

Date: 20060717

Docket: DES-3-03

Citation: 2006 FC 891

Ottawa, Ontario, July 17, 2006

Present: The Honourable Mr. Justice Simon Noël

BETWEEN:

IN THE MATTER OF a certificate under subsection 77(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) signed by the Ministers (“the Ministers”);

IN THE MATTER OF a referral to the Federal Court of Canada under subsection 77(1) and sections 78 and 80 of the Act;

IN THE MATTER OF a motion to change the conditions of release from detention of the person concerned to allow two (2) family outings to Parc Safari and the Granby Zoo;

AND IN THE MATTER OF
Adil Charkaoui (“Mr. Charkaoui”)

REASONS FOR ORDER AND ORDER

[1] This is a motion by Mr. Charkaoui under section 369 of the *Federal Courts Rules*, by which he is seeking amendment of the conditions of release specified in the order dated February 17, 2005 (“the order”), as subsequently amended. The object of this motion is to allow Mr. Charkaoui to leave the island of Montréal to go to Parc Safari in Hemmingford, Quebec, on July 19 or 20, 2006, and to Granby Zoo in Granby, Quebec, on July 24 or 25, 2006, with his spouse, children and parents.

[2] Mr. Charkaoui suggested two different dates to make allowances for the weather if required.

[3] The father, Mohammed Charkaoui, one of the escorts chosen, intends to submit to the Court a supervision report about these outings at the end of July 2006.

[4] The Ministers object to this motion to amend, claiming that there is a wide range of recreational activities available within the city of Montréal. The Ministers note that there is a rationale for condition 9 of the order of release restricting Mr. Charkaoui's outings to specified times and to the island of Montréal, including St. Helen's Island, and that the request does not warrant suspending the territorial limit specified for Mr. Charkaoui's outings. In addition, the Ministers submit that the situation sought by the motion presented must yield to considerations of national security or third party security as specified in condition 9 of the order.

[5] The Court is of the view that condition 9 is an important principle put forward in the conditions for release and must not be amended without any clear and precise grounds which warrant making an exception to the principle of territorial restrictions.

[6] In his supervision report for Adil Charkaoui, drafted in June 2006, the father, Mohammed Charkaoui, informed the Court in paragraph 14 that during his holidays the family planned on having family outings, and an application would be made to the Court so that Adil Charkaoui could accompany his family.

[7] The request for two (2) family outings is restricted to one day each (within the times specified by the order), in predetermined places which are family-oriented, and Mr. Charkaoui would be accompanied by two escorts: his father (Mohammed) and his mother (Latifa Radwan). The father would draft a supervision report about these outings at the end of July 2006.

[8] In addition, Mr. Charkaoui would notify the Canada Border Services Agency on the day preceding his outing.

[9] Having studied the motion and the answer submitted by Mr. Charkaoui, as well as the Ministers' answer and letter dated July 17, 2006, the Court is prepared to make a temporary exception concerning the territorial limit described in condition 9 of the order.

[10] However, I would add the condition that Mr. Charkaoui not only notify the Canada Border Services Agency the day before his outings but also advise the Agency when he returns home.

[11] In addition, in his supervision report of July 2006, I ask that Mohammed Charkaoui describe in detail the outings, times of departure and arrival and visits to the sites, and mention who participated in the family activity, as well as any persons met and any other fact worthy of mention.

[12] In closing, the Court reiterates the importance of the territorial limit described in condition 9 of the order and adds that requests for temporary exceptions to this principle will be dealt with taking into account the complete record and submissions made. In granting this exception, the Court reiterates its goal of applying preventive conditions to neutralize the danger to national security or to

other persons while granting a certain level of independence to Mr. Charkaoui, taking into consideration his day-to-day needs and obligations. Although the Ministers are of the view that the visits to the Granby Zoo and to Parc Safari do not have the same importance as those to which they already agreed (Mr. Charkaoui's presence at the Supreme Court hearing, etc.), this type of family outing including his relatives is acceptable, taking into consideration the special circumstances of the request. Nevertheless, trips are to be made to specific places, which are known to be family-oriented, in the presence of two supervisors (one of whom is obliged to draft a detailed report), within the hours already specified in the order, with the obligation of advising the Canada Border Services Agency before and after the trips. Thus, all the preventive conditions remain, except for the temporary exception created for condition 9 of the order. In my humble opinion, considering the request and the limits I am placing on it, there is a balance between the goal of neutralizing the danger to national security and to other persons on one hand and the day-to-day needs and obligations of Mr. Charkaoui on the other.

ORDER

THE COURT ORDERS THAT:

- The motion to amend the conditions of release is temporarily allowed as follows:
 1. Mr. Charkaoui shall abide by all preventive conditions of release already specified, subject to the following:
 2. On one of the following dates, either on July 19 or Thursday, July 20, 2006, Mr. Charkaoui will be authorized to leave the island of Montréal to go to

Parc Safari, located at 850 Route 202, Hemmingford, Quebec, J0L 1H0. The day before his outing, he will advise the Canada Border Services Agency of his intention to avail himself of the Court's permission and notify the Agency when he returns home.

3. On one of the following dates, either on July 24 or Tuesday, July 25, 2006, Mr. Charkaoui will be authorized to leave the island of Montréal to go to Granby Zoo, located at 525 St. Hubert Street (at the corner of Route 139, Pavillon Horace-Boivin, Granby, Quebec, J2G 5P3). The day preceding the outing, he will advise the Canada Border Services Agency of his intention to avail himself of the Court's permission and notify the Agency when he returns home.
4. Mohammed Charkaoui will inform the Court of Mr. Charkaoui's compliance with these conditions during his permitted outings through the monthly supervision report for July 2006. This detailed report shall include, without being limited to, the following information: times of departure, arrival and visits to the sites; the identities of participants in the family outing and persons met; etc.

WITHOUT COSTS.

“Simon Noël”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: DES-3-03

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DATE OF HEARING: MOTION IN WRITING WITHOUT APPEARANCES

REASONS FOR ORDER BY: The Honourable Mr. Justice Simon Noël

DATED: July 17, 2006

APPEARANCES:

Daniel Roussy
Luc Cadieux

FOR THE SOLICITOR GENERAL
OF CANADA

Daniel Latulippe

FOR THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Dominique Larochelle

FOR ADIL CHARKAOUI

SOLICITORS OF RECORD:

John H. Sims
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FOR ADIL CHARKAOUI