

Date: 20071109

Docket: IMM-3640-07

Citation: 2007 FC 1166

Ottawa, Ontario, November 9, 2007

PRESENT: The Honourable Mr. Justice Blais

BETWEEN:

MUHAMMAD GHAZANFAR SHAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR ORDER AND ORDER

[1] This is an application for a stay of a deportation to Pakistan.

[2] The application for leave in this case has been filed more than five months late.

[3] The Court has the obligation to consider the reasons provided to explain why an extension of time should be provided.

[4] In fact, the Court shall consider whether the underlying leave application should be considered.

[5] Madam Justice Danièle Tremblay-Lamer had addressed the same issue in *Mutti v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 97 at paragraphs 2-4:

2 As an extension of time is a condition precedent to the consideration of the underlying leave application, the applicant must, for the purposes of the stay motion, also establish that the request for an extension of time is justified. If he is denied the extension of time, there is no leave application to be disposed of and consequently the Court does not have jurisdiction to hear the motion for a stay (*Dessertine et al c. M.C.I.*, IMM-3931-00, August 14, 2000; *Paredes c. M.C.I.*, IMM-3989-97, October 20, 1997, Noël J. (as he then was)).

3 It is well established that the four factors set out in *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846 (F.C.A.) govern the discretionary decision of whether or not to grant the extension of time. To be granted an extension of time, an applicant must demonstrate:

- 1. a continuing intention to pursue his or her application;
- 2. that the application has some merit;
- 3. that no prejudice to the respondent arises from the delay; and
- 4. that a reasonable explanation for the delay exists.

4 Assuming without deciding that the first three requirements are met, I find that the applicant has not provided any valid reasons for the delay. Having poor legal representation and ignorance of the law are neither excuses nor justifications for a delay. Further, I note that his contentions are not supported by affidavit. The request for an extension of time is thus denied. The leave application is out of time and is therefore dismissed. Consequently, the Court is without jurisdiction to entertain this motion for a stay.

[6] In my view, this decision applies to the case before the Court.

[7] The reason provided to excuse the late filing is the ignorance of the law. I should note that the applicant appeared previously before the Federal Court with a similar application regarding a decision denying his refugee claim, he is therefore aware of the time frame requested by the *Federal Courts Rules*.

[8] I have reviewed the reasons provided by the applicant to excuse the late filing of his application.

[9] To grant such an extension of time, I must be persuaded that the applicant met the test established in *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846 (F.C.A.), above.

[10] In my view, the applicant failed to demonstrate:

- a) a continuing intention to pursue his or her application, failed;
- b) that the application has some merit;
- c) that a reasonable explanation for the delay exists.

It is sufficient to conclude that the request for an extension of time be denied.

[11] Therefore, the Court is without jurisdiction to entertain this motion for a stay.

[12] If I would consider the motion for a stay on its merits, the applicant would have to demonstrate that a serious issue exists, that he would suffer irreparable harm if deported and that the balance of convenience is in his favour.

[13] I have no hesitation to conclude that no evidence was provided that a serious issue exists, that the applicant will suffer irreparable harm, if deported, and I agree with the respondent that the balance of convenience favours the respondent.

[14] This motion for a stay should be dismissed.

ORDER

THIS COURT ORDERS that:

- a) the motion for an extension of time to file an application for leave and for judicial review of the decision of the PRRA officer be dismissed;
- b) the motion for a stay of the deportation be dismissed.

“Pierre Blais”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3640-07

**STYLE OF CAUSE:
BETWEEN:**

MUHAMMAD GHAZANFAR SHAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
and
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
Respondents**

PLACE OF HEARING: By teleconference

DATE OF HEARING: November 8, 2007

REASONS FOR ORDER AND ORDER: Mr. Justice Blais

DATED: November 9, 2007

APPEARANCES:

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FOR THE APPLICANT

Mr. François Joyal

FOR THE RESPONDENT

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