

Federal Court



Cour fédérale

Date: 20100720

Docket: IMM-4114-10

Citation: 2010 FC 760

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 20, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

BOVE LEON LAURA ROSA

Applicant

and

**MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

I. Preliminary remarks

[1] “The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the country”, the Supreme Court of Canada explained in *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711.

[2] The Court noted, in *Chiarelli*, above, that the constitution makes a distinction between Canadian citizens and permanent residents. Consequently, Parliament has a right to legislate the conditions under which a permanent resident may remain in Canada.

[3] The applicant's allegations are not sufficient to demonstrate that her departure would cause irreparable harm to herself or to her daughter, nor were they sufficient for the Pre-Removal Risk Assessment (PRRA) officer or the officer who considered her application on humanitarian and compassionate grounds.

II. Legal proceeding

[4] The applicant, Laura Rosa Bove Leon, is a citizen of Venezuela. She is also a citizen of Italy. She is filing an application for a stay of enforcement of the removal order issued against her, which is attached to an application for leave and judicial review (ALJR) against the decision of a removal officer dated June 10, 2010, in which he informed Ms. Bove Leon that the date of her removal to Venezuela had been set for July 21, 2010.

III. Facts

[5] Ms. Bove Leon was born on October 22, 1964, in Barquisimeto, Venezuela. She is a single mother of a daughter, Shanye Chantal Bove Leon, born on May 16, 1997, in Canada.

[6] This is the second application for protection submitted in Canada by Ms. Bove Leon. Indeed, Ms. Bove Leon was admitted as a visitor on March 12, 1995, and claimed refugee status in

Canada a first time on March 29, 1995, at Citizenship and Immigration Canada (CIC) in Montréal. The claim was determined to have been abandoned by the Convention Refugee Determination Division (CRDD) on December 19, 1997.

[7] On May 20, 1998, an arrest warrant for her removal was issued against Ms. Bove Leon, who had failed to report as required on May 6, 1998.

[8] On April 13, 2002, she arrived at Dorval Airport with a plane ticket for a return flight to Venezuela booked for May 13, 2002.

[9] On April 26, 2002, the Case Processing Centre (CPC) in Vegreville received an application for residence on humanitarian and compassionate grounds.

[10] On June 8, 2002, she left Canada and returned to Venezuela with her minor daughter, as indicated in the confirmation of departure.

[11] On January 23, 2003, she once again arrived at Montréal airport and sought temporary entry, declaring that life in Venezuela was difficult with her minor daughter being a Canadian citizen. Following an assessment, a Temporary Resident Permit was issued to Ms. Bove Leon authorizing her to stay in Canada until May 23, 2003.

[12] On June 9, 2003, an application for an extension of her Temporary Resident Permit was received by CPC Vegreville and forwarded to CIC Montréal on July 9, 2003. Instructed to report to CIC on August 11, 2003, regarding this application for an extension of her Temporary Resident Permit (TRP), Ms. Bove Leon failed to appear.

[13] On April 4, 2005, a request to update her application on humanitarian and compassionate (H&C) grounds was sent to Ms. Bove Leon, with a 30-day period allotted to submit the required documentation. Ms. Bove Leon did not respond to the request from CIC.

[14] Around September 2006, CIC attempted to contact Ms. Bove Leon by telephone. The person who answered and who introduced himself as a friend of Ms. Bove Leon informed CIC that she had left for Venezuela with her daughter about two years earlier. According to this information, this meant that Ms. Bove Leon would have left around 2004, without having her departure verified.

[15] On September 13, 2009, she once again returned to Canada. Upon her arrival in Canada, using her Italian passport, she sought and obtained entry as a temporary resident for a period of 6 months.

[16] On October 27, 2009, she reported to CIC Montréal to once again claim refugee status.

[17] On November 24, 2009, an interview regarding her claim was conducted at CIC. That same day, her claim refugee protection was determined to be ineligible under paragraph 101(1)(c) of the

Immigration and Refugee Protection Act, S.C. 2001, c. 27 (IRPA) because of her prior claim with the Immigration and Refugee Board (IRB).

[18] On December 3, 2009, the PRRA notice was sent to her.

[19] On December 18, 2009, her application was received by CIC.

[20] On December 29, 2009, additional arguments and supporting documents were received by CIC.

Alleged risks

[21] Ms. Bove Leon alleges that she would face risks if she were to return to Venezuela by reason of her political opinion. In support of her claim, she argues that her problems began after she participated in a march against the regime of President Chavez and helped in the collection of 3.2 million votes demanding his impeachment. Following that, she alleges that she was accused by the government of fraudulent organizing for the opposition and received death threats. She purportedly tried to file a complaint with the authorities, without success; the police telling her that she had only to leave the country if she was not happy there.

[22] In her narrative, she further states that her daughter, a Canadian citizen, was allegedly threatened and physically assaulted at school, and that none of the staff intervened. Ms. Bove Leon

claims to have once again tried to file a complaint with the authorities, who refused to intervene because they considered it to be nothing more than a quarrel between adolescents.

[23] Having dual citizenship, Venezuelan and Italian, Ms. Bove Leon indicates that she had thought of going to Italy but, given that she didn't speak Italian, that she didn't know anyone in Italy who could provide help and guidance to her, and that Venezuelan nationals are perceived as intruders seeking to take advantage of the country's benefits, she decided to go to Canada to claim refugee protection, a country in which her daughter had citizenship and that would allow her to live without fear or persecution.

IV Analysis

[24] Ms. Bove Leon has not met any of the three criteria of the case law test set out by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)*, (1988), 86 N.R. 302 (F.C.A.): (1) that there is a serious issue to be tried in the ALJR she filed, (2) that she would be at risk of suffering irreparable harm if she were deported to Venezuela, and (3) that the balance of convenience weighs in her favour.

[25] In *Adviento v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1430, 242 F.T.R. 295, the Court established that IRPA enforcement officers have limited discretion, which is limited to deferring the removal **by reason of special or compelling circumstances:**

It is well-established law that the discretion to defer a removal is very limited. It would be contrary to the purposes and objects to the Act to expand, by judicial declaration, a removal officer's limited discretion so as to mandate a "mini H & C" review prior to removal (Davis v. Canada (Minister of Citizenship and Immigration),

[2000] F.C.J. No. 1628 at para. 4 (T.D.) (QL); *John v. Canada (Minister of Citizenship and Immigration)* 2003 F.C.J. No. 583 (T.D.) (QL) ...
[Emphasis added.]

(See also: *Simoes v. Canada (Minister of Citizenship and Immigration)* (2000), 187 F.T.R. 219, 98 A.C.W.S. (3d) 422; *Williams v. Canada (Minister of Citizenship and Immigration)*, (2002) FCT 853, 116 A.C.W.S. (3d) 89 at para. 21; *Prasad v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 614, 123 A.C.W.S. (3d) 533 at para. 32; *Griffith v. Canada (Sollicitor General)*, 2006 FC 127, 146 A.C.W.S. (3d) 123 at para. 26).

[26] In *Simoes*, above, this Court set out the factors an IRPA enforcement officer may consider in the exercise of his or her discretion to defer removal:

[12] In my opinion, the discretion that a removal officer may exercise is very limited, and in any case, is restricted to when a removal order will be executed. In deciding when it is "reasonably practicable" for a removal order to be executed, a removal officer may consider various factors such as illness, other impediments to travelling, and pending H & C applications that were brought on a timely basis but have yet to be resolved due to backlogs in the system ...

[27] 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. ...
[Emphasis added.]

(*Wang v. Canada (Minister of Citizenship and Immigration)*, [2001] 3 F.C. 682, 2001 FCT 148)

V. Conclusion

[28] The applicant has not met the requirements set out in the case law for obtaining a judicial stay.

[29] For all of these reasons, the application to stay the execution of the applicant's removal order is dismissed.

ORDER

THE COURT ORDERS the dismissal of the application for a stay of the removal order against the applicant.

“Michel M.J. Shore”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4114-10

STYLE OF CAUSE: BOVE LEON LAURA ROSA v.
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: July 19, 2010 (by teleconference)

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: July 20, 2010

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