Date: 20080325

Docket: IMM-1347-08

Citation: 2008 FC 374

Ottawa, Ontario, March 25, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

NUR MOHAMED JAMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] The Applicant, Mr. Nur Mohamed Jama, had a fair and full opportunity to present evidence and arguments with respect to the Danger Opinion. It took approximately two years to make the Danger Determination. The Applicant made three different sets of submissions, July 2005, August 2006 and March 2007; however, he made a conscious choice not to challenge the Danger Opinion, rendered on June 11, 2007, although he knew that his removal was imminent. In fact, the Applicant was scheduled to be removed in July 2007, and yet, he still did not challenge the Danger Opinion. The only reason he was not removed, in July of 2007, is the airline's refusal to transport deportees to Somalia. No efforts to challenge the Danger Opinion, until now, were made by the Applicant.

[2] The Danger Opinion is based on the Minister's Delegate opinion, dated June 11, 2007 (excerpts annexed to this Judgment).

[3] There is no pending underlying application within which this stay motion can be properly brought. Furthermore, the Applicant has failed to show that the test for granting an extension of time has been met. To obtain an extension of time, an Applicant must demonstrate:

i. a continuing intention to pursue the application;

ii. an arguable case for leave has been shown - application has some merit

iii. no prejudice arises from the delay; and

iv. a reasonable explanation for the delay exists.

(*Canada (Attorney General) v. Hennelly* (1999), 244 N.R. 399 (F.C.A.); *Grewal v. Canada (Minister of Employment Immigration),* [1985] 2 F.C. 263 (F.C.A.); *Marshall v. Canada*, 2002 FCA 172.)

[4] The Applicant has acknowledged a lack of the continuing intention to pursue the application. Moreover, he has failed to show that an arguable case for leave has been shown, and that a reasonable explanation exists for the delay. As indicated, the Applicant has been aware of his imminent removal for duration of 8-9 months. There has been no material change in country conditions in the part of Somalia to which the Applicant is being removed; in any case, the Danger Opinion would still stand, as it was made before the alleged changes, and thus its validity would not be affected in any event. Serious prejudice would arise to the Respondent if this motion were to be

granted in the circumstances of this case. The Applicant has been held in detention for over two years awaiting removal. Only in the last few days has the Applicant come forward with his intention to challenge the Danger Opinion determination.

[5] The Applicant has not provided any reliable evidence that would establish new risk issues for regarding his return to Somaliland. The Applicant has a family there, including his parents and many siblings. Moreover, it appears that his previous wives/spouses reside there with more than four of his children (the exact number of ex and present wives/spouses and children in Hargeisa is not entirely clear on the record).

[6] The Applicant has had the existing mental health disorder for many years. Throughout this period he has consistently shown that he has not been compliant in taking his medication. While he has been incarcerated for over two years, prior to that time, the efforts of the Toronto Bail program failed to yield any success in having the Applicant comply with the treatment regiment required to keep him under control. This fact scenario, in part, formed the basis of the Danger Opinion. Accordingly, the availability of medications and/or psychiatric treatment is of no consequence to a person who has shown extensive reluctance to benefit from same.

[7] The Applicant's interests do not outweigh the public interest in executing removal orders as soon as reasonably practicable in accordance with ss. 48(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). The Minister's obligation under ss. 48(2) of the IRPA is

not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control.

[8] In considering the balance of convenience, the Court must consider that the Applicant is a danger to the public in Canada. If a person is a danger to the public in Canada or has committed crimes against humanity, the public interest and the balance of convenience favours not staying removal from Canada. (*Choubaev v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 816; *Grant v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 141.)

[9] As stated by Justice Judith Snider in *Chen v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 464, [2004] F.C.J. No. 567 (QL): "a clear starting point for viewing public interest in this case is the objective of the legislative framework in question." While acknowledging that Canada's commitment to non-refoulement is one of the objectives of the IRPA, an even more pressing objective, which impacts everyone living in Canada, is the maintenance and protection of the security of Canadian society and the integrity of Canada's immigration system.

[10] The balance of convenience favours the Minister, in that, the Applicant's removal would satisfy the objectives, as set out in the IRPA, of establishing fair and efficient procedures to maintain the integrity of the Canadian refugee system, protecting the safety and security of Canadian society, and promoting international justice and security by denying access to Canadian territory to persons who are security risks or serious criminals. (IRPA, ss. 3(2)(*e*), (*g*) and (*h*).)

II. Background

[11] The facts set out in the affidavit of Ms. Karen Miranda, the email explanation received from Officer, Mr. Bob Hickson, the Danger Opinion, dated June 11, 2007, and the extensive materials filed by the Applicant are self explanatory. (The annexed document highlights elements therein.)

III. Issue

[12] Has the Applicant satisfied all three parts of the conjunctive test for a stay?

IV. Analysis

[13] The test for the granting of an Order staying execution of a removal order, is:

a) whether there is a serious question to be determined by the Court;

b) whether the party seeking the stay would suffer irreparable harm if the stay were not issued; and

c) whether, on the balance of convenience, the party seeking the stay will suffer the greater harm from the refusal to grant the stay.

(*Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.); *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.)

[14] The test for a stay is conjunctive and the Applicant must therefore satisfy each branch of this tri-partite test.

Serious Issue

[15] As the Applicant has failed to establish a serious issue, this motion ought to be dismissed on this basis alone. This stay motion attempts to put into issue a Danger Opinion which was rendered 8-9 months previously. The Applicant made a conscious choice not to challenge the Danger Opinion, and he is now irrevocably out of time. In the circumstances, there is no underlying application within which this stay motion can be heard.

[16] On June 11, 2007, a Minister's Delegate issued an opinion, pursuant to paragraph 115(2)(*a*) of the IRPA that the Applicant constitutes a present and future danger to the public in Canada. The decision was prepared in accordance with Article 33(2) of the *United Nations Convention on the status of refugees*, which permits the host country to remove a refugee who has been convicted of a particularly serious crime and who constitutes a danger to the country. In addition to the danger assessment, the opinion includes a consideration of the Applicant's risk upon return to Somaliland in accordance with the Supreme Court of Canada decision in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, and of humanitarian and compassionate elements. This consideration addressed his personal circumstances. (Reference is also made to the Danger Opinion.)

[17] There has not been a material negative change in country conditions in the region to which the Applicant is being removed. (IRPA, s. 112 and s. 115; *Ragupathy v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1370 (T.D.), at paras. 15-22.)

Irreparable Harm

[18] The onus is on the Applicant to demonstrate, through clear and convincing evidence of irreparable harm, that the extraordinary remedy of a stay of removal is warranted. Irreparable harm must constitute more than a series of possibilities and cannot be simply based on assertions and speculation. (*Atwal v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427.)

[19] The Supreme Court of Canada has held that such harm must be done to the Applicant, not to a third party. (RJR-MacDonald Inc., above, at para. 58.)

[20] The Federal Court jurisprudence also establishes that irreparable harm must be something more than the inherent consequences of deportation. As Justice Denis Pelletier stated, in *Melo v. Canada (Minister of Citizenship and Immigration)* (2000), 188 F.T.R. 39:

> [21] …if the phrase irreparable harm is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak.
> .

[21] The Applicant's extensive family lives in the area to which the Applicant is being removed. During his extensive past in the U.S. and Canada, he has not been compliant with appropriate treatments/medications. Accordingly, the availability of same is immaterial to this Applicant as the state cannot force compliance. Contrary to the vague representations by the Applicant, regarding the treatment of mentally ill individuals, his other mentally ill siblings are institutionalized, and not "tied to a tree". As the Applicant has failed to satisfy the test for irreparable harm, this motion ought to be dismissed on this basis alone.

Balance of Convenience

[22] It is trite law that the public interest must be taken into consideration when evaluating this last criterion. (*RJR-MacDonald Inc.*, above; *Blum v. Canada (Minister of Citizenship and Immigration)* (1994), 90 F.T.R. 54 (F.C.T.D.), by Justice Paul Rouleau.)

[23] In this context, the very recent statements of the Supreme Court of Canada in *Medovarski v. Canada (Minister of Citizenship and Immigration),* [2005] 2 S.C.R. 539, concerning the intent of the legislation. The Right Honourable Berverley McLachlin, Chief Justice of Canada, speaking for a unanimous Court, stated:

> [9] The *IRPA* enacted a series of provisions intended to facilitate the removal of permanent residents who have engaged in serious criminality. This intent is reflected in the objectives of the *IRPA*, the provisions of the *IRPA* governing permanent residents and the legislative hearings preceding the enactment of the *IRPA*.
>
> [10] The objectives as expressed in the *IRPA* indicate an intent to prioritize security. This objective is given effect by preventing the entry of applicants with criminal records, by removing applicants with such records from Canada, and by emphasizing the obligation of permanent residents to behave lawfully while in Canada. This marks a change from the focus in the predecessor statute, which emphasized the successful integration of applicants more than security: e.g. see s. 3(1)(*i*) of the *IRPA* versus s. 3(*j*) of the former Act; s. 3(1)(*e*) of the *IRPA* versus s. 3(*d*) of the former Act; s. 3(1)(*h*) of the *IRPA* versus s. 3(*i*) of the former Act. Viewed collectively, the objectives of the *IRPA* and its provisions concerning permanent residents, communicate a strong desire to treat criminals and security threats less leniently than under the former Act.
>
> …
>
> [12] In introducing the *IRPA*, the Minister emphasized that the purpose of provisions such as s. 64 was to remove the right to appeal by serious criminals. She voiced the concern that "those who pose a security risk to Canada be removed from our country as quickly as possible".

> 13 In summary, the provisions of the *IRPA* and the Minister's comments indicate that the purpose of enacting the *IRPA*, and in particular s. 64, was to efficiently remove criminals sentenced to prison terms over six months from the country. Since s. 196 explicitly refers to s. 64 (barring appeals by serious criminals), it seems that the transitional provisions should be interpreted in light of these legislative objectives. (Emphasis added.)

[24] The balance of convenience heavily favours the Respondent in the circumstances. The Minister is seeking to protect the Canadian public and, with that objective in mind, is carrying out his statutory duty. As Justice William P. McKeown stated, in *Gomes v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 199 (QL):

> [7] With respect to the balance of convenience test, I am in agreement with the reasoning of Rothstein J. in *Mahadeo v. Canada (Secretary of State)*, October 31, 1994, (unreported), Court File IMM-4647-94 (F.C.T.D) [Please see [1994] F.C.J. No. 1624]. In that case, Rothstein J. stated that when the applicant is guilty of welfare fraud or has been convicted of a criminal offence in Canada, the balance of convenience weighs heavily in favour of the respondent. In this case the applicant was convicted of assault causing bodily harm, which I find to outweigh any consideration of the emotional devastation of the applicant's family. I therefore find that the balance of convenience in this case lies with the respondent.
>
> [8] Given my negative findings on the first two elements of the tripartite test, I do find it necessary to consider the issue of irreparable harm. (Emphasis added.)

[25] The public interest is to be taken into account and weighed together with the interests of private litigants. The Applicant has not met the third aspect of the tri-partite test, insofar as the balance of convenience favours the Minister and not the Applicant. (*Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110, at para. 146.)

[26] In *Dugonitsch v. Canada (Minister of Employment Immigration)*, [1992] F.C.J. No. 320 (F.C.T.D.), Justice Andrew MacKay set out the considerations pertinent to assessing balance of convenience:

> Absent evidence of irreparable harm, it is strictly speaking unnecessary to consider the question of the balance of convenience. Nevertheless, it is useful to recall that in discussing the test for a stay or an interlocutory injunction in the Metropolitan Stores case Mr. Justice Beetz stressed the importance of giving appropriate weight to the public interest in a case where a stay is sought against a body acting under public statutes and regulations which have not yet been determined to be invalid or inapplicable to the case at hand. That public interest supports the maintenance of statutory programs and the efforts of those responsible for carrying them out. Only in exceptional cases will the individual's interest, which on the evidence is likely to suffer irreparable harm, outweigh the public interest. (Emphasis added.)

[27] The comments of Justice John Maxwell Evans in *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, are also applicable:

> [21] Counsel says that since the appellants have no criminal record, are not security concerns, and are financially established and socially integrated in Canada, the balance of convenience favours maintaining the status quo until their appeal is decided.
>
> [22] I do not agree. They have had three negative administrative decisions, which have all been upheld by the Federal Court. It is nearly four years since they first arrived here. In my view, the balance of convenience does not favour delaying further the discharge of either their duty, as persons subject to an enforceable removal order, to leave Canada immediately, or the Minister's duty to remove them as soon as reasonably practicable: IRPA, subsection 48(2). This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control. (Emphasis added.)

[28] Section 48 of the IRPA requires the Minister to remove persons, such as the Applicant, as soon as reasonably practicable.

[29] In all of these circumstances, staying the Applicant's removal would undermine the fairness, integrity, and confidence in Canada's system of immigration control; therefore, the balance of convenience favours the Respondent.

[30] The Applicant seeks extraordinary equitable relief. It is trite law that the public interest must be taken into consideration when evaluating this last criterion. In order to demonstrate that the balance of convenience favours the Applicant, the latter should demonstrate that there is a public interest not to remove him, as scheduled. In *Townsend*, Justice Marshall Rothstein, found that the balance favoured the Minister given the "appellant's long criminal record and current costly incarceration outweigh the appellant's lengthy residence in Canada". (*Townsend v. Canada (M.C.I.)* (25 June 2004), Doc. No. A-167-04, at para. 6; *RJR-MacDonald Inc.*, above, *Blum*, above; *Tesoro v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148; *Thanabalasingham v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 486.)

[31] As stated by Justice John Sopinka in *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711:

> The most fundamental principle of immigration law is that non citizens do not have an unqualified right to enter or remain in the country.

[32] In the within motion, the Applicant has not demonstrated that the balance of convenience favours the non-application of the law nor outweigh the public interest; therefore, the risk assessment performed in the context of the Danger of Opinion does not fall "within a range of

possible acceptable outcomes which are defensible in respect of the facts and the law", as specified in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[33] In considering the balance of convenience, the Court must consider whether the Applicant is a danger to the public in Canada. If a person is a danger to the public in Canada, the public interest and the balance of convenience favours not staying removal from Canada. (*Choubaev*, above; *Grant*, above.**)**

[34] As stated by Justice Snider in *Chen*, above, "a clear starting point for viewing public interest in this case is the objective of the legislative framework in question." While acknowledging that Canada's commitment to non-refoulement is one of the objectives of the IRPA, an even more pressing objective, which impacts everyone living in Canada, is the maintenance and protection of the security of Canadian society and the integrity of Canada's immigration system.

[35] The balance of convenience favours the Minister, in that, the Applicant's removal would satisfy the objectives, as set out in IRPA, of establishing fair and efficient procedures to maintain the integrity of the Canadian refugee system, protecting the safety and security of Canadian society, and promoting international justice and security by denying access to Canadian territory to persons who are security risks or serious criminals. (IRPA, ss. 3(2)(*e*), (*g*) and (*h*).)

V. Conclusion

[36] The Applicant had a fair and full opportunity to present evidence and arguments with respect to the Danger Opinion. He made a conscious choice not to challenge the Danger Opinion, although he knew that his removal was imminent. He was scheduled to be removed in July 2007, and, yet, he still did not challenge the Danger Opinion. The only reason he was not removed in July of 2007, is the airline's refusal to transport him. He has known all along that he was to be removed as soon as possible, yet he made no efforts to challenge the Danger Opinion, until now. There is no pending underlying application, no pending motion for extension of time to challenge the Danger Opinion, and no prospects of being granted the extension of time. Moreover, he has not provided any reliable evidence that would establish new risk issues for regarding his return to Somaliland, an entirely separate region of Somalia. In these circumstances, in the present case, the Applicant's interests do not outweigh the public interest in executing removal orders as soon as reasonably practicable in accordance with ss. 48(2) of the IRPA. The Minister's obligation under ss. 48(2) of the IRPA is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control. (*Selliah*, above, at para. 22.)

ORDER

THIS COURT ORDERS that the application for a stay of removal from Canada, be dismissed.

"Michel M.J. Shore"
Judge

Part I - APPLICABLE PROVISIONS OF *IRPA*

These are the various provisions of *IRPA* which I must consider in making my determination.

This decision is prepared in accordance with *IRPA* and in agreement with Article 33(2) of the U.N. Refugee Convention. This Article permits the host country to remove a refugee who has been convicted of a particularly serious crime and who constitutes a danger to the country. The relevant section of *IRPA* is:

> 115(1). A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.
> (2) Subsection (1) does not apply in the case of a person
> (a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada;

In addition, in accordance with the Supreme Court decision in *Suresh*[1], I have considered Mr. Jama's claim of risk if he is returned to Somalia.

Part II - Facts of the Case:

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[1] *Suresh v. Canada (M.C.I.)* 2002 SCC 1

Immigration Case Details:

02Jan02	Arrived in Canada at Pearson International Airport, T-3 from Uganda with a valid U.S. re-entry permit. He was admitted as a visitor, with status valid to March 2, 2002.
24Jan02	Reported under previous immigration legislation for criminality and directed to Inquiry. Immigration Warrant issued and executed that date at the Toronto West Detention Centre.
29Jan02	Issued Departure Order by the Immigration and Refugee Board; now Deportation Order.
07Feb02	Reported under previous immigration legislation for U.S. criminal charges and convictions.
15Feb02	The United States government refused to re-admit Mr Jama to the U.S. because he had not entered Canada directly from the U.S. but from overseas (Uganda) and the fact that he is a convicted felon with multiple convictions in the U.S. In spite of the fact he was: - found to be a Convention refugee by the U.S. government - a green card holder (permanent resident of the U.S.) - in possession of a valid U.S. re-entry permit travelling on a U.S. travel document.
24Jul02	Immigration Warrant for removal issued – the Toronto Bail Program (TBP) withdrew supervision as Mr. Jama was habitually non-compliant with their provisions.
25Feb03	Warrant was executed and Notice of Arrest issued at Toronto Don Jail.
02Nov04	Immigration Warrant for removal issued; warrant executed on November 4, 2004 at the Don Jail, where he remained on court hold. Detention was continued because of continued criminality, escalating in gravity.
10May05	Immigration Warrant for removal issued; warrant executed May 12, 2005.
29Jun05	Placed on notice with respect to paragraph 115(2) (a) of the *Immigration and Refugee Protection Act*.

Summary of Criminality:

January 24, 2002 convicted in Toronto, Ontario of:
Carry concealed weapon, pursuant to s 90(1) of the Criminal Code of Canada.
Sentenced to 8 days time served.

In the 28 July 05, affidavit (para. 11) submitted by counsel and signed by Mr. Jama, he explains "On January 24, 2002, I was convicted of carrying a concealed weapon. The circumstances of the incident that led to this conviction are as follows. At the time, I was living at a friend's apartment building. I was drunk and put the cover of a big knife in the pocket of my pants for fun, and then went to the coffee shop in Scarborough. The knife was in my friend's apartment. The security man of the apartment building saw me with the knife cover in my pocket and followed me to my friend's apartment. The security man searched the apartment and found the knife under the sofa seat. He called the police and told them that I had had the knife on my person. I was arrested and charged. I plead guilty because one of my cousins (who is no longer in Canada) advised me to do so, and told me that by pleading guilty, I would be returned to the USA. I wanted to be returned to the USA at that time. I was sentenced to 8 days time served."

October 17, 2003 convicted in Toronto of:
Traffic in Schedule 1 Substance, pursuant to s 5(1) of the Controlled Drugs and Substances Act – Indictable offence, liable to imprisonment for life, and
Possession of property obtained by crime, pursuant to s 354(1) CCC.
Sentenced to 1 day imprisonment on each charge, concurrent plus 201 days time served, as well as a mandatory prohibition order.

In the same affidavit (para. 12) Mr. Jama explains. The circumstances leading to this conviction are as follows. "I was at Queen and Victoria Streets, and was under the influence of alcohol at the time. A lady in that area gave me some baking soda powder (which is used in the making of cocaine). An undercover policeman approached me and told me he needed some crack cocaine. At that time I did not know that this man was an undercover policeman. I asked this undercover policeman how much crack cocaine he wanted. The policeman asked me for $20 worth of crack cocaine; I asked him to show me the money and he did so. I then took out the baking soda from my pocket and showed it to the undercover policeman, who asked me if it was real cocaine. I replied that it was real. The undercover policeman, who asked took the baking soda from me and then I went on my way. Soon after, about seven policemen came towards me and arrested me. I was sentenced to 1 day in jail, 201 days time served and I also received a mandatory prohibition order."

July 14, 2004 convicted in Toronto of:
Theft under $5,000, s 334 CCC.
Suspended sentence and 18 months probation, plus 3 days pre-sentence custody.

In the affidavit (para.13) Mr. Jama explains. "The circumstances that led to this conviction are as follows. I had too much to drink and had no money. I saw a man at a bank machine close to the Wilson subway. The man withdrew $40 from the bank

machine. I pushed this man and took the $40 from him and then I ran away. After a few days, when I was at the Wilson subway, I was arrested by the police. I plead guilty and received a suspended sentence and 18 months probation for this conviction."

/September 8, 2004 convicted in Toronto of:
Assault, s 266 CCC, and
Theft under $5,000, s 354 CCC.
Sentenced to time served (52 days imprisonment) on both charges and to probation of one year on each charge, concurrent.

In the affidavit (para. 14) Mr. Jama explains. "I think this conviction arose from the previously mentioned incident for which I was convicted of theft under. I plead guilty to this charge. My sentence for this conviction was 52 days pre-sentence custody and 1 year probation."

November 30, 2004 convicted in Toronto of:
Theft under $5,000, s 354 CCC.
Sentenced to 30 days imprisonment and 53 days pre-sentence custody, and two years probation and
Assault, s 266 CCC.
Sentenced to 1 day, concurrent.

In the affidavit (para.15) Mr. Jama explains. "I was at a coffee shop in the Lansdowne and Dupont areas. I saw a lady buy coffee. I wanted some money to buy a drink. I was drunk at the time. I noticed $20 in this lady's handbag. After the lady left the coffee shop, I followed her, seized her $20 and ran with the money. The lady chased me. I was arrested by the police. I did not hit this lady, but she told the police that I pushed her. I received a sentence of 30 days in jail and 53 days pre-sentence custody and 2 years probation for the assault conviction, and a sentence of 1 day and 2 years probation concurrent for the theft under conviction."

March 22, 2005 convicted in Toronto of:
Fail to comply with recognizance, pursuant to s 733.1 CCC.
Sentenced to 1 day imprisonment plus 7 days pre-sentence custody.

/August 25, 2006 convicted in Toronto of:
Trafficking in cocaine, pursuant to s 5(3) (a) of the Controlled Drugs and Substances Act which is an indictable offence and liable to imprisonment for life.
Sentenced to 1 day in provincial jail, order of prohibition for 99 years under s 109 and 3 months pre-sentence custody in a provincial jail.

On February 7, 2002, Mr. Jama was reported under previous immigration legislation (section 27) by Citizenship and Immigration Canada (CIC) for his numerous charges and convictions in the United States:

01Jun95 charged in California with driving while impaired

02Jun95 charged in California with mischief in 4th and 5th degree
08May98 convicted in Washington of firearm or dangerous weapon

In (para.17) Mr. Jama states," I was convicted of carrying a concealed weapon in Seattle, Washington. During that time, I was living in an apartment building. The people who lived in this apartment building often had problems with the police because they were into drugs. The police often came to this apartment building to deal with problems. One day, the police came to check up on people in the building, and they came to my apartment. When the police came to my apartment, they saw a knife on the table and arrested me. I used this knife for cooking purposes and was actually cooking at the time. I plead guilty to this charge, because I was advised by a friend that if I did so, I would spend less time in jail and could go home soon. "

12Feb99 charged in Washington with fail to comply
17Feb00 charged in Washington with malicious mischief
05Mar99 convicted in Washington of three counts of theft under

Mr. Jama's account (para.18) he states, "On three occasions, I was under the influence of alcohol, went to different stores and tried to leave with stolen goods, but was arrested. On the first occasion, I tried to steal a can of beer. I attempted to steal a couple of cans of beer on the third occasion when I was arrested. I plead guilty to these three charges."

13Mar99 convicted in Washington of assault

Mr. Jama states (para. 19) "I went to a bar, had some drinks and was playing pool with some other people. At one point, my cue (pool stick) touched another man, and he claimed I assaulted him. I was arrested by the police and charged with the assault. I plead guilty to this charge."

17Jun99 convicted in Washington of malicious mischief

No direction for inquiry was sought by CIC officials pursuant to the section 27 report, as Mr. Jama was already under a removal order.

Part III - Danger Assessment:

One of the elements under paragraph 115(2) (a) expressly requires that the person who is the subject of a danger opinion be inadmissible on grounds of serious criminality. Paragraph 36(1) (a) of the *Immigration and Refugee Protection Act*[1] (*IRPA*), describes inadmissibility for serious criminality where a permanent resident or a foreign national has been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed. On 23 June 2005, Mr. Jama became the subject of a report under subsection 44 (1) for 36 (1) (a) of *IRPA*, as he was convicted in Toronto Ontario on 17 October

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2003 of one count of trafficking in substance, namely cocaine, contrary to section 5(1) of the Controlled Drugs and Substances Act, an indictable offence, which is punishable by a maximum term of imprisonment for life. Based on the evidence, I am satisfied on a balance of probabilities that Mr. Jama's conviction renders him inadmissible on the basis of serious criminality.

A similar conclusion also follows from a consideration of subsection 320(5) of the *Immigration and Refugee Protection Regulations*[3] (*IRPR*). This transitional provision provides that:

> "A person who on the coming into force of this section had been determined to be inadmissible on the basis of paragraph 27(1) (d) of the former Act is
>
> (a) inadmissible under the Immigration and Refugee Protection Act on grounds of serious criminality if the person was convicted of an offence and a term of imprisonment of more than six months has been imposed or a term of imprisonment of 10 years or more could have been imposed."

There is evidence in the record that Mr. Jama was also inadmissible on the basis of paragraph 27(1) (d) of the former Act[4].

In making my decision I have considered the case of Jeyaseelam Thuraisingam 2004 FC 507 which provides a useful summary respecting the meaning to be given to the phrase "danger to the public". The relevant passages may be found at paragraphs [32] & [33] as follows:

In *La*[5], Justice Lemieux cited with approval the following passage from the decision of Justice Strayer in *Williams*[6]:

> In the context the meaning of "public danger" is not a mystery: it must refer to the possibility that a person who has committed a serious crime in the past may seriously be thought to be a potential re-offender. It need not be proven -- indeed it cannot be proven -- that the person will re-offend. What I believe the subsection adequately focuses the Minister's mind on is consideration of whether, given what she knows about the individual and what the individual has to say in his own behalf, she can form an opinion in good faith that he is a possible re-offender whose presence in Canada creates an unacceptable risk to the public.

Mr. Jama has engaged in a pattern of criminal activity for years. He was only two weeks in Canada before he was charged with and subsequently convicted of carrying a

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[3] *Immigration and Refugee Protection Regulations*, SOR/DORS/2002-227.

[4] *Supra*, footnote 14.

[5] *La v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 476

[6] *Williams v. Canada (Minister of Citizenship and Immigration)*, [1997] 2 F.C. 646 (C.A.)

concealed weapon. He has accumulated numerous violence related criminal convictions since that time and has shown his recidivistic tendencies.

The following is a quote dated 4 Nov.04 from the Notice of Arrest under *IRPA* issued to Mr. Jama.

> "In my opinion, this person is a danger to the public and is unlikely to appear. My reasons for forming this opinion are:
> That (Jama) Nor ... should have his detention continued since he:
> -has accumulated a very extensive and most serious criminal history both in the U.S.A. and Canada over at least the past 11 years. This record continues at this writing and appears to be escalating in gravity. Presently, Mr. Jama is before the courts facing charges of robbery. His past criminal history here and in USA includes charges and convictions for the following offences: multiple offences for weapons possession; narcotics trafficking (cocaine); battery on a person; multiple assaults; malicious mischief; multiple thefts; criminal trespass; multiple firearms/ dangerous weapons offences; criminal mischief 4th and 5th degree; multiple driving offences; multiple fail to comply offences; obstructing law enforcement officer counts; unlawful bus conduct; possession proceeds of crime.
>
> - has one of the worst fail to comply criminal & immigration histories this investigator has seen in almost 20 years, & in fact, the Toronto Bail Program has for the 2nd/2nd time in as many years again formally withdrawn supervision of this subject because of his refusal to take his medications combined with the fact that he persists despite warnings not to drink alcohol. Further, Mr. Jama has twice been arrested by immigration and twice released on immigration bonds but has repeatedly violated them. Mr. Jama has a diagnosed serious psychological disorder for which he is supposed to take his prescribed medications but fails to all too often. His disorder is so severe that he is considered incapable of reporting to the bond centre here without a professional attending with him as arranged. He's failed to comply also with his criminal bail conditions both here in Canada and in U.S.A.
>
> This investigator notes that on this date, Mr. Jama repeatedly insisted he has no criminal record and has only been accused of theft falsely, notwithstanding a horrendous criminal history acquired in 11 years alone in 2 different countries and which appears to be getting worse. He simply accepted nil responsibility for any of his past or current actions. In fact, he is flip, stating if he is returned to Somalia, he will show us what killing is as he will "kill everybody," adding when I asked in which county he would kill everybody, "You will find out." Though he later said he was just "joking," and despite the fact he has a mental illness, Mr. Jama is believed to know right from wrong and his own Mental Health Coordinator stated he knows what he is doing when he is robbing people that it is wrong. Regardless of the whys, Mr. Jama, in this investigator's opinion, poses a very real danger to the public upon which he continues to prey and with alarming frequency, and he most definitely and obviously is incapable &/or unwilling to comply with terms & conditions of both criminal and immigration bail/bonds—period. He will not report and clearly will continue to victimize the unsuspecting innocent members of the population if given yet another chance. He is also the subject of an Effective Removal Order at present and to date, has been unable to receive criminal bail release again. It is questionable as to if he really does have a fixed residential address in Canada despite his claims, and the likelihood of his being tracked easily when he goes underground is not good but for the

sad fact he continues to perpetually offend and re-offend criminally and in violation of immigration law. He is apparently persona non grata in the USA where has also left a long trail of victims in 3 different states before coming to Canada to continue and escalate his habitual criminal conduct. He simply must remain in detention to both ensure his attendance at all proceedings, including his removal from Canada as well as to protect the public at large which has too often in recent past fallen victim to Mr. Jama and his obviously incorrigible criminal lifestyle."

On 27 October 2004, a Mental Health Coordinator stated:

> "Mr. Jama has been afforded supervision several times by Toronto Bail Program only to breach the terms and conditions of his release order and supervision agreement. Mr. Jama has incurred many new charges for trafficking, possession for the purpose of trafficking, and several robbery charges. He is currently incarcerated at "Toronto Don Jail" on a detention order for robbery. This writer has provided extraordinary supervision two times per week to no avail as Mr. Jama has been arrested repeatedly and this writer holds little hope of him being rehabilitated. After two separated releases to Toronto Bail Program, Mr. Jama again has failed to remain in good standing. Mr. Jama does not take his medication as prescribed and recently it has come to my attention that he has been consuming alcohol. It is for these reasons that supervision has been withdrawn."

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1347-08
STYLE OF CAUSE:	NUR MOHAMED JAMA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	March 25, 2008 (By Teleconference)
REASONS FOR ORDER AND ORDER:	SHORE J.
DATED:	March 25, 2008

APPEARANCES:

Ms. Carol Simone Dahan	FOR THE APPLICANT
Ms. Maria Stefanovic	FOR THE RESPONDENT

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