

**Date: 20080207**

**Docket: IMM-630-08**

**Citation: 2008 FC 167**

**Ottawa, Ontario, February 7, 2008, 9:30 p.m.**

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

**BETWEEN:**

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

**Applicants**

**and**

**Karim OUERK**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**1. Introduction**

[1] This *ex parte* motion, presented to the Court by conference call, is for an interlocutory injunction, an interim measure before the hearing on the merits of the application to stay filed by the applicants so that the application does not become moot.

[2] This motion follows the respondent's release pending the hearing of an application to stay the decision of member Marie-Louise Côté, no later than the week of February 11, 2008, or February 18, 2008, and until a decision is made on the application to stay.

[3] This application to stay must be served and filed no later than Wednesday, February 13, 2008, to be heard on an urgent basis on or before February 18, 2008.

## 2. The facts

[4] According to the affidavit of Isabelle Trottier, immigration officer, detention hearings, Immigration Division, at the Canada Border Services Agency (CBSA), the facts are as follows.

[5] The respondent was born on May 8, 1966, in Algeria.

[6] The respondent arrived in Canada in November 2005 through the port of entry at St-Bernard-de-Lacolle and was not given authorization to remain in Canada.

[7] The respondent then resided for three years at the hotel across from the Voyageur terminus in Montréal.

[8] On November 14, 2006, the respondent was convicted in Montréal of theft and breaching probation.

[9] On November 15, 2006, the respondent was arrested and detained by the Canada Border Services Agency for the purposes of proceeding with his removal.

[10] On November 15, 2006, the respondent stated that he was working in Canada illegally. He also stated that during a previous arrest by the police, he identified himself as his brother, i.e. Overk, Berkassim (September 1, 1951).

[11] A deportation order was made on November 15, for criminality in Canada, pursuant to paragraph 36(2)(a) of the *Immigration and Refugee Protection Act (IRPA)*.

[12] According to the information obtained from the U.S. Border Patrol, the respondent secretly entered the United States and he was arrested and detained by the American authorities on January 25, 2000. He was released from the York County Correctional Centre on October 7, 2002, on the condition that he report to the authorities each month. The respondent did not comply with these conditions and disappeared at the end of 2005. Further, it appears that the respondent had two aliases in the United States, namely that of Overk Karim (May 8, 1966) and Overk Berkassim (September 1, 1951).

[13] The Canada Border Services Agency requested a travel document from the Algerian Consulate on November 16, 2006.

[14] The respondent had been released on December 21, 2006, by the Immigration Division with the following conditions: Messaoud Aliouane had to deposit \$3,000, the respondent had to live with Messaoud Aliouane, and the respondent had to keep the peace.

[15] On March 1, 2007, the respondent was arrested by the Montréal police and charged with robbery, extortion, theft, concealing and possession of break-in instruments.

[16] On June 12, 2007, the respondent pleaded guilty to two counts of possession of property obtained by crime, two counts of theft, two counts of possession of break-in instruments and one count of attempted theft.

[17] The respondent did not comply with his condition to keep the peace and to live with Mr. Messaoud despite the \$3,000 surety.

[18] He received two sentences of six months' imprisonment and one sentence of three months' imprisonment, to be served concurrently.

[19] On October 11, 2007, at the end of his sentence, the applicant was once again arrested and detained by Immigration.

[20] He was kept in detention on the grounds that he was dangerous and a flight risk by the Immigration Division on October 12, 2007, October 19, 2007, November 15, 2007, December 14, 2007 and January 10, 2008.

[21] The Border Services Agency again contacted the Algerian Consulate several times and contacted the Minister of Foreign Affairs Canada to accelerate the process for obtaining a travel document.

[22] Today, February 7, 2008, the respondent was immediately released.

### 3. Analysis

[23] According to the applicants' information, the Court considered these facts:

- (a) The respondent is a danger to the public and has been convicted many times for theft;
- (b) The respondent is a high flight risk and is now subject to a deportation order issued against him on November 15, 2006, on grounds of criminality in Canada under paragraph 36(2)(a) of the IRPA;
- (c) The respondent, now without status, was unconditionally released on December 21, 2007, but nevertheless breached his release conditions thereafter, he was arrested on March 1, 2007 for theft; in fact, the applicant had been arrested on March 1, 2007, for theft, extortion, and possession of break-in instruments; he had been convicted on June 12, 2007, of different counts for three different incidents: possession of property obtained by crime, theft, possession of break-in instruments and attempted robbery;
- (d) According to the information obtained from the U.S. Border Patrol, the respondent secretly entered the United States and was released from the York County Correctional Centre on October 7, 2002, on condition that he report to the authorities

once a month. The respondent did not comply with these conditions and disappeared at the end of 2005;

- (e) The Border Services Agency made repeated requests to the Algerian Consulate and contacted the Department of Foreign Affairs Canada to accelerate the process for obtaining a travel document in order to carry out the respondent's removal as soon as possible.

[24] There is a serious issue to be decided in the application for leave and judicial review filed on this very day which justifies ordering an interim measure before the hearing on the merits of the application to stay filed by the applicants to ensure that this application for leave does not become moot.

[25] On this point, the applicants argue that the member Marie-Louise Côté who ordered the respondent's release erred in fact and in law and misinterpreted and misapplied the test required by subsection 58(2) of the IRPA and sections 244, 245 and 248 of the *Immigration and Refugee Protection Regulations* (the IRPR).

[26] The applicants will suffer irreparable harm if this *ex parte* motion on the decision of the member Marie-Louise Côté is not granted, in that the respondent's past record indicates that it is very likely that he will not report for his removal and that he may commit other criminal offences in Canada.

[27] The balance of convenience favours the applicants.

[28] The applicants were today informed of member Marie-Louise Côté's decision to release the respondent.

**JUDGMENT**

**THE COURT ORDERS** an interlocutory injunction, as an interim measure, pending an application to stay the decision of member Marie-Louise Côté to release the respondent: this judgment suspends member Marie-Louise Côté’s decision.

This judgment is made following the respondent’s release pending the hearing of an application to stay member Marie-Louise Coté’s decision no later than the week of February 11, 2008 or February 18, 2008, or until a decision is made on the application to stay.

This application to stay must be certified and filed no later than February 13, 2008, to be heard on an urgent basis on or before February 18, 2008.

“Michel M.J. Shore”

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Judge

Certified true translation

Kelley A. Harvey, BCL, LLB



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-630-08

**STYLE OF CAUSE:** MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS and MINISTER OF CITIZENSHIP  
AND IMMIGRATION v. Karim OUERK

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF *EX PARTE*  
HEARING:** February 7, 2008

**REASONS FOR JUDGMENT AND  
JUDGMENT:** Shore J.

**DATE OF REASONS:** February 7 at 9:30 p.m.

**APPEARANCES:**

Sylviane Roy

FOR THE APPLICANTS

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE APPLICANTS

FOR THE RESPONDENT