

Federal Court



Cour fédérale

Date: 20110506

Docket: IMM-2963-11

Citation: 2011 FC 532

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 6, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

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

Applicant

and

SIU KWAN HONG

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is a motion to stay in which the applicant is asking the Court to extend the respondent's detention until determination of the application for leave and judicial review of the refusal by the member from the Immigration Division of the Immigration and Refugee Board to review the applicant's reasons for detention under subsection 57(2) of the *Immigration and Refugee Protection*

Act, SC 2001, c. 27 (IRPA) and/or until the Immigration Division reviews the applicant's reasons for detention under subsection 57(2) of the *IRPA*.

[2] The Court fully agrees with the arguments by counsel for the applicant and therefore accepts all statements by counsel for the applicant.

II. Facts

[3] On April 19, 2011, the respondent was arrested by Laval police in a massage parlour and was turned over to the Canada Border Services Agency (CBSA) because she had no legal status in Canada.

[4] Consequently, the applicant was arrested under section 55 of the *IRPA*.

[5] On April 20, 2011, the applicant claimed refugee protection.

[6] On April 21, 2011, the respondent received a first detention review under subsection 57(1) of the *IRPA*.

[7] On April 28, 2011, the respondent received a second detention review under subsection 57(2) of the *IRPA*. Following the hearing, the member ordered that the respondent be released on certain conditions, including proving that the guarantor, Ms. Sin Fu, is a Canadian citizen, a permanent resident or a recognized refugee.

[8] In a fax dated May 2, 2011, counsel for the respondent advised the Immigration Division that Ms. Sin Fu could not meet the required conditions for the release of Ms. Hong.

[9] In her letter dated May 2, 2011, counsel also requested an early hearing to hear a new potential guarantor, Mr. Way Keung Wong.

[10] The early hearing was held on May 4, 2011.

[11] At the hearing on May 4, 2011, counsel for the respondent explained to the panel that Ms. Sin Fu, who is a refugee claimant, did not have the required status to be a guarantor under the conditions imposed by the panel.

[12] In his sworn testimony, Mr. Wong, a second potential guarantor, admitted to having owned a massage parlour and to having been convicted, as owner of a place, of knowingly permitting the place or any part thereof to be let or used for the purposes of a common bawdy-house (paragraph 210(2)(c) of the *Criminal code*, RSC 1985 c-46).

[13] Following the testimony by Mr. Wong, who claimed to be a waiter, counsel for the Minister submitted the police report regarding the events that led to Mr. Wong's conviction.

[14] The member disallowed the submission of the police report on the grounds that the report had not been translated into Mandarin, when the requirement is that documents must be submitted, when possible, in the language of the proceedings and the hearing, i.e. one of Canada's two official

languages, English or French. In this case, the hearing was held in French with a Mandarin/French interpreter.

[15] The Minister objected to the respondent's release on the grounds that Mr. Wong did not qualify as a guarantor under the specific circumstances of this case, namely that the respondent was arrested in a massage parlour and that, based on checks with Quebec's Enterprise Register, Mr. Wong still owned a massage parlour, while he testified that he was a waiter.

[16] Counsel for the Minister objected to the respondent's release on the grounds that she represented a flight risk and that the alternative presented did not offset that flight risk.

[17] Despite this, the member accepted Mr. Wong as a guarantor because he was of the view that the alternative proposed was appropriate under the circumstances, that Mr. Wong's testimony was credible, and that he had only been convicted once.

[18] The member thus ordered the respondent released on payment by the guarantor, Mr. Wong, of an amount of \$1,500 cash.

III. Issues

[19] Can a person who has been convicted and served a recent sentence, without being pardoned, be accepted as a guarantor for an individual involved in a context of related activities for which the guarantor was convicted? This case therefore raises three questions: Did the applicant demonstrate

the existence of a serious issue, of irreparable harm, and that the balance of convenience was in his favour?

IV. Analysis

A. *Serious issue*

[20] On May 4, 2010, the member committed an error in law by disallowing the submission of the police report on the grounds that the document had not been translated into Mandarin, when a review of the report would have allowed him to verify the facts regarding Mr. Wong.

[21] The member also erred by requiring that the police report be translated into Mandarin, which is not one of the two official languages.

[22] The member erred in law by not allowing an important document to be submitted as evidence, without valid reasons.

[23] The member committed another error in finding that the Guarantor, who claimed to be simply a waiter, had been a credible witness when the evidence submitted by the Minister showed that the guarantor still owned a massage parlour.

[24] Finally, the member committed an error in holding that the guarantor had only been convicted once, thus ignoring the nature of the offence for which the guarantor was convicted and the relevance of that offence to the facts of this case.

B. Irreparable harm

[25] The minister would suffer irreparable harm, as it is very likely that, if released, the respondent would not respect the other conditions set out in the order, including reporting to Canadian authorities.

[26] Moreover, it must be noted that the respondent is living in Canada illegally and that, if she had not been arrested, she would not have tried to correct her situation.

C. Balance of convenience

[27] The *IRPA* requires that the Minister ensure compliance with the provisions of that Act. This is not simply a matter of administrative convenience, but is instead the integrity and fairness of the Canadian immigration control system and the public trust in that system. It is in the public interest to have an efficient, expeditious and fair system.

V. Conclusion

[28] For all these reasons, the applicant's motion is allowed and the Court extends the respondent's detention until the next review by the Immigration Division of the reasons for detention in accordance with subsection 57(2) of the *IRPA*.

JUDGMENT

THE COURT ORDERS that the applicant's motion be allowed and the Court extends the respondent's detention until the next review by the Immigration Division of the reasons for detention in accordance with subsection 57(2) of the *IRPA*.

“Michel M.J. Shore”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2963-11

STYLE OF CAUSE: THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS v SIU KWAN
HONG

**MOTION HEARD BY TELECONFERENCE ON MAY 6, 2011 BETWEEN OTTAWA,
ONTARIO AND MONTRÉAL, QUEBEC**

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: May 6, 2011

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