

Date: 20070926

Docket: IMM-3786-07

Citation: 2007 FC 962

Montréal, Quebec, September 26, 2007

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

SAJID MAHMOOD CHOUDHARY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

and

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

Respondents

REASONS FOR ORDER AND ORDER

[1] **UPON** motion on behalf of the applicant for an order staying his removal to the United States of America, which is now scheduled to be executed on September 27, 2007;

[2] **UPON** reading the motion records of the parties and hearing the submissions of counsel for the parties;

[3] **UPON** reserving the Court's decision;

[4] **AND UPON** directing myself to the tri-partite test articulated by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302;

REASONS FOR ORDER

[5] The requested stay must be denied on the ground that the applicant has failed to show irreparable harm.

[6] Indeed, it appears that the applicant is to be removed to the United States of America. There is no evidence whatsoever about what will happen to him in the U.S.A. The applicant's arguments to the effect that he may risk detention in the United States, or deportation by the American authorities to Pakistan, are speculative. Such speculation does not meet the test as defined in *Toth, supra* (see, for example, *Figueroa v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 567 (F.C.) (QL), 2002 FCT 438; *Aquila v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 36 (F.C.) (QL); *Mikhailov v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 642 (F.C.) (QL); *Akyol v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1182 (QL), 2003 FC 931; *Kazzi v. Minister of Citizenship and Immigration*, IMM-6196-02, January 6, 2003).

[7] In any event, the applicant's allegations as to the prejudice that he would suffer if returned to Pakistan have been thoroughly considered and rejected by both the PRRA officer and the Immigration and Refugee Board. Furthermore, before and after the filing of the present motion, the applicant himself has requested to be returned to Pakistan rather than to the United States. In such a context, I am far from being satisfied that the applicant would face irreparable harm if returned to Pakistan by the American authorities.

[8] As for the applicant's argument related to life disruption and separation with his spouse, it is trite law that this type of hardship is simply part of the usual consequences of deportation and, therefore, does not constitute in itself irreparable harm. In *Selliah v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1200 (FCA) (QL), 2004 FCA 261, at para. 13, the Federal Court of Appeal recently reaffirmed the following principle:

[13] The removal of persons who have remained in Canada without status will always disrupt the lives that they have succeeded in building here. [...] Nonetheless, the kinds of hardship typically occasioned by removal cannot, in my view, constitute irreparable harm for the purpose of the *Toth* rule, otherwise stays would have to be granted in most cases, provided only that there is a serious issue to be tried: *Melo v. Canada (Minister of Citizenship and Immigration)* (2000), 188 F.T.R. 39.

[9] Indeed, as stated by Pelletier J., in *Melo v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 403 (QL), para. 21:

...if the phrase "irreparable harm" is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by

enforced separation and heartbreak. [Emphasis and quotation marks added.]

[10] In the circumstances, in view of subsection 48(2) of the *Immigration and Refugee Protection Act*, the balance of convenience favours the Minister of Public Safety and Emergency Preparedness who must execute removal orders as soon as reasonably practicable.

[11] Given the above conclusions, it will not be necessary to deal with the question of serious issue.

ORDER

CONSEQUENTLY, the applicant's motion is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3786-07

STYLE OF CAUSE: SAJID MAHMOOD CHOUDHARY v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION ET AL

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 25, 2007

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

DATED: September 26, 2007

APPEARANCES:

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