

Federal Court



Cour fédérale

**Date: 20210423**

**Docket: IMM-2484-21**

**Citation: 2021 FC 362**

**Holyrood, Newfoundland and Labrador, April 23, 2021**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**GEUMCHEOL JEONG  
SONGYONG IM  
CHEOLYEONG JEONG  
CHEOLJIN JEONG**

**Applicants**

**and**

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

**Respondent**

**ORDER AND REASONS**

[1] By a Notice of Motion filed on April 21, 2021, Geumcheol Jeong, Songyong Im, Cheolyeong Jeong and Cheoljin Jeong (collectively “the Applicants”) seek reconsideration of the Court’s “refusal” to hear their Motion for a stay of their removal from Canada which is scheduled for Monday, April 26, 2021.

[2] On April 14, 2021, the Applicants filed an Application for Leave and Judicial Review seeking review of the removal Order that had been issued against them. In the same document, they seek Leave and Judicial Review of the negative determination of the Pre-Removal Risk Assessment (“PRRA”) application that they had submitted pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[3] The Application for Leave and Judicial Review provides as follows:

1. The removal order the CBSA enforcement officer has given to this applicant family sometime in March 2021 which specifies the removal dates as between April 19 to April 23, 2021. The request for the deferral of the removal process was requested on March 23, 2021 through the family’s lawyer and such request was refused by the officer on March 24, 2021.

2. The PRRA results dated July 03, 2019 concerning this family. The decision was received by the family on July 22, 2019. The Notice of appeal was not given at the time and through this leave application the applicant seeks the leave of the Court for the judicial review of the PRRA results.

[4] The PRRA decision was made on June 28, 2019, and received by the Applicants on July 22, 2019. The Applicants indicated in their Notice of Application that they require an extension of time to commence an Application for Judicial Review of the PRRA decision.

[5] Following a hearing on April 16, 2021, an Order with Reasons was issued dismissing the application for an extension of time and the Applicant’s Motion for a stay of their removal was not heard. In the absence of an application for leave and judicial review, the Court is without jurisdiction to hear a motion for a stay; see the decision in *Mutti v. Canada (Minister of Citizenship & Immigration)*, 2006 FC 97.

[6] The Applicants filed written submissions in support of their Motion for reconsideration of the Order issued on April 16, 2021. The Minister of Public Safety and Emergency Preparedness (the “Respondent”) submitted a letter opposing the Applicant’s Motion for reconsideration. Counsel for the Applicants filed a reply to that letter, repeating her request that the Court hear the Motion for a stay.

[7] Pursuant to an Oral Direction issued on April 22, 2021, the parties were advised that the present Motion would be decided upon the basis of the written representations filed and without an oral hearing.

[8] The Applicants bring their Motion pursuant to Rue 397 of the *Federal Courts Rules*, SOR 98-106 (the “Rules”) which provides as follows:

**Motion to reconsider**

**397 (1)** Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that

**(a)** the order does not accord with any reasons given for it; or

**Réexamen**

**397 (1)** Dans les 10 jours après qu’une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant à la Cour qui a rendu l’ordonnance, telle qu’elle était constituée à ce moment, d’en examiner de nouveau les termes, mais seulement pour l’une ou l’autre des raisons suivantes :

**a)** l’ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;

**(b)** a matter that should have been dealt with has been overlooked or accidentally omitted.

**b)** une question qui aurait dû être traitée a été oubliée ou omise involontairement.

[9] In the written submissions filed in support of the present Motion, the Applicants have failed to show that the Order of April 16, 2021 does not accord with the Reasons for that Order. It follows that there is no basis for reconsideration pursuant to paragraph 397(1)(a).

[10] As for paragraph 397(1)(b), that the Court overlooked a “matter that should have been dealt with”, the Applicants argue that the Court overlooked their claims about a breach of section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), c. 11 (the “Charter”), allegedly arising relative to their previous application for relief on humanitarian and compassionate grounds and their intention to file another such application.

[11] I disagree with the arguments of the Applicants. Charter breaches are not decided in a vacuum, see the decision in *Danson v. Ontario (Attorney General)* (1990), 73 D.L.R. (4th) 686 (S.C.C.) at page 695.

[12] I note that although the Notice of Application for Leave and Judicial Review seeks to review the removal Order that was issued to the Applicants, this subject is not addressed in the written submissions filed in support of the within Motion. Neither did the Applicants address this issue in their original submissions that were filed prior to the hearing on April 16, 2021.

[13] I also note that I did not address that matter in the Order and Reasons that issued on April 16, 2021. However, my oversight in that regard does not change the ultimate disposition of the present motion.

[14] Generally, only one decision can be the subject of an application for judicial review. I refer to Rule 302 of the Rules which provides as follows:

**Limited to single order**

302 Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

**Limites**

302 Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

[15] The Applicants cannot, without leave, seek to have two “decisions” reviewed in a single Application for Leave and Judicial Review.

[16] While the Application for Leave and Judicial Review relative to the removal Order may be timely, the Applicants made no submissions in either their original written argument for a stay or in their materials filed upon the Motion for reconsideration about this “decision”.

[17] Although the Applicants’ Motion for a stay was not heard on April 16, 2021, both the Applicants and the Respondent addressed the relevant issues for a stay in the arguments they filed upon the Motion for reconsideration, that is a serious issue for trial arising from the underlying application for judicial review; that the applicants would suffer irreparable harm if

the relief sought were denied; and that the balance of convenience lies in favour of the applicants. The respective arguments of the parties were considered.

[18] However, the Applicants directed their arguments in this regard either to the negative PRRA decision or to a decision that was not made upon their application for relief on humanitarian and compassionate grounds, pursuant to section 25 of the Act. No submissions were made relative to the removal Order which presumptively, is a valid Order.

[19] The Order of April 16, 2021 dismissed a request for an extension of time within which to commence an application for leave and judicial review relative to the negative decision upon the Applicants' PRRA application. There is no basis for reconsideration of the Order of April 16, 2021.

[20] There is no application for leave and judicial review before the Court that would grant jurisdiction to adjudicate the Applicants' motion for a stay, relative to the PRRA decision.

[21] The Order of April 16, 2021 did not address the Applicants' Application for Leave and Judicial Review of the removal Order that was issued against them. However, no submissions were advanced at any time by the Applicants for reconsideration of the Order of April 16, 2021 in connection with the removal Order. Neither did the Applicants make any submissions for a stay of their removal in connection with the removal Order.

[22] In the result, the Motion for reconsideration of the Order of April 16, 2021, pursuant to Rule 397, is dismissed.

**ORDER in IMM-2484-21**

**THIS COURT'S ORDER is that** the Motion for reconsideration is dismissed.

“E. Heneghan”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2484-21

**STYLE OF CAUSE:** GEUMCHEOL JEONG, SONGYONG IM,  
CHEOLYEONG JEONG, CHEOLJIN JEONG v THE  
MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**MOTION DEALT WITH IN WRITING WITHOUT PERSONAL APPEARANCE OF  
PARTIES**

**ORDER AND REASONS:** HENEGHAN J.

**DATED:** APRIL 23, 2021

**WRITTEN REPRESENTATIONS BY:**

Myung-Kyu (Linda) Choi FOR THE APPLICANTS

Prathima Prashad FOR THE RESPONDENT

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