Federal Court Cour fédérale

Date: 20120127

Docket: IMM-600-12

Citation: 2012 FC 111

Ottawa, Ontario, January 27, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

LOREANNY ARTEAGA BARRERO

Applicant

and

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

Respondents

REASONS FOR ORDER AND ORDER

UPON MOTION dated January 26, 2012 on behalf of the Applicant for an Order to stay the execution of a removal Order made against her, which is scheduled to be executed on Monday January 30, 2012, to Colombia, until the Applicant's Application for Leave and for Judicial Review, of a negative decision by a Pre-Removal Risk Assessment [PRRA] Officer (the Officer), dated October 31, 2011, but signed on November 10, 2011, after consideration of additional evidence adduced;

AND UPON considering the evidence and the submissions contained in the motion records submitted by the Applicant and by the Respondents;

AND UPON hearing the oral submissions of counsels by teleconference in Ottawa on Friday, January 27, 2012;

AND UPON considering the conjunctive tri-partite test set forth in *Toth v Canada (Minister of employment and Immigration),* (1988) 86 NR 302 (FCA), that must be satisfied before a stay of removal can be granted;

ENDORSEMENT

[1] In order to succeed the Applicant must demonstrate that there is a serious issue to be tried and that there are valid reasons to explain the late filing of her application for judicial review. In this instance the Applicant claimed that the Officer made several errors that warrant the intervention of the Court namely that the new evidence adduced after the hearing held on October 24, 2012, was not considered by the Officer. Applicant also claimed that she never received a copy of the Officer's decision and more importantly that, on January 23, 2012, Ms Malenfant, the removal Officer, refused to provide a copy of the Officer's decision. The Applicant alleged that this failure constitutes a breach of the duty of procedural fairness;

[2] Having considered the evidence adduced by the Applicant namely her affidavit stating that she never received a copy of the decision, and that she was refused a copy on January 23, and Respondents' rebuttal namely the affidavit of Ms Liette Malenfant, the removal Officer, stating that on November 29, she did provide a copy of the PRRA decision to the Barrero family. That Applicant did request a stay of her removal on January 8, despite the fact that no date had been set, and further filed a written request for a stay on January 12, 2012. Ms Liette Malenfant denies having refused to see Applicant on January 20 and January 23, 2012, because she was absent from her office when Applicant tried to see her;

[3] And having considered the additional arguments presented by counsel for the Applicant at the hearing, the decision of Justice Hughes in *Varga v Canada (Minister of Citizenship and Immigration)*, FC 2005 1280 [*Varga*] and Canada's obligations as a signatory of the *United Nations Convention on the Rights of the child*, and in view of Applicant's failure to provide reasons for her late filing;

[4] The Court is not satisfied that the Applicant has demonstrated that there is a serious issue to be tried. The Court cannot conclude, on the balance of probabilities, that the Officer, in essence, made a reviewable error in the treatment of Applicant's evidence or that he failed to consider all of the evidence adduced by the Applicant or even that he made adverse credibility findings. The Court rejects Applicant's argument based on *Varga*, as that decision was overturned by the Federal Court of Appeal. Canada's obligation under the *United Nations Convention for the Rights of the Child* do not exempt an Applicant from bringing forth a reviewable case and meeting the tri-partite test in

order to obtain a stay. Accordingly, the Court is not satisfied that the Applicant has raised a serious issue to be tried with respect to whether the Officer erred;

[5] In short, the Applicant has not raised a serious issue with respect to whether the Officer's decision falls "within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v New Brunswick,* 2008 SCC 9 at para 47) or "fit[s] comfortably with the principles of justification, transparency and intelligibility" (*Canada (Citizenship and Immigration) v Khosa,* 2009 SCC 12, [2009] 1 SCR 339 at para 59);

[6] The Applicant has not satisfied her burden of establishing that she faces a risk of irreparable harm if she is removed from Canada. I note that this conclusion is consistent with the conclusions reached separately by the Officer and by the Refugee Protection Division of the Immigration and Refugee Board of Canada, after a careful consideration of all of the available evidence adduced in support of the applicant's PRRA and refugee protection applications;

[7] The fact that the Applicant's application for Permanent resident status will become moot is unfortunate, but not sufficient to constitute irreparable harm, nor is the fact that Applicant's children are aged respectively one and two years old. The Court has weighed the evidence submitted by both parties with respect to the medical condition of the Applicant's daughter and notes that proper medical care is available in both Colombia and Venezuela. The separation of families is a harsh consequence of deportation orders and the jurisprudence of this Court has clearly established that it does not constitute irreparable harm (see *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 69;

[8] The Court has also taken into consideration that measures have been taken to facilitate Applicant bringing her Canadian born children with her after her stated intention to do so. In that respect, the removal Officer has postponed the date initially set for removal, thereby permitting Applicant to obtain the Canadian passports for her Canadian born children. The Court also notes the removal Officer's acquiescence to defer the deportation of the Applicant's mother initially set for December 23, 2011 to January 30, 2012, to enable her to travel with the Applicant and her children;

[9] Finally the Applicant was also unable to demonstrate that the balance of convenience favors a granting of the requested stay by this Court;

[10] In conclusion, the Court is left with no alternative under the law, in view of the application presented which was limited to the PRRA Officer's decision, but to dismiss this motion for a stay.

THIS COURT ORDERS that this motion for a stay be dismissed.

"André F. J. Scott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-600-12
STYLE OF CAUSE:	LOREANNY ARTEAGA BARRERO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION HELD VIA TELECONFERENCE ON JANUARY 27, 2012 FROM MONTRÉAL, QUÉBEC AND OTTAWA, ONTARIO

REASONS FOR ORDER AND ORDER:	SCOTT, J.
DATED:	January 27, 2012

ORAL AND WRITTEN REPRESENTATIONS BY:

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