Date: 20060714

Docket: IMM-2758-06

Citation: 2006 FC 878

OTTAWA, Ontario, July 14, 2006

PRESENT: The Honourable Mr. Justice Teitelbaum

BETWEEN:

KATHLEEN CHARLES, ZACHARRY LAVIA (AKA ZACHARRY CHARLES)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants Kathleen Charles and Zacharry Lavia (aka Zacharry Charles) make a Motion for an Order that the execution of the removal order of the Applicants scheduled to take place on June 1, 2006 be stayed until such time as the Application for Leave and Judicial Review be disposed "and if leave is granted until such time as both these judicial reviews are finally disposed of by this Court".

[2] The regular grounds for such a motion are given by the Applicants, "There is a serious issue to be tried, the Applicants would suffer irreparable harm and the balance of convenience lies in

favour of staying the execution of the removal order, until the Court has determined the Application for Leave".

[3] The Applicant Kathleen Charles is the mother of Zacharry who is 12 years old. Both Applicants are citizens of St. Vincent and the Grenadines. Kathleen was born on May 5, 1971 in Kingston, St. Vincent. She came to Canada in June 1994 as a visitor and has been working as a nanny. Her son Zacharry joined his mother in Canada in December 2000.

[4] On November 11, 2001, Kathleen gave birth to a son, Paul Anthony, born in Toronto. At the time Kathleen was married to Seymour Lavia. Seymour Lavia is a citizen of St. Vincent.

[5] As a result of physical abuse, the female Applicant left her husband in November 2003 and went to live with friends.

[6] I am told that Seymour Lavia was to be removed to St. Vincent on June 1, 2006.

[7] Kathleen Charles made a refugee claim in 2001 which was denied in 2003. She also filed a Humanitarian and Compassionate Application (H&C) for permanent residence which was also refused.

[8] As I have stated, the removal of the Applicants was scheduled to take place on June 1, 2006.

[9] After hearing the Application for Stay by teleconference, I took the matter under reserve.

[10] I can do no better than to quote Mr. Justice O'Reilly from the case of Maria Rita Teineira Ramada v. The Solicitor General of Canada, Aug. 18, 2005, Docket IMM-7029-04, 2005 FC 1112 on the issue of removal of persons who have been ordered to leave Canada.

> "[3] Enforcement officers have a limited discretion to defer the removal of persons who have been ordered to leave Canada. Generally speaking officers have an obligation to remove persons as soon as reasonably practicable (s. 48(2), *Immigration and Refugee Protection Act*, S.C. 2001, c. 27; set out in the attached Annex). However, consistent with that duty, officers can consider whether there are good reasons to delay removal. Valid reasons may be related to the person's ability to travel (e.g. illness or a lack of proper travel documents), the need to accommodate other commitments (*e.g.* school or family obligations), or compelling personal circumstances (*e.g.* humanitarian and compassionate considerations). … It is clear, however, that the mere fact that a person has an outstanding application for humanitarian and compassionate relief is not a sufficient ground to defer removal. On the other hand, an officer must consider whether exigent personal circumstances, particularly those involving children, justify delay."

[11] In the case of Chowdhury v. The Solicitor General of Canada, Docket IMM-4002-05, 2006 FC 663, Mr. Justice Mosley states, at paragraph 4:

> "As stated by this Court on numerous occasions, a removals officer has only a limited degree of discretion to defer removal: *Simoes v. Canada (Minister of Citizenship and Immigration)* (2000), 187 F.T.R. 219, 7 Imm. L.R. (3d) 141 (F.C.T.D.). If there is a valid and enforceable removal order immediate removal should be the rule and deferral the exception. A deferral decision ought only to be set aside if it was patently unreasonable: *Arroyo v. Canada (Minister for Public Safety and Emergency Preparedness)*, 2006 FC 260."

[12] In the recent case of Lai Cheong Sing v. MCI and the Minister of Public Safety and Emergency Preparedness, 2006 FCJ No 851, 2006 FC 672, Docket IMM-2669-06, Madam Justice Layden-Stevenson states, regarding the issue of removal of persons who have been ordered to leave Canada:

> "¶ 1 A court order staying the execution of an enforceable removal order is an interlocutory measure. It is not readily granted because removal is the general rule. To obtain a stay, an applicant must satisfy the well-established conditions articulated in the jurisprudence. Even if successful, the relief is temporary. The stay remains in effect only until determination of the application for leave for judicial review and (if leave is granted) the application for judicial review.
>
> ¶ 2 Mr. Lai seeks a stay of his removal, presently scheduled for June 2, 2006. His underlying application relates to a negative pre-removal risk assessment (PRRA) made pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). Mr. Lai, in accordance with what is referred to as the tri-partite test delineated in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.) (*Toth*), must demonstrate that:
>
> (i) a serious issue exists;
> (ii) he would suffer irreparable harm if his removal is not stayed; and
> (iii) the balance of convenience favours staying his removal.

[13] After reading the written submissions of the Applicant and the Respondent and after hearing the oral submissions of the parties, I am unable to find irreparable harm if the Applicants are removed from Canada.

[14] The major allegation of irreparable harm submitted by the Applicant is fear of spousal abuse and the fact that the Canadian born child suffers from allergies.

[15] No convincing evidence was submitted that the Applicant could not get protection in St. Vincent and that the Canadian born child could not obtain treatment for allergies in St. Vincent.

[16] As a result of the Applicants being unable to submit evidence of irreparable harm, the Application for Stay must be denied.

JUDGMENT

The Application is denied.

"Max M. Teitelbaum"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2758-06
STYLE OF CAUSE:	KATHLEEN CHARLES, ZACHARRY LAVIA (AKA ZACHARRY CHARLES) and MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, Ontario
DATE OF HEARING:	May 30, 2006
REASONS FOR JUDGMENT:	TEITELBAUM J.
DATED:	July 14, 2006

APPEARANCES:

Ms. Carole Simone Dahan	FOR THE APPLICANTS
Ms. Anshumala Juyal	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Refugee Law Office Toronto, Ontario	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENTS