

Federal Court



Cour fédérale

Date: 20190724

Docket: IMM-2684-19

Citation: 2019 FC 984

Ottawa, Ontario, July 24, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ABDERRAZZAK BENTAMTAM

Applicant

and

**MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

ORDER

UPON motion on behalf of the Applicant for a stay of the execution of a removal order;

UPON reading all the materials before the Court;

AND UPON hearing counsel of both parties;

THE COURT considers that no serious issue exists on the grounds that the Applicant has not filed a copy of the Immigration Appeal Division [IAD] decision;

No documentary evidence has been brought before the Court supporting the motion;

Failure to submit the above IAD decision is reason enough to refuse to acknowledge a serious issue on a stay of removal motion (*Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FC 76);

In addition, the affidavit is improper with inadequate relevant information by which to support the affidavit (*Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43 at para 16; as well as *Duyvenbode v Canada (Attorney General)*, 2009 FCA 120 at para 2);

Inadmissible statements, as conclusion and arguments cannot be a substitute to fact in an affidavit in support of a stay motion;

Furthermore, and, of primary importance, the Applicant does not have “clean hands”;

The Applicant was convicted of five separate count of assault with a weapon, common assault and the uttering of death threats to cause death or bodily injury on his former spouse who had sponsored him to Canada;

It is recognized by this Court that the said crimes were perpetrated during the time of the pregnancy of the said victim, all of which culminated in the victim’s seeking shelter in a battered women’s shelter after having her pregnancy terminated;

The above criminal behavior of the Applicant caused the removal of the Applicant’s permanent residence status;

The criminal behavior of the Applicant, in and of itself, is the reason for refusal to grant a stay of removal of an execution order thereon. Injunctive relief is not given to anyone who does not have “clean hands”. An injunction is an extraordinary remedy, not granted to an Applicant who lacks “clean hands” (*Canada (National Revenue) v Cameco Corporation*, 2019 FCA 67 at para 37);

Loss of status due to serious criminality remove the possibility of granting an injunction, as the balance of convenience, certainly, does not favor the Applicant in such a matter (*Alexandre v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 834);

An equitable remedy in respect of an injunction is that which a Court must consider in deciding on this extraordinary remedy (*Trabelsi v Canada (Citizenship and Immigration)*, 2016 FC 585 at paras 3 to 8; also, *Cox v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1268 at para 4);

As often written by this Court “he is who has committed Iniquity ... shall not have Equity” (*Ksiezopolski v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1402 at para 7);

Clearly, as per the legislation, it is in the public interest that the Respondent executes the removal as soon as reasonably practicable.

CONSEQUENTLY, THE COURT ORDERS that the motion be dismissed.

“Michel M.J. Shore”

Judge