

Federal Court



Cour fédérale

Date: 20141017

Docket: IMM-5123-13

Citation: 2014 FC 860

Ottawa, Ontario, October 17, 2014

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

AJEET SINGH

Applicant

and

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

Respondent

AMENDED JUDGMENT AND REASONS

[1] Mr. Ajeet Singh seeks judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], of a decision of the Canada Minister of Canada Border Services Agency's delegate [Removal Officer], dated July 26, 2013, denying his request to defer his removal from Canada to India as he required a heart operation that was scheduled the following month. The surgery has since been performed and at least 180 days have elapsed since then.

[2] For the reasons discussed below, this application for judicial review will be dismissed.

Background

[3] The applicant is a citizen of India. He came to Canada in August 2011 on a work permit, and claimed refugee protection as a young baptized Sikh religious singer and drummer, having suffered severe torture. He started experiencing medical problems shortly thereafter.

[4] On October 5, 2012, the Refugee Protection Division of the Immigration and Refugee Board dismissed the applicant's refugee claim, finding that he did not have a credible fear of persecution, and, alternatively, that he had an internal flight alternative in India. This Court did not grant leave and judicial review of that decision.

[5] On June 5, 2013, the applicant was advised that his removal was to take place on July 17, 2013.

[6] On July 16, 2013, the applicant asked the Removal Officer for a deferral of his removal because he was to have heart surgery to replace an aortic valve. He claimed he would not be able to afford this necessary surgery in India. He specifically requested a deferral of 180 days following his surgery date. The officer refused his request, as not enough details had been provided by the applicant to explain that his medical condition prevented him from traveling.

[7] On July 17, 2013, the applicant was a "no show" for his removal at the airport.

[8] On July 26, 2013, the applicant was called for another interview. He did not attend.

[9] On July 30, 2013, the applicant was arrested and advised that he was to be removed on August 2, 2013.

[10] On August 2, 2013, he applied to the Court for a stay of removal. However, this application was not presented as the respondent accepted to administratively stay the applicant's removal.

[11] Shortly thereafter, the applicant was advised that he was to be removed on August 11, 2013.

[12] The applicant again requested a deferral of his removal. The Removal Officer denied it once more, finding that there was no reason to defer the deportation under section 25 or subsection 3(3) (f) of the Act. This is the impugned decision before the Court.

[13] On August 9, 2013, this Court granted the applicant a stay of removal until the present application for leave and judicial review is disposed of. The applicant was operated on in early September 2013.

The Impugned Decision

[14] The Removal Officer found that the medical notes submitted by the applicant do not give sufficient information to demonstrate that the applicant could not travel by plane back to India.

His need for aortic valve replacement surgery does not prevent him from traveling. The Removal Officer also noted that the applicant continued to work as a machinist while he was asking for a deferral of his removal.

[15] The Removal Officer relied on a report prepared by Dr Patrick Thériault, a medical doctor employed by the Minister of Citizenship and Immigration in Ottawa, finding that the applicant could travel by airplane with his condition, and that Indian hospitals could provide the treatment required by the applicant. Dr Thériault did not personally evaluate the applicant, but relied on the evidence in the applicant's file (his doctors' diagnoses) to arrive at his opinion. The Removal Officer also adopted the Doctor's suggestion that the Minister should send a nurse on the flight with the applicant, as well as provide him with oxygen during his passage to India.

Issues and Standard of Review

[16] The applicant submits a number of issues which, with all due respect, are not relevant to the case at bar. This application for judicial review raises the following issues:

1. Is the application now moot, as the applicant has been operated on and as more than 180 days have elapsed since the surgery?
2. If the applicant's application is not moot, did the Removal Officer's conclusions fall within the range of possible and acceptable outcomes?

Analysis

[17] The doctors' notes on behalf of the applicant stress that he "should not attempt traveling nor any activities requiring physical or emotional stress while waiting for his surgery." I have nothing before me to indicate that the applicant has not recovered from his surgery, or, alternatively, that even upon recovery, he would still be exposed to a risk to his life by boarding an airplane. Moreover, the applicant originally requested a 180 day deferral from the date of his surgery. The requested time period has lapsed. Accordingly, there is no live issue before this Court.

[18] I am aware that the applicant argues that returning to the place where he allegedly was tortured could expose him to considerable emotional stress, which may not be good for his heart. However, when the Minister does indeed proceed with his deportation, there is nothing preventing the applicant from requesting another administrative stay. In doing so, he would have to provide convincing new medical evidence to the Minister, indicating that his return to India would jeopardize his health, should that in fact be the case. Before the Court, all there is is the applicant's counsel argument that the applicant will face a certain death should he be removed to India. That is speculative and unsupported by the evidence.

[19] Therefore, this application for judicial review is moot (*Banga v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1332; *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81; *Hakeem v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 1302); *Joseph v Canada (Minister of Public Safety and*

Emergency Preparedness), 2013 FC 562; *Ren v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 1345).

[20] The applicant's counsel proposes the following questions of general importance for certification:

1- What is the duty of a CBSA removals officer in the presence of several requests from medical practitioners, in this case cardiologists, that say that a person should not travel or suffer any undue stress? Is there an obligation to seek medical advice in this situation? What is the obligation of this agent of the state?

2- Does the decision-maker have an obligation to inform herself fully before allowing a deportation that would put the applicant's life at risk under general administrative law principles or following the Canadian Charter of Rights and Freedoms? Is it necessary for the cardiologists involved to use the words 'life-threatening' for the CBSA agent to check on the situation?

[21] As those questions are all academic, they are not dispositive of this case, nor would they be dispositive of an appeal; they will not be certified (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 168).

[22] On September 16, 2014, Counsel for the respondent asked the Court to modify the style of cause to replace the Minister of Citizenship and Immigration by the Minister of Public Safety and Emergency Preparedness as the respondent. The applicant does not oppose that request.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The Minister of Public Safety and Emergency Preparedness is substituted to the Minister of Citizenship and Immigration as respondent; and
3. No question of general importance is certified.

"Jocelyne Gagné"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5123-13

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AND IMMIGRATION

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