Federal Court  Cour fédérale

Date: 20230127

Docket: IMM-1042-23

Citation: 2023 FC 136

Ottawa, Ontario, January 27, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ALEKSANDAR ALEKSANDROV

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant, Aleksandar Aleksandrov, brings a motion for a stay of his removal from Canada, scheduled to take place on January 30, 2023.

[2] The Applicant requests that this Court order a stay of his removal to Bulgaria until the determination of an underlying application for leave and judicial review of the refusal of his

deferral request by an Inland Enforcement Officer (the "Officer") of the Canada Border Services Agency ("CBSA").

[3] For the reasons that follow, this motion is dismissed. I find that the Applicant does not meet the tri-partite test required for a stay of removal.

II. Facts and Underlying Decisions

[4] The Applicant is a 27-year-old citizen of Bulgaria.

[5] The Applicant was a permanent resident of Canada as a dependent child on a spousal sponsorship application, which was submitted by his then-step-father for his mother. His permanent resident status was revoked as a result of the finding of the Immigration Division that his mother is inadmissible to Canada due to misrepresentation.

[6] On December 30, 2023, CBSA informed the Applicant of his scheduled removal on January 30, 2023. He was also scheduled to travel to Toronto on January 3, 2023, to attend an appointment at the Bulgarian Consulate to obtain a Bulgarian travel document.

[7] The Applicant claims that he suffers from several medical issues, for which he requires treatment and has medical appointments scheduled for the days following his scheduled removal. He claims that he is unfit to fly due to these health concerns.

[8] The Applicant claims that his sister is pregnant with her second child, due in April 2023. The Applicant claims that he needs to be in Canada to support his sister during this time, particularly given her husband's absences due to his employment and her history of mental health issues.

[9] The Applicant submitted his request to defer his removal to CBSA on January 20, 2023. In a decision dated January 27, 2023, CBSA refused the Applicant's deferral request. The Officer found that the Applicant provided insufficient evidence to establish that his medical issues would affect his travel or that he would be unable to access medical treatments in Bulgaria. The Officer also found no evidence to confirm that the Applicant's sister is pregnant. The Officer noted that the Applicant's initial reason for wishing to remain in Canada did not include any mention of his sister, that the BIOC does not extend from the sister's unborn child to the Applicant, and that the sister has other options available to her to access support. For these reasons, the Officer refused the Applicant's request to defer his removal.

III. Analysis

[10] The tripartite test for the granting of a stay is well established: *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) ("*Toth*"); *Manitoba (A.G.) v Metropolitan Stores Ltd*., 1987 CanLII 79 (SCC), [1987] 1 SCR 110 ("*Metropolitan Stores Ltd*"); *RJR-MacDonald Inc. v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 ("*RJR-MacDonald*"); *R v Canadian Broadcasting Corp*, 2018 SCC 5 (CanLII), [2018] 1 SCR 196.

[11] The *Toth* test is conjunctive, in that granting a stay of removal requires the applicant to establish: (i) a serious issue raised by the underlying application for judicial review; (ii) irreparable harm that would result from removal; and (iii) the balance of convenience favouring granting the stay.

A. *Serious Issue*

[12] In *RJR-MacDonald*, the Supreme Court of Canada established that the first stage of the test should be determined on an "extremely limited review of the case on the merits" (*RJR-MacDonald* at 314). This Court must also bear in mind that the discretion to defer the removal of a person subject to an enforceable removal order is limited. The standard of review of an enforcement officer's decision is that of reasonableness (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 (CanLII), [2010] 2 FCR 311 at para 67) ("*Baron*").

[13] A decision refusing to defer removal requires an applicant to meet an elevated standard with respect to the first *Toth* requirement of a serious issue for trial, pursuant to *Baron.*

[14] The Applicant submits that the underlying application raises serious issues about the reasonableness of the CBSA's refusal of the deferral request, specifically regarding the Officer's assessment of the Applicant's medical issues and the best interests of the child affected by removal ("BIOC").

[15] The Respondent submits that there is no serious issue because the Officer reasonably assessed and refused the Applicant's deferral request.

[16] Having reviewed the parties' motion material and the underlying decision, I agree that there is a serious issue to be tried. The underlying application for judicial review raises issues surrounding the Officer's proper assessment of the Applicant's medical issues and the BIOC, which are sufficiently serious to meet the first prong of the test.

B. *Irreparable Harm*

[17] At the second stage of the test, applicants are required to demonstrate that irreparable harm will result if relief is not granted. Irreparable harm does not refer to the magnitude of the harm; rather, it is a harm that cannot be cured or quantified in monetary terms (*RJR-MacDonald* at 341). This Court must be satisfied on a balance of probabilities that the harm is not speculative, but does not have to be satisfied that the harm will occur (*Xu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 746, 79 FTR 107 (FCTD); *Horii v Canada (C.A.)*, [1991] FCJ No 984, [1992] 1 FC 142 (FCA)).

[18] The Applicant submits that he would suffer irreparable harm if removed to Bulgaria, due to his current medical conditions and the short-term BIOC affected by removal, specifically his sister's unborn child. The Applicant submits that he requires a diagnosis and treatment for his medical concerns and air travel could pose an imminent to his health. The Applicant also submits that his sister is pregnant and in light of the BIOC consideration, he needs to remain in

Canada to support his sister during and after the birth of her second child. The Applicant submits this is particularly important given his sister's history of mental health issues.

[19] I am not persuaded that the Applicant will face irreparable harm upon return to Bulgaria. There is limited evidence to meet the threshold for irreparable harm concerning the Applicant's medical issues, or to demonstrate that the Applicant could not receive adequate medical care in Bulgaria. The Officer reasonably relied on a fitness-to-fly assessment to find that the Applicant is fit to travel by air, as he did in order to travel to Toronto on January 23, 2023.

[20] Concerning the Applicant's sister and the BIOC, I note the lack of evidence before the Officer that the Applicant's sister is pregnant or that the Applicant is her sole source of support. The Applicant initially failed to mention his sister as a reason for wishing to remain in Canada during his pre-removal interview on December 20, 2022. The best interests of the sister's unborn child does not extend to establish irreparable harm in the Applicant's favour.

C. *Balance of Convenience*

[21] The third stage of the test requires an assessment of the balance of convenience—a determination to identify which party will suffer the greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits (*RJR-MacDonald* at 342; *Metropolitan Stores Ltd* at 129). It has sometimes been said, "Where the Court is satisfied that a serious issue and irreparable harm have been established, the balance of convenience will flow with the Applicant" (*Mauricette v Canada (Public Safety and Emergency Preparedness)*, 2008

FC 420 (CanLII) at para 48). However, the Court must also consider the public interest to uphold the proper administration of the immigration system.

[22] The Applicant submits that the balance of convenience favours granting the stay of removal. The Applicant emphasizes that he was previously a permanent resident, has been compliant with Canadian law, and provides necessary support to his sister.

[23] While the insufficient evidence of irreparable harm is determinative of this motion, the balance of convenience nonetheless weighs in favour of the Respondent. Subsection 48(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, states that removal orders must be enforced as soon as possible. The inconvenience that the Applicant may face as a result of removal does not outweigh the Respondent's interest in enforcing the removal order expeditiously.

[24] Ultimately, the Applicant does not meet the tri-partite test required for a stay of removal. This motion is therefore dismissed.

ORDER in IMM-1042-23

THIS COURT ORDERS that the Applicant's motion to stay his removal is dismissed.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1042-23
STYLE OF CAUSE:	ALEKSANDAR ALEKSANDROV v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 27, 2023
ORDER AND REASONS:	AHMED J.
DATED:	JANUARY 27, 2023

APPEARANCES:

Valeriy Kozyrev	FOR THE APPLICANT
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kozyrev Law Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT