

**Date: 20071203**

**Docket: IMM-4820-07**

**Citation: 2007 FC 1266**

**Ottawa, Ontario, December 3, 2007**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**ASHRF HUSSEIN  
IBRAHIM HUSSEIN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**INTRODUCTION**

[1] The irreparable harm branch of the test is broader than that of a “serious issue”. The Court may consider the Refugee Protection Division’s (RPD) negative credibility findings. The RPD found the Applicants’ story not to be credible. It has been held that a story that was found not to be credible by the Refugee Board cannot serve as a basis for an argument supporting irreparable harm. There is no risk to the Applicants that would constitute irreparable harm. (RPD Reasons; Applicants’ Motion Record, pp 135-1456; *Beck-Ne v. Canada (M.C.I.)* (11 December 2002), Doc. No. IMM-5943-02 (F.C.T.D.) (unreported); *Saibu v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 103, [2002] F.C.J. No. 151 (QL), para. 11; *Rajz v. Canada* (15 July 2003),

Doc. No. IMM-5263-03 (F.C.T.D.) per Justice Luc Martineau; *Akyol v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 931, [2003] F.C.J. No. 1182 (QL.)

## **JUDICIAL PROCEDURE**

[2] This is a motion for a stay of removal of the Applicants, scheduled for December 4, 2007 at nine in the morning.

## **FACTS**

[3] Mr. Ashrf Abdelrahim Ibrahim Hussein Al-Hashmy (Ashif) and Mr. Ibrahim Abdelrahim Ibrahim Hussein Al-Hashmy (Ibrahim) are brothers and citizens of Sudan. In 2001, they entered Canada and claimed refugee status.

[4] The RPD dismissed the Applicants' claims to Convention refugee status for the reasons that Ashif's claimed conscription and subsequent escape from the military camp lacked credibility and plausibility in its key and central elements. The RPD noted numerous discrepancies between the immigration documents completed by the Applicants after their arrival in Canada, their Personal Information Forms (PIFs), and their oral testimony.

[5] The Applicants sought to have the determination of the RPD judicially reviewed. Leave was denied by the Federal Court on March 6, 2003.

[6] Their application was considered by a Pre-Removal Risk Assessment (PRRA) Officer who carefully considered all the material submitted by the Applicants and other publicly available country condition documents. The Officer also concluded that there were no substantial grounds to believe that the Applicants would face a risk of torture; nor were there reasonable grounds to believe they would face a risk to life or a risk of cruel and unusual treatment or punishment.

### **ANALYSIS**

[7] The principles upon which a stay of removal may be granted are:

- a. whether there is a serious question to be determined by the Court;
- b. whether the party seeking the stay would suffer irreparable harm if the stay were not issued; and
- c. whether, on the balance of convenience, the party seeking the stay will suffer the greater harm from the refusal to grant the stay.

*(Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110; *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.); *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.)

### **SERIOUS ISSUE**

[8] The application is a challenge to the substance of the PRRA decision. Thus, the Applicants are required to demonstrate the existence of a serious issue with respect to this proceeding.

[9] In the case at bar, the Officer did not make a determination regarding the Applicants' credibility, yet, he was not satisfied with the evidence the Applicants proffered to displace the

significant adverse credibility determination of the RPD Panel which included the discrepancy, that the Applicants resided outside of their country of origin from 1900 until 1997; and, they withheld that information subsequently from the RPD Panel, although the information had appeared on initial Immigration documents.

### **IRREPARABLE HARM**

[10] The irreparable harm branch of the test is broader than “serious issue”. The Court may consider the RPD’s negative credibility findings. The RPD found the Applicants’ story not to be credible. It has been held that a story that was found not to be credible by the Refugee Board cannot serve as a basis for an argument supporting irreparable harm. There is no risk to the Applicants that would constitute irreparable harm. (RPD Reasons; Applicant’ Motion Record, above; *Beck-Ne*, above; *Saibu*, above; *Rajz*, above; *Akyol*, above.)

[11] The Applicants have already had their risk assessed. The same risk cannot serve as a basis for an argument supporting irreparable harm in a stay application. As to the underlying application, they may continue to instruct counsel and pursue their application from abroad. Nothing in the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 or the *Immigration and Refugee Protection Regulations*, SOR/2002-227 interferes with the entitlement of a PRRA applicant, who has been removed from Canada and who is successful on judicial review, to have his application reconsidered. (*Sesay v. MCI* (IMM 912-07 and 914-07) per Justice Edmond Blanchard; *Kim v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 321, [2003] F.C.J. No. (QL); *Sivagnanansuntharam v. M.C.I.* (February 16, 2004, Docket A-384-03) (F.C.A.); *Akyol*, above,

para. 11 (and cases cited therein); *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, [2004] F.C.J. No. 1200 (QL), para. 20; *El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42, [2005] F.C.J. No. 189 (QL).)

[12] The fact that the Applicants may face detention in the United States, is not, by itself, a basis to find that the Applicants will suffer irreparable harm if removed. (*Nabut v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1392, [2001] F.C.J. No. 1878 (F.C.T.D.) (QL).)

#### **BALANCE OF CONVENIENCE**

[13] In the circumstances of this case, the balance of any inconvenience which they may suffer as a result of removal from Canada does not outweigh the public interest which the Respondent seeks to maintain. (*Selliah*, above.)

[14] For all of the above reasons, the Applicants' Motion for a stay of execution of the removal order is dismissed.

**ORDER**

**THIS COURT ORDERS** that the Applicants' Motion for a stay of execution of the removal order be dismissed.

“Michel M.J. Shore”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4820-07

**STYLE OF CAUSE:** ASHRF HUSSEIN; IBRAHIM HUSSEIN v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 26, 2007

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

**DATED:** December 3, 2007

**APPEARANCES:**

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