Federal Court  Cour fédérale

Date: 20111031

Docket: IMM-7434-11

Citation: 2011 FC 1242

Vancouver, British Columbia, October 31, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JULIETA MARIA RAMIREZ BAZAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] What is it about a stay application in immigration that must be answered?

[2] Have the criteria of the *Toth* test been met? (*Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA)).

[3] All in all, its three criteria must be met (without even one, the test fails!):

a. Does a serious issue exist?

b. Who does the balance of convenience favour?

c. Is irreparable harm about to befall the Applicant, should the application fail?

[4] That is the analysis to be undertaken for the conflict in the interpretation of the narrative to be discerned: on the one hand, the Applicant affirms having met the tri-partite criteria.

a. On the other, the Respondent denies the seriousness of the matter at issue;

b. The Respondent redresses the pleadings on the balance of convenience in his favour; and

c. Irreparable harm is argued to be non-existent for the Applicant, yet, about to befall the opposing Respondent, should the stay be granted.

[5] In this case, a very unfortunate situation has ensued; but, has the *Toth* test been met by the Applicant? No, not for any one of the criteria.

[6] This is not a case of a young Romeo and Juliet kept apart by the state and family, as seen below. As the narrative unfolds in its details, it is one of young love, where a child is born in 2010 to an unwed fugitive mother in Canada without any status since 2007, yet not recognizing the predicament of her situation.

[7] She fled detection by travelling, alone, thousands of kilometres from one end of Canada to the other, giving birth under an alias in a hospital far removed from the child's father's home. Denied refugee status in 2009 (after having waited more than a month before even claiming such)

in addition to having been denied acceptance as a refugee; she was denied status on the basis of a Pre-Removal Risk Assessment (PRRA) and also separately, on humanitarian and compassionate grounds (H&C) which were considered unfounded. All of which decisions were subject to possible review by this Court and for which none was granted.

[8] In this instance, it is the prerogative of the executive branch, as specified in the immigration legislation, not for a Court, to decide whether humanitarian and compassionate considerations can be made to apply outside of the purview and context of the pleadings. It is for the Court to simply interpret the legislative provisions; it is neither for the Court to rewrite the legislative provisions, nor is it for the Court to apply policies or objectives other than those for which the legislation was in its intention enacted; this, as specified in the introductory provisions of the legislation, charts the legislation's intentions.

[9] The child in question is under the same roof and in the able care of the paternal grandparents and also in the presence of the father, a young apprentice about to embark on a career. The young father is awaiting a response in the process of a sponsorship application for the mother of his child. In due course, that sponsorship process, if deemed worthy, will take place under the auspices of the pertinent executive authority (not that of this Court which, in effect, would be usurping the jurisdiction of the other two separate branches of government if it attempted to undertake the task.) This case encompasses a narrative which reverberates with all the ingredients of a story to be misconstrued. Yet, underground illegal immigration of a clandestine variety, using aliases, cannot be considered otherwise by a Court, but, on a basis of the intention of the legislation.

[10] The child is in the responsible care of grandparents, under the presence of the young father. The unification of the young couple is within the unique prerogative of the executive branch, under its jurisdiction, within its specific timing for processing.

[11] Should the behaviour which unfolds in the narrative be ignored under the interpretation of the legislation, the integrity of the immigration system would be compromised, wherein the limits of jurisdiction would be transcended by the Court taking, upon itself, a prerogative not within its jurisdiction; and, in effect, it would be usurping the respective jurisdictions of the legislative and the executive branches of government. In the rendering of this decision, the three branches of government must be acknowledged, recognized and understood, whether directly or indirectly for the legislation to be respected.

[12] This entire matter, throughout, has been fully considered to ensure that the best interests of the newborn child are central, at the very core of the judicial decision-making process as they are central from a legislative and jurisprudential point of view. It recognizes the executive jurisdiction and legislative objectives in regard to family unification, sponsorship and considers the well-being of a child. Each branch of government has its role to play, each, through its respective jurisdiction for the integrity of the immigration system, as a whole, to be met. Only then can the executive and legislative jurisdictions, as interpreted by the jurisprudence of the Courts, be said to be understood.

[13] The very essence of the immigration system involves all three branches of government; if the jurisdiction of any of the respective branches of government is misconstrued, the integrity of the immigration system stands to lose; a case such as this does not allow for a scapegoat from “justice”

to be considered in the abstract, to ensure that “justice” not be rendered in a vacuum. If such would be the case it would lack the consideration of the evidence, specifically before the Court, as to its own specific merits in all of its details. For justice to be done, it must be done not only by its process, but in its very substance; that is the very crux of the immigration system as conceived by the Canadian rubric, the three branches of government.

[14] In recognition that decisions on stay applications are made on very short notice within very short timeframes, this Court has decided to explain a matter which, very often, leaves both an individual, on the one hand, and the Canadian collectivity, on the other, perplexed as to why a decision was taken. The integrity of the immigration system must be met, in each case, within the framework of legislative provisions which do recognize the fragility of the human condition, yet, must be coupled with the legislative objectives of the collectivity to ensure that the needs or requirements of the legislation are respected, thus met.

[15] In this case, the application for a stay of removal is denied. The removals officer does not have the mandate under the circumstances of the case to grant a delay. That process is to be effected under the circumstances summarized above and explained below. The executive branch, within its proper channels, is cognizant of the sponsorship which is now in its hands for a decision in due course; it will be subsequent to the departure that an executive decision will decide the outcome of the sponsorship as the Court is not in a position to do so; and, therefore, it defers to the executive branch in regard to the departure notice which is wholly valid and, therefore, the application for a stay is denied.

II. Introduction

[16] The Court agrees with the position of the Respondent that the motion for a stay of removal of the Applicant scheduled for November 2, 2011, is to be denied.

a. She does not have clean hands: She failed to attend a meeting as directed with immigration officials. Instead, she covertly fled Ontario and moved to British Columbia where she used an alias to avoid detection. A warrant was issued for her arrest. When she was eventually arrested, she had been on the run for over three months.

b. She has failed to show irreparable harm: Her arguments pertaining to irreparable harm are speculative, inaccurate, and do rise to the level of irreparable harm. Furthermore, the hardship she complains about was caused by *her* decision to flee Ontario to British Columbia and failing to inform immigration officials of her whereabouts.

c. She has failed to show a serious issue: The decision not to defer her removal from Canada was valid and considered the best interests of her child. There are no reasonable grounds on which her removal should be deferred.

d. The balance of convenience favours the Minister: The Minister has a duty to ensure the integrity of the immigration system and the laws of Canada.

II. Background

[17] Ms. Julieta Maria Ramirez Bazan, the Applicant, is a Mexican citizen scheduled to be removed from Canada on November 2, 2011.

A. *The Applicant's arrival in Canada and her Refugee Protection Claim*

[18] The Applicant arrived in Canada from Mexico on September 29, 2007.

[19] On December 13, 2007, the Applicant made a refugee claim pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (*IRPA*). She claimed that she could not return to Mexico because her safety was threatened by members of a Mexican gang. That same day, a Conditional Deportation Order was issued by a Minister's delegate.

[20] The Applicant's refugee claim was refused by the Refugee Protection Division (RPD) by decision dated February 24, 2009. Of note, the RPD remarked that there were aspects of the Applicant's oral testimony that were at odds with information in her file, and that the Applicant was unable to provide a reasonable explanation for the inconsistencies. The RPD concluded that:

> Although these discrepancies are insufficient to cause the claim to fail, the Board finds that the claimant at the very least embellished portions of her allegations.

B. *The Applicant's Pre-Risk Removal Assessment & Humanitarian and Compassionate Grounds Applications*

[21] Following the negative RPD decision, the Applicant (with the aid of a representative) then submitted a Pre-Removal Risk Assessment (PRRA) application, as well as a Humanitarian and Compassionate (H&C) grounds application.

[22] By decisions dated April 19, 2010 and May 18, 2010, the Applicant's PRRA application and H&C application, respectively, were denied.

[23] In order to discuss these two decisions, the Applicant was ordered to attend a meeting scheduled for July 5, 2010 at the Greater Toronto Enforcement Centre (GTEC) in Mississauga, Ontario. The letter makes clear the severity of the consequences of failing to appear:

> Please note that your attendance is mandatory. Failure to report to this office on the above mentioned date and time may result in a Canada-wide warrant being issued for your arrest.

[24] The Applicant, in her materials, admits to having received this notice.

C. *The Applicant flees Ontario and moves to British Columbia without alerting immigration officials*

[25] Despite receiving the notice, the Applicant failed to attend the meeting scheduled for July 5, 2010.

[26] The Applicant's representative, however, did attend the July 5, 2010 meeting. The representative suggested that perhaps his client was unable to attend due to health concerns surrounding her pregnancy. A new meeting was scheduled for the next day and the Applicant's counsel was advised that his client should bring a doctor's note explaining her absence.

[27] On July 6, 2010, the Applicant again failed to appear for the scheduled interview. The Applicant's counsel stated that he was unable to get in touch with his client, but that he had been advised by the Applicant's friend that the Applicant had left Canada on Friday, July 2, 2010.

[28] A warrant for the Applicant's arrest was issued on July 6, 2010 and the CBSA began attempting to track down the Applicant.

D. *The Applicant is located after registering in a hospital under a false name*

[29] Approximately three months after failing to attend the July 5, 2010 meeting at GTEC, the Applicant was tracked down to a hospital in British Columbia. She had registered under a false name (Ms. Mae Rain) in order to avoid detection by immigration officials. Before she could be arrested, however, the Applicant discharged herself from the hospital – against her doctor's orders – the morning of October 18, 2010.

[30] On October 28, 2010, however, the Applicant was again located, and then arrested, by the CBSA. Realizing that she was pregnant, however, the CBSA did not take her into custody; rather the CBSA released her on her own recognizance.

[31] When interviewed by the CBSA, it is noted that the Applicant admitted:

> …that she lied about her identity when she was last admitted to the Emergency Ward at Penticton General Hospital but did so, because she was afraid that Immigration would learn of her presence. She was aware that she was illegally in Canada and Immigration was looking for her, but wanted to have the baby in Canada, marry and remain in Canada permanently.

E. *The Applicant's Spousal Sponsorship Application*

[32] The Applicant gave birth to her son in November 2010 and got married in December 2010.

[33] She and her husband filed a Spousal Sponsorship application on or around March 15, 2011.

F. *The events precipitating this Stay Application*

[34] On October 11, 2011, the Applicant was interviewed by the CBSA. During the interview, the Applicant was asked about her failure to attend (as required) the July 5, 2011 meeting, her surreptitious move to British Columbia, her months on the run from immigration officials, as well as her use of a false name when she registered at the hospital in British Columbia. The Applicant explained that:

> I didn't go to the interview because I went to where my boyfriend was. I moved to BC. I told him I was pregnant and we were both very happy about it. My husband and I then got scared that I might be sent back so we didn't say anything. I stayed with him. When I was having problems with the pregnancy and needed to go to the hospital my husband and I were afraid that I might not get service because I don't have papers. That's when I used a fake name so that way I can get service.

[35] Following the October 11, 2011 interview, a letter was sent to the Applicant advising that she was to meet with a CBSA representative to discuss the logistics of her departure from Canada on or before November 2, 2011.

G. *Request for deferral of the Applicant's return to Mexico*

[36] In response to the CBSA's letter, the Applicant's mother-in-law wrote to the CBSA asking that the Applicant's removal be deferred because her son had filed a Spousal Support application, and because she wanted the family to remain together.

[37] The CBSA Regional Program Manager Ms. Lucky Paul (Ms. Paul) considered the letter as well as the Applicant's PRRA and H&C application decisions, and concluded that the Applicant's removal from Canada could not be delayed.

[38] The Applicant nevertheless asked the CBSA to reconsider the deferral decision. Ms. Paul reviewed the status of the Applicant's Spousal Sponsorship application and determined that the application would likely not be processed in the next year.

[39] Ms. Paul also called the Canadian Consulate in Mexico to determine if there was any truth to the allegations that the Consulate was not issuing Authorizations to Return to Canada (an ARC). She determined that the Consulate continues to grant ARC applications, though the time it takes to process said applications depends on the complexity of each case.

[40] Ms. Paul wrote to Applicant's counsel to confirm the CBSA's decision not to defer the Applicant's removal from Canada. In this final decision, she specifically refers to the best interests of the Applicant's child, and writes:

> I also considered the following short term options for the best interest of Gael. Gael is a Canadian Citizen and therefore he can travel to Mexico and stay with his mother; he can stay in Canada with his father; in both scenarios Gael will have access to his biological parent. If Gael stays in Canada he will have additional support from his grandparents; he is currently living in his grandparents' home and continue [sic] living there would be the least disruptive for him. If Gael travels with his mother then his father can travel to Mexico to visit him or the family has the option of moving to Mexico so the family unit can stay together. This removal will not place Gael at risk.

III. Issue

[41] The issue before the Court on this motion is whether the Applicant has satisfied the three-part test for an order staying her removal from Canada.

IV. Analysis

A. *The Test for Leave*

[42] The test for injunctive relief is conjunctive and is threefold:

a. Is there a serious issue in the underlying judicial review application?

b. Would the applicant suffer irreparable harm?

c. Where does the balance of convenience lie, in other words which of the parties will suffer the greatest harm from the granting or refusing of the stay?

[43] The issuance of a stay is an extraordinary remedy wherein the Applicant needs to demonstrate "special and compelling circumstances" that would warrant "exceptional judicial intervention".[1]

[44] The Applicant's arguments in this stay are essentially:

a. The decision to deny deferring the Applicant's removal was rushed and not in accordance with the principle of fundamental justice; and

b. The decision to deny deferring the Applicant's removal did not take the best interest of the Applicant's child into consideration.

[45] The Applicant has failed to demonstrate that she meets all three requirements of the test and, therefore, the motion for a stay of removal should be dismissed.

B. *Preliminary Issue: No Clean Hands*

[46] A stay of removal is an extraordinary and discretionary measure. It was noted that the "Court does not grant relief if an applicant has shown disregard for Canadian immigration laws, or does not have clean hands in regard to Canadian authorities."[2]

[47] In the *Estrada* case, for example, this Court denied a stay because, *inter alia*:

a. The Applicant had failed to appear for an interview with Canadian immigration officials;
b. A warrant was issued for the Applicant's arrest;
c. The Applicant's arrest is attributable to an investigation by an immigration task force; and
d. The Applicant used aliases to avoid detection.[3]

[48] In this case, the Applicant did all of the above and more:

a. The Applicant failed to show up at a meeting with CBSA officials despite knowing the consequences of such a failure;
b. A warrant was issued for the Applicant's arrest;

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[1] *Ellero v Canada (MPSEP)*, [2008] FCJ No 1746 at para 19 (FC).
[2] See, for example, *Estrada v Canada (MCI)*, [2010] FCJ No 1008 at para 5 (FC); *Gonzague v Canada (MCI)*, [2001] FCJ No 1791 at para 2 (FC); *Manohararaj v Canada (MCI)*, [2006] FCJ No 495 at para 14 (FC).
[3] *Estrada v Canada (MCI)*, [2010] FCJ No 1008 at paras 2 & 3 (FC).

c. The Applicant fled to another province – British Columbia – thousands of kilometres away from Toronto without informing immigration officials and causing them to have to track her down;

d. The Applicant continued to live underground for many months until the CBSA was able to track her down; and

e. The Applicant used an alias in order to receive medical treatment and avoid detection from immigration officials.

[49] Were it not for the investigation by the CBSA and the administrative staff at the hospital in British Columbia (who informed the CBSA of the Applicant's whereabouts), there is no telling if the Applicant would ever have been found.

[50] The Applicant now argues, in part, that her return to Canada is uncertain because she may not be granted Ministerial permission to come back to Canada. Even if this were true, it was *the Applicant*, by choosing to flee to British Columbia, who caused the very state of affairs she now laments.

[51] Consequently, because of the Applicant's disregard for the immigration process and Canadian laws, this Court refuses to exercise its equitable jurisdiction and denies this stay.

C. *Irreparable Harm*

[52] The Respondent submits that the Applicant has failed to show irreparable harm were she to be removed to Mexico.

[53] Irreparable harm is a strict test in which serious likelihood or jeopardy to the applicant's life or safety must be demonstrated.[4]

[54] Wrote, this Court, in the recent case of *Yvonne*:

> An irreparable harm must be much more substantial and more serious than personal inconvenience or hardship. Rather, it must be based on a threat to the life or security of the person, or an obvious threat of ill treatment in the country of origin. Irreparable harm is harm which is irrevocable or permanent.[5]

[55] In this case, the Applicant points to the effect of her child only having one parent during her return to Mexico, and the impact on her and her son were they to leave their family behind in Canada.

[56] This Court has maintained that disruption of family life and emotional stress are all incumbent consequences of a removal and therefore cannot be considered irreparable harm.[6] To find otherwise would render impracticable the removal of individuals who do not have the right to reside in Canada. The jurisprudence of this Court has made it clear that illegal immigrants cannot avoid the execution of a valid removal order simply because they are the parents of Canadian-born children.[7]

[57] Moreover, there is nothing on the record that suggests that the Applicant's husband and in-laws could not travel to Mexico to live with, or visit, her and her son. Alternatively, if she is

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[4] *Malagon v Canada (MCI)*, [2008] FCJ No 1586 at paras 2 and 57 (FC).
[5] *Yvonne v Canada (MPSEP)*, [2011] FCJ No 1024 at paras 42 & 43 (FC) [*Yvonne*].
[6] *Yvonne*, above at paras 42 43; *Muwulya v Canada (MCI)*, [2009] FCJ No 985 at para 23 (FC).
[7] *Baron v Canada (MPSEP)*, [2009] FCJ No 314 at para 57 (FCA) [*Baron*].

worried about her son living in Mexico, he is free to live in Canada and to visit his mother from time to time. There is no evidence that such an arrangement causes irreparable harm, or even that it is unreasonable.

[58] The Applicant's second argument on this issue of irreparable harm, i.e., that she would not be granted authority to return to Canada, should also be rejected.

[59] There is no compelling evidence that the Applicant would not be granted authority to return to Canada. As Ms. Paul has clarified in her affidavit, the Canadian Consulate in Mexico continues to grant such authority, though the timelines depend on a case-by-case basis. To argue, as the Applicant does, that were she to apply she would be rejected is vague and speculative at best. The evidence in support of harm, however, must be clear and non-speculative.[8]

[60] In any event, this Court has found that the requirement to obtain authorization to return to Canada does not constitute irreparable harm, especially in the case where the need to obtain such permission is the result of the Applicant's own actions. As the Court suggested:

> The requirement to apply for an ARC is the direct result of the applicant's choice to remain in this country illegally after his authorized period of stay in Canada to make a refugee claim has ended. This requirement is faced by all who are removed from Canada every year and does not constitute anything other than the inherent effects of deportation. <u>As such, it does not meet the test for irreparable harm</u> [emphasis added].[9]

[8] *Yvonne*, above at para. 44.
[9] *Petrovych v Canada (MPSEP)*, [2009] FCJ No 113 at para 36 (FC).

[61] For all of these reasons, the Applicant has failed to make out irreparable harm and her stay application is consequently dismissed.

D. *Serious Issue*

[62] It is important to note that a higher threshold applies to the question of serious issue where a stay of removal is sought on the basis of an application to review a decision not to defer removal.[10]

(1) Review of decisions to defer removal

[63] The enforcement of removal orders is dealt with in the *Immigration and Refugee Protection Act* at, *inter alia*, section 48, which states:

> 48. (1) A removal order is enforceable if it has come into force and is not stayed.
>
> (2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable [emphasis added].[11]

[64] The following principles emerge from the case law pertaining to the discretion to defer a removal order:

a. An Officer's functions when reviewing a deferral request are limited,[12] and deferrals are intended to be temporary.[13]

b. The Officer does not perform an adjudicative function in the context of a deferral request, and any duty to provide reasons is minimal.[14]

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[10] *Mauricette v Canada (MPSEP)*, [2008] FCJ No 512 at para 16 (FC) [*Mauricette*.]
[11] *Immigration and Refugee Protection Act*, SC 2001, c 27, s 48. See also: *Turay v Canada (MPSEP*), [2009] FCJ No 1369 at para 16 (FC) [*Turay*].
[12] *MPSEP v Shpati*, 2011 FCA 286 at para 45 (FCA) [*Shpati*]; *Baron*, above at para 49.
[13] *Shpati*, above at para 45.

c. The range of what could qualify as considerations that render removal not "reasonably practicable" (and thus form grounds for a deferral) is narrow.[15]

d. The Court should intervene if the decision of the Officer was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."[16] Reasonability in the context of a deferral has been deemed to be "…where there are compelling circumstances that make it necessary for the Officer to defer removal, then, justice would require that the Officer exercise that discretion" [emphasis added].[17]

e. The Federal Court of Appeal confirmed that family hardship is a variable of low importance for an Officer.[18] It noted that "…deferral should be reserved for those applications or processes where the failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment in circumstances and where deferral might result in the order becoming inoperative."[19]

f. The burden rests squarely with the Applicant to present compelling evidence to support the deferral.[20]

[65] The best interests of the child may constitute compelling personal circumstances, but those interests are not a significant factor to be considered by the removals officer.[21] On this point, in *Baron*, Justice Nadon of the Federal Court of Appeal wrote that:

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[14] See *Boniowski v Canada (MCI)*, [2004] FCJ No 1397 at para 11 (FC) [*Boniowski*], where Justice Mosley found that: "…any reasons requirement was fulfilled in the decision letter of September 12, 2003 where the officer indicated that she had received and reviewed the applicants' submissions, and her decision was not to defer removal".
[15] *Shpati*, above at para 45. See also: *Boniowski*, above at para 11.
[16] *Shpati*, above at para 27; *Turay*, above at para 15.
[17] *Turay*, above at para 18; *Mauricette*, above at para 23.
[18] *Baron*, above at para 48; *Turay*, above at para 17.
[19] *Baron*, above at para 48; *Turay*, above at para 17.
[20] *John v Canada (MCI)*, [2003] FCJ No 583 at para 24 (FC).

> The jurisprudence of this Court has made it clear that illegal immigrants cannot avoid execution of a valid removal order simply because they are parents of Canadian-born children…an enforcement officer has no obligation to substantially review the children's best interest before executing a removal order [emphasis added][22]

And in the Vargas decision, the unanimous Federal Court of Appeal wrote that:

> … Within the narrow scope of removals officers' duties, their obligation, if any, to consider the interests of affected children is at the low end of the spectrum, as contrasted with the full assessment which must be made on an H&C application under subsection 25(1) [emphasis added].[23]

[66] An Officer needs only to consider the short-term interests of the children and not in any great detail.[24]

[67] To summarize, the case law supports the propositions that the ability to defer a removal is limited, the range of considerations that could qualify as ground for a deferral is narrow, the duty to give reasons is minimal, and though the best interests of the child are a factor, they are not a significant factor.

(2) Serious Issue

[68] The Applicant has failed to demonstrate that there is a serious issue in this matter. The CBSA's decision to not to defer the Applicant's removal was reasonable, considered the best interests of the child, and (in any event) the facts in this case does not support a deferral.

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[21] *Turay*, above at paras 15, 19 & 20; *Boniowski*, above at para 19.
[22] *Baron*, above at para 57.
[23] *Varga v Canada (MCI)*, [2006] FCJ No. 18 at para 16 (FCA).
[24] *Turay*, above at para 21.

[69] In this matter, the only submissions made by the Applicant in terms of the effect of returning the Applicant to Mexico were made by her mother-in-law's letter in which she outlines the concern over the potential separation of the Applicant's son from one of his parents.

[70] No other letter or document was provided to substantiate the request to defer the Applicant's removal.

[71] In her decision not to defer the Applicant's removal, Ms. Paul specifically states that she considered this letter and the submissions made therein.

[72] Furthermore, when she was asked to reconsider her decision, Ms. Paul obliged the Applicant. In her response to this request, Ms. Paul specifically refers to the best interests of the Applicant's child as something she considered in her decision not to defer the Applicant's removal. Specifically, she wrote:

> I also considered the following short term options for the best interest of Gael. Gael is a Canadian Citizen and therefore he can travel to Mexico and stay with his mother; he can stay in Canada with his father; in both scenarios Gael will have access to his biological parent. If Gael stays in Canada he will have additional support from his grandparents; he is currently living in his grandparents' home and continue [sic] living there would be the least disruptive for him. If Gael travels with his mother then his father can travel to Mexico to visit him or the family has the option of moving to Mexico so the family unit can stay together. This removal will not place Gael at risk.

[73] The best interests of the Applicant's child, then, were properly considered in accordance with the aforementioned when reaching a decision about the removal. There are no compelling

reasons to support a deferral, and this is **not** a situation in which refusing to do so will "expose the applicant to the risk of death, extreme sanction or inhumane treatment".

[74] For all of these reasons, the Applicant fails to raise a serious issue.

E. Balance of Convenience

[75] Under the *IRPA*, the Minister of Public Safety and Emergency Preparedness is responsible for maintaining and protecting the security of Canadian society and the integrity of Canada's immigration and refugee system.[25] This entails the enforcement of removal orders (per section 48 of the *IRPA*) as soon as is reasonably practicable which is to preserve the integrity of Canada's immigration and refugee system.[26]

[76] Only in exceptional cases does an applicant's interest outweigh the public interest.[27]

[77] In this case, the Applicant has benefited from a number of immigration processes, including the RPD process, the PRRA process, the H&C process, and a request to defer her removal from Canada.

[78] It is important also to note that the Applicant's hands are not clean – an issue that has been considered in a determination of the balance of convenience.[28] It is in the public interest that those

[25] *Khosa v Canada (MCI)*, [2010] FCJ No 99 at para 50 (FC) [*Khosa*]; *Yvonne*, above at para 53.
[26] *Khosa*, above at para 50; *Yvonne*, above at para 53.
[27] *Khosa*, above at para 53; *Yvonne*, above at para 53.
[28] *Khosa*, above at para 53.

who fail to abide by their obligations under an administrative scheme are not rewarded for doing so.

[79] In this case:

a. The Applicant failed to show up at a meeting with CBSA officials despite knowing the consequences of such a failure;
b. A warrant was issued for the Applicant's arrest;
c. The Applicant fled to another province – British Columbia – thousands of kilometres away from Toronto without informing immigration officials and causing them to have to track her down;
d. The Applicant continued to live underground for many months until the CBSA was able to track her down;
e. The Applicant used an alias in order to receive medical treatment and avoid detection from immigration officials.

[80] She now submits that if she goes to Mexico she will not be able to return to Canada, however, it is *she* who is the architect of her present predicament.

[81] For these reasons, the balance of convenience favours the Minister.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's application for a stay of removal be dismissed.

OBITER

It is only the Minister in his discretion who can decide whether the Applicant should remain in Canada until the matter of the sponsorship is concluded; that, as said, is not for a Court to do, as it is in the unique purview of the Respondent and is uniquely in the Respondent's jurisdiction. Thus, only the Respondent could decide to do so in the circumstances of prerogative under his discretion.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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