will suffer irreparable harm if he is removed to Costa Rica.
>
> [19] The better part of the jurisprudence of this Court, states that the irreparable harm must be personal to the applicant (*Csanyi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 758 (QL) (T.D.), paragraph 4).
>
> [20] Second, the interview notes dated January 8 indicate that on that date, the applicant's wife had not experienced any complications in two months.
>
> [21] Third, the applicant did not at any time ask that his removal be deferred based on problems related to his wife's pregnancy when he met with officer Cheung, either on January 8 or 22, 2008 (see the affidavit of officer Cheung).
>
> [22] In *Tobar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 399; [2002] F.C.J. No. 500 (QL), Mr. Justice J. François Lemieux determined:
>
> > [12] In this case, the evidence went to hardship the family would suffer should he be removed. There are many cases in this Court which hold such evidence is not satisfactory to meet the irreparable harm test.
>
> [23] In *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, [2004] F.C.J. No. 1200 (QL), the Federal Court of Appeal determined as follows:
>
> > [13] The removal of persons who have remained in Canada without status will always disrupt the lives that they have succeeded in building here. . . Nonetheless, the kinds of hardship typically occasioned by removal cannot, in my view, constitute irreparable harm for the purpose of the *Toth* rule, otherwise stays would have to be granted in most cases, provided only that there is a serious issue to be tried . . .

> [24] In this case, there is no evidence in the record that would establish the existence of irreparable harm if the applicant were removed to Costa Rica.

(*Castillo*, above; also, *Patterson*, above).

[84] The applicant states that removing him to the Dominican Republic before his ALJR of his PRRA is determined constitutes irreparable harm. However, the Court has clearly established the contrary:

> [66] Finally, the removal of a person who has an application pending before the Court does not constitute a serious question or irreparable harm . . . (Emphasis added.)

(*Kante*, above).

[85] The applicant has not discharged his burden of demonstrating that he would suffer irreparable harm if he were removed to the Dominican Republic.

C. Balance of convenience

[86] Absent a serious issue and irreparable harm, the balance of convenience lies with the public interest in ensuring that the immigration process under the IRPA is complied with *(Mobley v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 65 (QL)). As this Court recently pointed out:

> [28] The public interest is to be taken into account when considering the balance of convenience and weighing the interests of private litigants. The balance of any inconvenience that the Applicants might suffer as a result of their removal from Canada does not outweigh the public interest which the Ministers seek to maintain in the application of the IRPA, specifically, the interest in executing removal orders as soon as reasonably practicable. (*Manitoba (Attorney*

> *General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110, para. 146; IRPA, ss. 48(2).)
>
> [29] The Federal Court of Appeal has confirmed that the Minister's obligation to remove is "not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control." (*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, [2004] F.C.J. No. 1200 (QL), para. 22.)
>
> [30] All of the Applicants have had the benefit of a RPD hearing and of a PRRA; Atila has also received a decision on her H&C application, and, had made an application for leave and for judicial review of her RPD decision. This Court has held in similar cases that "it is in the public interest, in light of this history, to provide finality to the process" such that the balance of convenience lies with the Respondents. (*Park Lee v. Canada (M.C.I.)*, IMM-1122-05 and IMM-1182-05 (February 28, 2005), by Justice Judith Snider.)

(*Adams*, above).

[87] In this case, the applicant arrived in Canada in 2005 on a visitor's visa obtained on the basis of false statements. He asked that his visa be renewed so that he could continue working. Then, more than a year after arriving in the country, he chose to seek refugee protection. His application was denied because of his total lack of credibility and, in the alternative, because the applicant had an internal flight alternative in his country of origin.

[88] The applicant commenced an application in Federal Court to dispute this decision but was not successful. He then filed a PRRA application, which was rejected based on lack of evidence.

VI. Conclusion

[89] The applicant has failed to demonstrate that he met the criteria for obtaining a stay and, consequently, this stay motion cannot be granted.

[90] For all these reasons, the motion for a stay is dismissed.

JUDGMENT

THE COURT ORDERS that the motion for a stay is dismissed.

"Michel M.J. Shore"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	Montréal, Quebec
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