Federal Court Cour fédérale

Date: 20130429

Docket: IMM-2987-13

Citation: 2013 FC 440

Ottawa, Ontario, April 29, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MANUEL ANTONIO MARTINEZ DIAZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR ORDER AND ORDER

[1] The Applicant, a citizen of Honduras, is requesting a stay of removal which is scheduled for tomorrow, April 30, 2013, at 6:00 a.m.

[2] The Applicant has disregarded the Immigration Laws of Canada by requesting a stay of removal for a Temporary Resident Permit application to be considered.

[3] A request was made for a Temporary Resident Permit by an individual who had no status in Canada other than stays which were granted to an applicant to train and prepare others to continue a business enterprise which was established in Canada subsequent to a refusal of refugee status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[4] Subsection 24(4) of the *IRPA* clearly states that "a foreign national whose claim for refugee protection has been rejected … may not request a temporary resident permit if less than 12 months have passed since their claim was last rejected …".

[5] After having spent more than three years illegally in the United States, and subsequent to a refusal of refugee protection status on November 5, 2012 by the Refugee Protection Division of the Immigration and Refugee Board, the Applicant made a first request to defer removal on February 13, 2013, which was refused. The Applicant did not, at the time, even mention a "Temporary Resident Permit".

[6] On February 28, 2013, the Applicant filed a Temporary Resident Permit application without asking for a deferral of removal until April 18, 2013.

[7] On the next day, April 19, 2013, a refusal in respect of the request for deferral of removal was communicated to the Applicant; however, the Applicant, nevertheless, waited for one week, for the weekend, Friday afternoon of April 26, 2013, before even serving the Respondents with an application for a stay of removal.

[8] The delay in proceeding with this latest stay of removal is most untoward in respect of the Immigration Laws of Canada, its Officials in the Immigration Service of Canada and of this Court:

> [19] The Applicant's lack of diligence demonstrates a lack of respect for the efficient administration of justice in immigration matters.
>
> [20] The words of Justice Yvon Pinard in *Matadeen v MCI*, IMM-3164-00 are particularly relevant in this case:
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> > …Indeed, "last minute" motions for stays force the respondent to respond without adequate preparation, do not facilitate the work of this Court, and are not in the interest of justice; a stay is an extraordinary procedure which deserves thorough and thoughtful consideration.
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> [21] For these reasons alone, it would be open to this Court to outrightly dismiss this stay motion.

(*Tsiavos v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 747).

[9] Removals Officers have the authority to defer removal in limited circumstances as specified in *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311:

> [49] It is trite law that an enforcement officer's discretion to defer removal is limited. I expressed that opinion in *Simoes v. Canada (M.C.I.)*, [2000] F.C.J. No. 936 (T.D.) (QL), 7 Imm.L.R. (3d) 141, at paragraph 12:
>
> > [12] In my opinion, the discretion that a removal officer may exercise is very limited, and in any case, is restricted to when a removal order will be executed…
>
> [50] I further opined that the mere existence of an H&C application did not constitute a bar to the execution of a valid removal order. With respect to the presence of Canadian-born children, I took the view that an enforcement officer was not required to undertake a substantive review of the children's best interests before executing a removal order.

> [51] Subsequent to my decision in *Simoes*, supra, my colleague Pelletier J.A., then a member of the Federal Court Trial Division, had occasion in *Wang v. Canada (M.C.I.)*, [2001] 3 F.C. 682 (F.C.), in the context of a motion to stay the execution of a removal order, to address the issue of an enforcement officer's discretion to defer a removal. After a careful and thorough review of the relevant statutory provisions and jurisprudence pertaining thereto, Mr. Justice Pelletier circumscribed the boundaries of an enforcement officer's discretion to defer. In Reasons which I find myself unable to improve, he made the following points:
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> – There are a range of factors that can validly influence the timing of removal on even the narrowest reading of section 48, such as those factors related to making effective travel arrangements and other factors affected by those arrangements, such as children's school years and pending births or deaths.
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> – The Minister is bound by law to execute a valid removal order and, consequently, any deferral policy should reflect this imperative of the Act. In considering the duty to comply with section 48, the availability of an alternate remedy, such as a right to return, should be given great consideration because it is a remedy other than failing to comply with a positive statutory obligation. In instances where applicants are successful in their H&C applications, they can be made whole by readmission.
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> – In order to respect the policy of the Act which imposes a positive obligation on the Minister, while allowing for some discretion with respect to the timing of a removal, deferral should be reserved for those applications where failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment. With respect to H&C applications, absent special considerations, such applications will not justify deferral unless based upon a threat to personal safety.
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> – Cases where the only harm suffered by the applicant will be family hardship can be remedied by readmitting the person to the country following the successful conclusion of the pending application.
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> I agree entirely with Mr. Justice Pelletier's statement of the law. [Emphasis in original]

[10] This Court considers that a late application for a stay of removal is a practice that must be discouraged as it demonstrates a disrespect and a disregard for the Immigration Laws of Canada and its Officials at all three levels of government: those who formulate policy, the legislators and the Court.

[11] For all of the above reasons, the stay or removal is denied.

ORDER

THIS COURT ORDERS that the Applicants application for a stay of removal be denied.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2987-13
STYLE OF CAUSE:	MANUEL ANTONIO MARTINEZ DIAZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	SHORE J.
DATED:	April 29, 2013

WRITTEN REPRESENTATIONS BY:

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