

Federal Court



Cour fédérale

Date: 20121210

Docket: IMM-2884-12

Citation: 2012 FC 1456

Ottawa, Ontario, December 10, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ALEXEY AVERIN

Applicant

and

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

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2007, Mr Alexey Averin arrived in Canada from Ukraine as a visitor. He applied unsuccessfully for refugee status.

[2] After his refugee claim was turned down, Mr Averin experienced a series of unfortunate events. He was involved in two car accidents leaving him with physical limitations and mental

health issues. His physicians have diagnosed him with major depression, post-traumatic stress disorder, and a severe phobia of being in a car. He requires many different medications. He relies on social assistance, and his family members in Canada.

[3] In November 2011 Mr Averin attempted to hang himself. His neighbours saved him. While in hospital, with his mother's help, Mr Averin applied for a pre-removal risk assessment (PRRA). He alleged that he would not be able to obtain or afford proper medical treatment in Ukraine, and that there was a "grave situation regarding the treatment of mentally ill patients" there. He filed his medical records and documentary evidence about the availability of mental health care in Ukraine.

[4] The PRRA officer dismissed Mr Averin's application. That decision is the subject of a separate application for judicial review (see IMM-2600-12).

[5] Mr Averin also asked an immigration enforcement officer to defer his removal until his outstanding application for humanitarian and compassionate (H&C) relief was decided. In his deferral request, Mr Averin expressed concern about the lack of appropriate treatment, and possible mistreatment, in Ukraine. The officer dismissed Mr Averin's request.

[6] Mr Averin argues that the officer failed to consider the real basis of his request, namely that he would not have access to the medication he requires or adequate medical treatment. The officer reviewed recent medical reports filed by Mr Averin and concluded that Mr Averin's condition was improving. The fact that he has an outstanding H&C did not, on its own, justify a deferral of removal.

[7] Mr Averin argues that the officer's decision was unreasonable and he asks me to overturn that decision and order another officer to reconsider his request.

[8] I agree that the officer's decision was unreasonable and must, therefore, allow this application for judicial review.

II. Was the Officer's decision unreasonable?

[9] A removal officer's discretion is limited. He or she can only defer removal where there exist compelling or exigent personal circumstances that merit a temporary delay: *Ramada v Canada (Solicitor General)*, 2005 FC 1112, at para 3; *Canada (Minister of Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286, at para 43.

[10] Mr Averin raised a concern about whether he would have access to the medication he requires in Ukraine. In previous correspondence with another enforcement officer, this concern was clearly expressed and the officer requested further details about Mr Averin's drug regimen. In his submissions to the deciding officer, Mr Averin noted that the previous officer had found that only one of the several drugs Mr Averin required was available in Ukraine.

[11] However, the deciding officer did not address this issue and made no reference to the evidence on the point. In my view, given the evidence before him, the officer was obliged to consider whether the unavailability of medication for Mr Averin presented an "exigent personal

circumstance” that justified a deferral. The mere fact that Mr Averin had an outstanding H&C application would not have justified a deferral. But the fact that Mr Averin would not have available to him the medication he required would have provided that justification. The officer did not consider that issue.

[12] In my view, the officer’s decision was unreasonable because it did not take account of an exigent personal circumstance facing Mr Averin. There was evidence before the officer showing that Mr Averin may not have access to the medication he required. The officer simply did not consider that evidence. Accordingly, I find that the officer’s decision does not represent a defensible outcome based on the evidence before him, and the law requiring him to consider the applicant’s personal circumstances. Therefore, I must grant this application for judicial review.

III. Conclusion and Disposition

[13] The officer failed to consider an important issue relating to the timing of Mr Averin’s departure from Canada. Given that failure, the officer’s decision was unreasonable because it did not taken account of the evidence before him and did not accord with the obligation to consider the applicant’s personal circumstances. Accordingly, I must allow this application for judicial review and order another officer to reconsider Mr Averin’s request.

[14] Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration;
2. No questions of general importance are stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2884-12

STYLE OF CAUSE: ALEXEY AVERIN
v
MPSEP

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 19, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: December 10, 2012

APPEARANCES:

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