Federal Court Cour fédérale

Date: 20160705

Docket: IMM-2614-16

Citation: 2016 FC 757

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 5, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

EKANGA ANNE EUGÉNIE LILALA

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS:

I. Introduction

[1] The applicant was convicted of criminal offences committed against her minor daughter. She was charged with three counts of assault with a weapon causing bodily harm to a child under paragraphs 267(*a*) and 267(*b*) of the *Criminal Code*, RSC, 1985, c C-46.

[2] Given the serious crimes committed by the applicant against her child, and that, to date, she has not been granted a record suspension, the applicant has not regularized her status in Canada for 19 years; this is her third application for a stay of the removal order, which was also denied. In the very recent Federal Court decision, rendered by Mr. Justice Alan J. Diner, on May 4, 2016, *in Lilala v. Canada (Public Safety and Emergency Preparedness)*, 2016 FC 500, Diner J. clearly stated at paragraph 23:

> [23] Finally, as the Respondent noted in the hearing, a record suspension is discretionary. There is no guarantee that her application, if submitted, will be approved. Considering she had not even applied for a record suspension at the time of the Officer's decision, there was little evidence to suggest a deferral was reasonably forthcoming.

On May 4, 2016, Diner J. had no evidence demonstrating that the applicant had even applied for a record suspension at that time. After May 4, the applicant finally submitted an application in this regard, but with no guarantee of a favourable response.

II. Analysis

[3] The applicant is requesting a stay of the removal order.

[4] The applicant's removal was scheduled for Wednesday, July 6, 2016.

[5] Based on the test in *Toth v. Canada (Minister of Employment and Immigration)*, 86 NR 302 (FCA), the applicant must demonstrate three conjunctive requirements: a serious issue to be tried in an application for leave and judicial review; a risk of suffering irreparable harm; and, a balance of convenience in her favour.

[6] According to the history of the case, the applicant is a citizen of the Democratic Republic of the Congo [DRC]. She has been in Canada since January 28, 1997; at that time, she made a claim for refugee protection; <u>her claim for refugee protection was denied by the Refugee Protection Division</u> and a departure order was issued against her.

[7] The applicant's application for leave and judicial review of the decision regarding her claim for refugee protection was denied by the Federal Court on May 27, 1998.

[8] After that, the applicant filed a humanitarian and compassionate application [H&C application].

[9] Given the serious crimes committed by the applicant against her child, and that, to date, she has not been granted a record suspension, the applicant has not regularized her status in Canada in 19 years; this is her third application for a stay of the removal order, which was also denied (see *Lilala*, above, at paragraph 23). On May 4, 2016, Diner J. had no evidence demonstrating that the applicant had even applied for a record suspension at that time. After May 4, the applicant finally submitted an application in this regard, but with no guarantee of a favourable response.

[10] The applicant wanted to show that her actions constituted a simple parental disciplinary measure against a child with behavioural problems. Instead, her criminal assaults are considered serious crimes under common law under the *Criminal Code*.

[11] The investigation conducted confirmed at the time that this was not an isolated incident of abuse, but rather recurring acts constituting a serious crime under common law under the *Criminal Code*, repeated by the applicant. Moreover, following her serious criminal actions, the applicant lost parental authority and the right to visit her child, who was taken in by the state.

[12] A report was prepared under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and the applicant's H&C application was denied.

[13] Under the deportation order issued against her, the applicant was inadmissible in Canada in accordance with paragraph 36(1)(*a*) of the IRPA on grounds of serious criminality.

[14] Once again, the applicant tried to stay in Canada, based on a new application for permanent residence; it was also denied.

[15] The applicant's first pre-removal risk assessment [PRRA] was denied on May 7, 2014.

[16] In addition, given that the applicant failed to cooperate with the Canada Border Services Agency [CBSA] authorities, she posed a flight risk.

[17] The applicant was granted a stay pending the outcome of a judicial review of the PRRA decision.

[18] The applicant filed a second PRRA application that was also denied on January 16, 2016.

[19] Furthermore, the Federal Court dismissed the judicial review of the decision refusing to defer the removal on January 20, 2016.

[20] Following her release from custody with conditions, the applicant was arrested for breach of release conditions and detained once again.

[21] The applicant tried to obtain a new administrative stay without success on June 20, 2016; and she was again arrested due to a flight risk.

[22] According to the CBSA, the removal was scheduled for July 6, 2016, at 19:45, to the DRC, with the applicant's departure requiring an escort by two CBSA officers in possession of a visa for the applicant's country of nationality.

[23] This is based on the steps taken with authorities in Canada since 1997 (thus, for 19 years) and on the fact that the risks related to her were fully assessed as not interfering with her deportation, knowing that the applicant did not file her application for a record suspension until after Diner J.'s May 4, 2016 ruling, refusing her application for a stay of the removal order.

[24] The applicant must be deported given that she has not met any of the three conjunctive requirements in the *Toth* test.

III. Conclusion

[25] The Court finds that the applicant's motion for stay of the removal order must be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the motion for stay of the removal order is dismissed.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2614-16
STYLE OF CAUSE:	EKANGA ANNE EUGÉNIE LILALA v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION HEARD BY CONFERENCE CALL ON JULY 4, 2016, BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC

JUDGMENT AND REASONS:	SHORE J.
DATED:	JULY 5, 2016

APPEARANCES:

Arthur Ayers	FOR THE APPLICANT
Suzanne Trudel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Arthur Ayers, Lawyer Ottawa, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT