

Federal Court



Cour fédérale

**Date: 20120105**

**Docket: IMM-9826-11**

**Citation: 2012 FC 19**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, January 5, 2012**

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

**BETWEEN:**

**GABRIEL OLA ALANI**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant is submitting to this Court a motion to stay a removal order issued against him, which is to be enforced on January 7, 2012, at 3:40 p.m.

[2] On September 20, 2006, the applicant was found guilty in Brampton, Ontario, of possession of a forged or falsified credit card within the meaning of paragraph 342(1)(c) of the *Criminal Code*, an indictable offence punishable by a maximum of ten years imprisonment .

[3] On May 9, 2007, the applicant submitted a first application for permanent residence in the “spouse or common-law partner in Canada” class. On February 4, 2008, Citizenship and Immigration (CIC) refused the application because the sponsorship commitment made by Tishawna Davy was not valid pursuant to sections 127, 133 and 137 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[4] On October 27, 2008, the applicant submitted a second application for permanent residence in the “spouse or common-law partner in Canada” class. CIC refused this application because the applicant was inadmissible on grounds of criminality pursuant to paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (also, subsection 10 of this same division).

[5] On September 8, 2010, the applicant met with an enforcement officer and presented him with an application for an administrative stay of his removal from Canada, which was refused.

[6] On November 15, 2010, the applicant submitted an application for an exemption from a permanent resident visa for humanitarian and compassionate considerations (H&C) supported by a sponsorship application from his wife. This H&C application is still being processed and the CIC has not yet made a decision to date.

[7] On November 16, 2010, the applicant was the subject of a report under section 44 of the IRPA and declared inadmissible; specifically, a removal order was issued against him. This section

44 report for criminality, issued pursuant to paragraph 36(1)(a) of the IRPA, was given to him in person on that date.

[8] This motion is incidental to an application for leave and judicial review (ALJR) challenging the decision rendered orally on December 22, 2011, by the enforcement officer of the Canada Border Services Agency (CBSA), in which he refused the application to defer removal made by the applicant that day. The written reasons for this refusal were provided at the applicant's request, on December 23, 2011.

The applicant does not have clean hands

[9] It is well established that a stay application is a discretionary remedy and, and that, according to the rules of equity, those who come to the Court seeking a discretionary remedy must have clean hands (*Vasquez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1144 at para 27; *Gosal v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 620 at paras 1, 21-37; *Moore v Canada (Minister of Citizenship and Immigration)*, 2009 FC 803 at para 1; *Adams v Canada (Minister of Citizenship and Immigration)*, 2008 FC 256 at para 2).

[10] The Court agrees with the respondent's position that the motion to stay should be dismissed because the applicant engaged in unlawful conduct and acted in defiance of Canadian laws during his time in Canada, almost immediately from the time he arrived in 2003 from Nigeria. Moreover, the applicant acted in defiance of Canadian immigration laws by working illegally with no concern for a work permit since January 2005, although, at the same time, he was trying to regularize his residence status in Canada.

[11] As a result, it is clear that the applicant does not come before the Court with clean hands. He has anything but clean hands, and this creates a major obstacle to obtaining the equitable remedy he is seeking. Allowing the applicant to benefit from a stay, an exceptional remedy, would also impair the integrity of the system and encourage illegality (*Vasquez, supra*, at para 31; *Gosal, supra*, at para 1).

[12] As a result, the motion to stay is dismissed.

**JUDGMENT**

**THIS COURT ORDERS** the dismissal of the motion to stay the removal order.

“Michel M.J. Shore”

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Judge

Certified true translation  
Elizabeth Tan

Federal Court



Cour fédérale

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-9826-11

**STYLE OF CAUSE:** GABRIEL OLA ALANI v  
THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**MOTION CONSIDERED BY CONFERENCE CALL ON JANUARY 5, 2012,  
BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC**

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

**DATED:** January 5, 2012

**APPEARANCES:**

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