

Federal Court



Cour fédérale

Date: 20100520

Docket: IMM-1733-10

Citation: 2010 FC 551

Toronto, Ontario, May 20, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YASEEN AHAMAD HOSEIN

Applicant

and

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

Respondents

REASONS FOR ORDER AND ORDER

[1] The applicant brings a motion for the stay of his removal to Trinidad which is scheduled for May 31, 2010. The underlying application is for leave and judicial review of a Call-In Notice dated March 26, 2010, directing Mr. Hosein to report to the Greater Toronto Enforcement Centre on April 23, 2010 to sign his Direction to Report for Removal.

[2] Although he has had a negative PRRA determination and a refusal to defer his removal, neither of those decisions, as yet, has been made the subject of an application for judicial review.

The applicant's position on this motion is that the Call-In Notice ought never to have been sent to him as he has the benefit of an administrative deferral because of his outstanding spousal application. The respondents submit that if Mr. Hosein ever benefitted from such a deferral, the period of the deferral has expired and thus there is no serious issue shown relating to the underlying application.

[3] Mr. Hosein arrived in Canada on July 17, 2005 and made a claim for refugee status on March 28, 2007. That claim was rejected by decision made on April 17, 2009. This Court dismissed an application for leave to judicially review that decision on July 29, 2009.

[4] Mr. Hosein was notified of his Pre-Removal Risk Assessment (PRRA) in person on October 26, 2009 and his PRRA was initiated on that date. The applicant submits that there is no certainty when he was sent a call-in for this purpose. If it was necessary to determine that fact, I would have accepted the officer's notes to file which indicate that it was sent on October 6, 2009.

[5] The applicant on October 22, 2009 mailed an in-land spousal application which was received on October 28, 2009.

[6] On February 26, 2010 the applicant requested a deferral of removal saying that such a deferral is warranted because his "application for permanent residence as a member of the inland spouse/common-law class was filed prior to him being served with a Pre-Removal Risk Assessment and, consequently, he meets the requirements for applying under this category." The "category"

referenced is the ‘Spouse in Canada Public Policy’ of the Minister of Citizenship and Immigration whereby the Minister grants an administrative deferral of removal for individuals who have submitted a spousal application before they become removal ready.

[7] The respondents take the position on this motion that the applicant’s spousal application was filed after he became removal ready and therefore he cannot benefit from the policy. I do not need to decide that question because I agree with the respondents that if there ever had been such an administrative deferral, it has expired.

[8] The Ministerial deferral policy provides that “for those applicants who are receiving a pre-removal risk assessment (PRRA), the administrative deferral for processing applicants under this H&C public policy will be in effect for the time required to complete the PRRA.” That time has passed and thus any administrative deferral has expired. Accordingly, even on the low standard of a serious issue being an issue that is not frivolous or vexatious, I cannot find a serious issue in this application.

[9] It was suggested that the Court nonetheless should issue a stay given the personal circumstances of the applicant and his family. As compelling as those circumstances may be, I cannot do so.

[10] For these reasons the motion for a stay of removal is dismissed.

ORDER

THIS COURT ORDERS that the motion for a stay of removal is dismissed.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1733-10

STYLE OF CAUSE: YASEEN AHAMAD ZHABER HOSEIN v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION
AND THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 17, 2010

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

DATED: May 20, 2010

APPEARANCES:

Mr. Munyonzwe Hamalengwa FOR THE APPLICANT

Ms.Mario Burgos FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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