

Federal Court



Cour fédérale

Date: 20130815

Docket: IMM-4800-13

Citation: 2013 FC 873

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, August 15, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

EL MELIANI BEN MOUMEN

Applicant

and

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

Respondent

REASONS FOR ORDER AND ORDER

[1] The Court has before it a motion for a stay of removal from Canada by the applicant.

[2] The applicant is faced with a removal order scheduled for August 19, 2013.

[3] The applicant filed an application for leave and judicial review of a refusal to defer his removal.

[4] An application for permanent residence is pending following the specific events clearly described.

[5] A Quebec Selection Certificate was issued on June 19, 2013, with the following note:

[TRANSLATION]

We wish to note that the approval of the undertaking and the issuance of the Quebec Selection Certificate does not mean obtaining permanent residence. In fact, your sponsor and accompanying family members would need to first satisfy the health, security and criminality requirements of the Government of Canada.

[6] The Court received detailed information from the respondent in the case on the basis of the clear evidence that the applicant is inadmissible to Canada as a result of criminality. See subsections 41(a) and 20(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). (None of this evidence was even mentioned by counsel for the applicant.)

[7] According to the respondent's materials and the detailed evidence from the United States and Canada:

Now, a search in the NCIC system came out with the result that Mr. El Meliani would have been under a four year probation order after having been convicted in 2006, in the State of Pennsylvania, of one count of robbery. The warrant would have been issued for the breach of the probation after the conviction in 2006 for an event that happened in 2004. Now, also, in 2004, he would have been convicted to conspiracy to commit a fraud in the United States for an event that would have happened in 2001. According to the Minister's representative, this might represent forgery in Canada, and that is the subject of an admissibility hearing which was postponed before this detention review started.

Now, an interview took place on the 1st of March 2010, during which Mr. El Meliani would have declared that he had been in Canada for two years illegally. He had entered in the trunk of a car at an Ontario border crossing. He had used people that he had met in New York to enter Canada. He would be the owner of two clothing boutiques in the United States. This is according to the Minister's notes.

Now, in 1993, Mr. El Meliani would have left Morocco. He would have travelled extensively in Algeria, Libya, China, Hong Kong, and I learned during this hearing that he would also have travelled to Australia. He would have been a marathon runner and a trainer. In 1996 or 1997 he would have entered the United States of America, following which he would have married a U.S. citizen. Would have applied for a green card, and I learned from his own testimony that he would have been a processor of a green card for two years until he had the problems with criminality in the United States it seems. In 2001 the first charges of fraud would have happened. And in 2008 he would have entered Canada.

[8] Following an analysis of the test in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA), the applicant did not meet any criteria of the tripartite conjunctive test.

[9] Therefore, the Court dismisses the motion for a stay.

JUDGMENT

THE COURT ORDERS that the applicant's motion for a stay is dismissed.

"Michel M.J. Shore"

Judge

Certified true translation
Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4800-13

STYLE OF CAUSE: EL MELIANI BEN MOUMEN v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

**MOTION HEARD BY CONFERENCE CALL ON AUGUST 15, 2013, BETWEEN
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC**

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

DATE OF REASONS: August 15, 2013

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