

Federal Court



Cour fédérale

Date: 20141027

Docket: IMM-6743-14

Citation: 2014 FC 1021

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 27, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GERARDO ALFONSO REVOLORIO MUNOZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The applicant does not present his application for a stay of removal before this Court with clean hands. His conduct in Canada is a major barrier to the equitable remedy he is seeking.

[4] It is well established law that the issuing of a stay is an equitable remedy that will only be granted where the applicant appears before the court with clean hands. See *Khalil v. Canada (Secretary of State)* [1999] 4 F.C. 661 para 20, *Basu v. Canada* [1992] 2 F.C. 38, *Ksiezopolski v. M.C.I. & S.G.C.* [2004] F.C.J. No. 1715.

[5] In this case the applicant has anything but clean hands. She has shown a constant and persistent disregard for Canadian family law, criminal law and immigration law. It would be encouraging illegality, serve a detrimental purpose and be contrary to public policy if the court were to grant her the relief sought.

[6] Accordingly, given the circumstances of this case, the court is not prepared to exercise any equitable jurisdiction in respect of the applicant.

(Brunton v Canada (Minister of Public Safety and Emergency Preparedness), 2006 FC 33)

[2] The applicant came to Canada from Guatemala in 1986.

[3] He became a permanent resident under the *Refugee Claimants Designated Class Regulations*.

[4] The applicant was convicted of the following offences:

- (a) Trafficking in cocaine, being guilty of an indictable offence and liable to imprisonment, under subsection 5(1) and paragraph 5(3)(a) of the *Controlled Drugs and Substances Act*; and
- (b) Possession for the purpose of trafficking in cocaine, being guilty of an indictable offence and liable to imprisonment, under subsection 5(2) and paragraph 5(3)(a) of the *Controlled Drugs and Substances Act*.

[5] The applicant is inadmissible on grounds of serious criminality under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act* [IRPA].

[6] A notice of appeal from the Immigration Appeal Division [IAD] was filed by the applicant to take action against the removal order.

[7] The appeal was found to be abandoned by the IAD. The finding following a request for a review and a pre-removal risk assessment [PRRA] also resulted in a rejection.

I. Issue

[8] Have the three conjunctive tests for obtaining a stay of removal been satisfied?

[9] None of the three conjunctive tests have been satisfied according to *Toth v Canada (Minister of Citizenship and Immigration)*, 86 NR 302 (FCA).

II. No serious issue

[10] The applicant was granted residence status under the *Refugee Claimants Designated Class Regulations*.

[11] Under these Regulations, Convention refugee or person in need of protection status was not applicable. Instead landed status was considered and granted. This Court makes the same finding (see *Chand v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 548, at paras 1, 5, 10, 14, 17, per Justice Russel W. Zinn; also *Asif v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1201; *Kanes v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 994).

[12] The PRRA officer was authorized under the Act to consider the matter before him under sections 96 and 97 of the IRPA; section 115 of the IRPA does not apply in this context.

[13] The applicant did not provide the PRRA officer with specific evidence that he would face personalized risks if he were to return to his country of origin. The general country conditions do not indicate a personalized fear on the part of the applicant.

[14] The onus is on the applicant to present the PRRA officer with evidence to support his or her application. The applicant did not submit any information to the PRRA officer establishing his fear of soldiers with respect to allegations of suspicions of a guerrilla past.

[15] The PRRA officer had no evidence establishing that the applicant feared that he would be in danger should he return to his country (*Vasanthakumar v Canada (Citizenship and Immigration)*, 2012 FC 74, para 7).

[16] Consequently, there is no serious issue given the lack of evidence specifically related to the applicant.

III. No irreparable harm

[17] As the applicant is neither a Convention refugee nor a person in need of protection, the principle of *non-refoulement* under section 7 of the *Canadian Charter of Rights and Freedoms* does not apply.

[18] Allegations and submissions by an applicant without any evidence of their basis cannot be considered as the basis for an objective fear.

[19] The Court finds that there is no irreparable harm given that it is speculative.

IV. Balance of convenience

[20] Subsection 48(2) of the IRPA provides for the duty to enforce a removal order as soon as possible.

[21] The integrity and inherent fairness of the immigration system lead to removal in this case (*Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, para 22).

[22] Because of the applicant being found inadmissible on the grounds of serious criminality as a result of the undisputed criminal offences he committed, the balance of convenience does not lie in the favour of the applicant, but rather in that of the respondent.

ORDER

THE COURT ORDERS that the applicant's application for a stay be dismissed. There is no question of general interest to certify.

“Michel M.J. Shore”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6743-14

STYLE OF CAUSE: GERARDO ALFONSO REVOLORIO MUNOZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 27, 2014

ORDER AND REASONS: SHORE J.

DATED: OCTOBER 27, 2014

APPEARANCES:

Marie Pierre Labbé

FOR THE APPLICANT

Lynne Prince

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marie Pierre Labbé
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT