

Date: 20090327

**Docket: IMM-505-09
IMM-902-09**

Citation: 2009 FC 323

Ottawa, Ontario, March 27, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

EDINSON CAICEDO SANCHEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant with a record of drug trafficking and fraud seeks to invoke the Court's equitable jurisdiction. The Applicant asked for stay of his removal to the United States or Colombia. This case turns on irreparable harm and balance of convenience.

[2] The Applicant has a lengthy criminal record going back to 1985. It culminated in a 1992 conviction in the United States for cocaine trafficking. Upon completion of his sentence, he was deported from the United States.

[3] The Applicant then returned to the United States illegally and eventually worked his way to Canada. He entered Canada using a false identity and then, using that false identity, applied for refugee protection. That application was denied.

[4] Sometime later the Applicant's true identity was discovered and steps were commenced to have him removed.

[5] In the face of his illegal status and with knowledge that the Applicant had used a false identity, the Applicant's current wife married him. This knowledge of his past is relevant because the harm alleged is principally that of his wife who entered into the union knowing the Applicant's predilection for illegal conduct.

[6] Despite all this, the Applicant filed an H&C application and an application to clear his record (rehabilitation application). That application would have taken care of his criminal record and permitted the filing of a spousal application.

[7] The first rehabilitation application was returned for want of certain details. The second rehabilitation application was apparently lost by CIC.

[8] When the Applicant was called in for an interview, the Officer was informed of the pending rehabilitation application and had some information that the application was lost somewhere within CIC. The Officer chose to ignore these facts and dismissed the H&C application.

[9] The Applicant raises the issue of whether the Officer acted unreasonably in denying the H&C in the face of a timely filed rehabilitation application, the resolution of which had been stymied by CIC's mistakes.

[10] Assuming that this is a serious issue, which I do for purposes of this stay motion, the question is whether irreparable harm has been made out.

[11] In my view, it has not. I adopt Justice Shore's reasoning in *Perry v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 378, that, generally, substantial economic or psychological hardship to a family unit is not sufficient to establish irreparable harm.

[12] The Applicant's spouse who is completing her Masters in Occupational Health claims that she is dependent on her husband for emotional and financial support. It is highly unlikely that she will be forced on to welfare as she claims. She married the Applicant knowing the details of his illegal status, his criminal convictions and his fraudulent conduct. It is difficult for her to now object to the natural consequences of a readily foreseeable deportation.

[13] The plea concerning “best interests of the children” is largely addressed by the fact that the children of the Applicant’s wife are young adults of 18 and 20.

[14] It is hardly irreparable harm that the Applicant will be required to apply for status from outside Canada in the manner that the very vast majority of immigrants do daily.

[15] Lastly, on the balance of convenience, there is some debate about whether the “clean hands” principle is a separate issue from that of balance of convenience. For purposes of this case, the debate is immaterial.

[16] The Court, in this case, weighs (among other factors such as the legislative requirement for removal) the conduct of the department (at worst incompetence) versus that of the Applicant (drug dealing/fraud and misrepresentation). There is simply no contest that the balance of convenience favours the Respondent and the Applicant is not deserving of this Court’s broad equitable jurisdiction and relief. The Court of Appeal in *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, addressed the importance of the application of the “clean hands” principle.

[17] Therefore, this motion for a stay is dismissed.

ORDER

THIS COURT ORDERS that this motion for a stay is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-505-09 and IMM-902-09

STYLE OF CAUSE: EDINSON CAICEDO SANCHEZ

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 23, 2009

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

DATED: March 27, 2009

APPEARANCES:

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Ms. Ladan Shahrooz FOR THE RESPONDENT

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