Date: 20190501

Docket: IMM-2557-19

Citation: 2019 FC 556

Ottawa, Ontario, May 1, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

DALJIT SINGH CHAHAL

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

Respondent

<u>ORDER AND REASONS</u>

UPON CONSIDERING THAT the Applicant arrived in Canada on March 22, 2000 and became a permanent resident on August 17, 2001 and on December 13, 2016 was convicted of criminal offences including sexual interference with a minor, sexual assault, unlawful confinement and uttering threats, all offences contrary to the *Criminal Code*, R.S.C., 1985, c. C-46 and upon considering that the victim was a 4-year old and the Applicant's daughter was in close proximity and interrupted one of the Applicant's assaults;

UPON CONSIDERING that the Applicant was sentenced to serve three (3) years and six (6) months incarceration following an appeal to the Alberta Court of Appeal;

UPON CONSIDERING that the Applicant was only released on mandatory supervision, he not having completed therapy and educational programming at the correctional institution due to his lack of language ability, among other things and upon considering that Correctional Services Canada concluded he is at medium risk to reoffend;

UPON CONSIDERING that the Applicant is inadmissible on grounds of serious criminality pursuant to paragraph 36(1)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 and a deportation order was issued against him on June 14, 2018;

UPON CONSIDERING that the applicant's pre-removal risk assessment request was denied on November 13, 2018 and removal instructions were issued to the Applicant on April 3, 2019 requiring him to report for removal on May 1, 2019 at 10:25 a.m. CMT;

UPON CONSIDERING that on April 15, 2019, the applicant's request for a deferral of his removal, pending his exemption on humanitarian and compassionate grounds, was dismissed and upon considering the underlying application for judicial review of the refusal to grant a deferral;

UPON CONSIDERING that in order to be successful on the within application, the Applicant must meet each element of the three-part test set out in *Toth v. Canada (Minister of Employment and Immigration),* [1988] F.C.J. No. 587, 86 N.R. 302 (FCA) [*Toth*] and *RJR MacDonald Inc. v. Canada (A.G.)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385, namely that:
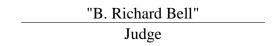
1. there is a serious issue to be determined;

2. the Applicant will suffer irreparable harm if the stay is not granted; and,

3. the balance of convenience favours the granting of the stay.

This court owes the Officer considerable deference in his determination on a request for deferral (see *Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148, [2001] 3 F.C. 682 at paras. 10-11). Furthermore, given the limited discretion possessed by the Officer in such matters, the "serious issue" standard becomes elevated (see *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paras. 66-67, [2010] 2 F.C.R. 311).

I am of the view that none of the requirements of the tripartite test in *Toth* have been met. There is no serious issue to be determined. There is no evidence of irreparable harm and the balance of convenience favours the enforcement of the removal order (see *Ibrahima v. Canada (Public Safety and Emergency Preparedness*, 2011 FC 607, 390 F.T.R. 142).

ORDER

THIS COURT ORDERS that the motion for a stay of execution of the removal order is dismissed.

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"B. Richard Bell"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2557-19
STYLE OF CAUSE:	DALJIT SINGH CHAHAL v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	APRIL 30, 2019
REASONS FOR ORDER AND ORDER:	BELL J.
DATED:	MAY 1, 2019

APPEARANCES:

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