Federal Court  Cour fédérale

Date: 20231129

Docket: IMM-15015-23

Citation: 2023 FC 1600

Ottawa, Ontario, November 29, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ABDALLAH KHALEEL ABEDALAZIZ YOUSEF

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant, Abdallah Khaleel Abedalaziz Yousef, brings a motion for a stay of his removal from Canada, scheduled to take place on November 30, 2023.

[2] The Applicant requests that this Court order a stay of his removal until the determination of his underlying application for leave and judicial review of a negative decision by a Canada Border Services Agency ("CBSA") officer (the "Officer").

[3] For the reasons that follow, this motion is granted. I find that the Applicant meets the tri-partite test required for a stay of removal.

II. **Facts and Underlying Decisions**

[4] The Applicant is a 32-year-old citizen of Jordan.

[5] The Applicant arrived in Canada in late 2018. In February 2019, he made a claim for refugee protection based on his fear of persecution in Jordan as a 2SLGBTQI+ individual.

[6] In a decision dated August 25, 2021, the Refugee Protection Division ("RPD") rejected his claim. In a decision dated February 3, 2022, the Refugee Appeal Decision ("RAD") upheld the RPD's decision. In a decision dated January 9, 2023, this Court dismissed the application for leave and judicial review of the RAD decision.

[7] On March 28, 2023, the Applicant's humanitarian and compassionate ("H&C") application was received by Immigration, Refugees and Citizenship Canada.

[8] On November 16, 2023, the Applicant received a Direction to Report for removal from the CBSA. On November 24, 2023, the Applicant submitted a request to CBSA to defer his removal.

[9] On November 28, 2023, the Officer refused the Applicant's deferral request. The Officer found that insufficient evidence had been adduced to establish the Applicant was at risk of harm upon removal to Jordan. Furthermore, the Officer did not find that the Applicant's incoming PRRA eligibility and pending H&C application warranted a deferral of removal, nor his evidence of mental health issues and the interests of his unborn child.

III. **Analysis**

[10] 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.

[11] 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*

[12] 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). This Court must also bear in mind that the discretion to defer the removal of a person subject to an enforceable removal order is limited. 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) ("*Baron*").

[13] A decision refusing to defer removal requires the applicant to meet an elevated standard with respect to the first *Toth* requirement of a serious issue for trial, pursuant to *Baron.*

[14] On this first prong of the tri-partite test, the Applicant submits that the underlying application for leave and judicial review raises the serious issues of the Officer failing to defer removal until he is able to complete his psychological treatment in Canada and until his upcoming eligibility for a pre-removal risk assessment ("PRRA").

[15] The Respondent submits that the Applicant has failed to raise a serious issue, as the Officer reasonably reviewed the best interests of the Applicant's child, his mental health concerns, his fitness to fly, and the availability of mental health services in and the country conditions of Jordan.

[16] Having reviewed the parties' materials, I agree with the Applicant. I first note that "future PRRA eligibility is not a basis for a stay and the argument would amount to an indefinite stay of removal" (*Adetunji v Canada (Public Safety and Emergency Preparedness)*, 2023 CanLII 74713 at para 11). The Applicant has not raised a serious issue with respect to his PRRA eligibility. Nonetheless, I find that the Applicant has established the underlying application raises the serious issue of the Officer failing to consider the impact of removal on the Applicant's psychological health and treatment such that a deferral may have been warranted (*Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075 at para 19; *Tiliouine v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1146 at para 12).

B. *Irreparable Harm*

[17] 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 (CA)*, [1991] FCJ No 984, [1992] 1 FC 142 (FCA)).

[18] The Applicant submits that he will suffer irreparable harm upon removal owing to re-traumatization and deterioration in his mental health, his wife being left without support for the during her pregnancy and the birth of their child, and not having the opportunity to submit new evidence of risk in a PRRA application.

[19] The Respondent submits that irreparable harm is not established. The Respondent maintains there is no evidence that he cannot seek mental health support in Jordan, and that his mental health issues (specifically his suicidal ideations and depression) and concerns about deportation do not rise to the level of irreparable harm. The Respondent also maintains that denying a stay so that the Applicant may apply for a PRRA does not amount to irreparable harm, nor does separating the Applicant from his pregnant wife.

[20] I agree with the Applicant. I find that he has provided clear and non-speculative evidence establishing he will face irreparable harm upon removal to Jordan (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31). Evidence in the record establishes that his psychological health has significantly deteriorated at the prospect of removal, including a psychological report noting his "increased risk of suicide, suicide attempts, and suicidal thoughts." This form of harm is one that has been recognized by this Court as irreparable in stay motions (*AB v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1301 at para 27 ("*AB*")). Taken with this report's statement that the Applicant's mental health challenges persist, that any disruption of his treatments may cause deterioration of his situation, and the recommendation he remain in Canada for treatment, I find the Applicant's psychological health would likely deteriorate upon removal to Jordan such that he would suffer irreparable harm. As such, the second prong of the *Toth* test is established.

[21] It is noteworthy to recite a portion of the Officer's decision: "No medical documentation has been received by this office that shows Abdallah Khaleel Abedalaziz Yousef has planned, attempted or is intending to cause injury or death to himself." At the hearing, counsel for the

Respondent suggested that the Applicant had not provided further evidence to substantiate a risk of suicide, including evidence from a doctor or psychiatrist, evidence of an attempted suicide, or evidence of a hospitalization owing to a suicidal attempt. The Respondent maintained that simply putting forward a letter from a psychotherapist, which the Respondent suggested was merely a recitation of what the Applicant told them and which states the Applicant may have suicidal ideations, is insufficient for the purposes of establishing irreparable harm.

[22] I disagree. The portion of the Officer's decision provided above is an example of a "perverse characterization" of the harm that has afflicted the Applicant, and afflicts all that have struggled with suicidal ideations (*Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313 at para 28). In addition, the Respondent's position on this portion of the decision misconstrues the evidence required for an individual to demonstrate that their risk of suicide can establish irreparable harm (see *AB* at para 27).

[23] This reasoning amounts to requiring an individual demonstrate that they have attempted or intend to commit suicide, so that they can establish that they may in the future. I do not accept this meritless and even life-threatening reasoning. It is contrary to law and would be a truly dangerous precedent to set.

C. *Balance of Convenience*

[24] 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.

[25] The Applicant submits that the balance of convenience weighs in his favour, as he has been forthcoming and cooperative in his immigration proceedings, has no criminal history, and poses no danger to the public or to the security of Canada. The Applicant also submits the Minister's interest in removal will be only delayed, not lost, in allowing him to apply for a PRRA and undergo his medical treatment in Canada.

[26] The Respondent submits that the Applicant having had the benefit of multiple immigration proceedings and the Respondent's interest in executing a deportation order expeditiously tips the balance of convenience in their favour.

[27] In my view, the balance of convenience weighs in the Applicant's favour. The Respondent's interest in enforcing a removal order expeditiously does not outweigh the significant mental harm the Applicant will likely face upon removal.

[28] Ultimately, the Applicant meets the tri-partite test required for a stay of removal. This motion is therefore granted.

ORDER in IMM-15015-23

THIS COURT ORDERS that the Applicant's motion is granted. The Applicant's removal is stayed until this Court finally disposes of the Applicant's pending application for leave and for judicial review of the Officer's decision.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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