Federal Court Cour fédérale

Date: 20230914

Docket: IMM-10125-23

Citation: 2023 FC 1243

Ottawa, Ontario, September 14, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

YULI RAQUEL CASTRO RAMIREZ
JUAN PABLO GALAN CASTRO

Applicants

and

MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicants, Yuli Raquel Castro Ramirez ("Principal Applicant") and Juan Pablo Galan Castro ("Minor Applicant"), bring a motion for a stay of their removal from Canada, scheduled to take place on September 15, 2023.

[2] The Applicants request that this Court order a stay of their removal to Colombia until the determination of an underlying application for leave and judicial review of a negative decision on their Pre-Removal Risk Assessment ("PRRA").

[3] For the reasons that follow, this motion is granted. I find that the Applicants meet the tri-partite test required for a stay of removal.

II. **Facts and Underlying Decisions**

[4] The Principal Applicant is a 36-year-old citizen of Colombia. She has a 13-year-old son, the Minor Applicant, and a 19-year-old daughter.

[5] In January 2014, the Principal Applicant and her family left Colombia and moved to the United States ("US"). In the US, the Principal Applicant alleges that she suffered years of physical, financial, and emotional abuse from her ex-partner. In 2018, she had a restraining order filed against him and in May 2019, he was deported from the US back to Colombia. The two divorced, but she fears returning to Colombia. She attests that he continued to contact and threaten her, that his family is involved in criminality, and that he has continuously and recently stated his intentions to retaliate against her in Colombia. Her daughter corroborated many of these statements through a sworn declaration.

[6] While in the US, the Principal Applicant remarried. However, she stated that her new partner was physically abusive. She stated that on one occasion, during talks of divorce, her new husband began to hurt himself and then called the police, resulting in assault charges being

levied against the Principal Applicant that were later dropped. In light of these events, she researched where to go and saw that Canada was a safe place for victims of domestic violence.

[7] On June 7, 2022, the Applicants entered Canada, they were found to be ineligible to have their claim referred to the Refugee Protection Division under the Safe Third Country provisions found in section 101(1)(e) of the *Immigration and Refugee Protection Act,* SC 2001, c 27.

[8] The Applicants then applied for a PRRA, submitting that the Principal Applicant and her children faced risk at the hands of her ex-husband and/or his criminally affiliated family upon return to Colombia. They provided evidence of a history of abuse, police and court reports, letters from domestic violence community groups, text messages, photos of injuries, medical reports, and country and academic documents in support of their submissions.

[9] In a decision dated June 29, 2023, the Applicants received a negative PRRA by a Senior Immigration Officer (the "Officer") of Immigration, Refugees and Citizenship Canada. The Officer found that the Applicants had not rebutted the presumption of Colombian state protection against the ex-husband in Colombia and/or his associates. The Officer found that documentary evidence on the current conditions in Colombia in relation to gender-based violence ("GBV") shows that Colombia has applicable laws and mechanisms in place to protect women and victims of violence. The Officer did not find that Colombia is either unwilling or unable to protect the Principal Applicant and that there was a breakdown of the state apparatus such that the she would be unable to receive protection from GBV. The Applicants submitted their application for leave and judicial review of the negative PRRA decision on August 10, 2023.

[10] On August 14, 2023, the Applicants were given a Direction to Report for Removal, scheduled on September 15, 2023.

III. **Preliminary Issue**

[11] At the request of the Respondent, and without objection from the Applicants, the style of cause in this proceeding will be amended to add the name of the Minor Applicant.

IV. **Analysis**

[12] 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.

[13] 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*

[14] 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). 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).

[15] On this first prong of the tri-partite test, the Applicants submit that the underlying application for judicial review raises serious issues about the reasonableness of the Officer's negative PRRA decision, particularly the Officer's findings on the effectiveness of state protection in relation to documentary evidence acknowledged by the Officer that contradicts the Officer's own findings, and in relation to evidence provided by the Applicants.

[16] The Respondent submits that there is no serious issue because the Officer reasonably found that the Applicants had not rebutted the presumption of state protection in Colombia.

[17] 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 evidence relied upon in the decision and the Principal Applicant's evidence and circumstances as a woman who has been subject to GBV, which are sufficiently serious to meet the first prong of the test.

B. *Irreparable Harm*

[18] 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)).

[19] The Applicants submit that the Principal Applicant would suffer irreparable harm if removed to Colombia. She emphasized that the first thing her ex-husband did when he returned to Colombia was to call and threaten her that he would take the children away, never stop until he had her, and make her pay for ruining his life. She notes that her ex-husband continued to contact her long after being returned to Colombia and even tried to contact her through their daughter. She further notes that she suffered from severe depression and, at one point, contemplated ending her life.

[20] The Respondent submits that there is no irreparable harm caused by the Applicants' removal. The Respondent contends that a finding of serious issue in relation to a risk assessment is not automatic, that the Applicants have not provided clear and convincing evidence that the Principal Applicant would face irreparable harm in Colombia, and that Parliament envisioned stays in certain specified circumstances related to PRRAs.

[21] The Principal Applicant is a mother of two children who has long faced appalling treatment at the hands of an ex-partner, and I am not persuaded that she will not face irreparable harm between her return to Colombia, where her abuser lives, and the disposition of her application for leave and for judicial review. The Applicants have provided more than enough evidence to establish a risk of harm in Colombia that is more than speculative (*Roman v Canada (Citizenship and Immigration)*, 2021 CanLII 7915 (FC) ("*Roman*")), including evidence demonstrating that her Colombian ex-partner has continued to seek her out through attempting to contact and threaten her directly, or find out her whereabouts through their daughter.

[22] It is inappropriate, if not incomprehensible, for this Court to brush aside evidence demonstrating that the Principal Applicant has contemplated taking her own life in light of the years of abuse she has faced from someone located in the country she is being returned to, who continues to look for her. Such a form harm is, in the most precise sense of the word, irreparable (*Tillouine v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1146 at para 13). In light of this evidence and the evidence above, I thus find that the Applicants have established a risk of irreparable harm.

C. *Balance of Convenience*

[23] 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 p. 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.

[24] The Applicants submit that the balance of convenience weighs in their favour, given that the Applicants have not benefited from a risk assessment in the past, and that the Principal Applicant faces risk in Colombia, has not been found inadmissible in Canada, and has a history of abuse.

[25] The Respondent submits that the balance of convenience favours the public interest in enforcing the removal order as soon as possible.

[26] I agree with the Applicants. I find that the PRRA decision at issue is the Applicants' first substantive risk assessment, weighing the balance of convenience in their favour (*Roman* at para 9, citing *Sing v Canada (Minister of Citizenship and Immigration)*, 2006 FC 672 at para 30). And weighing this finding and the Applicants establishing a serious issue to be tried and irreparable harm they would face upon return to Colombia, especially in light of the Principal Applicant's circumstances as a survivor of abuse, with the Respondent's interest in enforcing the Applicants' removal to Colombia, I find that the balance of conveniences favours the Applicants.

[27] Ultimately, the Applicants meet the tri-partite test required for a stay of their removal. This motion is therefore granted.

ORDER in IMM-10125-23

THIS COURT ORDERS that:

1. The Applicants' motion for a stay of removal is granted.

2. The Applicants' removal to Colombia scheduled for September 15, 2023, is stayed pending the final disposition of the Applicants' leave and judicial review in relation to the June 29, 2023, decision to refuse their PRRA application.

3. The style of cause is amended effective immediately.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10125-23
STYLE OF CAUSE:	YULI RAQUEL CASTRO RAMIREZ AND JUAN PABLO GALAN CASTRO v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 14, 2023
ORDER AND REASONS	AHMED J.
DATED:	SEPTEMBER 14, 2023

APPEARANCES:

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