

Date: 20090506

Docket: IMM-1190-09

Citation: 2009 FC 469

BETWEEN:

GHEORCHE CALIN LUPSA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER

Lemieux J.

[1] After having heard, on May 1, 2009, the parties on Mr. Lupsa's application for a stay of removal to Romania, which had been scheduled for the following day at 4 p.m., I granted an interim stay and ordered the serving and filing of further written representations on the part of the applicant no later than Friday, May 8, 2009, and on the part of the respondent no later than Friday, May 15, 2009.

[2] The following are my reasons for issuing the interim order.

[3] The stay sought by Mr. Lupsa is accompanied by an application for leave and judicial review of a decision by the Minister's Delegate, Jillan Sadek (the Minister's Delegate or the panel), dated January 12, 2009, dismissing his application for humanitarian and compassionate relief under subsection 25(1) of the *Immigration and Refugee Protection Act* (IRPA) seeking an exemption from the finding of inadmissibility on grounds of serious criminality and medical inadmissibility.

[4] The Minister's Delegate determined that:

[TRANSLATION]

The most compelling humanitarian issue in this case is the fate of Mr. Lupsa's two sons. I am well aware that my decision will profoundly affect their young lives. However, this is hardly Mr. Lupsa's first run-in with the law; in five years he has managed to acquire an extensive criminal record. His actions show a propensity for criminal behaviour as well as possible links to organized crime and there is very little evidence of rehabilitation. Mr. Lupsa continued to commit criminal offences knowing that his actions would jeopardize his status in Canada. Accordingly, I am satisfied that any harm resulting from his removal from Canada is not unfair, disproportionate or unusual.

As a result, I do not believe that humanitarian considerations in this case outweigh the finding of inadmissibility on grounds of serious criminality. Any positive factors simply do not overcome the seriousness of the facts to such an extent that I would grant an exemption.

[5] Relying on the judgment of my colleague Justice Gibson, in *Vu v. The Minister of Citizenship and Immigration*, 2007 FC 1124, Mr. Lupsa's counsel submitted at the hearing before me that the decision by the Minister's Delegate was vitiated by errors.

[6] The substance of counsel's arguments can be summarized as follows:

- The panel erred in assessing the evidence with regards to Mr. Lupsa's criminal record. As a result, his criminality is not as serious as the Minister's Delegate had characterized it to be;
- Its assessment of the risk of re-offending is overstated in today's context;
- The panel did not consider the interests of Mr. and Mrs. Lupsa's children, nor the fact that the couple have been married since 1999. This is demonstrated by the scant seven lines devoted to the subject in her reasons. Moreover, while the panel did not rule out the whole family's removal to Romania, it failed to analyze the situation in that country regarding the two Canadian-born children;
- The applicant's establishment in Canada was minimized and the presence of his relatives in Romania was improperly assessed; and,
- The panel failed to consider his wife's sponsorship as required by the immigration guidelines.

[7] During Mr. Lupsa's counsel's argument, the Minister's counsel objected several times on the grounds that what her colleague was arguing was nowhere to be found in her written representations in support of the application to stay, and that they exceeded the scope of both her written representations in support of the application for leave, which had already been filed, as well as those of the Minister.

[8] In reply, Ms. Milos argued two points: (1) that the facts in support of her representations appeared in Mr. Lupsa's affidavit; and, (2) in some instances, she had perhaps not sufficiently developed her arguments.

[9] I issued my interim order for a stay of removal for Mr. Lupsa because I believe that the argument to which the Minister's counsel objected was crucial to Mr. Lupsa and that it was in the interests of justice to grant an adjournment so as to allow his counsel to fine-tune her arguments. I thought she had adequately raised, in her written representations (albeit in the wrong place; i.e.: Mr. Lupsa's affidavit) the issues which she wanted to develop in her oral argument.

[10] I remain concerned about the availability in Romania of the anti-rejection drugs Mr. Lupsa needs since his 2004 kidney transplant. The comments by Doctor Baran and Doctor Labelle do not inspire confidence. The adjournment should prompt the parties to further pursue the matter.

“François Lemieux”

Judge

Ottawa, Ontario
May 6, 2009

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1190-09

STYLE OF CAUSE: GHEORCHE CALIN LUPSA v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

**PLACE OF
TELECONFERENCE:** Ottawa, Ontario, Montréal, Quebec and St-Lambert,
Quebec

**DATE OF
TELECONFERENCE:** May 1, 2009

REASONS FOR ORDER: Lemieux J.

DATED: May 6, 2009

APPEARANCES:

Michelle Milos FOR THE APPLICANT

Caroline Doyon FOR THE RESPONDENT

SOLICITORS OF RECORD:

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