

Date: 20070725

Docket: IMM-2887-07

Citation: 2007 FC 771

Ottawa, Ontario, July 25, 2007

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

KWAME BONA GYAN

Applicant

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant sought an Order for a stay of deportation scheduled to occur on Wednesday, August 8, 2007, pending consideration of the application for leave and, if leave is granted, of the application for judicial review.

[2] The Applicant has had a negative refugee claim and a negative PRRA. He has a pending H&C filed shortly after he married his wife, a Canadian citizen.

[3] He says that there are exceptional circumstances which should have caused the Officer to exercise his discretion to defer removal until his H&C application is decided.

[4] The Applicant complains of the delay in processing H&C applications, that his wife would suffer hardship due to separation and that the best interests of his child in Ghana would be affected because he could no longer send money from Canada.

[5] It is beneficial to remember that the Minister has a legal obligation imposed by Parliament under s. 48 of the *Immigration and Refugee Protection Act* to effect removal “as soon as reasonably practicable”. The request for deferral must be weighed against this obligation.

[6] In *Wang v. Canada (Minister of Citizenship and Immigration) (T.D.)*, 2001 FCT 148, Justice Pelletier (as he then was) encapsulated the principles applicable to deferrals. It is relevant that if there is an alternative remedy, such as a right of return, that factor should weigh heavily against deferral. The Applicant has two possible alternative remedies which could lead to a right to return to Canada – a pending H&C and a possible sponsorship application.

[7] Again, in *Wang*, at paragraph 48, the Court found that deferral for the mere sake of delay is not in accordance with the imperatives of the Act. Family hardship cases are unfortunate but they can be remedied by readmission.

[8] The hardship to be suffered in this case is the hardship which flows naturally from deportation. These consequences do not constitute compelling circumstances upon which to ground deferral.

[9] The Enforcement Officer (Removals Officer) is not authorized to conduct a H&C evaluation. There is no risk of death, extreme sanction or inhumane treatment which could follow on either the Applicant or members of his family which might justify deferral.

[10] Reasonable delay in processing applications is hardly a grounds for deferral particularly when one bears in mind that the H&C process is an exception to the general legislative intent that persons apply to be in Canada from outside Canada.

[11] There are no grounds for deferral and no basis for a stay.

[12] Therefore, it is ordered that this application for a stay is dismissed.

ORDER

IT IS ORDERED THAT this application for a stay is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2887-07

STYLE OF CAUSE: KWAME BONA GYAN

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 23, 2007

**REASONS FOR ORDER
AND ORDER:** Phelan J.

DATED: July 25, 2007

APPEARANCES:

Ms. Krassina Kostadinov FOR THE APPLICANT

Ms. Amina Riaz FOR THE RESPONDENT

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