

**Date: 20081114**

**Docket: IMM-1053-08**

**Citation: 2008 FC 1279**

**Ottawa, Ontario, November 14, 2008**

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

**BETWEEN:**

**SOOKELAL RAMJATTAN**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The issue before the Court is the reasonableness of an Enforcement Officer's decision not to defer removal despite the Applicant's claims that there were mental health issues and a pending humanitarian and compassionate grounds application (H&C) justifying the deferral.

[2] At the hearing of this matter, the Applicant sought to rely on *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 341, at least in respect of a question to be certified, in the eventuality that this application for judicial review was dismissed on the grounds of mootness.

## II. BACKGROUND

[3] The Applicant asks that the Enforcement Officer's decision be referred back to another enforcement officer for a re-determination and until the H&C decision is made. The Court understands this request, made in the Applicant's Record and reiterated at the hearing, to be a request for deferral of removal until the H&C is decided.

[4] The Applicant, a citizen of Trinidad and Tobago, entered Canada as a visitor in February 2001 and has had no legal status here after his visitor's visa expired.

[5] The Applicant's refugee claim was deemed abandoned, his pre-removal risk assessment (PRRA) application was denied, and leave for judicial review was also denied.

[6] In 2006, while the PRRA application was still in process, the Applicant filed an H&C application which remains pending.

[7] Following the negative PRRA decision, the Applicant secured a stay from this Court in respect of the pending judicial review of the Respondent's refusal to defer. However, the Applicant's leave for judicial review of the refusal to defer was ultimately dismissed.

[8] Subsequently, in February 2008, the Applicant was again scheduled for removal. A deferral request was denied and this Application for Leave and Judicial Review filed.

[9] Lastly, to complete the procedural history, the February 2008 removal was stayed by Justice Gibson "until the earlier of 30 days after a decision on the Applicant's H&C application, and the day on which the application for judicial review is finally disposed of". It is the latter, the review of this deferral decision, which is the matter before this Court.

[10] The Applicant, having come to Canada as a visitor, decided to stay. The reason, so advanced by his sister, was that he showed dramatic psychological and physical improvement in this country. However, the principal ground for seeking deferral was the existence of a pending H&C.

[11] The Enforcement Officer considered the existence of the pending H&C and noted that it was not an impediment to removal nor, at the time, was it imminent. The Officer also considered the Applicant's mental condition and family status, all matters considered on the previous deferral decision for which leave was denied. The Officer found no basis upon which to defer removal.

### III. ANALYSIS

[12] The standard of review of an enforcement officer's decision regarding deferral has been held to be reasonableness. It is also important to note that the range of reasonable outcomes is narrow given the narrow discretion accorded an enforcement officer.

[13] This case, like so many removals which have been stayed, raises the issue of mootness (see *Baron*, above). However, this case is slightly but significantly different from other cases discussing mootness. In this case, Justice Gibson, at a time when the issue of mootness was known to the Court, granted the stay until the H&C was decided (an event that would certainly make this matter moot) or the final disposition of this review. Justice Gibson's order contemplated this Court dealing with the issues in this judicial review. It is my view that the merits of the decision to refuse deferral should be considered because of Justice Gibson's order and the exercise of the Court's discretion to hear even a moot case.

[14] In my view, the Officer considered all of the relevant evidence before her. There had already been a valid PRRA which addressed the same issues regarding the Applicant's personal circumstances and there was no significant change in those circumstances.

[15] I reject the Applicant's argument that the jurisdiction to remove "as soon as is reasonably practicable" (*Immigration and Refugee Protection Act*, S.C. 2002 c. 27, s. 48) entails a consideration of s. 25 (H&C) factors. To so find would be to convert a deferral request into an

H&C. The mere existence of an H&C does not make removal impracticable (*Simoes v. Canada (Minister of Citizenship and Immigration)*, 187 F.T.R. 219).

[16] There is nothing unreasonable in the refusal to defer. Further, should the Applicant be successful on his H&C, there is no impediment to his return to Canada.

[17] In addition to the reasonableness of the decision, there is, of course, the fact that the removal date has come and gone. A new date must be scheduled and, perhaps, new grounds for deferral advanced.

#### IV. CONCLUSION

[18] As this judicial review is dismissed on grounds other than mootness, no question, as in *Baron*, above, will be certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

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

**DOCKET:** IMM-1053-08

**STYLE OF CAUSE:** SOOKELAL RAMJATTAN

and

THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 16, 2008

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

**DATED:** November 14, 2008

**APPEARANCES:**

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