

Federal Court



Cour fédérale

**Date: 20210603**

**Docket: T-873-21**

**Citation: 2021 FC 535**

**Ottawa, Ontario, June 3, 2021**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

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

**Applicant**

**and**

**VIMAL CHANDRA IYER**

**Respondent**

**ORDER AND REASONS**

**UPON** considering the Applicant's *ex parte* motion, brought under Rule 369 of the *Federal Courts Rules*, SOR/98-106;

**AND UPON** reviewing the affidavit of Angela Pfeifer, affirmed May 13, 2021;

**THIS COURT ORDERS THAT** the Applicant's motion is dismissed.

[1] The Respondent, Mr. Vimal Chandra Iyer, is a foreign national of Fiji. On August 10, 2016, he was convicted of 33 counts of fraud over \$5,000. The Respondent is currently incarcerated for those convictions.

[2] On January 26, 2021, the Immigration Division (“ID”) of the Immigration and Refugee Board found the Respondent was inadmissible to Canada on the ground of serious criminality, pursuant to subsection 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). Accordingly, the ID issued a deportation order against the Respondent pursuant to subsection 45(d) of the *IRPA*.

[3] Under subsection 48(2) of the *IRPA*, the Respondent’s removal must be enforced as soon as possible. Under subsection 140(1) of the *IRPA*, the Canada Border Services Agency (“CBSA”) may seize and hold the Respondent’s passport to enforce his removal.

[4] Ms. Angela Pfeifer, an Enforcement Officer of the CBSA, affirmed in her affidavit that the Respondent’s passport is currently held by the Provincial Court of Alberta’s clerk’s office pursuant to the Respondent’s bail conditions. According to Ms. Pfeifer, the Provincial Court of Alberta requires a court order to release the Respondent’s passport to the CBSA.

[5] Upon this *ex parte* motion, the Applicant requests from this Court an order directing the Provincial Court of Alberta to release the Respondent’s passport to the CBSA.

[6] For the reasons that follow, I dismiss the Applicant's motion because it is vague and fails to establish why this Court should grant the order it requests.

[7] First, the Applicant's rationale for why this motion was brought *ex parte* is lacking. The Applicant is concerned that if this motion is heard in the Respondent's presence, the Respondent will be alerted to the possibility of attending the Provincial Court of Alberta's clerk's office, obtaining his passport, and then frustrate the removals process by either destroying his passport, refusing to surrender it, or refusing to retrieve it.

[8] In my view, the possibility that the Respondent will obtain or destroy his passport is at best remote, as the Respondent is currently incarcerated. Likewise, it is unclear upon what grounds the Provincial Court of Alberta would return the Respondent's passport to him. The Applicant has not provided any evidence for why the Provincial Court of Alberta holds the Respondent's passport and upon what terms, other than the seizure is made pursuant to the Respondent's bail conditions. Even this ground is vague, as the Respondent is no longer released on bail but rather now incarcerated.

[9] In addition, the Applicant has not established that the Court has jurisdiction to issue the order it requests. Sections 252-258 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, outline how the CBSA should manage an item it seizes pursuant to subsection 140(1) of the *IRPA*. Under these provisions, the CBSA does not require this Court's order to exercise its power of seizure, although this Court may judicially review the exercise of such

power pursuant to subsection 72(1) of the *IRPA* (see *Siyaad v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 448 at paras 42-46).

[10] Finally, the Applicant's motion asks this Court to interfere with the Provincial Court of Alberta's authority. By ordering the Provincial Court of Alberta to relinquish the Respondent's passport to the CBSA, this Court will obstruct the Provincial Court of Alberta's order for the Respondent to surrender his passport or other travel documents to the clerk of that Court. The need for judicial comity, and frankly common sense, thus disfavour the Applicant's motion.

[11] This Court is not in the business of unduly circumventing the procedures of other courts. The clerk's office of the Provincial Court of Alberta informed Ms. Pfeifer that the CBSA requires a court order to release the Respondent's passport, but it is unclear whether this statement pertained to an order from this Court. For all I know, the clerk may have been referring to an order from the Provincial Court of Alberta, only to be shocked when the CBSA instead returns with an order from this Court. Accordingly, granting this motion induces a serious risk of frustrating the Provincial Court of Alberta's lawful seizure of the Respondent's passport while leaving the relevant parties in the dark, providing them with no opportunity to address these manifest concerns.

[12] In summary, I dismiss the Applicant's motion, as it lacks detail on the facts of the matter, whether this Court has jurisdiction to grant the order requested, and why such an order would not infringe upon the Provincial Court of Alberta's jurisdiction.

**ORDER AND REASONS IN T-873-21**

**THIS COURT ORDERS** that the Applicant's motion is dismissed.

“Shirzad A.”

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Judge

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

**DOCKET:** T-873-21

**STYLE OF CAUSE:** THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS v VIMAL  
CHANDRA IYER

**APPLICANT'S *EX PARTE* MOTION IN WRITING PURSUANT TO RULE 369 OF  
THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** AHMED, J.

**DATED:** JUNE 3, 2021

**WRITTEN SUBMISSIONS BY:**

Matthew Chao

FOR THE APPLICANT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Edmonton, Alberta

FOR THE APPLICANT