

Federal Court



Cour fédérale

Date: 20180619

Docket: IMM-2734-18

Citation: 2018 FC 635

[ENGLISH TRANSLATION]

Montréal, Quebec, June 19, 2018

Present: The Honourable Mr. Justice Locke

BETWEEN:

GUY ROBERT GERVÉ

Applicant

and

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

Respondent

ORDER

UPON motion for a stay of a removal order against the applicant to Haiti scheduled for June 27, 2018, until a final decision is made on his application for judicial review of a decision of an enforcement officer (the officer), dated May 30, 2018, to refuse to defer the removal order;

UPON REVIEW of the parties' records and the written and oral submissions of the counsel;

CONSIDERING that to succeed, the applicant must satisfy the test set out in *Toth (Toth v. Canada (Minister of Employment and Immigration))* (1988), 86 NR 302 (FCA)) and demonstrate:

1. that there is a serious issue to be tried;
2. that he would suffer irreparable harm if he were to be removed from Canada to Haiti;
and
3. that the balance of convenience is in his favour;

CONSIDERING that the test in *Toth* is conjunctive;

CONSIDERING that the officer has limited discretionary power to defer enforcement of a removal order;

CONSIDERING that the standard of review for the officer's decision is reasonableness and that a higher threshold of "likelihood of success on the underlying application" or "quite a strong case" applies when the underlying application concerns a refusal to defer a removal order: *Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 at paragraph 11 and *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paragraph 67;

CONSIDERING that the Court is convinced that there is a serious issue to be tried for the following reasons:

[1] With regard to the sponsorship application filed on January 15, 2018, the officer failed to consider in his decision the applicant's main submission that a preliminary decision is expected before the end of July 2018;

[2] The officer also failed to consider that the sponsorship application would be lost upon the applicant's removal;

[3] With respect to the applicant's role as financial and emotional support for his spouse and her eight children, the officer failed to consider in his decision that all of the children (even those who are not minors) are in school, or that asking them to work to contribute financially to the family could detract from their studies;

[4] The Court does not accept that the sponsorship application is destined to fail — even though the applicant appears to be excluded from the family class under paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, it seems (considering the motion to defer the removal order and the letter from the applicant's spouse dated November 21, 2017) that the sponsorship application includes a reference to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27, and to humanitarian and compassionate considerations, and that this aspect of the sponsorship application is not destined to fail;

CONSIDERING that the Court is convinced that the loss of the sponsorship application following the applicant's removal would cause irreparable harm;

AND CONSIDERING that the Court is satisfied that the balance of convenience favours the applicant — the inconvenience for the applicant of losing the sponsorship application being

greater than the inconvenience for the respondent (or for the public) of a brief deferral of the applicant's removal to await the preliminary decision on the sponsorship application;

THIS COURT ORDERS that:

1. The applicant's motion to stay the removal order is partially allowed.
2. The enforcement of the removal order against the applicant is stayed until the earliest of the following events:
 - a. A preliminary decision on the sponsorship application filed on January 15, 2018;
or
 - b. A final decision on the application for judicial review of the officer's decision dated May 30, 2018.

“George R. Locke”

Judge