Federal Court  Cour fédérale

Date: 20200219

Docket: IMM-813-20
IMM-927-20

Citation: 2020 FC 269

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, February 19, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

EDUARDO JAVIER CEJA CORONA

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
AND
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

[1] The applicant, Eduardo Ceja Corona, is seeking a stay of his removal to Mexico, scheduled for February 21, 2020. He asks that his removal be stayed until the Federal Court has reviewed the decision denying his application for a Pre-Removal Risk Assessment [PRRA],

dated January 24, 2020 (Docket IMM-813-20), as well as the decision of an enforcement officer refusing a postponement of the removal, dated February 6, 2020 (Docket IMM-927-20).

[2] The stay application was filed with the Court on February 12, 2020, and was heard on February 18, 2020. Since the applicant's immigration file is quite long and complex, I will deal with only a few aspects in detail in the analysis. At this stage, a brief summary is sufficient.

I Background

[3] The applicant is a citizen of Mexico and arrived in Canada in October 2005 with 14 family members, including his sister, brother and grandmother, all of whom were dependent on the latter. The family fled Mexico after the murder of the applicant's parents, which took place in September 2005. It appears that this murder was committed by a drug trafficker as a settling of accounts.

[4] The applicant and his family submitted a refugee protection claim, which was denied by the Refugee Protection Division [RPD] in May 2006. They then began seeking other remedies, including a PRRA and an application for permanent residence on humanitarian and compassionate considerations. Both were rejected on the same date in October 2007. The applications for leave and for judicial review regarding these decisions were dismissed by the Court in February 2008. After a public campaign of support for the family, the Minister granted them a temporary resident permit [TRP] from January 2008 to January 2010, to allow them to submit a second application for permanent residence on humanitarian and compassionate considerations.

[5] Up to this point, the applicant's applications were linked to those of his family, and his grandmother had been named designated representative for the applicant, as well as for his brother and sister, because they were minors. In March 2011, the applicant's TRP was not renewed because of criminal charges against him. These charges resulted in an unconditional discharge and recognizance to keep the peace, as per section 810 of the *Criminal Code*, RSC 1985, c C-46.

[6] The applicant has remained in Canada without status ever since.

[7] The applicant's family had a difficult time, and following proceedings initiated by the Director of Youth Protection in Quebec, in September 2013, the applicant's grandmother decided to move back to Mexico with the applicant's brother. Then, the applicant's sister's application for permanent residence was accepted. She has been a permanent resident of Canada since 2016.

[8] The applications for permanent residence of the other family members, including that of the applicant, were rejected in September 2016.

[9] Since September 2015, the applicant has been in a common-law relationship with a Canadian citizen.

[10] On August 19, 2019, the applicant was arrested at his workplace, and a conditional release order was issued a few days later. The Canada Border Services Agency [CBSA] summoned him to arrange for his removal to Mexico in October 2019. An administrative stay of the removal was granted to allow the applicant to complete a therapy program of 15 weekly sessions.

[11] In the meantime, the applicant's spouse submitted a sponsorship application in the spouse or common-law partner category on October 7, 2019 (still under consideration), and the applicant submitted a PRRA application on November 3, 2019, rejected on January 24, 2020. In addition, he obtained a Quebec Selection Certificate to help his brother in Mexico return to Canada, in the category of foreign nationals who are in a particularly distressful situation.

[12] Finally, on January 31, 2020, the applicant filed an application to postpone the removal, pursuant to subsection 48(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. That application was denied on February 6, 2020.

II Issues

[13] The only issue is whether a stay of removal should be granted to the applicant. The applicant has filed two applications for judicial review, one regarding the refusal of his PRRA and the other, the refusal to postpone the removal.

[14] The stay application is dismissed for the following reasons.

III Analysis

[15] Motions to stay a removal order are determined on the basis of the well-known three-part test that applies to interlocutory injunction applications: *RJR - Macdonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 [RJR], and *R. v Canadian Broadcasting Corporation*, 2018 SCC 5, [2018] 1 SCR 196 [*Canadian Broadcasting Corporation*]. The Court must determine whether (1) the applicant has demonstrated that the underlying application raises a

serious question to be tried; (2) the applicant will suffer irreparable harm if a stay is refused; and (3) the balance of convenience favours the applicant.

[16] Since this test is based on fairness, its application depends greatly on the context and the facts, and its fundamental objective is to ensure that it "seeks to do justice as between the parties": *Surmanidze v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1615, at paras 28, 35. In *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 (CanLII), [2017] 1 SCR 824, the Supreme Court of Canada confirmed as follows at paragraph 1: "Ultimately, the question is whether granting the injunction would be just and equitable in all the circumstances of the case" (see also *Okojie v Canada (Citizenship and Immigration)*, 2019 FC 880 at paras 31–37).

(i) *Serious issue to be tried*

[17] Case law teaches that the burden on the applicant at this stage is different with respect to the application for judicial review concerning the PRRA and the application concerning the refusal to postpone the removal. For the former, it is only a preliminary examination to decide whether the applicant has demonstrated the existence of a serious issue, that is, that the claim is neither frivolous nor vexatious.

[18] However, case law has established that, in considering a motion for a stay when the underlying decision in the motion is a decision not to postpone a removal, the judge "ought not simply apply the 'serious issue' test, but should closely examine the merits of the underlying application" (*Wang v Canada (Citizenship and Immigration)*, 2001 FCT 148 at para 10). In other words, "the Judge should take a hard look at the issue raised in the underlying application"

(*Baron v Canada (Public Safety and Emergency Preparedness*), 2009 FCA 81 at para 66). "An elevated standard applies to a stay motion arising out of a refusal to defer an applicant's removal because the stay, if granted, effectively grants the relief sought in the underlying judicial review application" (*Williams v Canada (Citizenship and Immigration)*, 2004 FC 683 at para 8).

[19] Bearing in mind the different standards, it is necessary to analyze the serious issue to be tried for both applications.

(a) *Serious issue – PRRA (Docket IMM-813-20)*

[20] In his written representations, the applicant argued that the officer's decision to reject the PRRA was unreasonable because the officer did not conduct a comprehensive analysis of the evidence submitted; the conclusion that the applicant has not demonstrated a nexus between his fear of returning to Mexico and his family ties is arbitrary; failure to hold a hearing is a breach of procedural fairness; and the conclusion that state protection is available in Mexico is unreasonable. At the hearing, the applicant emphasized the issues of state protection and the fear of return related to his family ties.

[21] Let us underline two points to start with. First, at this stage, my role is limited: it is a preliminary examination of the merits of the case, to determine whether the applicant has demonstrated that his application is neither frivolous nor vexatious. Second, in considering a decision denying a PRRA, the analysis of the serious issue is linked to that of irreparable harm. As Justice Grammond explained in *Musasizi v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 5 at paragraph 10:

> In that context, the first two prongs of the *RJR* test overlap significantly and the main issue is whether the PRRA officer

> reasonably assessed the harm to which the applicant would be exposed upon removal to his or her country of origin: see, for example, *Manto v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 335.

[22] In this case, I am not persuaded that the applicant has demonstrated a serious issue with respect to the PRRA decision.

[23] In a 25-page decision, the officer dealt with the evidence filed by the applicant in relation to his submissions, including in connection with state protection, as well as the applicant's fear related to his family ties. The officer noted that the situation in Mexico is not perfect, but he also took into account the fact that the man responsible for the murder of the applicant's parents was sentenced to prison for 35 years, and that there is documentary evidence that the government of Mexico has made progress in the battle against drug traffickers.

[24] With respect to the applicant's family ties issue, the officer noted that the RPD as well as the first PRRA decision rejected similar fears, and since that time, the other members of the applicant's family have returned to Mexico.

[25] The serious issue must be examined in light of the analytical framework established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 101 [*Vavilov*], that is, the decision must be based on inherently coherent reasoning that can be justified in light of the applicable legal and factual constraints.

[26] I find that the decision to deny the PRRA application meets this standard, and I am not persuaded that the applicant has demonstrated a serious issue to be tried in relation to this decision.

(b) *Serious issue – Postponement of removal (Docket IMM-927-20)*

[27] The request to postpone the removal focuses on the applicant's mental health issues. The applicant claims that the officer did not fully understand the extent of his problems, and that the decision is unreasonable based on the evidence.

[28] The starting point is the very limited discretion of law enforcement officers to postpone a removal, as per subsection 48(2) of IRPA (see *Toney v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1018 at para 50). However, it should be noted that at this stage, as the Supreme Court of Canada declared in *Canadian Broadcasting Corporation* at paragraph 17:

> Common to all these formulations is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.

(Emphasis in original.)

[29] I am not persuaded that the applicant has demonstrated that there is a strong likelihood on the law and evidence presented that he will succeed with regard to the refusal to postpone the removal. The officer dealt with the evidence, and the analysis is clear and consistent. It is obvious that the applicant does not agree with the officer's analysis, but this is not the criterion to be met. The officer performed an analysis that reflected the applicable law and the relevant facts. That is all that the standard of reasonableness requires (*Vavilov*, at para 101).

(c) *Conclusion on serious issue*

[30] For all these reasons, I agree that the applicant has failed to demonstrate a serious issue regarding the refusal of the PRRA or the refusal to postpone the removal.

[31] The elements of the test are conjunctive; accordingly, it is not necessary to deal with the other questions. But, given the fairness of a stay application, and considering the submissions made by the parties, I would add a few comments on the other factors.

(ii) *Irreparable harm*

[32] Irreparable harm is a type of harm that cannot be compensated for monetarily. In the context of a stay of removal, it is usually related to the applicant's fear of the risk of return, but may include other elements. Case law has consistently held that this type of harm cannot be personal inconvenience. In *Melo v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15140 (CF), Judge Pelletier stated:

> [21] These are all unpleasant and distasteful consequences of deportation. But if the phrase irreparable harm is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak. There is nothing in Mr. Melo's circumstances which takes it out of the usual consequences of deportation. This is not a case of deporting a 73-year-old woman who cared for and in turn was cared for by her elderly husband, as was the case in *Belkin supra*. Nor is it a case of deporting someone who is the sole caregiver for a blind and sick grandparent as was the case in *Richards v. Canada*. Mr. Melo is not being sent to a place as inhospitable as Albania with his young child as was Mr. Abazi. As unhappy as these circumstances are, they do not engage any interests beyond those which are inherent in the nature of a deportation.

(Citations omitted.)

(See also *Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at para 13 [*Selliah*]

[33] The applicant claims that he will suffer irreparable harm because his removal will aggravate his psychological state and will undermine his financial support for his grandmother and brother in Mexico. I disagree.

[34] There is no doubt that the evidence shows that the murder of their parents caused a great deal of trouble for the applicant and his sister and brother, and that the three children suffered greatly as a result of this incident. There are after-effects for the applicant, and the evidence shows that he had symptoms of post-traumatic stress. However, he was able to make a living despite these problems, and the evidence shows that he is not undergoing treatment or being seen by a mental health professional. The evidence has been considered by previous decision makers, including in very recent decisions on the PRRA application and the request to postpone the removal. No new evidence has been filed. The applicant's risks have already been analyzed and rejected and therefore cannot demonstrate irreparable harm (*AC v Canada (Citizenship and Immigration)*, 2019 FC 1196 at para 23; *Roh v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1273 at para 48).

[35] In the circumstances, I agree that the applicant did not meet the very demanding burden of establishing irreparable harm (*Selliah*).

(iii) *Balance of convenience*

[36] Subsection 48(2) of IRPA requires that the removal order must be enforced "as soon as possible". Case law teaches us that it is not only an administrative question. To quote Justice

Evans in *Selliah*, at paragraph 22: “This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada’s system of immigration control”.

[37] In this case, having regard to the circumstances and the fact that the applicant has received at least four decisions on his applications, I agree that the balance of convenience is in the Minister’s favour.

I agree that this decision will cause anxiety and stress for the applicant, and that his removal will cause family separation. However, this is a consequence of a removal, and of the fact that he has remained in Canada since 2011 without status and has not tried to regularize his status.

Conclusion

[38] For all these reasons, the stay application is dismissed.

[39] Copies of these reasons will be placed in both files.

JUDGMENT in IMM-813-20 and IMM-927-20

THE COURT'S JUDGMENT is as follows:

1. The stay application is dismissed.

"William F. Pentney"
Judge

Certified true translation
This 4th day of March 2020.

Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-813-20 IMM-927-20
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