

Federal Court



Cour fédérale

Date: 20180130

Docket: IMM-330-18

Citation: 2018 FC 103

Vancouver, British Columbia, January 30, 2018

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ABBAS, KHAWAJA HASSAN

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

ORDER AND REASONS

[1] Mr. Abbas seeks an order staying the execution of his deportation to Pakistan, currently scheduled for Sunday, February 4, 2018.

[2] The decision that underlies this motion is the application for leave and judicial review “of the decision made on or about January 22, 2018, by the Respondent wherein the request to defer

Applicant's removal from Canada was denied." The Respondent refers to this as the Second Deferral Refusal.

[3] Mr. Abbas entered Canada with his family from the U.S.A. on February 17, 2009, and made a claim for refugee status. In that claim, he reported that he belonged to the Muhajir Qaumi Movement Altaf Group [MQM-A]. As a result of that membership, on December 21, 2011, Mr. Abbas was reported inadmissible to Canada for security reasons under section 34 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. On March 16, 2016, the Immigration Division issued a deportation order against Mr. Abbas pursuant to paragraph 34(1)(f) of the *Act* [the Deportation Order]. An application to judicially review the Deportation Order was dismissed on June 28, 2016.

[4] On March 23, 2015, Mr. Abbas made an application for permanent resident status in Canada as a dependent based on his wife's application for permanent residence as a protected person. On December 9, 2016, his application was denied because of his inadmissibility status.

[5] Mr. Abbas then made an application for Ministerial relief in respect to his inadmissibility status. That application remains outstanding.

[6] On March 1, 2017, Mr. Abbas was offered a Pre-Removal Risk Assessment [PRRA]. A negative decision was rendered on September 8, 2017. I reviewed the application for leave and judicial review [IMM-4394-17] on January 29, 2018, and advised the parties at the hearing of this motion that leave will be granted.

[7] On January 17, 2018, Mr. Abbas made his first request for a deferral of his removal from Canada. He asked that it be delayed for 4 weeks so he could sell his business. It was also mentioned in that request that he had outstanding the request for Ministerial exemption and his wife's spousal application. That request was refused.

[8] The second request for deferral was based on the outstanding application for leave and judicial review of the PRRA decision, and that he had requested that the Ministerial relief application be expedited.

[9] Given the nature of the underlying decision, in order to obtain a stay of removal, Mr. Abbas must establish to my satisfaction that a serious issue is raised in the underlying application, that he is likely to suffer irreparable harm between now and the date the underlying application is disposed of if the stay is not granted, and that the balance of convenience rests with him: *Toth v Canada (Minister of Employment and Immigration)*, (1998) 86 NR 302 (FCA). All three of these components must be met. Because the underlying decision is a refusal to defer removal, the serious issue must be assessed on a higher threshold as stated by this Court in *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FC 682, and approved by the Federal Court of Appeal in *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81. Having read the parties' written submissions and heard their oral submissions, I find that this applicant has not met the test on this motion.

[10] All of the issues raised in the material filed in support of the motion relate to matters other than the actual decision under review. It is that decision that gives the basis for the motion

and it is alleged errors in that decision alone that are relevant to the question of serious issue.

For this reason alone, this motion must be dismissed.

ORDER

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

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-330-18

STYLE OF CAUSE: ABBAS, KHAWAJA HASSAN v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 30, 2018

ORDER AND REASONS: ZINN J.

DATED: JANUARY 30, 2018

APPEARANCES:

Ghulam Murtaza FOR THE APPLICANT

Brendan Ward FOR THE RESPONDENT

SOLICITORS OF RECORD:

GMS Law Corporation FOR THE APPLICANT
Barristers & Solicitors
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia