Date: 20081223

Docket: IMM-4010-08

Citation: 2008 FC 1411

Ottawa, Ontario, the 23rd day of December 2008

Present: The Honourable Mr. Justice Shore

BETWEEN:

KAKONYI JOZSEFNE

Applicant

and

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

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] With regard to a stay in an immigration matter, interpretation of the spirit of the *Toth* test rests on the fact that this test is tripartite and conjunctive. In order for a case to pass the three parts of the *Toth* test, a number of interconnected factors must be present.

A stay in an immigration matter confers a privilege, as much as a right, arising from a number of interconnected factors having to do not only with what the person is or represents in that person's situation, that is, the person's experience, but also with the person's actions and behaviour

with regard to Canadian values, as described in the objectives set out in the introduction to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA).

The *Toth* test is applied by means of a preliminary assessment; in fact the entire assessment process in the *Toth* test is a preliminary stage for, or for subsequent consideration of, a possible review of proceedings setting aside conclusions reached by authorities in the first instance.

In each case, assessment of the responses to the parts of the *Toth* test provides a <u>summary</u> outline of the person's past history and, <u>to the extent possible</u>, <u>a brief judicial overview</u> weighing the person's possible future chances at subsequent stages in light of that person's circumstances.

(*Toth v. Canada (Minister of Employment and Immigration) (1988)*, 86 N.R. 302,
11 A.C.W.S. (3d) 440 (F.C.A.))

II. <u>Judicial Proceedings</u>

[2] This a motion for a stay of the order for the removal of the applicant to Hungary scheduled for January 29, 2009. The stay motion was made together with an application for leave and for judicial review (ALJR) of the decision dismissing the applicant's application, based on humanitarian and compassionate (H&C) considerations, for an exemption from the requirement that she obtain her permanent resident visa outside Canada.

III. <u>Amendment to the Style of Cause</u>

[3] The respondents note that the applicant commenced her proceeding against only the "Minister of Citizenship and Immigration". Because the "Minister of Public Safety and Emergency Preparedness" is the Minister responsible for enforcing removal orders, he should have been named

as a respondent as well (*Department of Public Safety and Emergency Preparedness Act*, S.C. 2005, c. 10 and Order in Council made on April 4, 2005 (P.C. 2005-0482).

[4] Accordingly, the style of cause in this case is amended to add the Minister of Public Safety and Emergency Preparedness as a respondent in addition to the Minister of Citizenship and Immigration.

IV. Facts

[5] The facts arise from the H&C decision and from the applicant's affidavit.

[6] The applicant is a citizen of Hungary. **She arrived in Canada on November 6, 2001 and claimed refugee status**. She alleged that her life or safety would be jeopardized if she returned to her country because she is Rom, and members of that minority group in Hungary are victims of violence and racial crime and do not enjoy the protection of the Hungarian authorities.

[7] **On June 27, 2003, the Refugee Protection Division (RPD) denied** the applicant refugee status, concluding that her narrative was not credible and that she had not discharged the onus resting on her to establish that she could not obtain the protection of her government. **On November 17, 2003, this Court dismissed the applicant's ALJR with regard to the RPD decision**.

[8] **On December 14, 2004, the application for a Pre-Removal Risk Assessment (PRRA) filed by the applicant was rejected**.

[9] On March 11, 2005 in Montréal municipal court, the applicant pled guilty to a charge of theft under $5,000.

[10] **On August 25, 2006,** the applicant **filed her application for exemption based on H&C considerations**, accompanied by various documents and written representations by her counsel. She cited the ties she had formed with Canada as well as the risks of her returning to Hungary. **Essentially, she alleged the same risks as those alleged in support of her refugee protection claim and in her PRRA application**.

[11] **On June 16, 2008, the officer rejected the H&C application.** That decision is the subject of the application for leave and for judicial review filed with the present motion.

V. Analysis

[12] The applicant does not meet any of the three tests for obtaining a judicial stay as stated by the Federal Court of Appeal in *Toth*:

a. a serious issue to be tried;

b. irreparable harm; and

c. the balance of convenience.

<u>Applicable Standard of Review</u>

[13] In light of the Supreme Court of Canada decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Court must continue to exercise considerable restraint with regard to applications for exemption based on H&C considerations, and the applicable standard of review is the reasonableness standard referred to in *Dunsmuir* at paragraphs 47, 55, 57, 62 and 64 (*Gazlat v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 532, 167 A.C.W.S. (3d) 378, at paragraphs 10 and 11; *Barzegaran v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 681, [2008] F.C.J. No. 867 (QL), at paragraphs 15 to 20).

A. <u>Serious Issue</u>

Principles governing applications for exemption on the basis of H&C considerations

[14] It is a basic principle that persons wishing to obtain the status of permanent residents in Canada must apply from outside Canada. This requirement is clearly set out in subsections 11(1) and 25(1) of the IRPA and in section 6 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *Regulations*).

[15] That said, subsection 25(1) of the IRPA gives the Minister discretionary authority to exempt a foreign national from any criterion or obligation set out in the IRPA and to grant that person permanent resident status, if the Minister considers that H&C considerations relating to that person justify such an exemption.

[16] In applications for exemption based on H&C considerations, the decision-making procedure is **entirely discretionary** and is used to determine whether an exemption is justified (*Quiroa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 495, 312 F.T.R. 262, at paragraph 19; *Doumbouya v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1186, 325 F.T.R. 186, at paragraph 7).

[17] In order to obtain such an exemption, the applicant had to establish that the hardship she would face if she had to file her application for permanent residence from outside Canada would be unusual and undeserved or disproportionate (*Akinbowale v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1221, [2007] F.C.J. No. 1613 (QL), at paragraphs 14 and 24; *Djerroud v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 981, 160 A.C.W.S. (3d) 881, at paragraph 32; *Doumbouya*, *supra*, at paragraph 8).

[18] With regard to the meaning in this context of the words "unusual and undeserved or disproportionate", *Doumbouya*, *supra*, at paragraph 9, quotes with approval the following comments by de Montigny J. on *Serda v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 356, 146 A.C.W.S. (3d) 1057:

> [20] . . .
>
> In assessing an application for landing from within Canada on Humanitarian and Compassionate grounds made pursuant to section 25, the Immigration Officer is provided with Ministerial guidelines. Immigration Manual IP5 - Immigration Applications in Canada made on Humanitarian or Compassionate Grounds, a manual put out by the Minister of Citizenship and Immigration Canada, provides guidelines on what is meant by Humanitarian and Compassionate grounds . . .
>
> . . .

The IP5 Manual goes on to define "unusual and undeserved" hardship and "disproportionate" hardship. It states, at paragraphs 6.7 and 6.8:

6.7 Unusual and undeserved hardship	**6.7 Difficulté inhabituelle et injustifiée**
Unusual and undeserved hardship is:	On appelle difficulté inhabituelle et injustifiée:
- the hardship (of having to apply for a permanent resident visa from outside of Canada) that the applicant would have to face should be, in most cases, unusual, in other words, a hardship not anticipated by the Act or Regulations; and	- la difficulté (de devoir demander un visa de résident permanent hors du Canada) à laquelle le demandeur s'exposerait serait, dans la plupart des cas, inhabituelle ou, en d'autres termes, une difficulté non prévue à la Loi ou à son Règlement; et
- the hardship (of having to apply for a permanent resident visa from outside of Canada) that the applicant would face should be, in most cases, the result of circumstances beyond the person's control.	- la difficulté (de devoir demander un visa de résident hors du Canada) à laquelle le demandeur s'exposerait serait, dans la plupart des cas, le résultat de circonstances échappant au contrôle de cette personne.
6.8 Disproportionate hardship	**6.8 Difficultés démesurées**
Humanitarian and compassionate grounds may exist in cases that would not meet the "unusual and undeserved" criteria but where the hardship (of having to apply for a permanent resident visa from outside of Canada) would have a disproportionate impact on the applicant due to their	Des motifs d'ordre humanitaire peuvent exister dans des cas n'étant pas considérés comme "inusités ou injustifiés", mais dont la difficulté (de présenter une demande de visa de résident permanent à l'extérieur de Canada) aurait des répercussions disproportionnées pour le demandeur, compte tenu des circonstances qui lui

personal circumstances. (Emphasis added.)	sont propres.

Whether the officer's decision was well founded

[19] In the present case, the decision on the application for exemption based on H&C considerations is well founded in fact and in law, given the purpose and objectives of the procedure for assessing applications for exemption under subsection 25(1) of the IRPA (*Souici v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 66, 308 F.T.R. 111, at paragraph 38; *Keita v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1186, [2006] F.C.J. No. 1483 (QL), at paragraph 12; *Benjamin v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 582, 149 A.C.W.S. (3d) 140, at paragraph 10; *Doumbouya*, *supra*, at paragraph 6).

[20] In her application for exemption based on H&C considerations, the applicant cited:

a. the ties she had formed with Canada since arriving in 2001: her employment history, sound management of her finances, her volunteer activities, the fact that one of her daughters is a permanent resident, and the fact that she lives in Canada with her son, who is also without status in Canada;

b. the same risks of her returning to Hungary as those alleged in support of her refugee protection claim, which was rejected by the RPD in June 2003.

[21] In support of her allegations, the applicant adduced documents and written representations by her counsel.

[22] After carrying out a full and detailed analysis of the allegations made and the documents adduced by the applicant, and of the objective documentary evidence on Hungary from reliable sources, the officer concluded that the personal circumstances alleged by the applicant, including the alleged risks of her returning to Hungary, were not such that she would have to face unusual and undeserved or disproportionate hardship if she were required file an application for a permanent resident visa from outside Canada.

[23] The officer concluded that, although a few facts in the file (most of which were unsupported by any evidence, or supported by insufficient evidence) demonstrated a desire by the applicant to become established in Canadian society, she had not established unusual and undeserved or disproportionate hardship. Even if a person is established in Canada in a family, economic or community manner, the extent of establishment is insufficient to grant a visa exemption under section 25 of the IRPA (*Buio v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 157, [2007] F.C.J. No. 205 (QL), at paragraph 37; *Souici*, *supra*, at paragraph 37; *Samsonov v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1158, 157 A.C.W.S. (3d) 822, at paragraph 18).

[24] The purpose of the possibility of filing an application for exemption based on H&C considerations is to provide a remedy in case of unusual and undeserved or disproportionate hardship, not to ascertain whether the person really is making or would make a positive contribution to Canadian society. In determining whether there are H&C considerations, immigration officers must determine whether there is a particular situation in the person's country of origin and whether removal would cause undue hardship; that is exactly what the officer did in the present case (*Diallo*

v. Canada (Minister of Citizenship and Immigration), 2007 FC 1062, 317 F.T.R. 179, at paragraph 32; *Souici*, *supra*, at paragraph 38; *Keita*, *supra*, at paragraph 12).

[25] With regard to the alleged risks of the applicant's returning to Hungary, after assessing the Rom people's present situation in Hungary and the applicant's personal circumstances, the officer concluded that the applicant had not established risks of her returning to Hungary that would constitute unusual and undeserved or disproportionate hardship. In her reasons, the officer clearly set out the reasons supporting her negative conclusion; these reasons are legally valid and are based on the evidence that was before the officer.

[26] The officer performed her duty in accordance with the IRPA and the case law of this Court. There is no error of fact or of law that could warrant action by this Court.

[27] In her short brief, the applicant is essentially asking this Court to reassess all the evidence. As this Court recently noted in *Diallo*, *supra*, assessment of the evidence in an application for exemption based on H&C considerations is within the discretion of the officer, who is a person with expertise, and it is not the responsibility of the Court to reassess the facts submitted to the officer:

> [27] In fact, Mr. Diallo is essentially asking this Court to reassess all the evidence and to make a different decision.
>
> [28] However, <u>it is not the Court's function to reassess facts which were put before the officer</u> (*Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] F.C.J. No. 457 (QL), para. 11; *Lim v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 956, [2002] F.C.J. No. 1250 (QL), para. 20).
>
> [29] It appeared from the H&C decision that the PRRA officer reviewed all the evidence submitted by Mr. Diallo in support of his H&C application.

> [30] It was entirely a matter for the officer, not the applicant, to decide on the weight to be given to each of the various points submitted by the applicant, based on the evidence before him. Mere disagreement as to the weight given to the various points submitted is not sufficient to warrant this Court's intervention.
>
> [31] The officer's conclusions were reasonable and were based on the evidence. Assessment of the evidence is within the discretion of the officer, who is a person with expertise.
>
> (Emphasis added.)

[28] In *Davoudifar v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 316, this Court stated as follows:

> [44] The Decision made by the Officer is highly fact-based, and as the Officer is in a better position than this Court to assess the facts before her, the exercise of a discretion in assessing the Applicant's case is subject to a high level of deference from this Court. In this case, although the Applicant's situation attracts compassion, the Officer was not unreasonable in making her Decision and, as such, I must decline to intervene.

(Also *Lim v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 956, 116 A.C.W.S. (3d) 929)

[29] It is up to an immigration officer to assess the relevant factors in an application based on H&C considerations; and, when all issues have been properly examined by the decision-maker, this Court must not reassess the evidence. A decision on an application based on H&C considerations is largely discretionary, and Parliament has entrusted this discretion to the Minister or the Minister's delegate (*Herrada v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1003, 157 A.C.W.S. (3d) 412, at paragraph 49; *Lee v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 413, 138 A.C.W.S. (3d) 350).

[30] In her ALJR with regard to the decision on the application for exemption based on H&C considerations, the applicant has not established the existence of a serious issue.

B. Irreparable Harm

[31] With regard to irreparable harm, in her short brief the applicant alleges, in general terms and on the basis of documentary evidence that is **not recent (2002 and 2003)**, that she would suffer irreparable harm because she fears for her life in Hungary.

[32] This harm alleged by the applicant consists of the **same facts and risks that were adduced before the RPD** and found to be not credible, and that were reviewed by the Federal Court, which dismissed the ALJR with regard to the RPD decision.

[33] As well, the applicant cited the **same risks in support of her application for a PRRA and in her application for exemption based on H&C considerations**. The officer who considered her application for exemption based on H&C considerations carried out a painstaking analysis of the evidence presented as well as the recent, objective documentary evidence on Hungary. She, too, concluded that the applicant had not established that she personally would be at risk in Hungary.

[34] It has been clearly established that the risks alleged before the RPD, presented to the PRRA officer, and presented to the officer in the application for exemption based on H&C considerations, all of which risks were found to be not credible or unsatisfactory, cannot constitute irreparable harm. In this regard, the Court refers to the following recent decisions:

[TRANSLATION]

> I have grave doubts about the existence of a serious issue in this entire matter. That said, since I am not satisfied that the applicant will suffer irreparable harm if he returns to Lebanon, his applications for a stay cannot succeed (see *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.)).
>
> **In fact, these are the same facts as those previously adduced before the Refugee Protection Division (RPD) and considered to be not credible, and adduced in support of the applications for Pre-Removal Risk Assessment (IMM-4129-08), for exemption based on humanitarian and compassionate considerations (IMM-4130-08), and for postponement of removal (IMM-4269-08). These same facts were also reviewed by this Court, which dismissed the Application for Leave and for Judicial Review with regard to the RPD decision.**

(*Bou Jaoudeh v. M.C.I and M.P.S.E.P.*, IMM-4129-08, IMM-4130-08, IMM-4269-08, (October 8, 2008, Judge Yvon Pinard)

> [1] This Court has often held that allegations of risk which have been determined to be unfounded by the Board and the pre-removal risk assessment officer (PRRA), cannot be used to establish irreparable harm for the purposes of an application to stay (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 145, 137 A.C.W.S. (3d) 156). This principle in regard to credibility is adaptable in the context of the failure to reverse the presumption of state protection.
>
> [2] In regard to upsetting the family and the separation that must be endured by Ms. Malagon's spouse, this is not irreparable harm, but rather a phenomena inherent to removal (*Malyy v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 388, 156 A.C.W.S. (3d) 1150 at paragraphs 17-18; *Sofela v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 245, 146 A.C.W.S. (3d) 306 at paragraphs 4 and 5; *Radji v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 100, 308 F.T.R. 175 at paragraph 39). To find otherwise would render impracticable the removal of individuals who do not have the right to reside in Canada. Further, as pointed out in *Golubyev v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 394, 156 A.C.W.S. (3d) 1147 at paragraph 12: irreparable harm is a strict test in which serious likelihood of jeopardy to the applicant's life or safety must be demonstrated.
>
> [3] For these reasons, Ms. Malagon has not established irreparable harm. This ground alone justifies the dismissal of the application.

(*Malagon v. Canada (Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1068, [2008] F.C.J. No. 1586 (QL))

> [TRANSLATION]

> The narrative forming the basis for the main argument of irreparable harm is the same as that dismissed by the PRRA officer as being not credible. Here again, it has been clearly established, as a general rule, that this narrative may not form the basis for an application for a stay unless new facts are established or new and particularly probative evidence is adduced.

(*Dumbouya v. M.C.I. and M.P.S.E.P.*, IMM-982-08 (February 20, 2008); also *Bizi-Bandoki v. M.C.I.,* IMM-4261-07 (Judge Yves de Montigny); *Knyasko v. M.C.I.*, IMM-3240-06, (Judge Michael Kelen); *Ulusoy v. M.C.I.,* IMM-3277-05, June 3, 2005 (Judge Yves de Montigny)

[35] The applicant also cites a brief passage from a document entitled "Psychological Report" prepared by David L. B. Woodbury, a member of the Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec.

[36] This report, based in part on the applicant's narrative and in part on Mr. Woodbury's clinical observations, notes, "She described sufficient symptoms to meet the DSM-IV criteria for Posttraumatic Stress Syndrome with Panic Attacks, In Remission and Major Depressive Episode, Single Episode, Mild."

[37] According to this report, then, the applicant would be in remission from the post-traumatic stress syndrome (PTSS) caused by events she said she experienced in Hungary. According to this report, the applicant needs neither medication nor psychological care.

[38] This report, after noting, " . . . She is generally happy and fulfilled in her life here . . . ," concludes, "While the determination of Ms Kakonyi's status is, of course, the responsibility of Immigration officials, I make the following, purely therapeutic recommendation: It is my

professional clinical opinion that Ms Kakonyi's psychological state is likely to suffer greatly if she were forced to return to Hungary."

[39] Contrary to what appears to be the applicant's argument, this report does not in fact establish that she would suffer irreparable harm if she returned to her country of origin, since it does not establish in any way that there is a serious risk that her life or safety would be jeopardized. The Court points out that irreparable harm must correspond to harm beyond what is inherent in the concept of deportation itself.

[40] In addition, evidence must go beyond conjecture, be credible, and establish a high degree of likelihood that the potential harm will occur. In this regard, the Court cites the remarks by Judge Johanne Gauthier in a very recent decision:

> [TRANSLATION]
>
> With regard to the state of her health, (another aspect of the irreparable harm referred to), the February 26, 2007 letter does not indicate that the applicant cannot travel. It deals only with various possible scenarios. As well, this letter, intended to be a medical assessment, is odd considering that the physician goes so far as to refer to the father's situation in Canada (He's legally residing and working in Canada). Despite its strong sympathy for the applicant's situation and the admittedly very great difficulty at this stage of her pregnancy for her to leave Canada, her "boyfriend" and her work, the Court is obliged to apply the strict test required here, and her application must be dismissed.

(*Doumbouya v. M.C.I.*, IMM-982-08 (March 20, 2008); *Radji v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 100, 308 F.T.R. 175; *Ramratran v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 377, 146 A.C.W.S.(3d) 1033; *Melo v. Canada (Minister of Citizenship and Immigration)* (2000), 188 F.T.R. 39, 96 A.C.W.S. (3d) 278)

[41] Mr. Woodbury is a guidance counsellor and a psychological educator. He is not in a position to provide an expert opinion on the applicant's alleged post-traumatic stress syndrome (PTSS). In the words of Judge Edmond Blanchard:

> [6] . . .
>
> . . . On the issue of lack of spontaneity at the hearing, the applicant relies exclusively on Mr. Woodbury's Diagnostic Interview Report. The respondent's position is that the CRDD gave appropriate weight to this Report. Its author is an Orientation Counsellor and not a Clinical Psychologist with the necessary competence to provide diagnosis of the applicant's alleged post-traumatic stress syndrome. The evidence is that the CRDD did consider the Report. It is apparent from the reasons that little if any weight was given to this Report. Given that the author was not in a position to provide an expert opinion on the applicant's alleged post traumatic stress syndrome, I find the CRDD's reasons in terms of how it dealt with this Report not to be unreasonable.
>
> (Emphasis added.)

(*Singh v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 1376,

110 A.C.W.S. (3d) 1113)

[42] In conclusion, the irreparable harm alleged by the applicant corresponds to no more than what is usual and inherent in deportation. Clearly, her allegations do not correspond to the concept of irreparable harm as has been repeatedly clarified in the case law of this Court:

> [21] . . . But if the phrase irreparable harm is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak . . .

(*Melo*, *supra*)

> [13] The removal of persons who have remained in Canada without status will always disrupt the lives that they have succeeded in building here. This is likely to be particularly true of young children who have no memory of the country that they left. Nonetheless, the kinds of hardship typically occasioned by removal cannot, in my view, constitute irreparable harm for the purpose of the *Toth* rule, otherwise stays would have to be granted in most cases, provided only that there is a serious issue to be tried . . .

(*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, 132 A.C.W.S. (3d) 547; also *Bou Jaoudeh*, *supra*; *Malagon*, *supra*)

C. **Balance of Convenience**

[43] The balance of convenience favours the respondents, in that the applicant has not established the existence of either a serious issue or irreparable harm.

[44] As well, subsection 48(2) of the IRPA imposes a duty on the respondents to enforce a removal order as soon as is reasonably practicable.

[45] The Federal Court of Appeal has confirmed that in considering the balance of convenience the public interest must be taken into consideration. It has also confirmed that **the fact that an applicant has exercised a number of remedies since arriving in Canada, and all have been unsuccessful, may be taken into consideration in determining the balance of convenience**:

> (iii) Balance of convenience
>
> [21] Counsel says that since the appellants have no criminal record, are not security concerns, and are financially established and socially integrated in Canada, the balance of convenience favours maintaining the *status quo* until their appeal is decided.
>
> [22] I do not agree. They have had three negative administrative decisions, which have all been upheld by the Federal Court. It is nearly four years since they first arrived here. In my view, the balance of convenience does not favour delaying further the discharge of either their duty, as persons subject to an enforceable removal order, to leave Canada immediately, or the Minister's duty to remove them as soon as reasonably practicable: IRPA, subsection 48(2). This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control. (Emphasis added.)

(*Selliah*, *supra*; also *Atwal v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427, 136 A.C.W.S. (3d) 109)

[46] In this case, the applicant has exhausted all of her remedies under the IRPA. The Court is not an appellate forum, as Simon Noël J. recently recalled in *Aghourian-Namagerdy v. M.P.S.E.P.*, IMM-4742-07, IMM-4743-07, IMM-17-08, January 18, 2008.

[47] The balance of convenience therefore favours the respondents.

VI. Conclusion

[48] Having regard to all of the foregoing, the applicant has not met the tests laid down by the courts for obtaining a judicial stay.

[49] The applicant's motion for a stay of the removal order is dismissed.

JUDGMENT

THE COURT ORDERS that the motion filed by the applicant for a stay of the removal order be dismissed.

"Michel M. J. Shore"
Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

CITATION:	IMM-4010-08
STYLE OF CAUSE:	KAKONYI JOZSEFNE v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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DATED:	December 23, 2008

APPEARANCES:

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