



BETWEEN:

JAN PALENCIK

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

LUTFY J.:

The applicant was sentenced to two years imprisonment for conspiracy to import one kilogram of cocaine. He now seeks a stay of his removal order on the grounds that he will be subject to extortion and injury upon his return to Slovakia as the result of his criminal activity in Canada.

In *Sivakumar v. Canada*, [1996] 2 F.C. 872 (F.C.A.) at 877-80, the evidence of the risk to the applicant's life and the virtual certainty of his detention upon his return to Sri Lanka ("absolutely no doubt") was substantially stronger, if not qualitatively different, than the proof in this case. The credibility of the evidence was also not in issue.

The evidence in the present motion requires the Court to accept that: (a) the applicant never advised his mother of his pending deportation or (b) she never

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volunteered information concerning the incidents of extortion since 1994 and the more direct threats of June 1997 concerning her son's return, until a few days ago when the removal order was received. These necessary assumptions cast serious doubt concerning the credibility of the affidavit of Maria Palencikova.

Even if the veracity of Ms. Palencikova's affidavit were accepted, I am far from satisfied that the alleged facts constitute irreparable harm. Verbal threats from criminal elements in Slovakia, apparently repeated almost weekly over the past three years, have resulted in no physical harm to the applicant's parents. The bald assertions that the applicant himself will suffer physical harm are purely speculative. In my view, this evidence is not sufficiently precise and certain to warrant a finding of irreparable harm.

For these reasons, the motion to stay the execution of the removal order is dismissed.

"Allan Lutfy"
Judge

Ottawa, Ontario
September 4, 1997

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: IMM-3724-97
STYLE OF CAUSE: Jan Palencik v. The Minister of Citizenship and Immigration
PLACE OF HEARING: Ottawa, Ontario
Toronto, Ontario
DATE OF TELECONFERENCE: September 3, 1997
REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE LUTFY
DATED: September 4, 1997

APPEARANCES:

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Mr. Kevin Lunney FOR THE RESPONDENT

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