Federal Court  Cour fédérale

Date: 20230526

Docket: IMM-6382-23

Citation: 2023 FC 740

[ENGLISH TRANSLATION]

Toronto, Ontario, May 26, 2023

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

ALVARO MARRON ZAMUDIO

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

UPON motion brought by the applicant and received by the Court at 4:30 p.m. on May 25, 2023, for a stay of his removal to Mexico, scheduled for 8:00 p.m. on May 26, 2023 [Motion];

AND UPON noting that the Motion was served the day before the removal date, at the eleventh hour, even though the removal date had been set on May 8, at the applicant's initial pre-removal interview with a Canada Border Services Agency [CBSA] officer, and even though the

applicant had attended a second meeting with the CBSA, on May 15, 2023, accompanied by his counsel, where they were informed by a CBSA officer that the removal date of May 26, 2023, would remain unchanged;

AND UPON noting that counsel for the applicant sent letters to the respondent and to the Court dated May 19 and 24, 2023, stating the applicant's intention to bring the Motion, but the Motion record was not filed until the day before the removal, specifically at the end of the day on May 25, 2023;

AND UPON noting that the respondent had to prepare and file written representations in response to the applicant's Motion without having received or seen the Motion because of the applicant's excessive delay in filing it;

AND UPON considering the Federal Court's *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings* dated June 24, 2022 [*Guidelines*], which clearly state that last-minute motions to stay removals from Canada are not in the interests of justice:

> **12. Urgent motions.** The Court recognizes that there are circumstances where an applicant has no alternative but to bring a last minute, or urgent, motion to stay their removal from Canada. Such unavoidable urgent stay motions may be necessary, for example, when a direction to report for removal is issued for an imminent removal date, leaving an applicant with little time to retain and instruct counsel and to bring a stay motion. The Court considers such circumstances to be distinct from those where removal has been anticipated for some time and/or there is sufficient time between the service of a direction to report and the scheduled removal date to permit a stay motion to be set down to be heard on a non-urgent basis. These matters are not inherently urgent because they could be set down to be heard in accordance with Rule 362(1). These may be avoidable last minute stay motions, which are discouraged, as they are not in the interests of

> justice (see, for example, *Beros v Canada (Citizenship and Immigration)*, 2019 FC 325; *Khan v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1275 ("*Khan*"); *Ocaya v Canada (Citizenship and Immigration)*, 2019 CanLII 8561 (FC); *Miranda v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 1057). Accordingly, the Court may refuse to hear last-minute stay applications where there is no satisfactory explanation for the delay in bringing the matter forward (*Khan* at para 11).

AND UPON noting that, since the *Guidelines* were first published, on February 18, 2021, this Court has ruled repeatedly on the significance of these statements, for example, in *Dabo v Canada (Public Safety and Emergency Preparedness)*, 2023 CanLII 8319 (FC); *Nganga v Canada (Citizenship and Immigration)*, 2023 CanLII 13647 (FC); *Getachew v Canada (Public Safety and Emergency Preparedness)*, 2023 CanLII 13796 (FC); and even recently in *Charles v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 735 [*Charles*] (see especially paras 2–6);

AND UPON noting that the applicant has provided no reasonable justification for the delay in filing the Motion since his meeting with the CBSA on May 15, 2023, and that the record shows that the urgency referred to in the letters from counsel for the applicant was the result of the applicant's own actions and was entirely avoidable;

AND UPON noting that it is a well-established practice for applicants to bring a stay motion before the CBSA has ruled on their request for deferral when the timing is tight, as in this case, where the applicant had 10 days between his meeting with the CBSA and his scheduled removal (*Charles* at para 4);

AND UPON considering Justice Pamel's statement in *Ouni v Canada (Citizenship and Immigration)*, 2022 CanLII 121509 (FC), and the repeated statements of this Court that last-

minute motions of this nature force respondents to respond without adequate preparation and merely serve as a strategy to put pressure on the Court and on respondents;

AND UPON noting that the *Guidelines* of this Court are published for a reason, namely, so that parties such as the applicant may read them and act accordingly, and they make it clear that the Court may refuse to hear last-minute stay motions where there is no justification for the delay in filing the motion;

AND UPON noting that the Motion has other fatal flaws:

1. The application for leave and judicial review [ALJR] to which the Motion is joined is more than ten months out of time, and the applicant has not requested an extension of time or provided a valid reason. The applicant did try to justify the long delay by alleging that his former counsel had failed to provide him with the decision of the Refugee Appeal Division [RAD], the decision that is the subject of the ALJR; however, the evidence on the record shows that the RAD decision was sent to the applicant's home address.

2. The written representations in support of the applicant's Motion at pages 43–48 of the Motion record raise no serious, valid argument regarding the reasonableness of the RAD's decision. I agree with the respondent that the CBSA officer's decision is entirely reasonable in light of the applicant's arguments to defer the removal pending this Court's decision regarding his application for judicial review.

3. In short, the applicant has failed to meet the first of the three criteria in *Toth v Canada (Minister of Employment and Immigration)* (1988), 1988 CanLII 1420 (FCA), 86 NR 302 (FCA) [*Toth*], upon which this Court must rely in determining whether a stay of removal

should be granted. Since the three criteria in *Toth* are cumulative (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 19), the applicant's failure to meet the first criterion is a sufficient basis for dismissing the Motion.

AND UPON being in agreement with the written representations in the respondent's response of May 25, 2023;

THIS COURT declines to hear the applicant's stay motion.

"Alan S. Diner"
Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6382-23
STYLE OF CAUSE:	ALVARO MARRON ZAMUDIO v MINISTER OF CITIZENSHIP AND IMMIGRATION
REASONS FOR ORDER AND ORDER:	DINER J
DATED:	MAY 26, 2023

SOLICITORS OF RECORD:

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Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT