

Date: 20080815

Docket: IMM-3257-08

Citation: 2008 FC 953

Ottawa, Ontario, August 15, 2008

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

CHARLES GÉRARD PLACIDE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION
MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR ORDER AND ORDER

Introduction

[1] This is an application for a stay of the removal order of Charles Placide (the applicant) to Haiti, his country of citizenship. His removal is to be enforced on August 18, 2008, at 8:00 a.m. This application for a stay is accompanied by an application for leave and judicial review of a decision dated July 15, 2008, by the delegate of the Minister of Citizenship and Immigration Canada. For the reasons that follow, I believe that the stay of his removal should be granted.

Background

[2] The applicant is forty-six years old. He came to Canada with his parents and siblings in 1983 as a permanent resident. He is now inadmissible on grounds of serious criminality following his convictions in 2004 and 2006 for possession of and trafficking in narcotics for which he served a three-year sentence. He is currently being detained following the Correctional Service of Canada's suspension of his statutory release and pursuant to an arrest warrant issued under section 55 of the *Immigration and Refugee Protection Act (IRPA)*.

[3] On September 4, 2007, he applied for a pre-removal risk assessment (PRRA). Since he is inadmissible, the provisions of sections 112, 113 and 114 of the IRPA apply:

- Paragraph 112(3) states that refugee status may not be granted to him;
- Paragraph 113(d) provides that his PRRA application is assessed on the basis of the factors in section 97 and whether he is a danger to the public in Canada;
- Pursuant to subsection 114(1), a decision to allow the application for protection has the effect of staying the removal order against him;
- Under subsection 114(2), if the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(d) and the regulations, the grounds on which the application was allowed and may cancel the stay.

[4] In November 2007, the pre-removal risk assessment officer, Patricia Rousseau (the PRRAO), concluded her assessment, stating that, on a balance of probabilities, because of his personal situation and the current situation in Haiti, Mr. Placide would be subject to a risk to his life or to a risk of cruel and unusual treatment or punishment should he return to this country.

[5] On February 26, 2008, the Canada Border Services Agency (CBSA) sent Mr. Placide a copy of the PRRA together with a copy of the restriction assessment prepared by an analyst from the Department of Citizenship and Immigration (CIC) and other documents that were added to the PRRA material to be submitted to the Minister's delegate for a decision.

[6] The procedure surrounding the process triggered by the CBSA is prescribed by certain provisions of the *Immigration and Refugee Protection Regulations* (the Regulations) (see sections 172, 173 and 174 of the Regulations).

[7] On March 27, 2008, June 19, 2008, and June 30, 2008, counsel for Mr. Placide submitted comments to the Minister's delegate.

[8] The Minister's delegate issued his decision on July 15, 2008. He wrote [TRANSLATION] "as a result of my research, my view of the current situation in Haiti is different from the PRRAO's." He relied, in particular, on the most recent U.S. DOS 2007 report on Haiti published on March 11, 2008.

[9] Based on the evidence, he determined that, on a balance of probabilities, Mr. Placide [TRANSLATION] “would not be subject to a risk of torture or to a risk to his life or to cruel or unusual treatment or punishment if he were returned to Haiti.”

[10] The Minister’s delegate also concluded, based on [TRANSLATION] “a review of all the evidence in the file, on a balance of probabilities, that Mr. Placide currently poses and will in the future pose a risk for the public in Canada and that Mr. Placide may well commit other offences in the future . . . Mr. Placide is a potential recidivist whose presence in Canada would constitute an unacceptable risk for the Canadian public.”

[11] In his last finding, the Minister’s delegate was of the view that, on a balance of probabilities, [TRANSLATION] “Mr. Placide’s risk of return to Haiti is much lower than the threat he represents for the Canadian people.”

[12] In support of dismissing this stay application, counsel for the respondents filed a number of affidavits, including one from France Pérusse who reviewed the file that the Department of Justice had on Mr. Placide. She submitted a document entitled “Statutory Declaration” signed by Jean-François David, First Secretary (Immigration) at the Canadian Embassy in Haiti on July 30, 2008.

[13] Mr. David states that he is employed by the Government of Canada “as a Migration Identity Officer (MOI) since my arrival at the mission in August 2007”. He informs us that he “was able to monitor their arrival ([TRANSLATION] Haitian citizens deported from Canada despite the moratorium

“unless serious acts were committed”) at the airport for most of them”. He advises us that “practically none of the sixteen Haitian nationals removed from Canada was detained for more than 3 days” and that “based on observation of detention conditions and available information, there is no indication that deportees to Haiti are tortured, mistreated or subject to persecution.”

Analysis

[14] After considering the written and oral submissions of the parties, I find as follows.

(a) Serious issues

[15] The applicant has persuaded me that the decision dated July 15, 2008, by the Minister’s delegate raises at least the following serious issues:

- (1) Considering the decision by the PRRAO Patricia Rousseau, did the CBSA comply with the IRPA and its Regulations in the process it followed that resulted in the impugned decision; in other words, which provision of the Regulations applies: section 172 or section 173?
- (2) Considering the scheme of the Act and the Regulations concerning the assessments required to be given to the applicant under section 172 or section 173 of the Regulations, were these provisions, on the one hand, or procedural fairness, on the other hand, infringed by the Minister’s delegate when he went beyond the ambit of those assessments by conducting his own research on the treatment of criminal deportees to Haiti, without giving the applicant the opportunity to comment on this new evidence? I note that the U.S. DOS of March 11, 2008, was disputed on March 28, 2008, by the

organization Alternative Chance as contrary “to our own personal observations and findings as well as Haitian law.”

- (3) Did the Minister’s delegate disregard or fail to consider all the evidence when determining the danger that the applicant represented to the Canadian public, given the decisions of the National Parole Board dated September 24, 2007, and June 18, 2008? The documentation that was before the Board indicated that the gravity of the applicant’s violent behaviour was relatively weak; that the applicant had promised to attend a drug addiction program; that he had not reoffended and that in this context, his case could be managed in the community and “that the risk to society is not acceptable with the special conditions that you were subject to.”
- (4) Did the Minister’s delegate disregard the evidence or fail to assess all the evidence on the treatment of Canadian criminal deportees to Haiti?
- (5) Did the Minister’s delegate give sufficient reasons for rejecting certain pieces of evidence dealing with the allegations? The applicant contends that he does not know why this evidence was rejected (see Mr. Justice Blanchard’s order granting a stay of enforcement of a removal to Haiti in *Pierre v. Minister of Immigration and Citizenship and Minister of Public Safety and Emergency Preparedness*, July 25, 2008, IMM-3250-08).

(b) Irreparable harm

[16] Considering the PRRAO's finding that section 97 of the IRPA would be infringed if the applicant were deported to Haiti and considering the contradictory evidence on the treatment of criminal deportees from Canada to Haiti, I believe that the probability that he will suffer irreparable harm has been established.

[17] Counsel for the Minister submitted that the applicant did not demonstrate irreparable harm. She relies largely on the affidavit of Jean-François David dated July 30, 2008, that I described earlier. I believe it is premature to determine the value of this affidavit in the context of this stay application. Without cross-examination, it is impossible to know its probative value, which seems to be limited "that I was able to monitor their arrival at . . . the airport in Port-au-Prince for most of them." I note that Alternative Chance's document dated March 28, 2008, states "Additionally, the International Office on Migration (IOM) program referred to in the State Department report does not assist or intervene on behalf of criminal deportees while they are detained by Haiti police."

Balance of convenience

[18] In the particular circumstances of this case, I find that the balance of convenience favours the applicant. It is likely that section 97 of the IRPA would be infringed if he were deported to Haiti now. I am very aware that the Minister alleges that Mr. Placide represents a danger to the Canadian public. In my view, this risk is limited by the fact that he is being detained under section 55 of the IRPA because he is inadmissible on grounds of serious criminality and that his release is managed by the IRPA and administered by the Immigration Division.

ORDER

THE COURT ORDERS a stay of enforcement of the removal of Mr. Placide to Haiti until a decision is made on his application for leave and judicial review, and if this is granted, until a decision is rendered on the judicial review.

“François Lemieux”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3257-08

STYLE OF CAUSE: CHARLES GÉRARD PLACIDE v. MINISTER OF
CITIZENSHIP AND IMMIGRATION AND
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

**PLACE OF
TELECONFERENCE:** Ottawa, Ontario and Montréal, Quebec

**DATE OF
TELECONFERENCE:** August 14, 2008

**REASONS FOR ORDER
AND ORDER BY:** The Honourable Mr. Justice Lemieux

DATED: August 15, 2008

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