

Federal Court



Cour fédérale

Date: 20210416

Docket: IMM-2484-21

Citation: 2021 FC 338

St. John's, Newfoundland and Labrador, April 16, 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] On April 14, 2021, Geumcheol Jeong, Songyong Im, Cheolyeong Jeong and Cheoljin Jeong, (the “Applicants”) filed an Application for Leave and Judicial Review of the decision made by a Canada Border Services Agency Officer, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the “Act”) upon a Pre-Removal Risk Assessment (“PRRA”)

application, where risk was assessed by reference to South Korea. The decision was made on June 28, 2019.

[2] On April 14, 2021, the Applicants submitted a Motion for the stay of their removal to South Korea which is scheduled for April 26, 2021.

[3] The Minister of Public Safety and Emergency Preparedness (the “Respondent”) raised, among other things, the timelines of the Application for Leave and Judicial Review, considering that the negative PRRA decision was delivered to the Applicants on or about July 22, 2019.

[4] The Applicants referred to a need for an extension of time in their Notice of Application for Leave and Judicial Review, but failed to address that issue in the Memorandum of Fact and Law that was filed in support of the Motion for a stay. The parties were given the opportunity to address that issue in a hearing held on Friday, April 16, 2021.

[5] Paragraph 72(2)(b) of the Act provides that a notice of application for leave and judicial review must be served upon a respondent and filed with the Court within 15 days of a decision, when the matter arises in Canada. The 15-day limit applies in this case.

[6] The test for obtaining an extension of time within which to commence a proceeding in the Federal Court is well-known, as set out in the decision in *Canada (Attorney General) v. Hennelly*, 244 N.R. 399. The test requires an applicant to establish the following elements:

1. a continuing intention to pursue his or her application;

2. that the application has some merit;
3. that no prejudice to the respondent arises from the delay;
and
4. that a reasonable explanation for the delay exists.

[7] Upon considering the submissions of the parties, both written and oral, I am not satisfied that the Applicants have shown a continuing intention to pursue an application for judicial review of the negative PRRA decision or that there is merit in their proposed application.

[8] In my opinion, the Applicants also failed to show that granting an extension of time would not cause prejudice to the Respondent. The Respondent is responsible for the due administration of the Act, including the disposition of PRRA applications and is entitled to know when such decisions will be challenged by way of judicial review, in accordance with applicable statutory standards.

[9] Finally, the delay in this case is lengthy.

[10] The PRRA decision is dated June 28, 2019. According to the evidence tendered by the Respondent, the Applicants received the decision on or about July 22, 2019.

[11] The time limited for seeking leave to judicially review a PRRA decision, when the interested persons are in Canada, is 15 days.

[12] This means that the Applicants should have filed their application for leave and judicial review by August 6, 2019.

[13] On the basis of the evidence before me, they took no concrete steps until the Application for Leave and Judicial Review was filed on April 14, 2021, a delay of nearly twenty months.

[14] In these circumstances, the Applicants have failed to show why the Court should exercise its discretion to extend the time period, and the motion for such relief is dismissed.

[15] This means that the Court is without jurisdiction to adjudicate the Motion for the stay since without an extension of time, there is no Application for Leave and Judicial Review before the Court.

[16] The Applicants' request for a Special Sitting of the Court to hear the Motion for a stay is denied and the Motion will not be heard.

ORDER in IMM-2484-21

THIS COURT'S ORDER is that the request for an extension of time is dismissed and the Motion for a stay of removal will not be heard.

“E. Heneghan”

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 HELD BY TELECONFERENCE ON APRIL 16, 2021 FROM ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR (COURT) AND TORONTO, ONTARIO
(PARTIES)**

ORDER AND REASONS: HENEGHAN J.

DATED: APRIL 16, 2021

APPEARANCES:

Myung-Kyu (Linda) Choi FOR THE APPLICANTS

Prathima Prashad FOR THE RESPONDENT

SOLICITORS OF RECORD:

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