Federal Court  Cour fédérale

Date: 20230609

Docket: IMM-2658-23

Citation: 2023 FC 821

Ottawa, Ontario, June 9, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ROLANDO SERAFIN PARUNGAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The Applicant, Rolando Serafin Parungao, brings a motion for a stay of his removal from Canada, scheduled to take place on June 12, 2023.

[2] The Applicant requests that this Court order a stay of his removal to the Philippines until the determination of an underlying application for leave and judicial review of the negative decision of a Senior Immigration Officer (the "Officer") of Immigration, Refugees and

Citizenship Canada on the Applicant's Pre-Removal Risk Assessment ("PRRA") dated January 25, 2023.

[3] For the reasons that follow, this motion is dismissed. The Applicant does not meet the tri-partite test required for a stay of his removal.

I. Facts and Underlying Decision

[4] The Applicant is a 39-year-old citizen of the Philippines.

[5] The Applicant arrived in Canada on or around April 23, 2019 on a temporary visa and a work permit. On November 20, 2020, the Applicant was arrested and detained until October 5, 2021, when he was convicted of the following offences under the *Criminal Code*, RSC 1985, c C-46 (the "*Code*") for events that occurred in June, September, and November 2020: possession of a dangerous weapon in violation of section 88 of the *Code*; taking a weapon from a peace officer in violation of subsection 270.1(2) of the *Code*; failure to comply with an undertaking in violation of subsection 145(4)(a) of the *Code*, and; choking in violation of section 267(c) of the *Code*. The Applicant was sentenced to nine months pre-sentence custody for each of these four convictions.

[6] On March 17, 2022, the Applicant made a claim for refugee protection but was found ineligible due to his criminality. The Canada Border Services Agency ("CBSA") provided the Applicant with a PRRA application. In his PRRA application, the Applicant alleged that his life would be in danger if he returned to the Philippines because he incriminated himself by posting

photographs on social media of himself using cannabis and supporting the use of cannabis. The Applicant submitted that this made him vulnerable to persecution by the government, which actively targets people who use and distribute drugs such as cannabis. The Officer rendered a negative decision in the Applicant's PRRA application in a decision dated January 25, 2023.

[7] The Applicant attended removal interviews with CBSA on April 26 and May 15, 2023, when CBSA issued a Direction to Report for the Applicant's removal. The Applicant requested a deferral of his removal with CBSA, which was denied in a decision dated June 12, 2023.

II. Analysis

[8] The tripartite test for the granting of a stay is well established: *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) ("*Toth*"); *Manitoba (A.G.) v Metropolitan Stores Ltd*., 1987 CanLII 79 (SCC), [1987] 1 SCR 110 ("*Metropolitan Stores Ltd*"*); RJR-MacDonald Inc. v Canada (Attorney General),* 1994 CanLII 117 (SCC), [1994] 1 SCR 311 ("*RJR-MacDonald*"); *R v Canadian Broadcasting Corp,* 2018 SCC 5 (CanLII), [2018] 1 SCR 196.

[9] The *Toth* test is conjunctive, in that granting a stay of removal requires the applicant to establish: (i) a serious issue raised by the underlying application for judicial review; (ii) irreparable harm that would result from removal; and (iii) the balance of convenience favouring granting the stay.

A. *Serious Issue*

[10] In *RJR-MacDonald*, the Supreme Court of Canada established that the first stage of the test should be determined on an "extremely limited review of the case on the merits" (*RJR-MacDonald* at 314). The standard of review of an enforcement officer's decision is that of reasonableness (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 (CanLII), [2010] 2 FCR 311 at para 67).

[11] On this first prong of the tri-partite test, the Applicant submits that the underlying application raises serious issues about the reasonableness of the Officer's negative decision in the Applicant's PRRA application, namely regarding the Officer's fulsome consideration of the evidence provided in support of his application.

[12] The Respondent submits that there is no serious issue because the Officer reasonably assessed the Applicant's PRRA application, in light of the facts and evidence.

[13] Having reviewed the parties' motion materials and the underlying decision, I agree that there is a serious issue to be tried. The underlying application for judicial review raises serious issues surrounding the Officer's proper assessment of the evidence provided in support of the Applicant's PRRA application, sufficient to meet the first prong of the *Toth* test.

B. *Irreparable Harm*

[14] At the second stage of the test, applicants are required to demonstrate that irreparable harm will result if relief is not granted. Irreparable harm does not refer to the magnitude of the harm; rather, it is a harm that cannot be cured or quantified in monetary terms (*RJR-MacDonald* at 341). This Court must be satisfied on a balance of probabilities that the harm is not speculative, but does not have to be satisfied that the harm will occur (*Xu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 746, 79 FTR 107 (FCTD); *Horii v Canada (C.A.)*, [1991] FCJ No 984, [1992] 1 FC 142 (FCA)).

[15] The Applicant submits that he will face irreparable harm upon removal to the Philippines. He submits that he is at risk of persecution in the Philippines because he has incriminated himself on social media as being a user and supporting the use of cannabis. The Applicant further submits that the serious issues in the underlying PRRA decision amount to a finding that removal would result in irreparable harm.

[16] The Respondent submits that irreparable harm is not made out in this case. The Respondent notes that the Applicant relies on the same allegations of risk in establishing irreparable harm that were adequately assessed by the Officer in the PRRA application. The Respondent submits that the finding of a serious issue is not automatically determinative of irreparable harm, and the Applicant has failed to provide clear and non-speculative evidence of risk that he would face upon removal to the Philippines.

[17] I agree with the Respondent and do not find that irreparable harm is made out in this case. Firstly, the same allegations of risk that have been assessed by a competent trier of fact cannot provide the basis for establishing irreparable harm in a stay motion (*Jean v Canada (Citizenship and Immigration)*, 2009 FC 593 at para 56). Secondly, the Applicant's submission that the finding of irreparable harm flows from a finding of serious issue is meritless in light of this case. The Applicant must still provide evidence of irreparable harm, which is a separate and distinct stage of the test to be met in a stay of removal, and he has not done so.

C. *Balance of Convenience*

[18] The third stage of the test requires an assessment of the balance of convenience—a determination to identify which party will suffer the greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits (*RJR-MacDonald* at 342; *Metropolitan Stores Ltd* at 129). It has sometimes been said, "Where the Court is satisfied that a serious issue and irreparable harm have been established, the balance of convenience will flow with the Applicant" (*Mauricette v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 420 (CanLII) at para 48). However, the Court must also consider the public interest to uphold the proper administration of the immigration system.

[19] The Applicant submits that the balance of convenience favours granting the stay of removal. He submits that the risk of harm he faces upon removal outweighs the inconvenience to the Respondent in being unable to enforce removal.

[20] The insufficient evidence of irreparable harm is determinative of this motion. Nonetheless, the balance of convenience weighs in favour of the Respondent, particularly in light of the Applicant's criminal history. Subsection 48(2) of *IRPA*, states that removal orders must be enforced as soon as possible. Lacking sufficient evidence of irreparable harm, the balance of convenience favours the Minister in enforcing the removal order expeditiously.

[21] Ultimately, the Applicant does not meet the tri-partite test required for a stay of removal. This motion is therefore dismissed.

ORDER in IMM-2658-23

THIS COURT ORDERS that the Applicant's motion for a stay of his removal is dismissed.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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