

Date: 20080717

Docket: IMM-2553-08

Citation: 2008 FC 882

BETWEEN:

JAMES COREY GLASS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

FRENETTE D.J.

[1] This is a motion to stay the execution of a removal order rendered against the applicant to the U.S., scheduled to be executed on July 10th, 2008. I granted the stay on July 9th, 2008 and here are my reasons.

[2] I have rendered a decision with my reasons in a case between the same parties considering the refusal of the Officer in a Pre-Removal Risk Assessment (PRRA) application. The instant review is of the decision of the same Officer, rendered on June 21, 2008, refusing the applicant's request for permanent residency based upon humanitarian and compassionate (H&C) application.

[3] The background facts and reasons are to be found in the above mentioned decision.

I. Summary background

[4] The applicant is a citizen of the United States (U.S.) who came to Canada on August 6, 2006, claiming refugee status, to avoid serving in Iraq as a member of the U.S. Army.

[5] He had served in Iraq during six months, where he claims to have observed “gross human rights violation committed against Iraqi civilians and “gross misconduct” by U.S. soldiers.

II. The issues

[6] The applicant submits that Officer erred in dismissing his establishment despite finding that he had demonstrated a substantial degree of establishment in Canada, was self-sufficient and was involved in the community, solely because he possessed a work permit. The applicant contends that this decision was unreasonable. He pleads that his removal would cause irreparable harm if he were returned to the U.S. because he would face persecution as an army deserter and be subject to incarceration on the basis of his public denunciation of the illegality of the Iraqi war, taking into consideration the recent crackdown on army deserters.

[7] He also argues that if returned to the U.S. his application in Canada would become moot. The respondent contests these arguments claiming they are not founded either on fact or in law.

III. Analysis

[8] Although the test in a PRRA assessment and the one on an application for permanent residence based upon H&C grounds are not the same, the reasons I gave in file IMM-2552-08 apply to this case.

[9] I believe that the applicant should be given the opportunity to present his case in a judicial review, especially in light of the fact that the Officer refused to consider new evidence (2007-2008) which indicated that the legality of the war in Iraq is contested and that the difficulty in recruiting new soldiers has caused a crackdown on deserters, especially those who have publicly denounced that war.

[10] The other serious issue raised is the question of mootness of the judicial review proceedings if the applicant is removed from Canada, see: *Perez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 663, [2008] F.C.J. No. 836 (QL).

[11] In conclusion, the applicant has satisfied all the conditions required for a stay of removal established by the Federal Court of Appeal decision in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302, 6 Imm. L.R. (2d) 123 (F.C.A.).

WHEREFORE, THIS COURT grants the application for a stay of execution of the removal order until:

- i. the disposition of the latest leave application; and
- ii. if leave is granted, until such time as the sections 18 and 18.1 application is disposed of by this Court.

"Orville Frenette"

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2553-08

STYLE OF CAUSE: James Corey Glass
v.
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 9, 2008

REASONS FOR ORDER: FRENETTE D.J.

DATED: July 17, 2008

APPEARANCES:

Ms. Geraldine Sadoway
Ms. Alyssa Manning

FOR THE APPLICANT

Ms. Sharon Stewart Guthrie
Ms. Margherita Braccio

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Geraldine Sadoway
Barrister & Solicitor
Parkdale Community Legal Services
1266 Queen Street West
Toronto, ON M6K 1L3

FOR THE APPLICANT

John H. Sims,
Deputy Attorney General of Canada

FOR THE RESPONDENT