

Date: 20080121

Docket: IMM-221-08

Citation: 2008 FC 75

Toronto, Ontario, January 21, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

**JOSE FERNANDO LARANJEIRA RIBEIRO
MARIA MANUELA RIBEIRO
HENRIQUE RIBEIRO
DIOGO RIBEIRO**

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER AND ORDER

UPON motion, dated the 16th day of January 2008, on behalf of the Applicants for an Order granting a stay of the execution of the Removal Order now scheduled to occur on January 27, 2008.

AND UPON reading the submissions of the parties and hearing oral submissions;

AND UPON concluding that the motion for a stay of removal should not be allowed:

[1] The Applicants make this application for a stay of removal based on an underlying application for leave to commence an application for judicial review of the Enforcement Officer's refusal to defer removal until their application to remain on humanitarian and compassionate grounds (H & C application) is considered

[2] The test for granting an order staying execution of a removal order is:

- a. whether there is a serious question to be determined by the Court;
- b. whether the applicant seeking the stay would suffer irreparable harm if the stay of removal is not granted; and
- c. whether the balance of convenience must favour the applicant seeking the stay.

Toth v. Canada (Minister of Employment and Immigration) (1988) 86 N.R. 302 (F.C.A.)

[3] The *Toth* (above) test is conjunctive. If the Applicants fail on one of the grounds: serious issue, irreparable harm, and balance of convenience, then their application for a stay of removal fails.

[4] The Applicants are a husband and wife who are citizens of Portugal. They have been in Canada since 2005. One of their three children was born in Canada. They were denied refugee status and their pre-risk assessment concluded they did not face risk of serious harm on removal back to Portugal. The Applicants applied to remain on humanitarian grounds which appears to have been unsuccessful.

[5] The Applicants did not show for a scheduled removal interview. After being arrested on an immigration warrant and released on bond, they were scheduled for removal on December 20, 2007.

[6] The Applicants requested deferral of the removal in order to sell their house and their removal was deferred to January 27, 2008. The Applicants then made a second H & C application to remain on humanitarian and compassionate grounds on January 4, 2008. They submitting that their children would suffer harm if their schooling is disrupted. They made a further request to defer removal until their second H & C application is considered. The Enforcement Offer denied their request for deferral.

[7] In *Wang v. Canada (Minister of Citizenship and Immigration)* [2001] F.C.J. No. 295, Justice Pelletier considered the degree of discretion an enforcement officer has in considering requests for deferral of removal:

Notwithstanding a general that the discretion involved is “very limited”, Nadon J. was prepared to recognize a discretion to defer removal pending the resolution of H&C applications which had been made in a timely fashion but which were not yet resolved due to backlogs in the system.

[8] I find the applicants’ second H & C application was not made in a timely fashion. Further, in response to the Applicants’ submission that the Enforcement Officer had to be mindful of the impact on the applicant children, I find the evidence does not disclose that the children would suffer irreparable harm on removal since the family will remain together and the children will continue to have their parents’ support.

Conclusion

[9] I find the Applicants have not met the test in *Toth* (above). They have not demonstrated there is a serious issue to be considered and they have not shown they would incur irreparable harm as a result of their removal to Portugal. The application for a stay of removal cannot succeed.

ORDER

THIS COURT ORDERS that the application for stay of removal is dismissed.

"Leonard S. Mandamin"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-221-08

STYLE OF CAUSE: JOSE FERNANDO LARANJEIRA RIBEIRO ET AL V.
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 21, 2008

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

DATED: January 21, 2008

APPEARANCES:

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