Federal Court Cour fédérale

Date: 20200317

Docket: IMM-1218-20

Citation: 2020 FC 387

Ottawa, Ontario, March 17, 2020

PRESENT: THE CHIEF JUSTICE

BETWEEN:

KENTON TRISTON KEIR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

ORDER

UPON MOTION by the Applicant, Kenton Triston Keir, for an Order staying the execution of the removal order scheduled to be executed tomorrow (March 18, 2020) until such time as his underlying Application for Leave and for Judicial Review [the **Underlying Application**] has been finally determined;

AND UPON considering that the Underlying Application concerns an opinion [the **Danger Opinion**] issued by a delegate of the Minister of Immigration, Refugees and Citizenship

[the **Officer**] that the Applicant constitutes a danger to the public in Canada, as contemplated by paragraph 115(2)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the **IRPA**];

AND UPON considering that the issuance of the Danger Opinion would allow the Applicant to be removed from Canada under two Deportation Orders issued in 2013, even though he is a Convention refugee;

AND UPON considering the tripartite test to be satisfied in a motion for a stay of removal from Canada, which requires Mr. Keir to demonstrate, on a balance of probabilities, that (i) the Underlying Application raises a serious issue to be tried; (ii) he will suffer irreparable harm if he is removed to St. Vincent and the Grenadines; and (iii) the balance of convenience favours the granting of the stay: *RJR-MacDonald Inc v Canada* (*Attorney General*), [1994] 1 SCR 311, at 348 (SCC) [***RJR MacDonald***]; *R v Canadian Broadcasting Corp*, 2018 SCC 5, at para 12 [***CBC***]; *Toth v Canada* (*Minister of Employment and Immigration*) (1988), 86 NR 302 (FCA) [***Toth***]; *Akyol v Canada (Minister of Citizenship & Immigration)*, 2003 FC 931 at para 7 [***Akyol***];

AND UPON considering that the tripartite test is conjunctive, such that Mr. Keir must meet each of the three prongs of the test: *Janssen Inc. v Abbvie Corporation*, 2014 FCA 112;

AND UPON reviewing and considering the written materials submitted on behalf of the parties as well as the verbal submissions made by counsel this afternoon;

AND UPON concluding that Mr. Keir has not succeeded in satisfying any of the three prongs of the tri-partite test;

THIS COURT ORDERS that:

1. This motion is dismissed for the reasons set forth in the Endorsement below; and

2. The style of cause is amended as reflected on the first page of this decision.

ENDORSEMENT

[1] Mr. Keir is a citizen of St. Vincent and the Grenadines [**SVG**]. He came to Canada in 2002, when he was nine years old. He has not returned to that country since that time and has no family or other support system there. In 2004, he was granted refugee status based on his fear of harm at the hands of his stepfather.

[2] In 2011, Mr. Keir was the subject of an inadmissibility report issued pursuant to s. 44 of the IRPA, on grounds of serious criminality, as contemplated by paragraph 36(1)(a) of that legislation. That report was issued after he was convicted of three counts of robbery. He was also found to be inadmissible on grounds involvement in organized criminality, pursuant to paragraph 37(1)(a), based on his connections with the Eglinton West Crips gang.

[3] In 2016, Mr. Keir was the subject of a second inadmissibility report, after being convicted of several additional offences, for which he was sentenced to a total of seven years and three months' imprisonment. In total, he has now been convicted of committing 10 offences, in five separate sentencing hearings. He has also been found guilty of 14 institutional charges while incarcerated at various institutions. After completing his latest term of imprisonment, he was transferred to immigration detention while he awaits his removal from Canada.

[4] In the Danger Opinion, the Officer concluded that "Mr. Keir's criminal activities were serious and dangerous to the public," and that there was "minimal evidence of rehabilitation or prospect of rehabilitation". On that basis, the Officer further concluded that "Mr. Keir represents a present and future danger to the Canadian public", such that his "presence in Canada poses an unacceptable risk."

[5] In addition, the Officer found that "Mr. Keir will not likely personally face a risk to life, liberty or security of the person on a balance of probabilities." Furthermore, the Officer was not satisfied that the humanitarian and compassionate [**H&C**] grounds identified by Mr. Keir tipped the balance in favour of exercising his discretion in favour of Mr. Keir.

(i) Serious issue to be tried

[6] Mr. Keir submits that there are several serious issues to be tried with respect to the Danger Opinion. I disagree.

[7] In particular, Mr. Keir maintains that the Officer applied an overly narrow approach to the assessment of the risks to his "life, liberty or security of the person" that he identified in connection with s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 [the ***Charter***]. He states that the Officer impermissibly limited himself to the risks described in sections 96 and 97 of the IRPA, and that the Officer erred in suggesting that he had to demonstrate a personal risk, as opposed to a general risk faced by the population.

[8] I disagree. In his submissions to the Officer, the only "risk to life, liberty or security of the person" identified by Mr. Keir was risk at the hands of his stepfather. That risk was squarely addressed by the Officer, who found that there was no evidence to demonstrate that Mr. Keir's stepfather has continued to threaten him or to make contact with the family since he and his mother arrived in Canada almost 18 years ago. Mr. Keir has not identified any such evidence in the record.

[9] Moreover, notwithstanding the narrow focus of Mr. Keir's submissions, the Officer proceeded to assess broader issues, including the state of the economy and poverty levels in SVG. Once again, the Officer found that Mr. Keir had not provided sufficient evidence to demonstrate that the economic and poverty considerations raised by Mr. Keir would put him at risk. Before this Court, Mr. Keir did not identify any contrary evidence that would raise a serious issue in this regard. Although the Officer's choice of language was not apt when he observed that the economic and poverty issues were "faced by the general population and not specifically [by] Mr. Keir," it is readily apparent that the Officer appropriately focused on whether Mr. Keir had provided sufficient evidence to demonstrate that he would be put at risk: *Galvez Padilla v Canada (Citizenship and Immigration)*, 2013 FC 247, at para 69. In the absence of any material evidence that economic and poverty issues, whether faced by the general population or otherwise, would place Mr. Keir at risk, I consider that he has not raised a serious issue to be tried in connection with this aspect of the Officer's decision.

[10] For greater certainty, the Officer also articulated and applied the appropriate test in connection with s. 7 of the *Charter*. That test is whether his removal "would so shock the conscience as to breach [his] rights under section 7 of the Charter not to be deprived of the right

to life, liberty and security of the person other than in accordance with the principles of fundamental justice": *Ragaputhy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151, at para 19; *Salim v Canada (Citizenship and Immigration)*, 2019 FC 100 at para 18. Mr. Keir has not identified anything in the Officer's decision, or indeed in the record, that raises a serious issue in this regard.

[11] Mr. Keir also submitted that the Officer erred by:

- failing to conduct a personalized analysis of the H&C grounds that he had identified;
- failing to properly consider his relationship with his family;
- failing to consider evidence that he had admitted that he had made mistakes in the past and evidence indicating that he was in the process of changing his life for the better; and
- concluding that he had failed to demonstrate a degree of establishment in Canada, either social or economic, that would cause him disproportionate harm should he be removed.

[12] I disagree. Mr. Keir has not raised a serious issue in respect of any of these aspects of the Officer's decision. In brief, although some of the evidence that he adduced was not considered under the H&C heading, it was specifically addressed elsewhere in the officer's decision, which must be read as a whole, in a holistic fashion: *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65, at paras 85 and 97. As to the other issues raised immediately above, they were also specifically discussed at lines 160–210, 430–460, and 650 of the Officer's decision.

[13] In summary, Mr. Keir has not raised a serious issue to be tried in respect of the Danger Opinion.

(ii) Irreparable harm

[14] Turning to the second prong of the tri-partite test, Mr. Keir must demonstrate, on a balance of probabilities, that he will suffer irreparable harm if he is removed to SVG: *RJR MacDonald*, *CBC*, *Toth* and *Akyol*, above. In my view, he has failed to discharge this onus.

[15] Mr. Keir submits that if a stay of his scheduled removal is not granted, he "faces a serious probability of risk to his life, liberty and security, as a result of which he will be irreparably harmed." However, he has not demonstrated, on a balance of probabilities, that he will face any such consequences. There is no evidence in the record that his stepfather continues to be interested in harming or otherwise interacting with him, or that he is not fully able to defend himself against his father, now that he is a 28-year-old adult who has a long record of perpetrating violence himself.

[16] Mr. Keir submits that if he is removed to SVG, he is likely to find himself among the approximately 19.8% of the population that is reported to be unemployed, because he is not likely to find employment in that country. He adds that, without a job, he is likely to find himself living in poverty there. However, there are two shortcomings with this submission. First, it is a bare assertion. In the Danger Opinion, the Officer noted that Mr. Keir has some skills that could well assist him to find employment in SVG, including experience and qualifications as a forklift operator, and experience in customer service and construction. Mr. Keir has not demonstrated why he is unlikely to find employment with this background. Second, according to the evidence

submitted by Mr. Keir, the unemployment rate in many countries to which people are removed is higher than it is in Canada. The possibility or even likelihood of becoming unemployed upon removal to such a country does not constitute irreparable harm in the context of the enforcement of a validly issued removal order under the IRPA: *Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427, at para 16.

[17] Mr. Keir also submitted that if he is removed to SVG, there is a strong chance that he will fall back into his reliance on drugs, because he is not likely to have access to the same type of psychological counselling that he is presently receiving. However, once again, this was a bare assertion, without any supporting evidence, other than a short note from a doctor at the Fraser Regional Corrections Centre confirming that Mr. Keir has been attending such counselling. Moreover, the Officer noted that the evidence from Correctional Services Canada indicates that "Mr. Keir has shown little or no interest in beginning to take steps towards sobriety" and has "demonstrated very little effort towards rehabilitation."

[18] Finally, Mr. Keir's counsel requested that I take judicial notice of the COVID-19 pandemic and the "very real risk of irreparable harm" that this is likely to pose for him. However, when pressed for evidence regarding the risks that he is likely to face from the COVID-19 virus, as a 28 year-old, his counsel was unable to identify anything whatsoever. Nor did she suggest that Mr. Keir has any complicating risk factors that may increase the risk that he may face from that virus. As a result, she was unable to demonstrate, on a balance of probabilities, that Mr. Keir will suffer irreparable harm associated with the COVID-19 pandemic, if he is removed to SVG.

[19] In summary, Mr. Keir has not demonstrated that he will suffer irreparable harm, whether at the hands of his stepfather, for economic reasons, for reasons related to his drug-abuse, or for reasons related to the COVID-19 pandemic, if he is removed to SVG.

(iii) Balance of convenience

[20] I will now turn to the final prong of the tri-partite test for the issuance of a stay of removal. That prong requires Mr. Keir to demonstrate, on a balance of probabilities, that the balance of convenience favours the granting of a stay.

[21] In this regard, Mr. Keir maintains that it is in the public interest to grant a stay of his scheduled removal from Canada. He asserts that the personal harm that will be inflicted upon him if he is removed to SVG far outweighs any public interest that might be involved in his removal from Canada, particularly given that he is in detention and therefore does not present a danger to the public.

[22] I disagree. The only reason why he is in detention is because he has been found to pose a danger to the public in Canada and there are no acceptable alternatives to his ongoing detention: Respondent's Record, p. 106 (Transcript of Proceedings/Procès-Verbal, detention hearing, February 18, 2020).

[23] In the Danger Opinion, the Officer noted that Mr. Keir's large number of offences "demonstrate an escalation in seriousness and violence," and that he has "a history of institutional violence and possession of weapons." He further cited evidence to the effect that, between March 2018 and March 2018, he had "been implicated in about 22 security incidents," and that in early 2017 he arrived at Kent Institition with "a 15cm metal shank in his rectum."

Other evidence that was cited included a report stating that his "community supervision history … was ... abysmal." In addition, the Officer noted that there was "minimal evidence of rehabilitation or prospect of rehabilitation."

[24] In addition to the foregoing, Mr. Keir has demonstrated a long history of disregard for the country that welcomed him here so many years ago. Despite being given many chances to become a law-abiding, productive member of society, he has a history of failing to abide by conditions imposed on him, as set out at paragraph 38 of the Respondent's written submissions. Put differently, he has shown nothing but contempt and disregard for all of the generosity that this country has extended to him. He also has a history of unemployment in this country, which the Parole Board of Canada linked to his criminal history in its decision dated November 1, 2019.

[25] The public resources that have been spent on Mr. Keir's immigration proceedings, his criminal proceedings, his institutional infractions, his Correctional Service of Canada reports, and now this Motion, have been very substantial. In brief, this country has invested heavily in Mr. Keir and has little to show for it but an individual who has victimized many other individuals, including many law-abiding Canadians, and who has now been found to present a danger to the public in Canada.

[26] Having regard to all of the foregoing, I have no difficulty whatsoever in concluding that the balance of convenience favours the execution of the validly issued order for his removal to SVG. In my view, the adverse consequences likely to be experienced by Mr. Keir upon his removal to SVG are significantly outweighed by the danger that he poses to the public. When the additional costs likely to be associated with his continued presence in Canada are taken into

account, this balance of convenience weighs even more strongly in favour of his removal to SVG.

"Paul S. Crampton"
Chief Justice