

Date: 20070112

Docket: IMM-13-07

Citation: 2007 FC 27

Ottawa, Ontario, January 12, 2007

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

ANITA RICHARDS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant, Anita Richards, is a dual citizen of Guyana and St. Kitts who seeks a judicial stay from the execution of her removal order scheduled for January 14, 2007.

[2] She is a failed refugee claimant who was refused refugee status by decision dated April 21, 2004. She also received a negative PRAA decision on October 16, 2006 in respect of which leave for judicial review has been sought.

[3] On December 13, 2006, the applicant sought deferral of the execution of the removal order. This deferral request was refused on December 19, 2006 by Enforcement Officer Wolowiec (the Enforcement Officer).

[4] The stay application seeks an order of prohibition from her removal from Canada until such time as the pending application for leave and judicial review of the Enforcement Officer's December 19, 2007 decision can be disposed of.

[5] The request for deferral was based on two principle grounds:

1. The applicant entered into a *bona fide* marriage with a Canadian citizen on the 21st of August, 2005. The couple immediately contacted their solicitor instructing him to make an in-Canada spousal application. Owing to administrative delays, not due to the couple's fault, a necessary document for the in-Canada spousal application i.e., their marriage certificate was only received in late June 2006 which made them miss an opportunity for an administrative stay pursuant to the ministerial policy under the spousal in-Canada class but which also delayed the processing of their spousal application by Citizenship and Immigration Canada in Vegreville, Alberta.
2. A psychological report dated July 24, 2006 which determined the applicant still suffers from psychological effects of past trauma consistent with post-traumatic stress disorder and likely to be exacerbated if removed from Canada.

[6] Both counsel before me acknowledged the limited discretion a removal officer has to defer the execution of a valid removal order.

[7] I am of the view this stay application must be dismissed. The applicant has not satisfied me she will suffer irreparable harm and, in my view, the balance of convenience favours the Minister.

[8] As to irreparable harm, I accept the submission from counsel for the Minister that such harm has not been made out even accepting the results of the psychological report. There is no evidence before me the applicant is taking any medication or is now under a doctor's care and such medication or medical services would not be available to her in her country of return.

[9] Second, in terms of losing the benefit of their current in-Canada processing, which both counsel conceded would happen if she was removed, as well as the added time it will take to process from abroad the evidence I have does not convince me such delay constitutes irreparable harm.

[10] Moreover, as pointed out by counsel for the Minister, the applicant had a choice of making her spousal application abroad in the first place and cannot reap the fruits of a decision not to do so.

[11] I find the balance of convenience favours the enforcement of the removal order. I make the usual reference to section 48 of the *Immigration and Refugee Protection Act* which stipulates that a removal order shall be executed as soon as practicable. In addition, there is another factor in this case.

[12] The Canada Border Services Agency agreed to defer her removal which was scheduled for December 2006 if the applicant bought her own ticket and presented that ticket on January 8, 2007. The applicant failed to appear for the call-in notice that day. The call-in notice was issued to the applicant on November 17, 2006.

ORDER

THIS COURT ORDERS this stay application is dismissed.

“François Lemieux”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-13-07

STYLE OF CAUSE: ANITA RICHARDS
v.
MPSEP

PLACE OF HEARING: Ottawa and Toronto via teleconference

DATE OF HEARING: January 11, 2007

**REASONS FOR ORDER
AND ORDER:** The Honourable Mr. Justice Lemieux

DATED: January 12, 2007

APPEARANCES:

Ms. Chantal Desloges FOR THE APPLICANT

Mr. Singer FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green and Spiegel FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada