Federal Court

Cour fédérale

Date: 20181015

Docket: IMM-4005-17

Citation: 2018 FC 1029

Ottawa, Ontario, October 15, 2018

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ZAVAION FORDE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] One of the important functions of this Court is to ensure that the exercise of discretion by members of the executive branch of the federal government is within the scope that has been authorized by Parliament. The classic situation in which the Court is called upon to perform this role is when someone in the executive branch has taken, or is proposing to take, a course of action that is alleged to be beyond the scope of the discretion granted by Parliament. A second

type of situation is when one or more members of the public maintain that a decision-maker in the executive branch has arbitrarily excluded from consideration something that was within the scope of that person's discretion.

[2] In both of these types of situations, the Court must be vigilant to ensure that the exercise of discretion has been or will be in accordance with the law.

[3] In performing this role, the Court must give paramount importance to the law, even where the skillful and animated efforts of counsel to kindle and fan its compassion may have hit their mark. Any shirking of this weighty responsibility can have profound adverse effects on public confidence in the Court and in the rule of law. In the field of immigration law, this can also undermine public confidence in, and the integrity of, this country's immigration system, as compassionate considerations appear to be advanced on behalf of most applicants for judicial review who face removal from Canada.

[4] The foregoing observations are relevant to the first of the four issues that Mr. Forde has raised in this application for judicial review of a decision in which his request for a deferral of his removal from Canada was denied.

[5] Mr. Forde is a citizen of Jamaica. He became a permanent resident in this country upon his arrival in Canada in 2000.

[6] In 2009, he was found to be inadmissible on grounds of serious criminality. However, the Immigration Appeal Division [**IAD**] of the Immigration and Refugee Board subsequently stayed the Deportation Order that had been issued against him. In April 2016, after Mr. Forde was convicted of further offences, the IAD cancelled that stay of deportation.

[7] On August 31, 2017, Mr. Forde was served with the Direction to Report for removal from Canada on September 29, 2017. Approximately one week later, he submitted a request for a deferral of his removal. That request was denied.

[8] Mr. Forde submits that the Inland Enforcement Officer [the **Officer**] of the Canada Border Services Agency [**CBSA**] who rejected his request erred by:

i. fettering his discretion,

ii. ignoring and misconstruing evidence in the course of making unreasonable findings with respect to the medical and mental health grounds that he had advanced in support of his request,

iii. making unreasonable findings when assessing the best interests of his children and stepchildren, and

iv. ignoring and misconstruing evidence in the course of making unreasonable findings with respect to the personal hardship that he would face if removed to Jamaica.

[9] I disagree. For the following reasons, this application will be dismissed.

II. **Background**

[10] Mr. Forde has six children. He is the biological father of the two Canadian born daughters, aged seven and 11, from a prior relationship whom he sees regularly. In addition, he is a stepfather to his current partner's three children, aged six, 16 and 19. He also fathered a son with his current partner. That child was born in December 2017 following a high-risk pregnancy that is further discussed below.

[11] In February 2008, Mr. Forde was convicted of assaulting his ex-girlfriend and of failure to comply with a recognizance. The following month, he was convicted of sexual interference with his 13-year-old stepsister, which resulted in her pregnancy and a shared child. As a result of those convictions, he was determined to be inadmissible to Canada for serious criminality, pursuant to paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [**IRPA**]. A Deportation Order was then issued against him, which was stayed by the IAD in April 2010.

[12] In April 2016, that stay was cancelled after Mr. Forde violated several conditions imposed by the IAD. Those violations included conduct that resulted in convictions for several additional offenses, including two counts of assault against his ex-partner, possession of a controlled substance, theft under $5,000 and disobeying a court order. As a consequence of the cancellation of his stay of deportation, Mr. Forde lost his permanent resident status.

[13] On January 3, 2017, Mr. Forde was advised by the CBSA of a negative Pre-Removal Risk Assessment and that he may be removed from Canada at any point, pending his application before the Federal Court seeking judicial review of the IAD decision. On January 23, 2017, this Court dismissed Mr. Forde's application: *Forde v Canada (Minister of Public Safety and Emergency Preparedness),* 2017 FC 80.

[14] Although he is currently not authorized to work in Canada, Mr. Forde continues to do so, to support himself and his blended family.

[15] In his request for a deferral of his removal from Canada to Jamaica, Mr. Forde asked that his removal be deferred pending the final determination of his application for permanent residence under the Spouse or Common-Law Partner in Canada Class. That application was made on the same day as the Direction to Report was served on him, and only one week prior to his request for a deferral of removal.

[16] In his application for permanent residence, Mr. Forde also sought a waiver of his inadmissibility to Canada on humanitarian and compassionate [**H&C**] grounds, pursuant to s. 25 of the IRPA. Those H&C grounds included alleged severe emotional, financial and practical hardships that his removal from Canada would cause him, his partner (Ms. Kamaica Taylor) and his children.

[17] As an alternative to his request for a deferral of removal pending the final determination of his application for permanent residence, Mr. Forde requested a six-month deferral on several grounds, namely: to enable him to support Ms. Taylor during the final months of her high-risk pregnancy and during the post-partum period; to reduce the risk of his unborn son being born prematurely; to be present for his son's birth; and to make arrangements for his family that will reduce the hardships that they will suffer in his absence.

[18] On September 26, 2017, Justice Campbell granted a stay of Mr. Forde's deportation to Jamaica pending a final determination on the application that is now before me.

[19] Ms. Taylor gave birth to her infant son on December 16, 2017.

III. <u>**The Decision Under Review**</u>

[20] At the outset of the decision rejecting Mr. Forde's request for a deferral of his removal from Canada [the **Decision**], the Officer noted that the CBSA has an obligation under subs. 48(2)

of the IRPA to enforce removal orders "as soon as possible" and that enforcement officers have little discretion to defer removal.

[21] After briefly discussing Mr. Forde's application for permanent residence as a member of the Spouse or Common-Law Partner in Canada Class, the Officer observed that "there is insufficient evidence to demonstrate that a decision on Mr. Forde's spousal sponsorship application is imminent or that he cannot be sponsored to Canada from abroad." (Emphasis added.)

[22] Notwithstanding that observation, the Officer proceeded to assess Ms. Taylor's pregnancy, the best interests of the affected children and the hardships that Mr. Forde had identified in his request for deferral. In each case, the Officer found that insufficient evidence had been provided to support Mr. Forde's submissions, or certain related hardships. The Officer also appeared to embrace the IAD's finding that "the greater interests of Canadians for safety must trump the best interests of a child in this case."

[23] In addition, the Officer considered it to be "important to note" two things. The first was that Mr. Forde had been granted a five year stay of his removal from Canada based on H&C considerations, yet continued to engage in criminal conduct. The second was that Mr. Forde had been aware of his impending removal from Canada since January 2017, and therefore had ample time to make the necessary preparations for that removal.

[24] Based on the foregoing, the Officer stated that, having carefully considered Mr. Forde's request, a deferral of the execution of the removal order was not appropriate in the circumstances of this case.

IV. Relevant Legislation

[25] Subsection 48(2) of the IRPA provides as follows:

Enforcement of Removal Orders	**Exécution des mesures de renvoi**
(…)	(…)
Effect	Conséquence
(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.	(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être exécutée dès que possible.
(Emphasis added.)	[Soulignement ajouté.]

V. Issues

[26] Mr. Forde has raised the following four issues in this Application:

i. Did the Officer err by fettering his discretion?

ii. Did the Officer err by ignoring and misconstruing evidence in the course of making unreasonable findings with respect to the medical and mental health grounds that Mr. Forde had advanced in support of his request?

iii. Did the Officer err by making unreasonable findings when assessing the best interests of Mr. Forde's children and stepchildren?

iv. Did the Officer err by ignoring and misconstruing evidence in the course of making unreasonable findings with respect to the personal hardship that Mr. Forde would face if removed to Jamaica?

VI. **Standard of Review**

[27] It is unnecessary to definitively determine whether the standard of review applicable to the first issue that has been raised by Mr. Forde is correctness or reasonableness. This is because the result will be the same under either of those standards, since a decision that is the product of fettered discretion is *per se* unreasonable: *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299, at para 24; *Danyi v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 112, at para 19 [***Danyi***].

[28] The standard of review applicable to the remaining three issues that have been raised by Mr. Forde is reasonableness: *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, at para 43 [***Lewis***]. In assessing whether a decision is reasonable, the focus of the Court is generally upon whether the decision is appropriately intelligible, transparent and justified. In this regard, the Court's task will be to assess whether it is able to understand why the decision was made and to ascertain whether the decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47 [***Dunsmuir***]. A decision that is "rationally supported" will

generally fall within this range: *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, at para 47.

VII. **Analysis**

A. *Did the Officer err by fettering his discretion?*

[29] Mr. Forde submits that the Officer fettered his discretion by imposing an arbitrary limitation on the duration of the deferral that he had the discretion to grant. This error is alleged to have been committed when the Officer concluded that there was insufficient evidence to demonstrate that a decision on his spousal sponsorship application was "imminent." I disagree.

[30] In support of his position, Mr. Forde relies on this Court's decisions in *Ortiz v Canada (Public Safety and Emergency Preparedness),* 2017 FC 931 [***Ortiz***] and *El Sayed v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 802 [***El Sayed***].

[31] In *Ortiz*, it appears that the applicant requested a deferral of his removal from Canada until a final determination could be made on his H&C application. The Court was later informed that such H&C application had not been submitted until approximately two weeks after Mr. Ortiz had made his deferral request. After observing that an H&C application can take approximately 34 months to process, the Respondent argued that this duration fell outside the parameters of the short-term deferrals that CBSA enforcement officers can grant. In rejecting that position, the Court observed that it had "not been referred to any jurisprudence to the effect that there is a particular outside limit on the duration of a deferral that an Officer has the discretion to grant",

Ortiz, above, at para 13. The Court added that a "deferral until an H&C application has been decided is still temporary in nature …" In support of this proposition, the Court cited *Martinez v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1341 [***Martinez***].

[32] The Court's comments in *Ortiz* were *obiter dictum*, as the decision in that case turned on the removals officer's treatment of the evidence and submissions regarding the effect that Mr. Ortiz's removal would have on his four-year-old son, who was severely autistic: *Ortiz*, above, at paras 2 and 7. In any event, there is, in fact, jurisprudence that has established an outside limit on the duration of a deferral that a removals officer has discretion to grant. Indeed, Parliament has also explicitly established a limit in subs. 48(2) of the IRPA.

[33] Moreover, *Martinez* is no longer good authority in support of the proposition that a removals officer has the discretion to defer removal pending an indeterminate decision on an outstanding H&C application. This is particularly so where the H&C application was not yet filed, or was filed shortly before, the applicant's request for a deferral of his or her removal from Canada.

[34] *Martinez* involved a motion for a stay of removal from Canada. That motion appears to have been brought shortly after the applicant's request for a deferral of his removal from Canada, and approximately one month or so after his request for an H&C exemption pursuant to s. 25 of the IRPA. The Court found that the issue of whether an undecided H&C application was a bar to the removal of the applicant constituted a serious issue to be tried, because that application was based in part on the best interests of the applicant's children in Canada, and this country is a

signatory to the United Nation's *Convention on the Rights of the Child*, 20 November 1989, Can TS 1992 No 3 (entered into force 2 September 1990): *Martinez*, above, at para 13.

[35] Subsequent to *Martinez*, the Federal Court of Appeal has determined that an undecided H&C application is not a bar to the removal of a person from Canada, even where the person has children in Canada who may suffer adverse consequences as a result of their separation from their removed parent: *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, at paras 50-51 and 57 [***Baron***]; *Lewis*, above, at paras 56-57 and 80.

[36] Moreover, it is now settled law that an enforcement officer's discretion to defer removal is "very limited," and is restricted to deferring for a short period of time in situations "where failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment": *Baron*, above, at para 51; *Lewis*, above, at paras 54 and 83. In cases where a determination has not yet been made on a previously submitted H&C application, CBSA enforcement officers do not have the discretion to defer removal in the absence of "special considerations" or a "threat to personal safety": *Baron*, above, at para 51; *Danyi*, above, at paras 29-32. Even in such "special situations," as discussed below, there are important temporal limits on a removal officer's discretion to defer removal. It does not appear that the Court's attention in *Ortiz*, above, was drawn to the foregoing jurisprudence and its progeny.

[37] Turning to *El Sayed*, Mr. Forde relies on the Court's acceptance of the proposition that the Officer in that case had the discretion to defer removal until a determination had been made on the applicant's outstanding spousal sponsorship application. The Court's view was that this

would preserve the possibility that the applicant's removal and the harm associated with that removal could thereby be permanently avoided, should the sponsorship application succeed: *El Sayed*, above, at para 24. Given that such application had been made less than three weeks prior to the applicant's request for a deferral of his removal, it can be inferred that the Court recognized that it may well have taken several months, or longer, for a determination on the application to be made.

[38] As in *Ortiz*, it does not appear that the Court's attention in *El Sayed* had been drawn to binding jurisprudence on this point. Specifically, in *Lewis*, which was issued shortly before *El Sayed*, the Court observed that "it is only where a timely H&C application is still pending due to a backlog in processing that a deferral may be warranted" (emphasis added): *Lewis*, above, at para 81; *Baron*, above, at para 49. The Court in *Lewis* explained that were it otherwise, a person subject to a removal order could forestall his or her removal from Canada by filing an H&C application shortly before a scheduled removal, thereby creating "a large loophole" in the IRPA: *Lewis*, above, at para 80.

[39] The same logic would apply to pending spousal sponsorship applications.

[40] To permit a person to avoid removal from Canada by filing a spousal sponsorship or an H&C application shortly before the scheduled removal, or indeed well after being notified that he or she is subject to removal, would be contrary to the principles articulated in *Lewis* and the jurisprudence cited therein. Pursuant to that case law, a removals officer is not entitled to defer removal where a decision on an outstanding application is unlikely to be imminent: *Baron*,

above, at para 80; *Newman v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 888, at paras 28-34 [***Newman***]; *Singh v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 403, at para 7. Moreover, a removals officer does not have the discretion to defer removal to an indeterminate date: *Baron*, above, at para 80; *Fatola v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 479, at para 33. Rather, the "special considerations" that may warrant deferral must be associated with the impending or imminent removal being challenged and cannot be more than temporary in nature: *Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286, at para 45; *Newman*, above, at para 33. In this context, the word "temporary" cannot be construed as including a deferral of indeterminate or lengthy duration.

[41] The exercise of discretion to permit a person to avoid removal in circumstances that go beyond the very limited situations described above would also be inconsistent with the plain language and the underlying spirit of subs. 48(2) of the IRPA, which requires that removal orders be enforced "as soon as possible." My conclusion on this latter point is reinforced by the fact that in 2012, Parliament substituted the "as soon as possible" wording for the prior "as soon as is reasonably practicable" wording. In so doing, it clearly communicated an intention to significantly limit the temporal scope of a removals officer's discretion to defer, and to reduce that discretion from what it previously had been.

[42] Having regard to all of the foregoing, the Officer cannot be said to have fettered his discretion by appearing to take the position that he could not grant a deferral based on Mr. Forde's pending spousal sponsorship application, on the basis that there was insufficient

evidence to demonstrate that a decision on that application was "imminent." In brief, there was no evidence as to the timing of a decision on that application. As such, the timing was "indeterminate," and beyond the scope of the discretion of the Officer.

[43] I pause to observe that the jurisprudence discussed above, and the wording in subs. 48(2), are difficult to reconcile with any suggestion that the outside limit of the duration of a removals officer's discretion extends beyond a few months or so. In my view, such an outside limit appears to be contemplated by the change of the wording in subs. 48(2) from "as soon as is reasonably practicable" to "as soon as possible." An outside limit would also appear to be contemplated by the teachings that have required pending H&C applications to be "imminent," and that have specified that only "short term" considerations, including those related to "travel arrangements, illness or health issues, the end of a child's school year, imminent births and deaths, etc." can be taken into account by a removals officer: *Baron*, above, at para 80; *Lewis*, above, at 82; *Newman*, above, at para 28.

[44] In addition to the indeterminate status of a decision on Mr. Forde's outstanding spousal sponsorship application, Mr. Forde failed to make that application in a timely fashion: *Baron*, above, at para 49; *Lewis*, above, at paras 55 and 81; *Crawford v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 743, at para 47. The application was made on the same date (August 31, 2017) that he was served with the Direction to Report for removal from Canada, and only one week before he made his request for a deferral of removal. In my view, Mr. Forde's failure to submit his spousal sponsorship application on a more timely basis constitutes a

separate and distinct basis upon which to conclude that the Officer did not fetter his discretion in the manner that Mr. Forde has alleged.

[45] Furthermore, given the jurisprudence that I have mentioned at paragraphs 38-40 above, it cannot be said that the Officer erred by adopting a position that is consistent with that jurisprudence, even if other jurisprudence from this Court might support Mr. Forde's position: *Garcia Kanga v Canada (Citizenship and Immigration)*, 2012 FC 482, at para 11. Stated differently, given the extent of the former jurisprudence, the Officer did not fetter his discretion when he declined to take Mr. Forde's pending spousal sponsorship application (which incorporated his H&C application) into account, on the basis that a decision on that application was not "imminent."

[46] I will simply add in passing that the Officer ultimately did, in fact, consider the principal H&C submissions that were advanced by Mr. Forde in support of his request for a deferral of his removal. The Officer's treatment of those submissions will be discussed below.

B. *Did the Officer err by ignoring and misconstruing evidence in the course of making unreasonable findings with respect to the medical and mental health grounds that Mr. Forde had advanced in support of his request?*

[47] Mr. Forde submits that the Officer's treatment of his submission that Ms. Taylor's high-risk pregnancy presented a serious risk of harm to both her and her unborn child was unreasonable in several respects. He takes the same position regarding the Officer's treatment of his submissions regarding Ms. Taylor's need for his support during the post-partum period.

[48] I have some sympathy with some of those submissions. However, Ms. Taylor, who was in the final trimester of her pregnancy at the time Mr. Forde made his request for a deferral of removal on September 8, 2017, proceeded to give birth to their son on December 16, 2017. Her post-partum period has now long passed. The same is true with respect to the six-month deferral that Mr. Forde requested in the alternative, to enable him, among other things, to support Ms. Taylor during the final months of her high-risk pregnancy and during the post-partum period (see paragraph 17 above).

[49] Accordingly, the issues that Mr. Forde has raised in respect of the Officer's treatment of Ms. Taylor's pregnancy and her post-partum period are now moot and it is not immediately apparent why I should exercise my discretion to address those issues on their merits: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, at 353. For greater certainty, the facts of this case are sufficiently unique that I do not consider that it would advance the interest of justice for me to do so: *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, at para 17.

[50] Turning to Ms. Taylor's mental health, Mr. Forde submits that the Officer unreasonably dealt with the medical and other evidence regarding her "long term struggle with mental health" and the impact that his sudden removal from Canada would have on her and her ability to care for their children. He adds that the Officer's treatment of the evidence that he presented regarding Ms. Taylor's chronic foot pain and her related inability to stand for a prolonged period of time was also unreasonable.

[51] I am very sympathetic to the situation in which Ms. Taylor will find herself when Mr. Forde is ultimately removed from Canada. However, the Officer's treatment of the issues that Mr. Forde raised with respect to Ms. Taylor's mental and physical health was not unreasonable. This is because the various adverse impacts on Ms. Taylor that Mr. Forde identified in his request for deferral are all consequences that she will experience regardless of when Mr. Forde is removed. While some of these consequences will no doubt be exacerbated in the "short term," immediately following Mr. Forde's departure, it is not apparent how any of those consequences will be any different from what Ms. Taylor will experience in the short term whenever Mr. Forde is removed from Canada. In brief, they are not the type of "temporary" considerations that are within the scope of a removals officer's discretion to consider. They are not similar to any of the types of short-term, temporary, consequences identified in the jurisprudence discussed in paragraphs 40 and 43 above.

C. *Did the Officer err by making unreasonable findings when assessing the best interests of Mr. Forde's children and stepchildren?*

[52] Mr. Forde submits that the Officer's assessment of the best interests of his children was flawed in several different ways.

[53] First, he asserts that the Officer failed to recognize that the hardship that they would suffer upon his removal could be significantly mitigated if he were granted a six-month deferral to make transitional financial and other arrangements for them. In this regard, he adds that the Officer unreasonably speculated about how his family could cope if he were suddenly removed from Canada without such arrangements in place.

[54] Second, Mr. Forde maintains that the Officer erred by failing to undertake a particularized assessment of the best interests of each of his children.

[55] Third, Mr. Forde submits that the Officer ignored the fact that the best interests of three of his children have never been previously assessed, and that his pending sponsorship application will provide an opportunity for this to occur, while he is present in Canada.

[56] Fourth, he states that the Officer unreasonably speculated that his children could maintain contact with him by travelling to visit him in Jamaica.

[57] In my view, the Officer's treatment of the submissions made by Mr. Forde in respect of the best interests of his children did not result in his decision being unreasonable.

[58] As with the submissions that Mr. Forde made regarding Ms. Taylor's mental and physical health, the submissions that he made regarding the interests of his children did not involve any "temporary" or "short term" interests that were within the Officer's scope of discretion to consider.

[59] In particular, the financial and other transitional impacts that he identified in his request for a deferral of his removal were all essentially the same types of impacts that his children and Ms. Taylor will suffer regardless of when he is removed from Canada. With one exception, Mr. Forde did not identify any consideration that would be any different from the situation that his children will face whenever his is removed from Canada. The sole exception was the loss of

his infant son's "opportunity to bond with his father during his first few months of life" and that son's ability to benefit from his father's support during that period. However, that period has now passed, as his son was born almost ten months ago.

[60] In the absence of any specific submissions regarding the temporary or short term interests of Mr. Forde's other children, beyond what I have already addressed above, Mr. Forde has not identified anything that was before the Officer that was within the scope of his discretion to consider, such as the types of considerations identified in *Lewis*, above, at para 83. As the Federal Court of Appeal has observed, "… one of the unfortunate consequences of a removal order is hardship and disruption of family life." *Baron*, above, at para 69. As a result, the adverse consequences that are typically experienced by children who remain in Canada following a parent's removal to another country typically will not justify deferral of such removal: *Nguyen v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 225, at para 25. This will be especially so in circumstances such as the present, where there is a reasonable basis for considering that the parent facing removal poses a public safety risk. In such circumstances, it is not unreasonable to give priority to the safety of the public.

[61] Similarly, the fact that the pending sponsorship application provided an opportunity for the best interests of some of his children to be considered for the first time was not within the scope of the Officer's discretion to consider, as the timing of a decision on that application was indeterminate: see discussion at paragraph 41 above.

[62] Finally, the hardships that Mr. Forde has identified in relation to the inability of his children to travel to visit him in Jamaica are also not the type of temporary or short-term considerations that are within the scope of the Officer's "very limited" discretion. In brief, those hardships would be the same regardless of when Mr. Forde is removed from Canada. Mr. Forde did not identify how those hardships might be less if his removal to Jamaica were deferred for a period of a few weeks or months.

[63] I pause to add that in his alternative request for a deferral of six months, Mr. Forde submitted that he required such time to make arrangements for his family that would reduce the hardships that they will suffer in his absence. However, Mr. Forde had more than six months to make those arrangements between the time he was informed (in January 2017) that he may be removed from Canada and the time when he made his request for a deferral of his removal to Jamaica (in September 2017).

D. *Did the Officer err by ignoring and misconstruing evidence in the course of making unreasonable findings with respect to the personal hardship that Mr. Forde would face if removed to Jamaica?*

[64] Mr. Forde submits that the Officer unreasonably assessed the hardships that he would face in Jamaica, including by engaging in speculation and failing to fully appreciate the nature of those hardships.

[65] However, once again, Mr. Forde failed to identify any particular temporary or short-term consideration that was within the scope of the Officer's discretion to consider. The various

hardship factors that Mr. Forde identified were all factors that will be the same, regardless of when he is removed to Jamaica.

[66] Accordingly, it was not unreasonable for the Officer to have failed to have given greater weight or consideration to those factors in reaching his decision. This is particularly so given the risk to the Canadian public identified by the Officer.

VIII. **Conclusion**

[67] For the reasons set forth above, this application will be dismissed. In brief, the Officer did not fetter his discretion in the manner described by Mr. Forde and the Officer's assessment was not unreasonable for any of the reasons that Mr. Forde has advanced. In this latter regard, it bears reiterating that "non-citizens, whether they be foreign nationals or permanent residents, do not have the right to have H&C considerations imported and read into every provision of the IRPA, the application of which could jeopardize their status in Canada": *Canada (Citizenship and Immigration) v Bermudez*, 2016 FCA 131, at para 38. The appropriate vehicle for H&C issues to be considered is an application under s. 25 of the IRPA.

[68] At the end of the hearing of this application, counsel to the parties stated that the facts and issues in this case do not give rise to a serious question of general importance for certification, pursuant to paragraph 74(d) of the IRPA. I agree. Accordingly, no question will be certified.

[69] Before concluding, I consider it necessary to comment upon the use of hyperbole. I and other members of the Court have discouraged its use in several presentations to the bar in recent years. However, such language continues to be used. For example, the written submissions of one of the parties to this proceeding are replete with terms such as “deeply flawed,” “gross inadequacy of the Officer’s assessment,” “profoundly unreasonable,” “glaring example,” “dire situation,” and references to a family being “plunged into poverty”. Such language does not assist to advance a party’s case.

JUDGMENT in IMM-4005-17

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. There is no question for certification.

"Paul S. Crampton"

Chief Justice

APPENDIX 1 — Relevant Legislation

***Immigration and Refugee Protection Act*, SC 2001, c 27**

Status and Authorization to Enter

Humanitarian and compassionate considerations — request of foreign national

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

(…)

Inadmissibility

Serious criminality

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six

***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27**

Statut et autorisation d'entrer

Séjour pour motif d'ordre humanitaire à la demande de l'étranger

25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

(…)

Interdictions de territoire

Grande criminalité

36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de

months has been imposed;	six mois est infligé;
(…)	(…)
Enforcement of Removal Orders	**Exécution des mesures de renvoi**
Enforceable removal order	*Mesure de renvoi*
48 (1) A removal order is enforceable if it has come into force and is not stayed.	48 (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.
Effect	*Conséquence*
(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.	(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être exécutée dès que possible.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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