Federal Court  Cour fédérale

Date: 20230524

Docket: IMM-6435-23

Citation: 2023 FC 735

Vancouver, British Columbia, May 24, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

BEVERLY MELLANIE THOMAS CHARLES

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER AND REASONS

[1] The request of the Applicant, Ms. Beverly Mellanie Thomas Charles, for an urgent hearing of her motion to stay [Stay Motion] her removal to Saint-Vincent and the Grenadines [SVG], scheduled for 3:00 a.m. EDT on May 25, 2023, is denied.

[2] The Court is not satisfied that Ms. Thomas Charles has provided a reasonable explanation as to why her Stay Motion was submitted to the Court and served on the Respondent, the

Minister of Public Safety and Emergency Preparedness [Minister], at the very last minute, slightly before 5:00 p.m. PDT on May 23, 2023, about 30 hours before her scheduled removal. In fact, she has not provided any satisfactory explanation for bringing her motion so late, merely one business day before her scheduled removal. The Court notes that Ms. Thomas Charles knew she has been subject to a removal order for years, that she had received her formal direction to report on May 12, 2023, that she requested a deferral of her removal to the Canada Border Services Agency [CBSA] on May 16, 2023, and that this request for deferral was denied in detailed reasons on Friday, May 19, 2023 [Decision]. At no point before the actual filing of her Stay Motion after the close of business in Montreal on May 23, 2023 — where counsel for Ms. Thomas Charles and for the Minister are both based — has Ms. Thomas Charles or her counsel indicated to the Court or to the Minister their intention or desire to seek a stay of her removal.

[3] As rightly pointed out by counsel for the Minister in her May 24, 2023 letter, the Court fails to understand how no work could be done on Ms. Thomas Charles's Stay Motion between May 19 and May 23, over a four-day period that happened to fall on a long weekend. Stay motions are typically urgent matters and are regularly prepared and filed with the Court on holidays or during weekends. The long three-day weekend is certainly not a valid explanation for Ms. Thomas Charles's lateness.

[4] It is also a well established practice that, when the timing is tight, applicants seeking a stay of their imminent removal can and will often file their stay motion materials before the CBSA has ruled on an applicant's request for deferral.

[5] Ms. Thomas Charles could have — and should have — brought her Stay Motion much earlier. Her late filing gives the Minister little if any time to prepare materials and argument, and prevents the Court from being able to properly consider the matters and hear the motion. In her May 24, 2023 letter, counsel for the Minister asked that this matter not be heard because of the last-minute nature of the Stay Motion. The Court agrees with the Minister, as it is both prejudicial to the Minister and unfair to the Court not to have all of the materials and the time to be able to make a reasoned analysis.

[6] It bears reminding that a stay of removal is an extraordinary equitable relief, an injunction that is only granted in special and compelling circumstances (*Canada (Minister of Citizenship and Immigration) v Harkat*, 2006 FCA 215). Where an applicant does not act diligently in preparing a challenge to his or her removal, the Court has the discretion to decline to hear a motion for stay of removal that was not filed in a timely manner (*El Ouardi v Canada (Solicitor General)*, 2005 FCA 42). Motions for stay of removal raise important and complex issues and they deserve careful consideration. Where there is no valid reason to bring such a motion on the eve of the scheduled removal — as is the case here —, it is not fair to ask the Minister to prepare a meaningful response in a very short period of time. Moreover, it is not in the interests of justice to ask the Court to decide such motions in a hurried fashion. The interests of justice are better served by the timely filing of motions for stay of removal, allowing both parties to provide the Court with all relevant information and evidence, and with time for proper consideration.

[7] Several precedents of the Court have indeed established that the Court can decide to refuse to hear a last minute stay motion when an applicant does not provide satisfactory explanations for the delay in bringing the matter forward and does not demonstrate why he or she was unable to act more diligently (see, for example, *Beros v Canada (Citizenship and Immigration)*, 2019 FC 325; *Khan v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1275; *Matadeen v Canada (Minister of Citizenship and Immigration)*, IMM-3164-00, June 22, 2000).

[8] The Court emphasizes that, since February 2021, it has adopted practice guidelines regarding urgent stay motions in immigration matters. These are now regrouped in the June 24, 2022 *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings* [Guidelines]. The Guidelines expressly state that avoidable last-minute stay motions are discouraged as they are not in the interests of justice. The Guidelines specify that a failure to provide a satisfactory explanation for the need to file a last-minute urgent motion may result in the Court declining to hear the matter. This is precisely the situation here.

[9] Ms. Thomas Charles was fully aware of her impending May 25, 2023 removal date since at least May 12, 2023, but she did not submit her request for an administrative deferral of removal to the CBSA until May 16, 2023, and her Stay Motion until late on May 23, 2023. The arguments and reasons raised by counsel for Ms. Thomas Charles to justify this late request and the failure to act sooner are not convincing. The alleged impossibility to do “administrative work” on a long weekend is not persuasive, and is not unsupported by evidence showing efforts made to prepare the motion materials. Moreover, the elements raised to support the request for a

deferral of removal (namely, Ms. Thomas Charles's establishment and integration in Canada, the impact of her removal on her Canadian employer, the health conditions of her adult son, and Ms. Thomas Charles's own health reasons) were all issues that could have been brought forward much earlier and did not rely on any new and recent evidence.

[10] In other words, the Court finds no justification for the delay in bringing the Stay Motion and concludes that hearing Ms. Thomas Charles's motion in the present circumstances would be an unfair process, both for the Minister and for the Court. The Court will therefore not exercise its discretion to hear this motion on an urgent basis.

[11] Notwithstanding the foregoing, the Court has nonetheless reviewed Ms. Thomas Charles's motion record to ascertain whether the three-part test for the issuance of a stay of removal would be met. The Court is not persuaded that Ms. Thomas Charles meets that tripartite test, which requires her to demonstrate that: i) her underlying application for leave and judicial review of the CBSA's refusal of her request for deferral of removal raises a serious issue and is likely to succeed; ii) she will suffer irreparable harm if the stay is not granted and the removal order is executed; and iii) the balance of conveniences lies in her favour (*R v Canadian Broadcasting Corp*, 2018 SCC 5; *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*]; *Toth v Canada (Minister of Employment and Immigration)*, (1988), 86 NR 302 (FCA) [*Toth*]). The 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 at para 19).

[12] A stay of removal is an exceptional measure (*Tesero v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148), and the discretion of a removal officer to defer removals is extremely narrow as the officer's primary task, according to section 48 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, is to enforce removal orders "as soon as possible."

[13] As the underlying application for leave and judicial review concerns the refusal to defer by a CBSA officer, the Court must consider that granting a stay in this case is one of the situations addressed in *Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 [*Wang*] at para 11 and its progeny, where a favourable decision on the interlocutory application effectively grants the relief sought in the underlying judicial review application. In these circumstances, the "serious issue" element of the *RJR-MacDonald / Toth* test does not merely require that the underlying application be found "neither vexatious nor frivolous" (*RJR-MacDonald* at pp 338–339). Instead, an elevated threshold for the establishment of a serious issue applies, pursuant to which Ms. Thomas Charles must show a "likelihood of success" in her underlying application for leave and judicial review of the CBSA's Decision (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 66; *Fox v Canada (Citizenship and Immigration)*, 2009 FCA 346 at para 21). Furthermore, 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 light of the applicable legal and factual constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 85, 101).

[14] On the serious issue to be tried, the Court sees no reason in the case at bar to interfere with the removal officer's Decision. The Decision leaves no doubt that the CBSA officer carefully reviewed and considered all the arguments and evidence adduced by Ms. Thomas Charles, in a reasonable manner and in accordance with the standard set in *Vavilov*. The CBSA officer provided very detailed reasons for rejecting the request of Ms. Thomas Charles, and in her submissions, Ms. Thomas Charles has not identified any material error with respect to the reasonableness of the CBSA Decision. More specifically, the CBSA officer analyzed all the arguments and evidence submitted by Ms. Thomas Charles with respect to her employment, her health issues, her application on humanitarian and compassionate grounds, and her adult son's economic dependency and health condition. Ms. Thomas Charles has failed to establish that she has any likelihood of success in her application for judicial review of the CBSA Decision. There is no serious issue raised in this case.

[15] The Court is not persuaded either that Ms. Thomas Charles has established that she will suffer irreparable harm if the stay of her removal is not granted. As this Court has repeatedly stated, if the words "irreparable harm" is to have any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of the deportation itself, which implies being separated from familiar faces and places and is accompanied by enforced separation and heartbreak. The Court is not satisfied that the harm alleged by Ms. Thomas Charles meets the irreparable harm threshold, and that there is a serious risk to her life or safety is she is removed to SVG.

[16] Finally, the Court is of the view that the balance of convenience lies with the Minister in this case. Ms. Thomas Charles has a long history with the Canadian immigration authorities, a history punctuated with several removal and exclusion orders issued against her, illegal work in Canada, prior removals from Canada, arrests by the CBSA, and failures to present herself to removal interviews. Over the years, Ms. Thomas Charles has repeatedly failed to respect the Canadian immigration laws and showed disregard for the Canadian immigration authorities. This is an element that tilts the balance of convenience in favour of the Minister.

[17] In sum, the Court is not persuaded that that the conditions of the *RJR-MacDonald / Toth* test for the issuance of a stay would be met, and there are no exceptional circumstances justifying the intervention of the Court and the exercise of its discretion to grant the reliefs sought by Ms. Thomas Charles. In the specific context of this case and considering all the circumstances, it would not be just and equitable to grant a stay of removal to Ms. Thomas Charles.

ORDER in IMM-6435-22

THIS COURT ORDERS that:

1. The Court declines to hear the Applicant's motion for stay of removal.

2. The style of cause is hereby amended, with immediate effect, to reflect the proper Respondent as The Minister of Public Safety and Emergency Preparedness.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6435-23
STYLE OF CAUSE:	BEVERLY MELLANIE THOMAS CHARLES v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GASCON J
DATED:	MAY 24, 2023

WRITTEN SUBMISSIONS BY:

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Margarita Tzavelakos	FOR THE RESPONDENT

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