

Federal Court



Cour fédérale

**Date: 20110426**

**Docket: IMM-1982-11**

**Citation: 2011 FC 493**

**Ottawa, Ontario, April 26, 2011**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

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

**Applicant**

**and**

**ADRIEN DAMBANA SUNGU**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant Minister sought an order staying the release of the Respondent Sungu which release had been granted by the Immigration Division (ID) of the Immigration and Refugee Board subject to certain terms. Release had been stayed pending this Court's hearing.

[2] The Court has issued a further interim order dealing with the then pending April 21, 2011 detention review so as to ensure no issue of mootness. That interim order will be replaced by the order to follow.

[3] Sungu has had a checkered immigration history including leaving Canada in 2006 before an immigration admissibility hearing could be held, possibly trying to re-enter Canada under a false name in 2007/2008, and clearly trying to enter Canada in 2010 under a fraudulent passport.

[4] Sungu was detained and has had five detention reviews. In the four previous hearings, he was ordered detained in order to ensure his appearance for removal. In the latter hearings the ID expressed concern about the sureties proposed and was prepared to accept those sureties or the amounts proposed.

[5] On March 24, 2011, Sungu was found to be inadmissible under paragraphs 34(1)(f) and 35(1)(a) of the *Immigration and Refugee Protection Act*. Immediately thereafter a detention review hearing was conducted and release was granted despite the same proposals for sureties and other terms as had been previously rejected.

[6] I am satisfied that the Minister has established the “serious issue” threshold whether on the usual standard or on an elevated standard as argued by the Respondent. The Minister has argued that the reasons of the ID are inadequate as to why release was acceptable now but not so previously under similar circumstances.

[7] The Minister has also established irreparable harm in respect to the insufficiency of the terms of release to prevent Sungu avoiding deportation either by going underground or leaving the country again without advising CBSA. His history gives some basis for anticipating the future.

[8] In terms of balance of convenience, there is a clear public interest at risk and precious few equities in favour of the Respondent.

[9] The Court had expected that the leave application would at least have been ready for determination before the April 21 detention review hearing, as had been discussed at the stay hearing.

[10] Detention reviews serve several purposes not just that of determining whether a person should be released. As there will be a delay in having the merits of the leave decided and, assuming that it is granted, the ultimate determination of the judicial review, this Court's earlier order needs to be revised.

**ORDER**

**THIS COURT ORDERS that** the release of Adrien Dambana Sungu is stayed until the review of the leave application and if leave is granted, the determination of the judicial review.

**THE COURT FURTHER ORDERS that** Adrien Dambana Sungu is to have his detention reviewed every 30 days hereafter but no release order may be made except as ordered by this Court.

“Michael L. Phelan”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1982-11

**STYLE OF CAUSE:** THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

and

ADRIEN DAMBANA SUNGU

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 4, 2011

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

**DATED:** April 26, 2011

**APPEARANCES:**

Ms. Sharon Stewart Guthrie FOR THE APPLICANT  
Ms. Samantha Reynolds

Ms. Melinda Gayda FOR THE RESPONDENT  
Ms. Lily Tekle

**SOLICITORS OF RECORD:**

MR. MYLES J. KIRVAN FOR THE APPLICANT  
Deputy Attorney General of Canada  
Toronto, Ontario

REFUGEE LAW OFFICE FOR THE RESPONDENT  
Toronto, Ontario