

Federal Court



Cour fédérale

Date: 20181101

Docket: IMM-3314-18

Citation: 2018 FC 1100

Ottawa, Ontario, November 1, 2018

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CHAUDHRY MUHAMMAD AZEEM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] Mr. Azeem is scheduled for removal to Pakistan on November 6, 2018. This motion to stay his removal was brought on short notice and heard by teleconference.

[2] The decision underlying this motion is an application for leave and judicial review of a Pre-Removal Risk Assessment [PRRA] that was denied by decision dated June 6, 2018. By Order dated October 10, 2018, this Court granted leave on that application and has scheduled the hearing for January 8, 2019, in Winnipeg, Manitoba.

[3] Mr. Azeem has a long immigration history. He entered Canada on July 31, 2009. His claim for refugee protection was denied on August 20, 2012, and his application for leave and judicial review was denied on January 29, 2013. His subsequent application for permanent residence from within Canada was refused on November 13, 2015. Following that, he applied for a PRRA which was refused on February 25, 2016. A subsequent application for permanent residence from within Canada was also denied on June 23, 2017.

[4] Mr. Azeem's removal from Canada was originally scheduled for July 6, 2017, but he was granted an administrative deferral for medical reasons related to cardiac surgery.

[5] In May 2018, Mr. Azeem made a second application for a PRRA. It was rejected on June 6, 2018, and he made an application for leave and judicial review of that decision and leave has been granted. He was served with a notice of removal scheduled for August 21, 2018.

[6] Again, an administrative deferral of removal was sought on medical grounds. After review by a doctor of the medical information provided, the deferral was refused. Mr. Azeem failed to report for removal on August 21, 2018, as directed.

[7] When asked why he failed to appear for removal, he said that he was in the hospital. When confronted with information that he had been discharged the day prior to removal, he responded that he had slept in because of the medication he was taking. During this meeting Mr. Azeem provided a further note from his doctor and made another request for deferral of his removal.

[8] This most recent deferral request and its accompanying medical information was examined by a doctor who provided the following opinion:

Based on the medical file documentation presented for review, it is my professional opinion that if Mr. Azeem is to be repatriated to his country of origin, he may travel by commercial airliner in accordance with the following medical recommendations:

1. Given Mr. Azeem's medical history, travel with a nurse is recommended to facilitate compliance with pharmacological management during air travel.
2. There should be a sufficient supply of oxygen on board the plane to administer at a rate of 3L/min for the duration of the trip if needed.
3. Avoidance of heavy physical exertion is advised; such as, special assistance with baggage during boarding and deplaning is recommended.
4. Avoidance of rapid gait and excessive ambulation, including the use of stairs, is recommended while in the airport.
5. Vehicular transportation or wheelchair use while in the airport is recommended.
6. Mr. Azeem should be provided a copy of his medical records for the flight home.

[9] Canada Border Services Agency has committed to all of these recommendations and on that basis refused the most recent deferral request.

[10] In order to be granted the extraordinary remedy of a stay of removal, Mr. Azeem must satisfy me that he meets the conjunctive tri-partite test in *Toth v Canada (Minister of Employment and Immigration)*, (1988) 86 NR 302 (FCA). He must persuade the Court that there is a serious issue to be tried in the underlying judicial review, that he will suffer irreparable harm

between now and the date of the judicial review determination if the stay is not granted, and that the balance of convenience rests with him.

[11] The Minister properly concedes that a serious issue is raised in the underlying application.

[12] Mr. Azeem submits that he will suffer irreparable harm in that if removed his judicial review of his PRRA decision will become moot, and he will be removed prior to having his risk in returning to Pakistan properly assessed.

[13] The finding of a serious issue, even when the decision under review is a negative PRRA decision does not automatically lead to a finding that irreparable harm is likely to occur: See *Sallai v Canada (Citizenship and Immigration)*, 2018 CanLII 86645 at para 4, and *Adams v Canada (Citizenship and Immigration)*, 2008 FC 256 at para 22. Irreparable harm is still a matter to be weighed independently.

[14] The Minister submits that “the Federal Court of Appeal has repeatedly found that the potential mootness of the Applicant’s underlying judicial review if they are removed does not amount to irreparable harm” citing *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 112 at para 32, and *Canada (Minister of Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286 at paras 34, 35 & 38, and other decisions.

[15] Mr. Azeem, while acknowledging this line of authorities, submits that there are instances when the removal would constitute disrespect for the administration of justice: *Begum v Canada (Minister of Citizenship and Immigration)*, 2013 FC 550. Unlike the present case, in *Begum* the application had been heard and was under reserve at the time the stay motion was heard. Also in the present case, Mr. Azeem, had he reported for removal on August 21, 2018, as he was directed, he would have been returned to Pakistan before his application was considered by the leave judge.

[16] While Mr. Azeem has some significant health issues, I am satisfied that CBSA is accommodating him in keeping with the medical advice it has received. There is no evidence that his life or health is at risk during removal, or that he is at risk if returned to Pakistan. Irreparable harm has not been made out.

[17] While it is unnecessary to consider the third element of the tripartite test elements, I find that the balance of convenience rests with the Minister. The Minister has been accommodating in the past in granting administrative deferrals so that health concerns could be addressed. When he was able to be removed, Mr. Azeem failed to report and then provided less than genuine responses when asked why.

[18] For these reasons, the motion is dismissed.

ORDER IN IMM-3314-18

THIS COURT ORDERS that the motion for a stay of the removal of Mr. Azeem to Pakistan, currently scheduled for November 6, 2018, is dismissed.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3314-18

STYLE OF CAUSE: CHAUDHRY MUHAMMAD AZEEM v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO VIA TELECONFERENCE WITH
WINNIPEG, MANITOBA
MOTION DEALT WITH IN WRITING WITHOUT THE
APPEARANCE OF PARTIES

DATE OF HEARING: OCTOBER 31, 2018

ORDER AND REASONS: ZINN J.

DATED: NOVEMBER 1, 2018

WRITTEN REPRESENTATIONS BY:

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