Federal Court  Cour fédérale

Date: 20211223

Docket: IMM-9265-21

Citation: 2021 FC 1463

Ottawa, Ontario, December 23, 2021

PRESENT: Mr. Justice Gascon

BETWEEN:

GAJANATH LEDSHUMANAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant, Mr. Gajanath Ledshumanan, brings a motion to be granted an order staying the execution of his removal to Sri Lanka, scheduled to take place on December 28, 2021 [Stay Motion].

[2] The application underlying this Stay Motion is an application for leave and judicial review of the December 13, 2021 decision of an Inland Enforcement Officer [Officer] of the Canada Border Services Agency [CBSA], refusing Mr. Ledshumanan's request for an administrative deferral of his removal from Canada [Decision].

[3] For the reasons that follow, Mr. Ledshumanan's Stay Motion will be dismissed. Further to my review of the materials filed with the Court by each party, including the affidavits and the written submissions, and after hearing the oral submissions of counsel for both parties by telephone conference on December 21, 2021, I am not persuaded that the facts justify the exercise of the Court's discretion in favour of the stay sought by Mr. Ledshumanan. I instead find that, on a balance of probabilities, Mr. Ledshumanan has not met the tripartite test articulated by the Supreme Court of Canada [SCC] in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*] for the issuance of interlocutory injunctions or stays, and applied to stays in immigration matters by the Federal Court of Appeal [FCA] in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) [*Toth*].

II. Background

[4] The facts relevant for this Stay Motion can be summarized as follows.

[5] Mr. Ledshumanan is a citizen of Sri Lanka, of Tamil ethnicity. He arrived in Canada in May 2017 after receiving a temporary student visa.

[6] He subsequently filed a claim for refugee protection, which was dismissed by the Refugee Protection Division [RPD] in August 2019 [RPD Decision]. Mr. Ledshumanan appealed this decision to the Refugee Appeal Division [RAD], but his appeal was dismissed in December 2020 [RAD Decision]. In June 2021, his application for leave and judicial review of the RAD Decision was dismissed by this Court at the leave stage.

[7] In each of the RPD Decision and the RAD Decision, the Canadian immigration authorities have notably reviewed the claims made by Mr. Ledshumanan regarding the risks he allegedly faced in Sri Lanka as a Tamil male who would be targeted by the Sri Lankan police or the Eelam People's Democratic Party [EPDP] on suspicion of affiliation with the Liberation Tigers of Tamil Eelam [LTTE], a terrorist group.

[8] Mr. Ledshumanan is subject to an enforceable removal order since August 2019.

[9] A Direction to Report for his removal was delivered to Mr. Ledshumanan on November 15, 2021. Shortly thereafter, on November 19, 2021, Mr. Ledshumanan submitted an application for permanent residence from within Canada based upon humanitarian and compassionate [H&C] considerations. Mr. Ledshumanan's H&C application is being processed, but it has not yet been decided by the Canadian immigration authorities.

[10] On December 13, 2021, the CBSA Officer issued his/her Decision, refusing Mr. Ledshumanan's request for deferral of his removal.

[11] Mr. Ledshumanan is married and has two children. His wife and children live in Sri Lanka.

III. Analysis

[12] A stay order is an extraordinary equitable relief requiring special and compelling circumstances (*Canada (Minister of Citizenship and Immigration) v Harkat*, 2006 FCA 215 at para 10), and for which the requirements can be summarized as follows.

[13] Mr. Ledshumanan must meet the well-accepted tripartite *RJR-MacDonald* / *Toth* test. This test requires Mr. Ledshumanan to demonstrate that: i) there is a serious issue to be tried in the underlying application for judicial review; ii) irreparable harm will result if the stay is not granted and his removal is not stayed; and iii) the balance of convenience favours the granting of the order and the staying of his removal (*R v Canadian Broadcasting Corp*, 2018 SCC 5 [*CBC*] at para 12).

[14] As stated by the SCC in *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 [*Google*], the fundamental question is whether the granting of the injunctive relief is "just and equitable in all of the circumstances of the case," and this will "necessarily be context-specific" (*Google* at para 25). I pause to observe that the SCC decision in *Google* has not changed the well-accepted three-prong test developed in *RJR-MacDonald* and expanded in *CBC* for mandatory injunctions, nor has it superimposed an additional consideration over it. However, the *Google* decision reinforces the principle that, in exercising their discretion to grant a stay or an interlocutory injunction, the courts need to be mindful of overall considerations of justice and equity. In sum, the *RJR-*

MacDonald test cannot be reduced to a simple box-ticking exercise of the three components of the test.

[15] The *RJR-MacDonald* test is conjunctive, meaning that all three elements of the test must be satisfied in order for the Court to grant relief (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 [*Janssen*] at para 19). None of the branches can be seen as an "optional extra" (*Janssen* at para 19), and the "failure of any of the three elements of the test is fatal" (*Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 212 at para 15; *Western Oilfield Equipment Rentals Ltd v M-I LLC*, 2020 FCA 3 [*Western Oilfield*] at para 7).

[16] That said, I acknowledge that the three prongs of the test are not water-tight compartments, that they are somewhat interrelated and that they should not be assessed in total isolation from one another (*The Regents of University of California v I-Med Pharma Inc*, 2016 FC 606 at para 27, aff'd 2017 FCA 8; *Merck & Co Inc v Nu-Pharm Inc* (2000), 4 CPR (4th) 464 (FC) at para 13). However, this does not mean that one of the three compartments can be completely empty and compensated by the other two being filled to a higher level. There still needs to be something on each of the three branches, and none of the elements of the test can be entirely left aside and rescued by the other two. In stays of removal sought in the immigration context, there is sometimes a significant overlap between the first two prongs of the *RJR-MacDonald / Toth* test (Gill v Canada (Immigration, Refugees and Citizenship), 2020 FC 1075 at para 22.

[17] Moreover, the exceptional nature of a stay of removal in immigration matters is reinforced by the fact that a removal interferes with the normal administrative process prescribed by Parliament in section 48 of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [IRPA]. This provision expressly states that, when enforceable, a removal order "must be enforced as soon as possible."

A. *Serious issue*

[18] The first component of the tripartite test is whether the materials on the underlying application for judicial review and the evidence before the Court are sufficient to satisfy the Court, on a balance of probabilities, that Mr. Ledshumanan has raised a serious issue to be tried. The demonstration of a single serious issue suffices to meet this part of the test (*Jamieson Laboratories Ltd v Reckitt Benckiser LLC*, 2015 FCA 104 at para 26).

(1) The applicable test

[19] The requirement of a serious issue to be tried can give rise to one of three different thresholds (*Letnes v Canada (Attorney General)*, 2020 FC 636 [*Letnes*] at para 40; *Okojie v Canada (Citizenship and Immigration)*, 2019 FC 880 at paras 69-87). First, the usual and general threshold is a low one, in which case the Court should not engage in an extensive review of the merits of the underlying application. There are no specific requirements to be met in order to satisfy this low threshold, and the Court must simply conclude that the issues raised in the underlying application are "neither vexatious nor frivolous" (*RJR-MacDonald* at pp 338-339). Second, an elevated threshold applies "when the result of the interlocutory motion will in effect

amount to a final determination of the action" (*RJR-MacDonald* at p 338). These situations call for a more extensive review of the merits of the underlying application at the first stage of the *RJR-MacDonald* analysis. They have often been referred to as situations requiring a "likelihood of success" in the underlying application. Third, for mandatory interlocutory injunctions, the SCC has established in *CBC* that an even higher, heightened threshold of a "strong *prima facie* case" applies. The SCC expressly stated that, in such cases, a "strong likelihood" of success needs to be demonstrated for assessing the strength of the applicant's case at the first stage of the *RJR-MacDonald* test (*CBC* at paras 15, 17).

[20] In the current case, Mr. Ledshumanan's underlying application for judicial review concerns the refusal to defer his removal by the CBSA Officer. It is therefore one of the situations addressed in *Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 [*Wang*] and its progeny, where a favourable decision on the interlocutory stay effectively grants the relief sought in the underlying application (*Wang* at para 11). In these circumstances, the second, elevated threshold for the establishment of a serious issue applies, and Mr. Ledshumanan must show a "likelihood of success" in his underlying application for judicial review of the Officer's Decision (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 [*Baron*] at para 66; *Fox v Canada (Citizenship and Immigration)*, 2009 FCA 346 at para 21).

[21] I point out that the scope of a CBSA enforcement officer's discretion to defer the removal of a person under subsection 48(2) of the IRPA is limited, as the enforcement officer is required to enforce the removal order as soon as possible (*Lewis v Canada (Public Safety and Emergency*

Preparedness), 2017 FCA 130 [*Lewis*] at para 54). The enforcement officer's discretion is restricted to determining when, and not if, the removal will be executed. Such discretion should be exercised only for those cases where there is clear evidence of a "risk of death, extreme sanction or inhumane treatment," or where there are temporary, short-term exigent circumstances such as facilitating appropriate travelling arrangements or allowing a child to finish a school year (*Atawnah v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144 [*Atawnah*] at paras 13-15; Revell v Canada (Citizenship and Immigration), 2019 FCA 262 at para 50; *Lewis* at paras 55, 82-83; *Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286 [*Shpati*] at para 43; *Baron* at paras 49-51; *Wang* at para 48). A request for deferral does not oblige an enforcement officer to undertake a "mini H&C" assessment or to make a pre-removal risk assessment decision (*Newman v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 888 [*Newman*] at para 19); *Shpati* at para 45; *Baron* at para 51).

[22] Furthermore, when the applicable threshold is the elevated "likelihood of success" threshold, the standard of review applicable to a decision of a CBSA enforcement officer not to defer removal is reasonableness. To be reasonable, a decision must be "based on an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 83, 85, 101; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31). In view of the foregoing, and considering that the standard of review of the Officer's Decision is that of reasonableness, Mr. Ledshumanan must put forward "quite a strong case" in order to succeed on his Stay Motion (*Baron* at para 67).

(2) The Officer's Decision

[23] In the Decision, the Officer reviewed the evidence submitted as part of the deferral request, and considered more specifically Mr. Ledshumanan's risk in Sri Lanka, his hardship in Sri Lanka and establishment in Canada, the best interests of the children affected, and Mr. Ledshumanan's pending H&C application. The Officer concluded that the grounds advanced by Mr. Ledshumanan were not sufficient to justify a deferral of his removal order.

[24] On the serious issue to be tried, Mr. Ledshumanan has not persuaded me that he meets the elevated threshold set out in *Baron* and *Wang* and that he has a realistic likelihood of success in his underlying application for judicial review of the Officer's Decision. In the Decision, the CBSA Officer carefully considered the arguments advanced by Mr. Ledshumanan, but the Officer was not convinced that Mr. Ledshumanan's circumstances warranted a temporary deferral. I am satisfied that the Officer addressed each of the issues raised in Mr. Ledshumanan's application for deferral in a reasonable manner and in accordance with the standard set in *Vavilov*. The Officer provided a rational and logical reasoning for each of the issues raised, and the resulting Decision was justified in light of the evidence submitted by Mr. Ledshumanan and the legal constraints imposed by the IRPA. In my view, the reasons are sufficient and provide a transparent and intelligible justification for the Officer's conclusions. In sum, Mr. Ledshumanan has not established a serious issue regarding the reasonableness of the Officer's Decision, and his arguments amount to a mere disagreement with the Officer's conclusions.

[25] I pause to address immediately the main concern raised by counsel for Mr. Ledshumanan with respect to the Decision, namely, the lack of justification and reasoning offered by the Officer in light of the *Vavilov* decision. According to *Vavilov*, the reasons of a decision maker

must add up, they must provide enough justification to demonstrate that the parties' concerns have been heard, and they must not contain fundamental gaps. To achieve this, it suffices if a decision maker provides reasons clearly reflecting that he/she accounted for the "critical point[s]" of the case at hand (*Vavilov* at para 103; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 [*Alexion*] at para 13). The "critical point[s]" of a case are shaped by its central issues, and by the concerns raised by the parties (*Vavilov* at paras 127-128; *Alexion* at para 13).

[26] That said, even a lack of reasons on a critical point mentioned in the decision maker's analysis does not automatically warrant judicial intervention, as the basis of a decision can be inferred from the circumstances of a particular case (*Vavilov* at paras 94, 123; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 [*Mason*] at para 32). Indeed, a decision maker's reasons can be expressed or implied and, from these, the reviewing court must be able to discern an internal coherence in the decision, one that puts its critical points in relation with one another in a rational way (*Vavilov* at paras 85, 102-103; *Mason* at para 33).

[27] A reviewing court must also look at the reasons the decision maker has written and read them "holistically and contextually" in "light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at paras 97-103).

[28] Here, I do not find that there is a "fundamental gap" in reasoning or that it is impossible to understand the Officer's reasoning on a critical point, though I admit that the reasons might have been more elaborated (*Vavilov* at paras 103-104; *Mason* at paras 31, 38). Neither do I

discern a lack of logic, coherence or rationality in the Decision or "fatal flaws in its overarching logic" (*Vavilov* at para 102). Overall, I am satisfied that the Officer "actually *listened* to the parties" and showed that he/she was "actually alert and sensitive to the matter before" him/her [emphasis in original.] (*Vavilov* at paras 127-128).

[29] I agree that, "[w]here the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov* at para 133). But, again, I find that the Officer adequately grappled with the important consequences of his/her Decision on Mr. Ledshumanan, and that the reasons present an analysis detailed enough to reflect his/her concerns for the important impact of the removal order.

[30] The reasonableness standard does not concern a decision's degree of perfection, but only its reasonableness (*Vavilov* at para 91; *Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 29). The reasons for a decision do not need to be perfect or even comprehensive. They only need to be comprehensible and justified. The reasonableness standard requires that the reviewing court start with the decision and with recognizing the fact that the administrative decision maker's first responsibility is to determine the facts. Such findings require deference. The reviewing court examines the reasons, the record and the outcome, and, if a logical and rational explanation justifies the outcome, and enough justification is provided, the court refrains from intervening. A reviewing court should not hold administrative decision makers to the "standards of academic logicians" (*Alexion* at paras 23-24; *Mason* at paras 39-40).

[31] Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). An assessment of the reasonableness of a decision must be robust, but it must remain sensitive to and respectful of the administrative decision maker (*Vavilov* at paras 12-13). The reasonableness standard of review is an approach anchored in the principle of judicial restraint and in respect of the distinct role and specialized knowledge of administrative decision makers (*Vavilov* at paras 13, 75, 93). For the reasons that follow, I am not convinced that the Decision fails to meet the *Vavilov* requirements.

(a) *Risk in Sri Lanka*

[32] The Officer first reviewed Mr. Ledshumanan's submissions related to the risks he allegedly faces in Sri Lanka, and found that he has had numerous opportunities to have his risk allegations assessed before the RPD and the RAD, which both found that Mr. Ledshumanan's story was not credible and that he was not at risk due to his Tamil identity or political affiliation. The Officer considered the deferral request and found no new evidence of personalized risk for Mr. Ledshumanan.

[33] While the Officer has not used the words "threat to personal safety," he/she clearly considered the risk from the personal perspective of Mr. Ledshumanan, including his Tamil identity and his claims of persecution based on suspected LTTE ties, and found no evidence of sufficient personalized risk for Mr. Ledshumanan in Sri Lanka. I find nothing unreasonable in that conclusion. As emphasized by the Officer, Mr. Ledshumanan has had the benefit of risk

assessments by the RPD and the RAD, which rejected his assertions of risk based on political affiliation, ethnicity, membership in the Tamil diaspora, and status as a failed asylum-seeker and returnee to Sri Lanka.

[34] Mr. Ledshumanan further submits that the Officer failed to consider new evidence of risk of harm at the hands of the Sri Lankan authorities. He relies on country condition evidence highlighting abuse of power by the police and deterioration in human rights for the Tamil population in Sri Lanka. I do not find that this evidence relates to new risks not assessed by previous immigration decision makers, or that the Officer erred in considering that the more recent evidence essentially repeated what was before the RPD and the RAD. I appreciate that the evidence that Mr. Ledshumanan now relies upon postdates the RPD's and RAD's risk assessments. However, although it identifies some marginalization of the Tamil minority, this country condition documentation is not evidence of personalized risk to Mr. Ledshumanan.

[35] It is well accepted that a deferral of removal for a risk allegation is reserved for cases where there is new evidence that failure to defer will expose an applicant to risk of death, extreme sanction or inhumane treatment. This is not the case here. Nothing in the evidence allows to support Mr. Ledshumanan's complaint that the Decision is not sufficiently justified, or that the Officer ignored the evidence. I acknowledge that the Decision could have been more detailed. However, while the documentation and evidence referred to by Mr. Ledshumanan in his deferral request is not expressly cited in the Decision, an enforcement officer is presumed to have considered all the evidence presented to him/her unless the contrary is shown (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36) and, in my

view, Mr. Ledshumanan has not raised a serious issue to the effect that this presumption should be rebutted.

[36] In his submissions, Mr. Ledshumanan repeatedly complains about the fact that the Officer failed to consider the elements of hardship that may be relevant on his H&C application. Mr. Ledshumanan's submissions on the standard for assessing risk on an H&C application are misplaced. An enforcement officer seized of a deferral request is not conducting an H&C assessment or even a "preliminary or mini H&C," no matter how compelling or sympathetic his H&C application may be (*Newman* at para 19; *Shpati* at para 45). The issue on this Stay Motion is whether Mr. Ledshumanan has shown that there is a serious issue that the Officer's exercise of his/her limited discretion to defer removal was unreasonable. I conclude that Mr. Ledshumanan has not shown a basis on which there is any realistic likelihood that the factual and discretionary determinations of the Officer on his risk in Sri Lanka would be disturbed on judicial review.

(b) *Hardship in Sri Lanka and establishment in Canada*

[37] With respect to hardship in Sri Lanka, Mr. Ledshumanan focused, in his deferral request, on his difficulties in finding employment in Sri Lanka to allow him to support his family financially. In the Decision, the Officer reviewed the employment history of Mr. Ledshumanan, observed that no medical or physical conditions prevented him from working and concluded that Mr. Ledshumanan had failed to demonstrate an inability to obtain employment and lodging upon his return to Sri Lanka. I find nothing unreasonable in this conclusion.

[38] Mr. Ledshumanan submits that the Officer failed to engage with the evidence, did not provide a refined analysis and did not sufficiently justify his/her finding on the issue of employment. Mr. Ledshumanan takes particular exception with the absence of references, in the Decision, to the country documentation he had submitted regarding the general economic conditions now prevailing in Sri Lanka further to the pandemic, the unemployment rate, and the challenges migrant workers face upon their return, especially if they are of Tamil ethnicity.

[39] Again, I do not dispute that an administrative decision may be unreasonable if it fails to address central arguments made by a party (*Vavilov* at paras 127-128). However, it is clear from the Decision that the Officer amply considered Mr. Ledshumanan's personal employment experience and was not satisfied that the evidence allowed to conclude to difficulties sufficient to warrant a removal. The Officer indicated that Mr. Ledshumanan had not demonstrated his inability to obtain employment, noting a lack of evidence to establish that he would not be able to secure a job in Sri Lanka.

[40] I do not detect, in the country documentation evidence submitted, any clear and convincing evidence to contradict that. Apart from Mr. Ledshumanan's own statements in his affidavit about his alleged perceived difficulties to find employment and the documentation on Sri Lanka's general economic conditions, there is no evidence linked to Mr. Ledshumanan's personal situation. This does not raise a serious issue with respect to the reasonableness of the Officer's conclusions on this point. Evidence concerning the conditions of a particular country is not useful if it cannot be tied to the situation of an applicant. There needs to be some combination of country condition evidence and evidence that proves that the applicant is

personally at risk (*Delgado v Canada (Citizenship and Immigration)*, 2018 FC 1227 at paras 14-19). In the circumstances of this case, Mr. Ledshumanan has not raised a serious issue with respect to the reasonableness of the Officer's finding in respect of his employment in Sri Lanka.

(c) *Best interests of the children*

[41] Turning to the best interest of the children affected, the Officer considered the impact of Mr. Ledshumanan's removal on his two children residing in Sri Lanka, as well as on his uncle's three children and on the autistic child of a friend. The latter four children all reside in Canada with their respective parents, but Mr. Ledshumanan argues that he has a strong bond with them and that the removal will be devastating for them.

[42] Mr. Ledshumanan's submissions with respect to his own children are essentially economic ones related to his alleged risk of being unemployed and unable to support them financially. The Officer referred to the lack of evidence demonstrating an inability for Mr. Ledshumanan to secure gainful employment and to the evidence showing that, prior to 2021, the children were not financially dependent on him. For the reasons mentioned above, I am satisfied that the Officer reasonably considered the evidence related to Mr. Ledshumanan's claimed inability to secure employment.

[43] Counsel for Mr. Ledshumanan forcefully advocated for a contrary conclusion based on Mr. Ledshumanan's own affidavit and the country condition evidence. Despite these submissions, the issue on this Stay Motion is whether Mr. Ledshumanan has shown that there is a serious issue that the Officer's exercise of his limited discretion to defer removal was

unreasonable. I am not persuaded that this is the case with respect to Mr. Ledshumanan's employment prospects in Sri Lanka.

[44] As to the four other children residing in Canada, the Officer reasonably considered their situation and the support they will continue to receive from their own parents. The Officer did not ignore the bonds between Mr. Ledshumanan and these children, and acknowledged the emotional impact that a removal would have on them. That said, the Officer determined that the children will continue to have the assistance they require even after Mr. Ledshumanan's removal. There is nothing unreasonable in these conclusions. I can understand that Mr. Ledshumanan may disagree with the Officer's assessment and treatment of the evidence, but this is no ground to declare the findings unreasonable.

[45] Again, the limited number of details in the Decision does not allow me to conclude that the Officer failed to engage in a reasonably robust analysis of the best interests of the children affected. In considering a deferral request, an enforcement officer is not required to conduct a full analysis of the children's best interests, but is only required to consider their short-term best interests (Lewis at paras 82-83). In this case, it was reasonable for the Officer to find that, in light of the evidence, there is no basis to defer removal due to the children's short-term best interests.

(d) *Pending H&C application*

[46] Regarding Mr. Ledshumanan's argument on his pending H&C application, I find that it has no merit on any front. First, the Officer correctly noted that a pending H&C application does

not entitle a person to remain in Canada and does not give rise to a statutory stay of removal or to the level of a serious issue such as to justify a stay of removal (*Baron* at paras 50-51, 57). In addition, the late timing of Mr. Ledshumanan's H&C application was certainly a relevant factor that could reasonably be taken into account. Given that the H&C application was submitted shortly before the deferral request, the Officer was clearly not dealing with a short-term deferral request.

[47] It was also open to the Officer to make reference to the current processing time of approximately 22 months for an H&C application on the website of Immigration, Refugees and Citizenship Canada [IRCC]. In the circumstances, the Officer's Decision to refuse deferral on the basis of the outstanding H&C application was not unreasonable in light of the jurisprudence (*So v Canada (Public Safety and Emergency Preparedness)*, 2019 CanLII 92224 (FC); *Forde v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029 at para 40; *Newman* at para 28). In my view, Mr. Ledshumanan has not raised a serious issue that the Officer's conclusion, based on the IRCC website, would be found unreasonable on judicial review.

[48] Mr. Ledshumanan contends that a decision on his H&C application may be more imminent than what the Officer found. Counsel for Mr. Ledshumanan referred to instances of decisions being issued in a shorter time frame. I do not doubt counsel's statements of their own experience. However, in my view, without evidence that goes beyond these anecdotal examples, there is no basis to conclude that the Officer's determination on this point was unreasonable. There was no other evidence put before the Officer to suggest that the IRCC's estimates of timing were incorrect or out of date.

[49] Mr. Ledshumanan further argues that the Officer unreasonably failed to consider some recent IRCC statistics that were provided, reporting a much lower percentage of H&C approvals post-removal, relative to those who remain in Canada while their H&C applications are processed. As the Court stated in *Dosa v Canada (Citizenship and Immigration)*, 2019 CanLII 391 (FC) [*Dosa*], and contrary to the decision *Cvetkovic v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 402 [*Cvetkovic*] cited by Mr. Ledshumanan, the Officer was not compelled to analyze these statistics. Again, there is no obligation under the law to have an individual remain in Canada during processing of an H&C application. To echo what the Court said in *Dosa*, "providing statistics - or other H&C-based submissions - does not require a full-blown analysis by the CBSA enforcement officer" (*Dosa* at para 3; *Barco v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 421 at para 24; *Lewis* at paras 82-83).

[50] My conclusion that it was not unreasonable for the Officer to omit mentioning the statistics showing that H&C applications are approved at a lower rate, when an applicant is outside the country, is compounded by the fact that, contrary to Mr. Ledshumanan's assertions, these statistics are of no value or relevance for the purpose of a deferral of removal or a stay motion. This will be discussed below in the section on irreparable harm.

(3) Conclusion

[51] For all those reasons, I find that Mr. Ledshumanan is not likely to succeed in his application for judicial review of the Decision, and he has thus not met the serious issue element of the *RJR-Macdonald / Toth* test. Even though this finding would be enough to dismiss Mr.

Ledshumanan's Stay Motion, I will nonetheless discuss the second prong of the test as the serious issue and irreparable harm dimensions are closely intertwined in this case.

B. *Irreparable harm*

[52] On the issue of irreparable harm, I am not satisfied that Mr. Ledshumanan has provided the required evidence to establish a real probability that he (or his family) will suffer irreparable harm between now and the time his application for judicial review is finally disposed of, in the event that he is returned to Sri Lanka. Mr. Ledshumanan had to demonstrate, through clear, convincing and non-speculative evidence, that there is a real probability of irreparable harm during that interim period, such that the extraordinary remedy of a stay of removal is warranted (*Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 [*Atwal*] at para 14). As in any stay application, the burden lies on the moving party (*Canada (Attorney General) v Bertrand*, 2021 FCA 103 at para 10). Here, Mr. Ledshumanan has failed to meet his burden.

(1) The applicable test

[53] Irreparable harm refers to the nature of the harm suffered rather than its magnitude. It is harm which "either cannot be quantified in monetary terms or which cannot be cured" (*RJR-MacDonald* at p 341).

[54] Irreparable harm is a strict test. In the context of stays of removal in immigration matters, it implies a serious likelihood or jeopardy to an applicant's (or his or her family's) life, security or safety, and it also requires evidence going beyond the inherent consequences of deportation

(*Palka v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 165 [*Palka*] at para 12; *Atwal* at paras 16-17; *Ghanaseharan v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 [*Ghanaseharan*] at para 13; *Golubyev v Canada (Citizenship and Immigration)*, 2007 FC 395 at para 12; *Melo v Canada (Minister of Citizenship and Immigration)*, (2000), 188 FTR 39 [*Melo*] at para 21).

[55] The FCA has frequently insisted on the attributes and quality of the evidence needed to establish irreparable harm in the context of stays or injunctive reliefs (*Canada (Health) v Glaxosmithkline Biologicals SA*, 2020 FCA 135 at paras 15-16; *Western Oilfield* at para 11; *Janssen* at para 24):

A. Irreparable harm must flow from clear and non-speculative evidence (*AstraZeneca Canada Inc v Apotex Inc*, 2011 FC 505 at para 56, aff'd 2011 FCA 211; *Aventis Pharma SA v Novopharm Ltd*, 2005 FC 815 at paras 59-61, aff'd 2005 FCA 390; *Syntex Inc v Novopharm Ltd* (1991), 36 CPR (3d) 129 (FCA) at p 135).

B. Simply claiming that irreparable harm is possible is not enough: "[i]t is not sufficient to demonstrate that irreparable harm is 'likely' to be suffered" (*United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200 [*US Steel*] at para 7). There must be evidence that the moving party <u>will suffer</u> irreparable harm if the injunction or the stay is denied (*US Steel* at para 7; *Centre Ice Ltd v National Hockey League* (1994), 53 CPR (3d) 34 (FCA) at p 52).

C. The evidence must be more than a series of possibilities, speculations, or hypothetical or general assertions (*Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 [*Gateway City Church*] at paras 15-16; *Atwal* at para 14). Assumptions, hypotheticals and arguable assertions unsupported by evidence carry no weight (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 [*Glooscap*] at para 31).

D. It is also not enough "for those seeking a stay […] to enumerate problems, call them serious, and then, when describing the harm that might result, to use broad, expressive terms that essentially just assert – not demonstrate to the Court's satisfaction – that the harm is irreparable" (*Stoney First Nation v Shotclose*, 2011 FCA 232 at para 48). Quite the contrary, there needs to "be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted" (*Gateway City Church* at para 16, citing *Glooscap* at para 31; *Janssen* at para 24).

E. In *Janssen*, the FCA observed that a party seeking a suspension relief such as a stay must demonstrate in a detailed and concrete way that it will suffer "real, definite, unavoidable harm – not hypothetical and speculative harm – that cannot be repaired later" (*Janssen* at para 24). Furthermore, the FCA added that "it would be strange if a litigant complaining of harm it caused itself, harm it could have avoided or repaired, or harm it still can avoid or repair could get such serious relief" (*Janssen* at para 24; see also *Western Oilfield* at paras 11-12).

[56] The existence of one ground meeting the required attributes of irreparable harm is sufficient to meet the second prong of the *RJR-MacDonald / Toth* test (*Toth* at p 5).

[57] I pause to make one observation. Relying on *Medina Cerrato v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1231 [*Cerrato*] and other older decisions, Mr. Ledshumanan appears to contend that the test for irreparable harm only requires him to prove a "likelihood" of harm. With respect, this is not a correct statement of the applicable law. Nor do I believe that it accurately reflects the actual scope and contents of the *Cerrato* decision. The FCA decisions, by which I am bound, have repeatedly stated that, in order to be granted a stay, an applicant must demonstrate "a real probability that unavoidable irreparable harm will result unless a stay is granted" (*Gateway City Church* at para 16) [emphasis added]; see also, e.g., *Canada (Attorney General) v Robinson*, 2021 FCA 39 at para 24; *Arctic Cat, Inc v Bombardier Recreational Products Inc*, 2020 FCA 116 at paras 19-20; *Glooscap* at para 31). I agree that this test does not mean certainty; but it clearly means more than simple likelihood. While these FCA precedents were issued in contexts other than immigration matters, Mr. Ledshumanan has provided no grounds or authorities to support a proposition that this oft-repeated requirement ought not to apply in the immigration area.

[58] Stays and injunctions are typically future-looking in the sense that they all intend to prevent or avoid apprehended harm rather than compensate for injury already suffered (Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Canada Law Book, 1992) (loose-leaf updated 2018, release 23) at para 1.660). In *Letnes*, I discussed the *quia timet* ("because he or she fears") injunctions, where injunctive remedies are sought before any harm has actually been

suffered and where the harm is only apprehended and expected to occur at some future point. This is typically the case in motions seeking stays of removal in immigration matters. To assess prospective harm for such *quia timet* injunctions, the courts have adopted a cautious approach requiring the conjunction of two evidentiary elements. First, the evidence must support a high degree of probability that the alleged harm will occur; second, the evidence must demonstrate that the situation expected to exist when the alleged harm eventually occurs is already "crystallized" (*Letnes* at paras 55-58).

[59] In this case, Mr. Ledshumanan claims that his irreparable harm results from three factors: i) the risk of harm upon his return to Sri Lanka and the threat to his personal safety; ii) the harm to the children; and iii) his pending H&C application. Each will be considered in turn. As mentioned above, this is one of those situations where there is a significant overlap between the first two prongs of the *RJR-MacDonald / Toth* test.

(2) Threat to personal safety

[60] Mr. Ledshumanan argues that threats to his personal safety, as well as his inability to provide financial support for his children, constitute irreparable harm in this case. Based on the evidence before me, I cannot agree.

[61] Relying on country conditions documentation and affidavits filed with his H&C application, Mr. Ledshumanan claims that he faces a threat to his personal safety due to his profile as a Tamil male with potential perceived links to the LTTE and who is returning to Sri Lanka as a failed asylum seeker. This harm essentially stems from risk allegations unsuccessfully

made by Mr. Ledshumanan in his refugee claim, and which he repeated in his H&C application. In both the RPD Decision and the RAD Decision, the Canadian immigration authorities considered this risk claimed by Mr. Ledshumanan, and they were not convinced that he was a person who would be targeted by the police or the EPDP on suspicion of affiliation with the LTTE and that he was personally at risk in Sri Lanka. The RPD and the RAD did not find plausible that Mr. Ledshumanan had previously been arrested or detained in Sri Lanka as a result of being suspected or identified as a LTTE member. Leave to judicially review the RAD Decision was dismissed by this Court.

[62] The harm now claimed by Mr. Ledshumanan is identical to the risk already assessed by the Canadian immigration authorities in the negative RPD and RAD Decisions. Mr. Ledshumanan's risk allegations were rejected by these Canadian immigration authorities further to a detailed analysis, and they were found to lack persuasive evidence. These risks were already adequately assessed, and they cannot rise from the ashes of these previous decisions and form a basis supporting a claim of irreparable harm now (*Atawnah* at para 14; *Shpati* at paras 41-45; *Appu v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 780 at paras 59-61; *Ellero v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 1364 at para 49).

[63] The documentary evidence now provided by Mr. Ledshumanan to support his claims of discrimination against the Tamil essentially echoes the same risk allegations he unsuccessfully made in his refugee claim. According to this documentation, a central feature underlying the risk allegedly faced by failed asylum seekers of Tamil ethnicity returning to Sri Lanka is their actual or suspected affiliation with the LTTE. In the case of Mr. Ledshumanan, both the RPD and the

RAD Decisions have precisely found that he had not provided credible evidence that he was a person likely to be targeted on the basis of actual or suspected links to the LTTE. The risk profile of Mr. Ledshumanan simply does not match with the country conditions documentation on which he is relying for his allegations of threat to personal safety. It did not match before the RPD and the RAD, and I find no new clear and convincing evidence suggesting that the passage of time has changed the country conditions in Sri Lanka to the point where the particular profile of Mr. Ledshumanan would now attract the interests of the Sri Lankan authorities and put him at risk upon his return. I note that the RAD had made specific references to the situation created by the election of the new president of the country.

[64] I am therefore not satisfied that the additional documentation provided by Mr. Ledshumanan concerning the plight of Tamils in Sri Lanka and the dangers of being forcibly returned to that country support a real probability that irreparable harm will occur for him given the absence of personalized evidence of risk and his own situation and profile. General documentary evidence on country conditions or references to the situation in Sri Lanka are not sufficient to establish irreparable harm given that the onus is on Mr. Ledshumanan to show that he will be personally exposed to a risk (*Mahmoudian v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 87 at para 11). A link had to be drawn between those country conditions and Mr. Ledshumanan's personal situation or risk profile. It was the onus of Mr. Ledshumanan to do so, but it was not made in this case.

[65] In the absence of specific evidence allowing me to relate the general country documentation to the particular situation of Mr. Ledshumanan, I can only conclude that the

evidence provided is speculative and hypothetical, and does not amount to a real probability that unavoidable irreparable harm will result if Mr. Ledshumanan is removed from Canada. Being a male Tamil is not, in itself, enough to amount to a risk of irreparable harm.

[66] I accept that the previous determinations of the RPD and the RAD are not necessarily binding on me and that I must make my own determination concerning the harm faced by Mr. Ledshumanan. Here, he has not convinced me that I should reach a different conclusion. In the evidence filed in support of this Stay Motion, Mr. Ledshumanan has not provided clear, convincing and non-speculative evidence of any new, unassessed risk having arisen since the RPD Decision or the RAD Decision, with respect to his alleged threat of personal safety in Sri Lanka. I note that Mr. Ledshumanan has submitted a supporting letter from his father, but the letter is unsworn and essentially repeats the allegations that Mr. Ledshumanan has already made. As to his wife's letter, it essentially echoes statements she had previously made before the RPD on the alleged risk faced by her husband, and which the RPD and the RAD did not find convincing.

[67] In terms of new risks linked to his alleged threat to his personal safety, Mr. Ledshumanan also refers to the difficult economic situation in Sri Lanka and the risk of unemployment he will face if he is removed to Sri Lanka now. He says that, without a job, he is likely to find himself unable to support his family and his children. I find that there are two shortcomings with this submission. First, it relies on a general assertion made by Mr. Ledshumanan himself in his affidavit. As noted by the Officer in the Decision, Mr. Ledshumanan has been able to find employment while in Canada, and he has not demonstrated why he is unlikely to find

employment in Sri Lanka with his background and broad work experience. Relying on the prevailing general economic situation or on his Tamil ethnicity does not constitute clear and compelling evidence of an inability to find work. Second, I find the country condition documentation on the general economic situation and rate of unemployment in Sri Lanka unconvincing. The unemployment rate in many countries to which people are removed is higher than it is in Canada. This cannot constitute, in and of itself and without particularized evidence regarding an applicant's own situation, irreparable harm. The possibility or even likelihood of becoming unemployed upon removal to such a country does not constitute irreparable harm in the context of the enforcement of a validly issued removal order under the IRPA (*Atwal* at para 16).

[68] Having to live in a country where social and economic rights are not realized to the same degree as in Canada is not, in the absence of exceptional circumstances, considered irreparable harm and does not warrant a stay (*Ghanaseharan* at para 13; *Tesoro v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148 [*Tesoro*] at paras 30-35). Mr. Ledshumanan has adduced insufficient evidence to demonstrate that his employment challenges in Sri Lanka rise to the level of irreparable harm.

(3) Harm to children

[69] With respect to the alleged harm to the children who will be directly impacted by his removal, Mr. Ledshumanan refers to his own two children, to the three children of his uncle and to the autistic child of a family friend.

[70] Regarding his own children, I observe that they currently live in Sri Lanka, that Mr. Ledshumanan will not be separated from them and that he will instead be reunited with them upon his return to Sri Lanka. Mr. Ledshumanan essentially argues that, being their sole financial supporter, they will be irreparably harmed if he is removed and loses the benefit of his Canadian employment, since he will be unable to secure gainful employment in Sri Lanka and to adequately provide for them. In terms of evidence on this economic harm, Mr. Ledshumanan relies on his own affidavit and on the country conditions documents dealing with current employment challenges in Sri Lanka and the dire economic situation prevailing there since the pandemic.

[71] I am not persuaded that this constitutes clear, convincing and non-speculative evidence of irreparable harm. As pointed out by the Minister, there is no evidence that Mr. Ledshumanan was providing financial support for his family in Sri Lanka until 2021. I note that his wife's letter does not refer to any financial contribution by Mr. Ledshumanan until her recent loss of employment due to the pandemic. As discussed immediately above, I do not dispute that Mr. Ledshumanan could face difficulties in finding new employment in Sri Lanka and that the economic situation in the country may be challenging, but I do not agree that general economic conditions in a given country do amount, in and of themselves, to irreparable harm to a particular individual. Considering his education and prior work experience in both Canada and Sri Lanka, Mr. Ledshumanan has not established a real probability that he will be unable to obtain employment in his own country. His claim of economic harm to his own children is a direct consequence of this unsubstantiated claim of inability to secure employment.

[72] As to the four other children from whom he will be separated, they are Canadian citizens who reside in Canada with their own respective parents, and who all have family support in Canada beyond Mr. Ledshumanan. There is no evidence that Mr. Ledshumanan is the primary caregiver of any of these children, or that there is an absence of adequate support for the children left behind, including the autistic child. I find that no convincing evidence has been provided demonstrating that the needs and short-term interests of these children will not be taken care of in the interim period between Mr. Ledshumanan's removal and the time his underlying application is finally disposed of. Nor is there evidence that Mr. Ledshumanan cannot maintain some contact with his uncle's family and his friend during that period, or that Mr. Ledshumanan could not provide emotional support to these children from a distance.

[73] This is not to say that Mr. Ledshumanan's family and friends will not miss his presence and support if he is removed, or that the Canadian children will not be heartbroken. I accept that. However, separation from family members and friends is a normal though unfortunate consequence of deportation, and such separation does not, in and of itself, amount to harm that goes beyond the inconvenience and regrettable effects of deportation (*Palka* at para 12; *Tesoro* at paras 33-35). It is trite law that there will "inevitably be some hardship associated with being required to leave Canada" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 23). In *Melo*, this Court held that, "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" (*Melo* at para 21).

[74] I understand that Mr. Ledshumanan appears to play a material and helpful role in the life of the affected children remaining in Canada, and that they receive emotional support from him. However, I am unable to find clear and convincing evidence that the Canadian children will not be "adequately looked after" if Mr. Ledshumanan is removed from Canada (*Pegito London v Canada (Citizenship and Immigration)*, 2015 FC 942 at paras 17-20), or that the children's lives, security or safety will be put at risk if Mr. Ledshumanan is not in Canada. This is not a unique and exceptional circumstance like in *Munar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1180, where the applicant was the sole caregiver to his own child and no other family member could ensure that the best interests of the child could be taken care of further to the removal. In the current case, there is no evidence suggesting that Mr. Ledshumanan is the sole caregiver of the Canadian children, or that the members of their respective families will not be able to provide the assistance and care they need. The fact that Mr. Ledshumanan will miss the contact with the Canadian children, or that the children will lose a bond – even a strong one – with Mr. Ledshumanan, if removed, while unfortunate and regrettable, does not amount to a serious jeopardy to his life, security or safety, or to theirs, sufficient to justify a stay of removal in the circumstances.

(4) H&C application

[75] Finally, in his written submissions, Mr. Ledshumanan claims that, since his chance of succeeding on H&C application will significantly decrease post-removal, this constitutes another ground of irreparable harm. I do not agree and I instead find that, both legally and factually, Mr. Ledshumanan's arguments on this front have no merit whatsoever.

[76] Neither the IRPA nor its regulations provide that a pending H&C application is a reason for deferral or stay of removal. Stays are not granted simply because H&C applications have been filed and are pending; that reality does not prevent removal from Canada.

[77] It is also well established in the case law that denying a stay of removal while an H&C application is pending does not, unless a decision on the application is imminent or exceptional circumstances exist, amount to irreparable harm as the H&C application will continue to be processed and, if positive, the applicant may be allowed to return to Canada (*Baron* at paras 50-51; *Palka* at paras 13-15; *Toney v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1018 at para 50; *Urbina Ortiz v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 18 at paras 43-46). As the FCA stated in *Baron*, "H&C applications are not intended to obstruct a valid removal order" (*Baron* at paras 87-88). In this case, there is no evidence indicating that the decision on Mr. Ledshumanan's H&C application is imminent. Quite the contrary, Mr. Ledshumanan's application has only been filed very recently, after he had received his Direction to Report for his removal.

[78] The potential mootness of an underlying application has also been found insufficient, in and of itself, to demonstrate irreparable harm for the purpose of the tripartite test governing judicial stays of removal (*Shpati* at paras 34-35, 39; *Palka* at paras 18-20). If the Court were to accept such an argument as a general rule, it "would apply to virtually all removal cases in which a stay is sought and would essentially deprive the Court of the discretion to decide questions of irreparable harm on the facts of each case" (*El Ouardi v Canada (Solicitor General)*, 2005 FCA

42 at para 8; *Mohamed v Canada (Citizenship and Immigration)*, 2012 FCA 112 at para 32; *Ghanaseharan* at para 20).

[79] Mr. Ledshumanan complains that the Officer simply stated that his H&C application will continue to be processed after he is deported, and that he/she has not considered the IRCC statistics showing that there is only a *de minimis* 3.8% approval rate for H&C applicants who have been confirmed departed, compared to 68.2% for H&C applicants who remained in Canada. In other words, argues Mr. Ledshumanan, these statistics demonstrate a low percentage of H&C approvals post-removal, relative to those who remain in Canada while their H&C applications are processed, and show that a removal will create irreparable harm.

[80] In my view, these statistics are of no assistance to Mr. Ledshumanan (or to any applicant) on a claim of irreparable harm. With respect, Mr. Ledshumanan's argument on this front reflects a profound misunderstanding of what these statistics actually say and illustrate. Contrary to what Mr. Ledshumanan advances, these statistics do not demonstrate that his chances of receiving a positive decision will be significantly reduced if he is removed. These statistics only indicate that there is a correlation between the rate of approval of H&C applications and the removal of applicants. However, they do not allow to conclude that there is a causal relationship between the low rate of approval and removal. There is a fundamental difference between correlation and causation. A correlation between rates of success in H&C applications and the departure of an applicant from Canada does not necessarily imply causation.

[81] In order to demonstrate that a removal creates irreparable harm by annihilating the chances of success on an H&C application, an applicant would need to demonstrate that the *de minimis* rate of success is caused by and attributable to the removal. There is no evidence whatsoever that the lower rate of approval for H&C applicants removed from Canada is due to their removal. This could perhaps be done through a more refined statistical analysis, such as a regression analysis, if such analysis could keep all other factors involved in an H&C application constant and have the removal as the only independent variable. The IRCC statistics contain no such evidence, and the argument being made on the alleged harm caused by a removal to the expected success of a pending H&C application is purely speculative.

[82] Mr. Ledshumanan ignores a logical explanation for the outcomes observed in the IRCC statistics, which is that applicants with strong H&C factors may be less likely to be removed from Canada in the first place if they have more sympathetic and compelling evidence to support their H&C application. Indeed, in the *Cvetkovic* decision cited by Mr. Ledshumanan, the Court mentioned that "[a]pplicants with strong H&C factors may have been less likely to be removed from Canada, and those with weaker H&C applications may have been more likely to voluntarily depart or be removed prior to a determination on their application" (*Cvetkovic* at para 48).

[83] In sum, the IRCC statistics put forward by Mr. Ledshumanan cannot be a relevant and useful consideration in assessing irreparable harm. They provide no support, let alone any compelling evidence, that there is a loss of opportunity on H&C applications caused by the removal. It is impossible to tell from these statistics that the observed lower approval rate could be attributed to the removal as opposed to other factors.

(5) Conclusion

[84] In summary, I am not persuaded that, on a balance of probabilities, the evidence put forward by Mr. Ledshumanan on the various grounds of harm he has identified reaches the high threshold of convincing and non-speculative evidence showing a real probability that irreparable harm will occur, or a serious likelihood or jeopardy to his life, security or safety, or to his family's, in the interim period leading to a decision on his underlying application.

C. *Balance of convenience*

[85] In light of my conclusions respecting serious issues and irreparable harm, it is unnecessary to consider the balance of convenience.

IV. Conclusion

[86] For the above reasons, Mr. Ledshumanan's Stay Motion is dismissed. I conclude that the conditions of the *RJR-MacDonald / Toth* test for the issuance of a stay are not met and that no exceptional circumstances justify the intervention of the Court and the exercise of my discretion to grant the relief sought.

[87] Furthermore, in the specific context of this case and bearing in mind all the relevant circumstances, I cannot find that it would be just and equitable to grant the stay of removal sought by Mr. Ledshumanan.

ORDER in IMM-9265-21

THIS COURT'S ORDER is that:

1. The motion for a stay of the removal of the Applicant is dismissed.

2. No costs are awarded.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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