

Federal Court



Cour fédérale

Date: 20110721

**Dockets: IMM-4383-11
IMM-4443-11
IMM-4503-11**

Citation: 2011 FC 913

Toronto, Ontario, July 21, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

Docket: IMM-4383-11

PAULO CESAR RAMOS ROJAS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

AND BETWEEN:

Docket: IMM-4443-11

PAULO CESAR RAMOS ROJAS

Applicant

and

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

Respondent

AND BETWEEN:

Docket: IMM-4503-11

PAULO CESAR RAMOS ROJAS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant has brought three separate Applications and within each of those applications a Motion to stay his imminent removal to Peru. I am providing one set of Reasons and Order a copy of which will be placed on each file. I am dismissing the motions for a stay in each instance. Removal will proceed as scheduled.

[2] Briefly as to the factual background, the Applicant was born in Peru and came to Canada when he was 9 years old. He has remained in Canada for the last twenty or so years but is not a Canadian citizen. The Applicant works as a cement finisher and appears to have a modest income from this work. A few years ago he joined an organization which can be referred to as the “Latin Kings”. He remained as a member of that organization for at least a few months and rose up at least three levels in its ranks. The “Latin Kings” have been determined to be violent criminal gang. The Applicant states that he was unaware of the true nature of this organization and when he became aware of that nature, he quit and wants nothing more to do with it.

[3] It further appears that five or six years ago the Applicant had a relationship with two women and fathered a child by each; one child has Down's syndrome. The Applicant married the mother of the healthy child at a time when his status in Canada was precarious. He does not live with either woman. He lives with his parental family. He contributes some money for the upkeep of each child as well as his own family. He performs occasional parental duties with each child.

[4] The Minister made a determination under section 37(1)(a) of the *Immigration and Refugee Protection Act* (IRPA) SC 2001, c.27 that, having regard to his membership in the Latin Kings, the Applicant was inadmissible in Canada. The Applicant sought a risk assessment which was unfavourable to him. The Applicant sought to remain on humanitarian and compassionate grounds (H&C) and was unsuccessful. The Applicant applied for a Ministerial exemption under section 37(2) of IRPA some seven months ago and is awaiting a decision.

[5] The three applications pending before this Court are for leave and judicial review of the failed H&C, for leave and judicial review of the removals officer's decision not to defer removal and for mandamus to require that the Minister make a decision under section 37 (2) of IRPA before the Applicant is removed from Canada.

[6] Applicant's Counsel made many arguments in support of a stay of removal in the circumstances of each of the three motions. Many of these arguments were novel, some were those often raised in such cases. Given the imminence of the possible removal I cannot give full weight and effect to each argument. I base my decision essentially on the lack of irreparable harm and balance of convenience.

[7] The arguments as to serious issue respecting the H&C decision are the usual ones including alleged failure to consider all of the evidence and alleged failure to give full and proper consideration to the best interests of the children. While these arguments can be raised, they do not amount to serious arguments. The H&C decision is sound in my view and is unlikely to be given leave for judicial review.

[8] With respect to the decision of the removals officer, Applicant's Counsel sought to argue *Charter* considerations and to argue that, given the Supreme Court of Canada decision in *Conway* 2010 SCC 22, the removals officer must consider *Charter* arguments. This novel argument I believe has little merit.

[9] The argument upon which the Applicant's Counsel spent most time was that sections 37(1) and 37(2) of IRPA were bound up together such that a removal under section 37(1) could not be effected until the Minister had exercised or not exercised the discretion given in section 37(2). In this regard reliance is placed on the decision of the Supreme Court in *Suresh*, [2002] 1 SCR 3 at paragraphs 100 to 110.

[10] As I read those paragraphs in *Suresh*, the Court is saying at paragraph 107 that the *Charter* does not protect expressive or associational activities that constitute violence.

[11] The Minister has a discretion, but not an obligation, to waive association with a terrorist gang in the case of an exclusion and that, among the matters that the Minister may consider, is whether a person was ignorant of or innocent of the activities of the gang. Ignorance or innocence is

not in itself determinative of the exercise of discretion. In the present case, while the Applicant protests ignorance, there have already been findings to the contrary in the proceedings previously determined against him.

[12] I base my decision primary on lack of irreparable harm and balance of convenience. As to irreparable harm, if the Applicant were to be removed to Peru he would suffer the usual results of such dislocation. To some extent his children will be affected, but he does not live with them and his financial and parental support is limited. His application for exercise of Ministerial discretion under section 37(2) will continue to be processed. There is, at present, no inordinate delay in such processing. If there is such a delay later, the Applicant can seek a mandamus. Applicant's Counsel sought to argue that even if the discretion were exercised in the Applicant's favour, there would be many roadblocks to his return. I expect that if the Minister's decision were favourable, any roadblocks would be minimized or if not, judicial relief could be sought.

[13] This brings into consideration the balance of convenience. The Minister has a duty to effect removal as soon as practicable. The Applicant has been found to have been in association with a violent gang, even if he now claims to have distanced himself. He has already removed himself from the day to day life of his children and their mothers. The balance favours the Respondent.

ORDER

FOR THE REASONS GIVEN

THIS COURT ORDERS that:

1. The motions brought in each of IMM-4383-11; IMM-4443-11; and IMM-4503-11 for stay of removal, are dismissed;
2. No order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-4383-11; IMM-4443-11; IMM-4503-11

STYLE OF CAUSE: PAULO CESAR RAMOS ROJAS v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION
AND BETWEEN: PAULO CESAR RAMOS ROJAS v. THE MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS
AND BETWEEN: PAULO CESAR RAMOS ROJAS v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 20, 2011

**REASONS FOR ORDER
AND ORDER BY:** HUGHES J.

DATED: July 21, 2011

APPEARANCES:

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