

Federal Court



Cour fédérale

Date: 20230504

Docket: IMM-5451-23

Citation: 2023 FC 631

Saint-Sauveur, Quebec, May 4, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

ABDULLAH FAYYAZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] Mr. Fayyaz seeks a stay of his removal to Pakistan, scheduled for May 7, 2023. I am dismissing his motion, because he has not shown any serious issue with respect to either the dismissal of his claim for asylum or the denial of his request to defer his removal.

I. Background

[2] Mr. Fayyaz is a citizen of Pakistan. He came to Canada in November 2021 and claimed asylum. He alleges that he was the victim of persecution because he is a member of the LGBTQ+ community.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dismissed Mr. Fayyaz's claim in January 2023. Before doing so, the RPD informed Mr. Fayyaz that it noted striking similarities between his Basis of Claim [BOC] narrative and that of another claimant and invited him to provide explanations in this regard.

[4] Mr. Fayyaz denied any wrongdoing and testified that he told his full story to an interpreter who then drafted his BOC narrative. He also provided an affidavit from the interpreter, to the same effect.

[5] The RPD dismissed Mr. Fayyaz's claim. It based its analysis on the decision of the Refugee Appeal Division [RAD] of the IRB in *X (Re)*, 2018 CanLII 101516 [*Re X*]. It found that the presumption of truthfulness was rebutted by the striking similarity between Mr. Fayyaz's narrative and that of the other claimant. It identified 32 paragraphs of those narratives that are "identical or strikingly similar" and provided examples. It also reviewed Mr. Fayyaz's testimony and found that it did not provide an adequate explanation for the similarities between the two claims, especially as the other claim pre-dated Mr. Fayyaz's. The RPD also considered documentary evidence provided by Mr. Fayyaz, but concluded that it could be disregarded

because of its concerns regarding the fabrication of the claim. Lastly, the RPD stated that Mr. Fayyaz's claim is manifestly unfounded, pursuant to section 107.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[6] Mr. Fayyaz brought an application for leave and judicial review of the RPD's decision. The application has not been perfected yet.

[7] Where the RPD states that a claim is manifestly unfounded pursuant to section 107.1, there is no appeal to the RAD and no statutory stay of removal pursuant to section 231 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227: see, for example, *Adeshina v Canada (Citizenship and Immigration)*, 2022 FC 1559 at paragraph 30. Thus, the Canada Border Services Agency [CBSA] began preparing for Mr. Fayyaz's removal from Canada.

[8] On March 19, 2023, Mr. Fayyaz was called in for an interview with a CBSA officer on April 4, 2023. At a later interview on April 13, 2023, Mr. Fayyaz was directed to report for his removal on May 7, 2023.

[9] On April 12, 2023, Mr. Fayyaz requested a deferral of his removal. He argued that the RPD's decision was likely to be sent for reconsideration and that he was at risk of persecution upon returning to Pakistan.

[10] On April 27, 2023, a CBSA officer denied Mr. Fayyaz's request. The officer noted that the mere fact that Mr. Fayyaz is applying for judicial review of the RPD's decision does not

automatically stay the removal order and that there was insufficient evidence to justify deferral on this basis. The officer also noted that deferral could be warranted where new evidence casts doubt on the RPD's assessment of risk, but that Mr. Fayyaz had not brought any such new evidence.

[11] Mr. Fayyaz brought an application for leave and judicial review of the refusal of his deferral request. He also brought a motion for the stay of his removal.

II. Analysis

[12] Motions for stay of removal are decided according to the well-known three-part test for interlocutory injunctions: *RJR – Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR*], and *R v Canadian Broadcasting Corp*, 2018 SCC 5, [2018] 1 SCR 196. The Court must determine whether: (1) the applicant has shown that the underlying application raises a serious issue; (2) the applicant will suffer irreparable harm if the stay is not granted; and (3) whether the balance of convenience favours the applicant.

[13] In *RJR*, at 337, the Supreme Court of Canada held that the serious issue prong of the test is a low threshold, which is met as long as the issue raised by the applicant is not frivolous. However, when the underlying application targets a decision refusing deferral, the motion for stay of removal seeks the same remedy as the underlying application and is often the final determination of the matter. In these circumstances, the first prong of the *RJR* test is applied more rigorously and the applicant must show “quite a strong case” and not simply a “serious issue.” *RJR*, at 338–339; *Baron v Canada (Minister of Public Safety and Emergency*

Preparedness), 2009 FCA 81 at paragraphs 66–67, [2010] 2 FCR 311; *Ledshumanan v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1463 at paragraphs 19–22

[*Ledshumanan*]. Moreover, as the underlying proceeding is an application for judicial review, the strength of the case must be assessed having regard to the fact that the applicants must show that the decision challenged is unreasonable. I refer to *Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075, for a review of the grounds that typically warrant deferral.

[14] This motion for a stay of removal was brought as part of the application for judicial review of the negative deferral decision. As a result, the higher threshold of “quite a strong case” applies. The test would have been different had the applicant brought his motion within his application for judicial review of the RPD’s decision. This, however, makes no difference in practice, as I find that the applicant fails on either test.

[15] There is simply no serious issue raised by the RPD’s decision. The present matter is a blatant case of plagiarism and the applicant was unable to provide any meaningful explanation. In particular, the RPD was entitled to rely on the fact that the other claimant’s BOC predated Mr. Fayyaz’s. The fact that portions of Mr. Fayyaz’s BOC were not plagiarized does not detract from the RPD’s conclusion. The RPD conducted its inquiry in accordance with the precedential decision of the RAD in *Re X*. Having found Mr. Fayyaz’s story to be fraudulent, the RPD did not have to review country condition evidence or other documents filed in evidence.

[16] In these circumstances, the RPD’s further finding that Mr. Fayyaz’s claim was manifestly unfounded does not raise a serious issue.

[17] Nor does the CBSA officer's decision to refuse to defer Mr. Fayyaz's removal raise any issue. The officer was entitled to rely on the RPD's decision, as it raises no serious issue:

Ledshumanan, at paragraph 62. Moreover, Mr. Fayyaz did not bring evidence of a new risk arising after the RPD's decision that could justify deferring removal. Thus, there was no basis on which the officer could grant Mr. Fayyaz's deferral request.

[18] I acknowledge that Mr. Fayyaz filed objective evidence regarding the situation of the LGBTQ+ community in Pakistan. As the RPD found his story to be fabricated, however, there is little remaining evidence to connect Mr. Fayyaz with the risks described in the objective evidence.

[19] At the hearing, Mr. Fayyaz argued that he is the sole breadwinner for his family, who have recently come to Canada to claim asylum as well, and that his removal would be highly detrimental to them. This argument was not raised in the request for deferral. Mr. Fayyaz cannot now claim that the decision is unreasonable for failing to address an argument he did not make. In any event, I do not have any evidence that this raises above the unfortunate but necessary consequences of removal, which cannot form the basis of a request for deferral.

[20] As a result, the deferral decision does not raise a serious issue, let alone "quite a strong case."

[21] As Mr. Fayyaz fails the first prong of the test, it is not necessary to address the second and third prongs.

III. Disposition

[22] For these reasons, Mr. Fayyaz's motion for a stay of his removal from Canada will be dismissed.

ORDER in IMM-5451-23

THIS COURT orders that the motion for a stay of the applicant's removal from Canada is dismissed.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5451-23

STYLE OF CAUSE: ABDULLAH FAYYAZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: MAY 3, 2023

ORDER AND REASONS: GRAMMOND J.

DATED: MAY 4, 2023

APPEARANCES:

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