Federal Court  Cour fédérale

Date: 20160120

Docket: IMM-63-16

Citation: 2016 FC 60

Vancouver, British Columbia, January 20, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

JACOB DAMIANY LUNYAMILA

Respondent

ORDER AND REASONS

[1] The Applicant appears before the Court with an application for a stay of the release order issued by a member of the Immigration Division (ID) of the Immigration and Refugee Board.

[2] The member ordered the release of the Respondent.

[3] The Respondent has been in detention since June 2013, as several members of the ID have determined that the Respondent is considered to be a flight risk and represents a danger to the public.

[4] In the *Thanabalasingham* judgment, the Federal Court of Appeal (2004 FCA 4), [2004] 3 FCR 572, at paragraph 24, stated the need to ensure that previous decisions be considered in a detention review, when previous decisions had been rendered. It was clearly specified that the ID member must give "clear and compelling reasons for departing from previous determinations".

[5] In this case, a disregard is manifestly noticed in that the member departed from previous decisions without clear and compelling reasons.

I. Serious Issue

[6] It must be recalled that between 1999 and 2013, uncontradicted facts on record establish that the Respondent had fifty-four criminal convictions, ten of which are for assaults between 2005 and 2013, with four convictions as a result of uttering threats and thirteen convictions for failing to appear in Court, in addition to the failure of compliance with orders, probation or recognizance. The last conviction was for sexual assault. It is primordial to recall in this case, the decision in Canada *(Minister of Citizenship and Immigration) v Li*. 2009 FCA 85, in regard to tribunal members who speculate instead of ensuring an analysis of the evidence submitted (In that regard paragraphs 62, 63, 66, 67 and 68 are most significant).

II. Irreparable Harm

[7] The application would be moot if the Respondent were to be released.

III. Balance of Convenience

[8] The Court considers that, should the stay of release from detention be granted, a new detention review will take place within thirty days and with the possibility that an expedited review will take place.

[9] If the stay of release from detention is not granted, the incidents of the past could be repeated as per the previous pattern of behaviour demonstrated to the Court.

[10] As the tripartite conjunctive test in *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 has been satisfied, therefore, the Court orders a stay of the release order of the ID dated January 5, 2016, until the Application for Leave and Judicial Review is determined on the merits.

ORDER

THIS COURT ORDERS a stay of the release order of the Immigration Division dated January 5, 2016, until the Application for Leave and Judicial Review is determined on the merits.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-63-16
STYLE OF CAUSE:	MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v JACOB DAMIANY LUNYAMILA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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ORDER AND REASONS:	SHORE J.
DATED:	JANUARY 20, 2016

APPEARANCES:

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