

Federal Court



Cour fédérale

**Date: 20130605**

**Docket: IMM-3748-13**

**Citation: 2013 FC 607**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, June 5, 2013**

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

**BETWEEN:**

**ADE SHAKIRU DOSUNMU**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The applicant is seeking a stay of the removal order against him.

[2] The removal of the applicant, Ade Shakiru Dosunmu, to Nigeria is scheduled for Tuesday, June 11, 2013, at 3:00 p.m.

[3] According to the test in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA), the applicant must demonstrate that the three conjunctive requirements exist: a serious issue to be argued in an application for leave and judicial review; a risk of irreparable harm; and a balance on convenience in his or her favour.

[4] Upon his arrival in Canada the applicant was in possession of forged documents when Canadian customs officers found him hiding in an airport washroom. He claimed that he was a citizen of the Netherlands and that he faced a risk in that country; he also indicated that he feared returning to Nigeria.

[5] Since he arrived in Canada the applicant has committed criminal offences; and, following these offences, he has reoffended. Furthermore, he has shown a penchant for abuse of process by lying to Canadian immigration authorities.

[6] The applicant failed to appear at the airport as agreed, claiming that his spouse was in hospital and that he had to take care of his baby; however, after his detention, his spouse arrived to take her baby.

[7] Before the Refugee Protection Division (RPD), the applicant was found to have shown a flagrant lack of credibility, having changed his version of the facts several times; thus, his claim was deemed to have no credible basis. The RPD even noted that “[s]ince the claimant arrived in Canada, he kept changing his version of the facts of his claim, often as a result of the irrefutable proof of the falseness of his statements” (at para 43).

[8] The applicant raises no serious issue; the risks alleged in his motion before the Court were not, for the most part, submitted to the officer.

[9] The removals officer, despite the applicant's past, had already deferred his removal so he could be with his spouse when she gave birth.

[10] Little is known by the immigration authorities about the applicant's past, other than the criminal acts he has committed in Canada and to which he pleaded guilty: assault, section 266 of the Criminal Code of Canada, rendering him inadmissible by reason of criminality under paragraph 36(2)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The applicant also hid from the removals officer the fact that he had been charged with breach of conditions and arrested for fraud, having credit cards under several names on his person.

[11] The applicant's sponsorship application was refused following a decision by Citizenship and Immigration Canada (CIC) declaring him inadmissible.

[12] Following a motion to withdraw his guilty plea, a hearing is scheduled at the Quebec Court of Appeal for September 20, 2013.

[13] The applicant claims that his guilty plea was not a free and informed choice on his part, given that he was not warned of the impact such a plea would have on his immigration file in Canada.

[14] In addition, the applicant is facing two other charges at the Municipal Court of Montréal for breach of conditions and obstruction, the trial for which is scheduled for September 27, 2013. These charges have not been withdrawn.

[15] These preliminary factors, in and of themselves, could be determinative of the applicant's stay application. The remedy sought by the applicant is a remedy in equity. The Court has enough evidence to conclude that the applicant does not come before the Court with "clean hands". The Court could have decided not to consider the application on that basis alone; nevertheless, the Court gave extensive consideration to the stay application (see Federal Court of Appeal in *Moore v Canada (Minister of Citizenship and Immigration)*, 2001 FC 803).

[16] The applicant is essentially basing his stay application on factors that allow him to remain in Canada while he awaits a decision on his application for permanent residence on humanitarian and compassionate grounds, and not on any error on the part of a removals officer.

*A. Serious issue*

[17] The removals officer weighed all of the evidence that was available to him.

[18] After having heard the parties by a teleconference call and having considered their oral and written submissions, and based on all of the evidence in the record, the Court finds that the applicant has not raised any serious issue.

*B. Irreparable harm*

[19] The alleged risks raised by the applicant have been assessed and dismissed by both the Immigration and Refugee Board and by Citizenship and Immigration Canada, and now also by this Court. The applicant has been found to be completely lacking in credibility, and his claim to have no credible basis. The applicant's allegations can therefore not serve as a basis on which to argue irreparable harm.

[20] With respect to hardship to the family, the Court finds that the evidence entered in the record does not support the allegations of harm. The evidence is deficient and cannot serve as an adequate basis on which to grant a stay in order to prevent irreparable harm being caused.

*C. Balance of convenience*

[21] All in all, the applicant's record, given his criminal record and past dealings with immigration authorities, leads to a balance of convenience that instead favours the respondent. Subsection 48(2) of the IRPA provides that a removal order must be enforced as soon as is reasonably practicable.

Conclusion

[22] For all of these reasons, the application to stay the removal order is dismissed.

**ORDER**

**THE COURT ORDERS** that the motion for a stay of removal be dismissed.

“Michel M.J. Shore”

---

Judge

Certified true translation  
Sebastian Desbarats, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3748-13

**STYLE OF CAUSE:** ADE SHAKIRU DOSUNMU v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**MOTION CONSIDERED BY CONFERENCE CALL ON JUNE 5, 2013, BETWEEN  
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC.**

**REASONS FOR ORDER**

**AND ORDER:** SHORE J.

**DATED:** June 5, 2013

**WRITTEN AND ORAL SUBMISSIONS BY:**

Dimitrinka Saykova

FOR THE APPLICANT

Sonia Bédard

FOR THE RESPONDENT

**SOLICITORS OF RECORD**

Marin Guzun  
Counsel  
Montreal, Quebec

FOR THE APPLICANT

Mr. William F. Pentney  
Deputy Attorney General of Canada  
Montreal, Quebec

FOR THE RESPONDENT