

Federal Court



Cour fédérale

Date: 20111118

Docket: IMM-7854-11

Citation: 2011 FC 1326

Ottawa, Ontario, November 18, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

VLADIMIR CAYEMITTES

Applicant

and

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

Respondent

REASONS FOR ORDER AND ORDER

UPON Motion by the Applicant dated November 2nd, 2011 for an interim Order of prohibition or for an interim stay of removal of the Applicant pursuant to the removal order that was issued against the Applicant on November 16, 2004, pending determination by this Court of the Application for leave and judicial review served and filed November 3rd 2011, of a negative decision by a Pre-Removal Risk Assessment [PRRA] Officer, dated October 5, 2011;

AND UPON reading the materials filed with the Court and hearing counsel for the Applicant and for the Respondent earlier yesterday;

AND UPON reviewing the authorities provided to the Court and cited in the materials filed with the Court;

AND UPON considering the tripartite test for a stay articulated by the Federal Court of Appeal in *Toth v Canada (Minister of Employment and Immigration)*, [1988] FCJ No 587;

AND UPON considering the motion made by counsel for the Respondent pursuant to rule 155(2)(a) of the *Federal Court Rules*, SOR/98-106;

AND UPON having heard the representations of counsels for the parties with respect to said motion and having determined that it is in the best interest of justice that said motion for an indefinite confidentiality order applicable to all materials contained in both the Applicant's and the Respondent Minister's record be kept confidential for an indefinite period and that only a solicitor of record or, a solicitor assisting in the proceedings, who is not a party, be entitled to have access to said confidential material.

Endorsement

1. I am not satisfied that the Applicant has demonstrated that there is a serious issue to be tried. I am unable to conclude, on the balance of probabilities, that the PRRA Officer in essence made adverse credibility findings when she concluded, on October 5, 2011, that the Applicant

had not provided sufficient evidence to meet his burden. The Officer accepted the Applicant's representation regarding his personal situation, his family, his children and the situation in Haïti but noted that the Applicant has not added more recent information since filing his application in December 2009. The Applicant moved and failed to inform Immigration services of said move after December 2009. The Officer noted the Applicant's criminal record falls within the exception of section 230 (3)(c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, the serious criminality exception to the ministerial stay of removal. Nothing in the Officer's decision questioned the Applicant's credibility in any way. Accordingly, I am not satisfied that a serious issue has been raised with respect to whether the PRRA Officer erred.

2. The Applicant's counsel did not identify for the Court any evidence submitted by the Applicant that was ignored by the PRRA Officer, and that did not support the PRRA Officer's conclusion. Accordingly, I am unable to conclude that a serious issue has been raised with respect to the reasonableness of the PRRA Officer's conclusion.

3. The Applicant's counsel submitted that the doctrine of legitimate expectation could apply in this case since the Minister of Employment and Immigration granted a temporary working permit in 2007 to the Applicant, notwithstanding that his application for permanent residence was rejected in 2006 and that the stay applicable to Haïti in 2007, as a result of the hurricane, could not apply to the Applicant on account of his criminal convictions. The Applicant contends that this permit could only have been issued on Humanitarian and Compassionate grounds pursuant to section 25.1 of the Act at the sole discretion of the Minister. Hence the Applicant submits that the Minister should be consistent and adhere to the promise that was made with the

issuance of the work permit. Unfortunately, these circumstances are not part of the underlying PRAA decision that is being challenged by the application. Hence this claim cannot be entertained by this Court and even if it was, it is trite law that the doctrine of legitimate expectations can only procure procedural rights.

4. In short , the Applicant has not raised a serious issue with respect to whether the PRRA Officer's decision (i) falls "within the range of possible , acceptable outcomes which are defensible in respect of the facts and the law"(see *Dunsmuir v New-Brunswick*, 2008 SCC 9 at para 47).

5. The Applicant has not satisfied his burden of establishing that he faces a risk of irreparable harm if he is removed from Canada. Separation from one's family is a direct and normal consequence of deportation. The evidence adduced by the Applicant establishes that the conditions in Haïti are not ideal and present certain risks but the Court cannot conclude that these risks will inevitably lead to irreparable harm to the Applicant.

6. Finally, the rule being the enforcement of deportation orders, the Applicant was unable to demonstrate that the balance of convenience favours a granting of the requested stay by this Court in this instance.

ORDER

THIS COURT ORDERS that

1. The motion be dismissed.
2. The complete record be kept confidential and that only a solicitor who represents a party or is assisting in the proceedings be entitled to have access to the confidential material.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7854-11

STYLE OF CAUSE: VLADIMIR CAYEMITTES
v
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 17, 2011

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

DATED: November 18, 2011

APPEARANCES:

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