Federal Court  Cour fédérale

Date: 20220312

Docket: IMM-2151-22

Citation: 2022 FC 348

Vancouver, British Columbia, March 12, 2022

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ABDULAZIZ ASHRI ALHEDAIB

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER

UPON MOTION made on behalf of the Applicant dated March 7, 2022 for an Order staying the execution of a Removal Order, scheduled to be executed on March 14, 2022, until such time as his related Application for Leave and for Judicial Review has been finally determined;

AND CONSIDERING that the above-mentioned Application concerns a decision dated March 8, 2022 [the **Decision**] by an Inland Enforcement Officer [the **Officer**] of the Canada Border Services Agency, refusing the Applicant's request for a deferral of his removal;

AND UPON considering the tripartite test for a stay articulated in *Toth v Canada* (*Minister of Employment and Immigration*), (1988), 86 NR 302 (FCA) [***Toth***]; *RJR-MacDonald Inc v Canada* (*Attorney General*), [1994] 1 SCR 311, at 348 [***RJR MacDonald***]; and *R v Canadian Broadcasting Corp*, 2018 SCC 5, at para 12 [***CBC***];

AND UPON considering that the tripartite test is conjunctive, such that the Applicant must meet every prong of the test: *Janssen Inc. v Abbvie Corporation*, 2014 FCA 112;

AND UPON considering the elevated standard ("a likelihood of success") that applies to the first prong of the test when an applicant is seeking to review a negative decision on a request to defer removal: *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FC 682, at para 11; *Baron v Canada (The Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, at paras 66-67 and 74;

AND UPON considering that in the context of the present Motion, this means a likelihood of demonstrating that the Decision was unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [***Vavilov***]; *Lewis v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FCA 130, at para 42 [***Lewis***];

AND UPON considering that the discretion of CBSA officers to defer removal is very limited and is restricted to deferring removal for a temporary, short period of time: *Lewis*, above,

at paras 54-55; *Forde v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029, at para 36 [***Forde***];

AND UPON considering the materials filed by the Parties and hearing oral submissions of counsel for the respective parties on by videoconference today, Saturday March 12, 2022;

THIS COURT ORDERS that this Motion is dismissed for the reasons set forth in the Endorsement below.

ENDORSEMENT

[1] The Applicant's written representations were submitted before the Officer issued the Decision. Accordingly, to the extent that his oral submissions today differed from those prior written representations, I will address the former.

[2] The Applicant is a citizen of Saudi Arabia. In his request for a deferral of his removal from Canada, he stated that his life would be in danger if he were removed to Saudi Arabia. He maintained that the risk he would face would be greater than what was previously assessed by the Refugee Protection Division [the **RPD**] of the Immigration and Refugee Board of Canada. This is because he recently transmitted a series of tweets that were critical of the Saudi government. Moreover, he posted a video in which he openly expressed his views about the Saudi regime and declared himself to be an apostate of Islam.

[3] The Applicant maintains that the Officer's Decision was unreasonable because it failed to take into account his personal circumstances and evidence he submitted regarding the risks that he would face if he were removed to Saudi Arabia. Specifically, he submits that the Decision

failed to address a report by *Human Rights Watch* documenting repressive actions taken by the Saudi government. These include seeking the death penalty against individuals solely based on their peaceful political affiliations or ideas. In this regard, the report described the case of a reformist religious thinker, in respect of whom the Applicant maintains he is similarly situated.

i. Likelihood of success

[4] Regarding the first prong of the tripartite test for a stay, the Applicant has not demonstrated a likelihood that the Decision would be found to be unreasonable for the reasons he has identified.

[5] In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker": *Vavilov*, above, at para 85.

[6] In my view, it is unlikely that the Officer's Decision would be found to have fallen short of these requirements. In brief, the Officer specifically addressed the Applicant's submissions regarding the differences between the recently issued tweets and the previous (anonymously issued) ones that were assessed by the RPD. These differences included the content of the tweets and the fact that the Applicant revealed his identity in the recent tweets. The Officer also considered certain findings made by the RPD in respect of the previous tweets. These included the following:

i. it would have been relatively easy for the Saudi government to have ascertained the Applicant's true identity, despite his use of a pseudonym, if it had been concerned about his previous tweets; and

ii. the Applicant remained in Saudi Arabia for five months after posting the previous tweets that were critical of the government, yet he had not been targeted by the state before leaving that country and his family had not been approached.

[7] In addition, the Officer noted that whereas the anonymous Twitter account used by the Applicant had "over 2,000" followers when the previous tweets were made, the new account only has 26 followers. The Officer also observed that the Applicant had not provided any evidence of threats associated with his most recent tweets. Finally, the Officer noted that although a letter submitted on behalf of the Applicant stated that the Saudi government was aware of him and that he would be arrested upon his return, no evidence was provided to support those statements.

[8] Having regard to the foregoing, the Officer concluded that there was insufficient evidence to warrant a deferral of removal.

[9] I consider that it is unlikely that the Officer's Decision would be found to be insufficiently justified, transparent or intelligible; or to lack an internally coherent and rational chain of analysis. I recognize that the evidence adduced by the Applicant did not need to be

conclusive and could even have "an element of speculation": *Atawnah v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144, at para 21 [***Atawnah***]. However, it still needed to be clear and compelling: *Atawnah*, above. It is unlikely that the Officer's Decision would be found to have been unreasonable on the ground that it implicitly found that this standard had not been met.

[10] It is also unlikely that the Officer's Decision would be found to be unreasonable on the ground that it failed to mention the above-mentioned *Human Rights Watch* report. In brief, the shortcomings in the evidence adduced by the Applicant with respect to the risks he allegedly faces were such that the evidence cannot be reasonably said to be within the scope of the types of activities described in the report.

[11] For greater certainty, the evidence does not reasonably suggest that the Applicant is similarly situated to the reformist religious thinker mentioned in the report. Although the latter individual reportedly attracted the ire of the Saudi government because of certain tweets that he made, he also reportedly engaged in a broad range of other activities. These included participating in television interviews, attending discussion groups, writing books and studies, possessing banned books, and violating Saudi Arabia's cybercrime law.

ii. Irreparable harm

[12] Turning to the second prong of the tripartite test, the Applicant is required to demonstrate, on a balance of probabilities, that he will suffer irreparable harm if he is removed to

Saudi Arabia: RJR MacDonald, above; CBC, above. The evidence he has adduced falls well short of this threshold.

iii. Balance of convenience

[13] The third prong of the tripartite test requires the Applicant to demonstrate, on a balance of probabilities, that the balance of convenience favours the granting of a stay.

[14] Where a public authority is enforcing validly enacted legislation, the burden on that authority in the balance of convenience analysis is less than the burden on a private litigant. In brief, once it has been demonstrated that the public authority is proposing to take action pursuant to validly enacted legislation, "the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action": *RJR*, above, at 346.

[15] This is not simply a question of administrative convenience. It implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control. This is particularly so in cases, such as here, where an applicant has a long immigration history in Canada dating back several years: *Ghanaseharan v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at para 22.

[16] In the present circumstances, the Applicant is subject to a validly issued Removal Order. Pursuant to subsection 48(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, such orders must be enforced "as soon as possible."

[17] In my view, the Applicant has not met his onus of establishing that the balance of convenience lies in his favour. In other words, he has not established that the harm he will suffer from the refusal of the stay he is seeking will be greater than the aforementioned irreparable harm to the public interest that can be assumed would result from restraining the normal operation of the law, namely, the enforcement of a validly issued Removal Order: *RJR*, above, at 342.

[18] The foregoing provides a sufficient basis for concluding that the Applicant has not satisfied the third prong of the tripartite test for a stay of his removal. However, I consider it appropriate to add that a further consideration that weighs against the Applicant in the balance of convenience analysis is that he attempted to take the law into his own hands. He did so by deliberately attempting to create a risk of future harm to himself that he hoped to then rely upon to defeat the normal operation of the law. In this regard, 20 of the 24 recent tweets upon which he relied in requesting a deferral of his removal were issued between February 25, 2022 and March 2, 2022, after he was informed of his impending removal. This conduct cannot be countenanced. Indeed, permitting such tactics to succeed can reasonably be expected to undermine the integrity of, and public confidence in, Canada's system of immigration control.

[19] This flouting of Canada's immigration laws was exacerbated by the Applicant's repeated statements that he was unlikely to appear for removal. Those statements were made during an interview in February of this year, when he was informed that he would be removed from Canada this month. Such behaviour cannot be condoned.

[20] A final factor that is relevant to consider in the exercise of my discretion is the Applicant's criminal history, specifically, multiple domestic assault charges. Although those charges were ultimately stayed, the RPD found that there were serious reasons for considering that the Applicant committed the alleged assaults.

[21] Considering all of the foregoing, I have no difficulty in concluding that the balance of convenience favours the execution of the Removal Order.

CONCLUSION

[22] In conclusion, the Applicant has failed to meet his onus in respect to each of the three prongs of the tripartite test for a stay. Accordingly, this Motion is dismissed.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	ABDULAZIZ ASHRI ALHEDAIB v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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