Federal Court  Cour fédérale

Date: 20110307

Docket: IMM-1111-11

Citation: 2011 FC 257

Ottawa, Ontario, March 7, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

B232

Respondent

AMENDED REASONS FOR ORDER AND ORDER

I. Overview

[1] Society cannot rest secure if its decision-makers take undue risks, afoul of the parameters of their jurisdictions.

[2] Constitutional Supremacy does not call for a separation of powers wherein the three separate branches of government, executive, legislative and judicial, function in three distinct solitudes.

[3] The executive branch implements its policies within the parameters of legislative will. The legislative will is expressed in enacted legislation by elected officials on behalf of the people whom they serve; and the judicial function is neither to judge by individual whim nor wit, but simply to interpret the legislative will.

[4] The introductory paragraphs of every statute provide the instructions of the voice to be heard and the very purpose or will that must be interpreted in each Act.

[5] Therefore, in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], the fragility of the human condition is addressed as is the integrity of the immigration system. This means that the collectivity of individuals that make up Canadian society must be considered in regard to their safety in each decision as the introductory paragraphs clearly specify. The legislative will, as is legislated in the Act, is set therein.

II. Introduction

[6] The Respondent is a 40-year-old, single, Sri Lankan citizen who admits to having worked for the Liberation Tigers of Tamil Eelam (LTTE), a terrorist organization identified and listed in the *Criminal Code Regulations Establishing a List of Entities* as a terrorist entity. The Respondent arrived in Canada, with 491 others, in conditions described as a “human cargo” smuggling operation on the ship, MV Sun Sea.

[7] The Minister of Public Safety and Emergency Preparedness (the Minister) sought the Respondent's continued detention on the basis that he is being investigated as inadmissible on security grounds.

III. Judicial Procedure

[8] The Applicant, the Minister of Citizenship and Immigration, is seeking to stay a second order releasing the Respondent from immigration detention, dated February 17, 2011, made by a Member of the Immigration Division of the Immigration and Refugee Board. In a related proceeding, *MCI v B232* in Court File No. IMM-341-11, the Minister sought leave and judicial review of a previous release order by the Immigration Division dated January 18, 2011 of the same Respondent. By court order dated February 8, 2011, Justice Blanchard granted the Minister's motion to stay the release order of January 18, 2011. The Court also granted the application for leave and expedited the judicial review application with the hearing set to be held on March 10, 2011, at 11:30 a.m. Ottawa time. The Minister seeks to consolidate this proceeding with IMM-341-11 and have the proceedings heard together.

[9] According to the Applicant, the February 17, 2011 decision to release the Respondent on its terms and conditions contains significant errors raising a serious issue and warranting the granting of a stay:

(a) While the Member accepted that there was a reasonable suspicion that the Respondent may be inadmissible on security grounds, the Member erred in applying the threshold for the "necessary steps" in assessing the Minister' investigatory steps of the reasonable suspicion;

(b) The Member misapplied the test for danger to the public;

(c) The Member gave an incomplete analysis of the Respondent's flight risk; and

(d) Finally, the Member released the Respondent on minimal terms conditions, notably with no surety to ensure his compliance with his conditions, particularly continued co-operation with CBSA's on-going investigation.

IV. Point of Procedure

[10] These proceedings are to be joined and consolidated with the related proceedings in IMM-341-11.

[11] The Respondent relies on the facts as set out in the Order of Justice Edmond Blanchard, dated February 8, 2011, in IMM-341-11. These facts are not in dispute (*MCI v B282* (IMM-341-11), February 8, 2011 Order of Blanchard, J. – Exhibit "C" to the Affidavit of Elly Huang, Applicant's Motion Record).

V. Background

[12] On August 13, 2010, a vessel called the MV Sun Sea arrived in Canadian waters off the west coast of Vancouver Island, British Columbia.

[13] Members of the Royal Canadian Mounted Police (the RCMP) secured the ship. The RCMP found the Respondent and 491 other persons (the Migrants) on board the vessel.

[14] The Respondent and the Migrants were detained by Canada Border Services Agency (CBSA) officers under the *IRPA* to determine their identity and admissibility to Canada.

VI. Detention Reviews

A. *Identity Not Established*

[15] The Respondent appeared for his first detention review hearing on August 19, 2010. The Immigration Division of the Immigration and Refugee Board (Immigration Division or ID) ordered the Respondent's continued detention pursuant to s. 58(1)(d) of the *IRPA* as his identity was not yet established.

[16] The Respondent's detention was continued on identity grounds at subsequent detention review hearings, specifically, on August 25, 2010, September 16, 2010, October 13, 2010, and November 8, 2010. The ID noted in particular that the Respondent arrived in Canada with no primary identity documents. Those documents appear to have only arrived in Canada between the October and November hearings.

B. *Detention*

[17] On December 2, 2010, the Respondent appeared for his sixth detention review hearing. At that hearing, the Immigration Division continued the Respondent's detention on security grounds pursuant to s. 58(1)(c) of *IRPA* specifically that the Minister was taking necessary steps to inquire into a reasonable suspicion that the Respondent is inadmissible on grounds of security.

[18] The Member at the hearing found that the Respondent lived in an area controlled by the Liberation Tigers of Tamil Eelam (LTTE), he was incarcerated for a period of a year in Sri Lanka and has an identification card issued by the International Organization for Migration (IOM), an organization involved in rehabilitating and reintegrating Tamils involved in the armed conflict in Sri Lanka.

[19] The Member was also of the view that the Respondent's identity had not yet been established, but that the Minister was attempting to establish his identity.

[20] The Respondent appeared for his seventh detention review hearing on December 20, 2010, at which time his detention was again continued in order for the Minister to inquire into a reasonable suspicion of inadmissibility for security reasons. The Member at that hearing found that, despite the fact that the Respondent refused to sign a waiver allowing the Minister to access information about the Respondent from the IOM, the Minister was nonetheless taking reasonable steps to find information related to the matter.

[21] The Member was also of the view that the Minister was making reasonable efforts to ascertain the Respondent's identity.

[22] On January 18, 2011, Member McPhalen of the Immigration Division departed from the findings of the previous seven detention review hearings and released the Respondent on "minimal terms and conditions."

[23] With respect to the ground of continued detention for security investigation purposes, the Member concluded that there was no longer an on-going investigation and found that CBSA "know who you are, at least for the purposes of a security investigation". The Member also doubted the reliability of the information available from the IOM and further found that, because the Respondent refused to sign the waiver, the investigation was at an end and that there was no reason for continued detention on this ground.

[24] With respect to continued detention on the basis that the Respondent is unlikely to appear for removal or an admissibility hearing, the Member concluded that the Respondent is not a flight risk solely on the basis that his debt has been paid.

[25] With respect to the ground that the Respondent is a danger to the public, the Member summarily dismissed the possibility of continued detention on the ground of danger to the public saying "I have no evidence of anything he might have done in the past that is dangerous" and "There's no evidence on the balance of probabilities that the person concerned was an LTTE member or associated with the LTTE."

[26] Consequently, the Member released the Respondent on "minimal terms and conditions", in substance, a $500 deposit to be posted by the Respondent himself, with some suggestion, not stated in the order for release, that he reside with a local Hindu temple (Transcript of Proceedings, Detention Review Hearing dated January 18, 2011 – Exhibit "D" to the Affidavit of Elly Huang, Applicant's Motion Record).

VII. Judicial Review

[27] The Minister sought leave and judicial review of the January 18, 2011 release order in Court File No. IMM-341-11. By order of the court dated February 8, 2011, Justice Blanchard granted a stay of the release order of January 18, 2011. Justice Blanchard also granted the application for leave. The hearing of the judicial review application will be held on Thursday, March 10, 2011, at 11:30 a.m. Ottawa time. The Court ordered expedited time-lines for the filing of the Certified Tribunal Record, further affidavits and further memorandum of argument (*MCI v B282* (IMM-341-11), February 8, 2011 Order of Blanchard, J. – Exhibit "C" to the Affidavit of Elly Huang, Applicant's Motion Record).

VIII. Detention Review – February 17, 2011

[28] On February 17, 2011, the Immigration Division held the ninth detention review hearing. At the hearing, the Minister did not pursue continued detention on identity grounds; nevertheless, the Minister did argue for continued detention on three grounds: danger to the public pursuant to s. 58(1)(a) of *IRPA*; unlikely to appear for removal or admissibility hearing pursuant to s. 58(1)(b) of *IRPA*; and the Minister is taking necessary steps to inquire into a reasonable suspicion that the Respondent may be inadmissible on security grounds of *IRPA* pursuant to s. 58(1)(c) of *IRPA*.

[29] In his Reasons, Member Rempel held that there were not clear and compelling reasons to issue a different decision than Member McPhalen at the January 18, 2011 detention review. Member Rempel ordered the release of the Respondent on "minimal terms and conditions", being

the same terms and conditions as imposed by the release order dated January 18, 2011, with the addition of a curfew.

[30] Member Rempel adopted the same terms and conditions imposed by Member McPhalen with the additional condition of a nightly curfew between 12:00 a.m. and 6:00 a.m. except for an emergency or as authorized by CBSA (Decision and Reasons of Immigration Division dated February 17, 2011 – Exhibit "A" to the Affidavit of Elly Huang, Applicant's Motion Record).

IX. Issues

[31] The three-part test for an order to stay a Release Order is as follows:

(a) Is there is a serious issue to be tried with respect to the Release Order;

(b) Would the Minister or the public suffer irreparable harm if the Respondent's release is not stayed; and

(c) Does the balance of convenience favour an order staying the Respondent's release? (*Toth v Minister of Employment and Immigration* (1988), 86 NR 302 (FCA)).

X. Analysis

[32] The person seeking the stay order must demonstrate an arguable case and that the issues being raised are not frivolous or vexatious (*Canada (MSPEP) v Iamkhong*, 2009 FC 52 at paras 16-17. *Toth*, above.

[33] In an order made by this Court on November 26, 2010, Justice Russel Zinn distinguished the decision in *Canada (MCI)* v *XXXX* (IMM-5368-10), *supra*, on the appropriate threshold for serious issue and held that "granting a stay of an order releasing a person from immigration detention does not effectively grant the Minister the relief sought in the underlying judicial review application challenging the order to release. It merely preserves the status quo." The serious issue test is to be measured on the standard set out by the Supreme Court of Canada in *Manitoba (Attorney General) v Metropolitan Stores Ltd.*, [1987] 1 SCR 110 and *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, namely whether "there is a serious question to be tried as opposed to a frivolous or vexatious claim."(*Canada (MCI) v. XXXX* (IMM-5368-10)).

[34] The Court accepts the position of the Applicant that a higher threshold for "serious issue" has been met in this case.

A. *Steps for Security Investigation*

[35] Member Rempel erred in applying the threshold for the "necessary steps" in assessing the Minister' investigatory steps of the reasonable suspicion.

[36] In *MCI v XXXX*, 2010 FC 112, Justice Barnes considered the legal test and the scope of the jurisdiction of the Immigration Division Members with respect to s. 58(1)(c) of IRPA in a case involving another group of marine arrivals aboard the vessel named the Ocean Lady. The correct test in assessing "necessary steps" is determining whether the Minister is conducting an ongoing investigation in good faith which has the potential to uncover relevant evidence bearing on the Minister's suspicion:

> It is not the role of the Board to dictate the steps that are necessary for the conduct of the Minister's ongoing investigation. … The Board's supervisory jurisdiction on this issue is limited to examining whether the proposed steps have the potential to uncover relevant evidence bearing on the Minister's suspicion and to ensuring that the Minister is conducting an ongoing investigation in good faith. (MCI v XXXX, 2010 FC 112 at para 20; MCI v X, 2010 FC 1095 at paras 28-29) [Emphasis in original]

[37] In the case at bar, Member Rempel acknowledged the test set out by Justice Barnes with respect to "necessary steps" but noted that the Member would welcome further guidance from the court as to exactly how to define whether steps are necessary or not and what sort of potential in reality these steps need to have that they might uncover relevant evidence.

[38] In his Reasons, Member Rempel was satisfied that the Minister's suspicion of inadmissibility on security ground is reasonable based on several factors: an informant alleged that the Respondent was an LTTE member and talked about the LTTE on board the ship; the Respondent's admission about participating in various activities at the behest of the LTTE; and information from the IOM confirming that the Respondent was involved in the a program aimed at former LTTE combatants; however, Member Rempel found that the Minister is not taking necessary steps to inquire into the suspicion of security inadmissibility:

(a) The further verification of the Respondent's national identity card through the Migration Integrity Office is not a necessary step since the Minister could not provide an explanation for the delay or a timeframe as to when the investigation will be completed;

(b) The examination of the alleged wounds by a medical expert is not a necessary steps since there appear to be legal barriers to a medical examination, and it is not clear

that a medical examination would have the potential to uncover evidence relevant to the security suspicion;

(c) With respect to follow-up investigation of the information provided by an informant, no specific information was provided of the investigation or timeframe to accomplish this step;

(d) The second inquiry to the UNHCR in Thailand initiated on February 11, 2011 is not a necessary step since no information was provided why this step is necessary or what relevant information it might produce with respect to security;

(e) CBSA interview of the Respondent on February 11, 2011 did not indicate that the Respondent was questioned about his LTTE involvement, but rather the waiver to the UNCHR to release information, assistance from friend to pay for the trip and alleged risk of return to Sri Lanka;

(f) Investigation into the Respondent's account of being hospitalized in Kilinocchi in 2009 is not a necessary next step because no timeline was provided and no evidence was presented linking the hospital to the LTTE;

(g) No progress in the investigations were made since the last detention review and the Minister presented little if any evidence of any activities with respect to next steps;

(h) Six months in detention is not justified to continue detention given the lack of action taken on the steps that were deemed necessary and the vagueness and lack of timeframe associated with future steps (Decision and Reasons of Immigration Division dated February 17, 2011 – Exhibit "A" to the Affidavit of Elly Huang, Applicant's Motion Record).

[39] Member Rempel erred by requiring that the Minister take all of the steps that the Member thinks will be appropriate and will lead to conclusive, positive results into the Minister's suspicion that the Respondent is inadmissible to Canada.

[40] Subsection 58(1)(c) of *IRPA* does not require nor state that the Minister is required to take all possible steps deemed appropriate by the Member.

[41] The Member also erred in requiring the Minister to provide a strict timeline for anticipated results in the steps taken. As stated by Justice Barnes:

> [21] The Board appears to have held a rather simplistic view of the complexity of an investigation involving the unexpected arrival of 76 migrants from a war zone. While the importance of not unduly detaining such persons cannot be forgotten, the protection of Canadians and Canada's pressing interest in securing its borders are also worthy considerations. The government cannot use ss. 58(1)(c) as the basis for indefinitely detaining foreign nationals, **but it is entitled to a reasonable time to complete its admissibility investigation.** In cases of mass arrivals from some parts of the world it may well take several months for the Minister to complete an investigation, particularly where the identity of the individuals is in issue. In this case, the Minister's investigation was clearly incomplete and it was wrong for the Board to decide for itself that, in the case of the Respondent, enough had been done or that more should have been done. (MCI v XXXX, 2010 FC 112 at para 21) [Emphasis in original]

B. *Consideration of Factors Contributing to Flight Risk*

[42] Member Rempel erred in adopting the findings of Member McPhalen that any flight risk concerns are mitigated by the "quite strict terms and conditions" imposed at the previous detention review.

[43] Like Member McPhalen, Member Rempel erred by failing to assess all of the factors that contribute to the likelihood that the Respondent would not appear. Consideration was only given to the Respondent's lack of ties to the community under s. 245(g) of the *IRPR*, but not that the Respondent may be inadmissible on security grounds. A strong incentive exists for him to avoid further examination and to avoid a future admissibility hearing. The Respondent has been uncooperative.

[44] The Member's ability to consider factors beyond those enumerated in s. 245, so long as they are otherwise relevant, has been recognized by this Court. By dealing with each ground for continued detention in isolation, the Member failed to appreciate the cumulative effect that those various grounds may have on the Respondent's likelihood to appear for future hearings (*Canada (Citizenship and Immigration) v B157,* 2010 FC 1314).

C. *Misapplied Test for "Danger to the Public"*

[45] The Member refused to continue the Respondent's detention on the ground that he is a danger to the public, finding that "with respect to the detention ground of danger to the public, the arguments are very weak based on the alleged association to the LTTE" (Transcript of Detention Review Hearing dated February 17, 2011, at p. 29 of Transcript, Exhibit "A" – Affidavit of Elly Huang, Applicant's Motion Record).

[46] The relevant factor the Member was required to consider, pursuant to s. 246(b), was the Respondent's association with a criminal organization. The LTTE falls within the definition of a "criminal organization" under the Act. The Respondent has repeatedly confirmed that he performed

work for the LTTE. This alone is sufficient to establish his association with the LTTE, and, according to the scheme of the legislation, that he is a danger to the public.

[47] There was also extensive evidence before the Member confirming his association with the LTTE: he participated in a rehabilitation program for former LTTE members; he was personally identified by an informant from onboard the ship as being a member and discussing his activities with the LTTE during the voyage; the IOM holds information about the Respondent that he is reluctant to have disclosed.

[48] Thus, for the Member to conclude that past association with the LTTE is not sufficient to demonstrate a danger to the public is a dismissal of the danger ground without regard to the seriousness of such an association.

[49] Moreover, the Member's analysis of "danger to the public" appears to turn entirely on whether there is evidence that the Respondent has done anything in the past that is dangerous. In applying such an analysis, however, the Member misconstrued the meaning of "danger to the public", which has been given a wide interpretation by the Federal Court of Appeal. The inquiry involves a "consideration of whether, given what [the Minister] knows about the individual and what that individual has had to say on his own behalf, [he] 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." (*Williams v Canada (Minister of Citizenship and Immigration)*, [1997] 2 FC 646 (FCA)).

[50] Due to the Respondent's admission, the Minister's counsel submitted extensive evidence in respect of Canada's position as a fund-raising centre for the LTTE, former LTTE members find employment as enforcers on behalf of the LTTE, as well as the direct violence in the LTTE community worldwide and the atmosphere thereby created in the Tamil Diaspora in Canada. Given the nature of the Respondent's involvement with the LTTE, these concerns are particularly salient (Transcript of Proceedings, Detention Review Hearing dated January 18, 2011, Exhibit "D" to the Affidavit of Elly Huang, Applicant's Motion Record).

[51] The Member failed to address any of this evidence and thus failed to appreciate the manner in which the Respondent may pose a danger to the public. Again, while the Respondent may take a different view of this evidence, the Member erred in ignoring the evidence.

[52] The relevant factor to be considered is *association* with a criminal organization, as this Court clearly held in *Canada (Minister of Citizenship and Immigration) v Nagalingam*, 2004 FC 1757. According to the scheme of the legislation, to be associated with a criminal organization is considered inherently dangerous, and is a sufficient ground for a finding of danger to the public. The Member erred in requiring more (*Nagalingam*, above).

D. *B232 Released on Unreasonable Terms and Conditions*

[53] The Member released the Respondent on a $500 deposit to be posted by the Respondent himself. Aside from typical reporting, non-association conditions and a curfew, the Member imposed no further substantial conditions on his release. No surety was specified nor was any particular place of residence, aside from the province of B.C.

[54] The Member released the Respondent on these terms despite the security grounds invoked in regard to the public, with significant incentives not to appear for further examination at an admissibility hearing.

[55] This Court has recognized the importance of crafting appropriate terms and conditions of release. In particular, this Court has held (*Canada (Minister of Citizenship and Immigration) v Zhang*, 2001 FCT 521 at para 19) that:

> It appears that the theory behind the requirement for a security deposit or a performance bond is that the person posting the bond or deposit will be sufficiently at risk to take an interest in seeing that the release complies with the conditions of release including appearing for removal.
> …
> A security deposit or a performance bond is intended to act as a motivator for compliance. As noted above, the theory of a security deposit is that it provides an incentive for compliance with conditions of release. If the posting of a security deposit made no difference, there would be no reason to require one. If it makes a difference, then the question of the likelihood of compliance with conditions of release must be considered in light of the effect of the security deposit. If one were to adopt the reasoning in *Ri Wo Chen*, then only those who could satisfy the adjudicator that they would appear for removal without the necessity of a security deposit would eligible for release. But by definition, none of these would require the imposition of a security deposit to ensure their compliance with the conditions of release. The provisions as to the posting of security would only apply to those who do not require it.

[56] The Member has failed to asses meaningfully whether the Respondent, in the absence of a bondsperson, is likely to comply with his conditions. With no opportunity for CBSA to monitor him and no person imbued with the responsibility for ensuring his compliance, a significant security challenge to the Minister and to the public exists as a result of the Member’s decision.

[57] Terms and conditions need careful crafting to create incentives for appearance at future proceedings. Reasons to doubt that the terms and conditions will be respected do exist. This raises a serious issue.

E. *Irreparable Harm*

[58] The irreparable harm in this case engages the security of Canada and the integrity of the immigration system.

[59] There is compelling evidence substantiating a connection between the Respondent and the LTTE:

- he has admitted working for the LTTE and has substantial knowledge of the LTTE's recruitment practices;
- he was a participant in the IOM's ICRS program, whose objective is the rehabilitation of former LTTE members;
- he has been uncooperative in CBSA's on-going investigation;
- he has been personally identified by other migrants aboard the MV Sun Sea as having self-identified as a member of the LTTE, and having talked about his work for the LTTE.

[60] The release of the Respondent before the extent of his association with the LTTE has been fully investigated compromises the ability of the Minister to continue his investigation, and to protect the public.

[61] Accordingly, subsection 58(1)(c) provides for continued detention while CBSA takes necessary steps to investigate a reasonable suspicion that the detainee is inadmissible to Canada on security grounds. Subsection 58(1)(c) is important to the Canadian legislative scheme with respect to security. Release of individuals with respect to whom there is an ongoing reasonable suspicion that they are active members of well-organized terrorist organizations undermines the objectives of the *IRPA*, as well as Canada's international obligations with respect to terrorism. It defeats the purpose of the provision and, as such, places the security of Canadians at risk. This Court has found this to constitute irreparable harm (*Canada (Minister of Citizenship and Immigration) v Confidential*, IMM-6436-09, January 8, 2011, Near J. (FC)).

[62] As the Supreme Court of Canada stated in *Suresh v Canada (MCI)*, 2002 SCC 1, at paras 87-88:

> 87 We believe courts may now conclude that the support of terrorism abroad raises a possibility of adverse repercussions on Canada's security: see *Rehman, supra*, per Lord Slynn of Hadley, at paras. 16-17. International conventions must be interpreted in the light of current conditions. It may once have made sense to suggest that terrorism in one country did not necessarily implicate other countries. But after the year 2001, that approach is no longer valid.
>
> 88 First, the global transport and money networks that feed terrorism abroad have the potential to touch all countries, including Canada, and to thus implicate them in the terrorist activity. Second, terrorism itself is a worldwide phenomenon. The terrorist cause may focus on a distant locale, but the violent acts that support it may be close at hand. Third, preventive or precautionary state action may be justified; not only an immediate threat but also possible future risks must be considered. Fourth, Canada's national security may be promoted by reciprocal cooperation between Canada and other states in combating international terrorism.

[63] Given that the Respondent remains a security risk whom the Minister has not had sufficient opportunity to investigate to determine the extent of his involvement with the LTTE, his release into the community will cause real and non-speculative irreparable harm. Moreover, the Respondent is a danger to the public if released on minimal terms and conditions including a patent lack of supervision in the community by a surety. Releasing the Respondent directly prevents the Minister's efforts to ensure his availability for future proceedings – including a possible admissibility hearing; furthermore, it prevents him from carrying out his mandate of protecting the public and undermines the safety and security of the Canadian public (*Canada (MCI) v B188*, 12 November 2010 (IMM-6390-10); *Canada (MCI) v B017*, 22 November 2010 (IMM-6541-10); *Canada (Solicitor General) v Oraki*, 2005 FC 555; *Canada (MCI) v Chen*, [1999] FCJ No 1815 at para 17; *Canada (MCI) v Patwal*, 2001 FCT 152 at para 8; *Canada (MSPEP) v Iamkhong*, above, at para 27; *Canada (MCI) v Ambrose*, 2003 FCT 203, at paras 10 and 12).

XI. Balance of Convenience

[64] It is in the public interest to continue detention until the disposition of the underlying application for leave and for judicial review of the Member's decision.

[65] As this Court stated in *Sahin* v *Canada (MCI)*, [1995] 1 FC 214 at para 31:

> There is also public interest, although perhaps somewhat less than in a case of public danger, in detaining a person when there are grounds for believing he or she would not appear for examination, inquiry or removal. This public interest must be weighed against the liberty interest of the individual. In many cases, the most satisfactory course of action will be to detain the individual but expedite the immigration proceedings.

[66] The public interest, and thus the balance of convenience, favours maintenance of the *status quo* until these issues can be determined on their merits.

ORDER

THIS COURT ORDERS:

1. A stay of the Order of the Immigration Division, dated February 17, 2011, until the application for leave and for judicial review is determined on its merits
2. Pursuant to Rule 55 of the *Federal Courts Rules*, dispensation of the need to perfect the application for leave and for judicial review, granting of the application for leave and thereafter abridging the time limits for the parties to file and serve their materials and to expedite the hearing of the judicial review application to be scheduled forthwith by the Court Administrator;
3. Pursuant to Rule 105 that these proceedings be consolidated and heard together with IMM-341-11; and
4. That all documents filed or delivered to the Court in the Applicant's application for leave and for judicial review of the Division Member's decision be treated as confidential.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-1111-11**
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PLACE OF HEARING:	**Vancouver, BC**
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