

Federal Court



Cour fédérale

Date: 20160122

Docket: IMM-3692-15

Citation: 2016 FC 79

Vancouver, British Columbia, January 22, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RAAFAY SHEHZAD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The Applicant has presented a motion before this Court to stay his application for judicial review scheduled for today, January 20, 2016.

[2] The stated reason for the Applicant's motion is to adjourn until such time that the Supreme Court of Canada will have rendered its final judgment in *Thanh Tam Tran v Canada (MPSEP)*, (SCC file no. 36784). As yet, the Supreme Court has not even granted leave.

[3] It is recalled that in its decision, the Federal Court of Appeal in *Canada (MPSEP) v Tran*, 2015 FCA 237, stated that it affirmed thereby, that conditional sentences of imprisonment are “terms of imprisonment” under the *Immigration and Refugee Protection Act (IRPA)* and are properly considered as such.

[4] It is to be recalled that a pending appeal, and even less so, a pending application for leave to appeal, does not change the law. The requirement in such cases is to apply the legislation as it is, as interpreted by the latest jurisprudence in that regard.

[5] The Federal Court of Appeal concluded in *Tran*, as cited above, that “a conditional sentence of imprisonment imposed pursuant to the regime set out in ss. 742 to 742.7 of the Criminal Code may reasonably be construed as a term of imprisonment under paragraph 36(1)(a) of the IRPA”.

[6] In the same Federal Court of Appeal decision, the Court clearly set out in concluding that paragraph 64(2) of IRPA applies thereto as well.

[7] The test to determine whether to stay a judicial review in such matter is whether it would be in the interests of justice to pursue such a course. *Sanchez v Canada (MCI)*, 2014 FCA 19, para 8.

[8] Immigration proceedings aa per the IRPA are to proceed in a timely manner as is set out in paragraphs 72-74 inclusive.

[9] Also, judicial review applications are to be conducted “without delay” and in a “summary way”.

[10] There are no appeals of interlocutory decisions to the Federal Court of Appeal.

[11] In *Joseph v Canada (MCI)*, 2015 FC 904, paras 49 and 52, Justice Henry Brown reiterated the Court’s responsibility in its “duty to decide cases as they arise”. Furthermore, he went on to specify therein that the law is to be applied as decided by the Federal Court of Appeal, which stands until such time as the Supreme Court of Canada may decide otherwise.

[12] It is recalled that the Federal Court of Appeal was very clear when it specified in *Sanchez* that a potential delay was “very long”, and considered a prejudice to public interest when the Supreme Court of Canada hearing was to take place subsequent to a two month delay. In the *Tran* case, it has not been decided whether the Supreme Court of Canada will even grant leave for the matter to be heard. As a result, the delay would be substantially and significantly much longer.

[13] Also, due to the several issues arising in the *Tran* case, the definitive answers in regard to that which the Federal Court of Appeal has already decided appear to have responded to the issues in respect of the present case before this Court. Therefore, the Court considers that an adjournment would not be appropriate in such circumstances. It would go against finality in the proceeding; it would also be in opposition to the need for a summary and expeditious manner in

proceeding in judicial reviews; and, it would be in contradiction to the Court's responsibility or duty to ensure the legislation is applied and the jurisprudence is interpreted as it stands.

[14] At this time, the law is as it is; the Federal Court of Appeal decision is dispositive of as it was in *Tran* (above).

[15] Therefore, the interlocutory motion for an adjournment, or a stay, of the Applicant's application for judicial review is refused.

ORDER

No basis for a delay exists. Therefore, **THE COURT ORDERS** that this interlocutory motion for an adjournment be refused.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3692-15

STYLE OF CAUSE: RAAFAY SHEHZAD v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 20, 2016

ORDER AND REASONS: SHORE J.

DATED: JANUARY 22, 2016

APPEARANCES:

Fritz Gaerdes
Christopher Elgin
Alison Brown

FOR THE APPLICANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Elgin, Cannon & Associates
Vancouver, British Columbia

William F. Pentney
Deputy Attorney General of Canada
Vancouver, British Columbia

FOR THE APPLICANT

FOR THE RESPONDENT