

Date: 20081002

Docket: IMM-4312-08

Citation: 2008 FC 1114

Toronto, Ontario, October 2, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Applicant

and

TEE MENG LIEW

Respondent

REASONS FOR ORDER AND ORDER

[1] This matter was heard on short notice and on an urgent basis.

[2] The Minister applies under section 18.2 of the *Federal Courts Act* for an order staying the order of Immigration Division Member H. Shepherd dated October 1, 2008, releasing the Respondent from detention, on terms and conditions as set out in that order. The Minister asks that the order be stayed until a final determination has been made in its application for leave and judicial review of that order.

[3] Mr. Liew is a citizen of Malaysia. He attempted to enter Canada in 1993 but was denied permission. It appears that he was able to enter Canada later that year in an unknown manner. He then remained in hiding until 2004 when he was arrested and came to the attention of the authorities. Mr. Liew then made a refugee claim on February 3, 2004. His claim was rejected. A fair reading of the decision of the RPD indicates that they did not find Mr. Liew at all credible.

[4] Mr. Liew failed to appear for a removal interview in January 2007 and a warrant was issued for his arrest. He was arrested and detained February 19, 2007. At the time of his arrest he was asked if he would go back to Malaysia and he said that he would not as he wanted to stay in Canada. He further stated that even if ordered by the Canadian officials to return to Malaysia, he would not.

[5] After his arrest, Mr. Liew disclosed for the first time that he was on Malaysia's most wanted list as he was charged with murder in Malaysia and faced the death penalty if convicted. His PRRA application was rejected, however the Minister agreed to re-determine that application and seek assurances from Malaysia that Mr. Liew would not face the death penalty if convicted of the charges. The Government of Canada continues to actively seek that assurance.

[6] The Immigration Division has refused Mr. Liew's release on a number of occasions because he seen to be a flight risk and because of the seriousness of the outstanding murder charge.

[7] On October 1, 2008, Member H. Shepherd ordered the release of the Applicant on a performance bond of \$3000 from Mr. Chiu and a further \$10,000 cash bond from Mr. Wong.

[8] The detention review commenced on September 25, 2008 but was adjourned to October 1st in order that Mr. Wang, who counsel for Mr. Liew indicated would post a \$10,000 bond, could be interviewed. Mr. Wong did not attend the hearing on October 1st as he did not wish to discuss his finances. Counsel presented, in his place, Mr. Chiu who was prepared to provide a \$10,000 performance bond. The Member found that Mr. Chiu did not have the financial wherewithal to meet that obligation and the Member was only prepared to accept a \$3000 bond from him. The Member then indicated that he would accept a \$10,000 cash bond from Mr. Wong, despite having no evidence of his financial resources and whether the cash would, in fact be coming from him, or another source. The Member seemed to be of the view that because Mr. Liew would be staying with Mr. Wong this sufficed.

[9] The Minister has applied for leave and judicial review of that decision, and in the interim, seeks a stay of the Respondent's release.

[10] In order to obtain a stay an applicant must demonstrate: (1) that there is a serious issue to be tried; (2) that the applicant would suffer irreparable harm if no order were granted; and (3) that the balance of convenience favours the granting of the order: *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.).

[11] Upon hearing counsel for the parties and reading the material filed, I am satisfied that the first part of the tripartite test has been met. There is a serious issue as to whether the Member erred in accepting Mr. Wong as a guarantee of Mr. Liew's future compliance with the Act and the terms

of release. The Member heard no evidence from Mr. Wong and Canada Border Services Agency had no opportunity to examine Mr. Wong as he refused to attend the hearing. Arguably the Minister was denied procedural fairness.

[12] There is also a serious question as to the reasonableness of the decision made by H. Shepherd in light of the many previous detention orders made by Members of the Immigration Division. While the Court does not have the advantage of a transcript of the reasons for release, the Court notes that the evidence that is available shows that Mr. Liew has previously, and many times, lied to immigration authorities, stated that he would not comply with a removal order or deportation order, has lived successfully underground in Canada for more than 10 years, and is facing a very serious criminal charge in Malaysia. Given these facts, it cannot be said that the Minister's assertion that the decision was unreasonable is frivolous or vexatious.

[13] I am also satisfied that the Minister has established irreparable harm. In this regard, I adopt paragraph 30 of the Applicant's written memorandum. The objective of the Act is compliance. To date, Mr. Liew has failed to comply many times with the Act. His disappearance underground is a real risk and given his past success, if he does go underground again, it may well be a long time before he is detained. That risk is irreparable.

[14] The balance of convenience lies with the Minister and the public interest in enforcing the provisions of the Act and in protecting the public.

[15] Consequently, Member H. Shepherd's order dated October 1, 2008, releasing the Respondent from detention on terms will be stayed.

ORDER

THIS COURT ORDERS THAT the decision of H. Shepherd, dated October 1, 2008, is stayed until the earlier of:

- (a) the application for leave and for judicial review is determined on its merits; or
- (b) the Respondent's next statutorily required detention review hearing.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4312-08

STYLE OF CAUSE: *THE MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS v. TEE MENG LIEW*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 2, 2008

**REASONS FOR ORDER
AND ORDER:** ZINN J.

DATED: OCTOBER 2, 2008

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