

Federal Court



Cour fédérale

Date: 20211203

Docket: IMM-6362-21

Citation: 2021 FC 1348

Ottawa, Ontario, December 3, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

RISARDS PUKITIS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

UPON CONSIDERING THAT the Applicant is a citizen of Latvia who came to Canada in 1996 where he obtained refugee protection in August, 1998. That after obtaining refugee protection in Canada, the Applicant returned to Latvia using his Latvian passport, obtained a legal change of name from Latvian authorities, made repeated trips back to Latvia, used his Latvian passport to travel to numerous other countries, including back to Canada as a Latvian visitor with a different name, and thereby voluntarily re-availed himself of Latvia's protection; and,

UPON CONSIDERING THAT the Refugee Division concluded that the Applicant re-availed himself of Latvia’s protection to avoid criminal charges in Canada, to obtain inheritance, to visit family and to renew his Latvian passport; and,

UPON CONSIDERING THAT the Respondent successfully made an application for cessation of the Applicant’s status as a protected person in Canada in September, 2019; and,

UPON CONSIDERING THAT that the Applicant made an application for permanent residence in Canada based upon humanitarian and compassionate grounds pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“IRPA”] in November, 2020, which application was refused in August, 2021 and from which the Applicant seeks judicial review; and,

UPON CONSIDERING THAT on or about November 4, 2021 the Applicant was directed to report at the Lester B. Pearson Airport, Terminal 1, Level 3, Departures for removal from Canada scheduled for December 8, 2021 and now seeks a stay of that removal order;

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 (Attorney General)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385 [“RJR-MacDonald”], namely that:

- a. there is a serious issue to be determined;
- b. the Applicant will suffer irreparable harm if the stay is not granted; and,
- c. the balance of convenience favours the granting of the stay.

The Respondent concedes a serious issue is to be determined by the Court on the underlying application for judicial review.

I am of the view, however, that neither of the two (2) remaining requirements of the tripartite test in *Toth* have been met. With respect to the issue of irreparable harm, the Applicant contends that he has one son born of a union in Canada and that irreparable harm will result if he (the Applicant) is removed to Latvia. The Applicant acknowledges that the child's mother has been married twice to persons other than the Applicant. The child has lived without any significant influence from the Applicant. The Applicant returned to Latvia as recently as 2019. There is no shared custody agreement between the mother of the child and the Applicant. The Applicant provides no receipts of any contribution to the care and support of the child. The Applicant provides no evidence from the mother attesting to his support and care of the child. The Applicant has not established that he will suffer any irreparable harm by his removal to Latvia (see, *RJR-MacDonald*, supra, at para. 58). The Applicant has not shown that he will suffer any harm greater than the inherent consequences of deportation (see, *Melo v. Canada (Minister of Citizenship and Immigration)*, 188 F.T.R. 39 at para. 21).

With respect to the balance of convenience, this prong of the test favours the Respondent. Section 48 of *IRPA* provides that a removal order must be enforced as soon as possible. This factor favours the Respondent. The Applicant has been found guilty of violations of the the *Criminal Code*, RSC 1985, c C-46 since his arrival in Canada. This factor favours the Respondent. An administrative tribunal with authority to so decide has concluded the Applicant obtained a change of name to avoid criminal prosecution in Canada. This factor favours the Respondent. I am satisfied the Applicant comes to the Court with unclean hands. Equity should

not reward those who take advantage of Canada's generous immigration system. (see: *Patterson v. Canada (Citizenship and Immigration)*, 2008 FC 406 at para 23; *Zheng v. Canada (Immigration, Refugees and Citizenship)*, 2021 FC 616 at para 20)

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 in IMM-6362-21

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

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6362-21

STYLE OF CAUSE: RISARDS PUKITIS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 30, 2021

**REASONS FOR ORDER AND
ORDER:** BELL J.

DATED: DECEMBER 3, 2021

APPEARANCES:

Valeriy Kozyrev FOR THE APPLICANT

Neeta Logsetty FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kozyrev Law Office FOR THE APPLICANT

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario