Federal Court  Cour fédérale

Date: 20110114

Docket: IMM-171-11

Citation: 2011 FC 35

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 14, 2011

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

MANUEL ANTONIO FLORES VASQUEZ

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 wants to obtain a stay of execution for the removal order against him, which will oblige the applicant to leave for Guatemala on January 17, 2011, until a decision is made on his

underlying application for leave and judicial review concerning the refusal of his application for a pre-removal risk assessment ("PRRA"). The motion was heard via teleconference.

[2] The applicant indicates he received the PRRA decision on December 14, 2010. Thus, the applicant was given until December 29, 2010, to submit his application for leave and judicial review of this decision. However, the applicant did not file his application until January 10, 2011. Thus, this stay motion is added to an application for leave filed past the deadline.

[3] In his notice of application for leave, the applicant alleges—without providing further details—that he was sick and that he was unable to make his way to his lawyer's residence. No details were provided regarding the nature of the alleged illness nor the dates during which the applicant was reportedly affected by it. No medical certificate was produced.

[4] Furthermore, as noted by the respondent, the removal officer's notes indicate that the applicant contacted his lawyer on December 17, 2010, after he had been informed of the PRRA decision in question.

[5] In these circumstances, the applicant did not discharge the burden of providing a valid explanation for the entire length of the delay (see *Beilin et al. v. the Minister of Employment and Immigration* (1994), 88 F.T.R. 132). As I noted in *Arita et al. v. Minister of Public Safety and Emergency Preparedness*, 2010 FC 1019, my colleague Justice Luc Martineau, in *Butt v. The Solicitor General*, 2004 FC 1032, as appears in the following citations, dismissed the underlying

motion due to an absence of a serious question because the applicants had not provided a valid explanation for the late filing of their application for leave and judicial review:

> [4] As an extension of time is a condition precedent to the consideration of their leave application, the applicants must for the purpose of this stay motion, also establish that the request for an extension of time made in their leave application raises a serious issue. To do so, the applicants must put before me evidence from which I could conclude that there are special reasons upon which this Court could extend the time. In this respect, the case law requires, that the applicants establish that they had, throughout the period with respect to which the extension is being sought, the intention to challenge the decision in issue, but that they were prevented from doing so by reason of factors which were beyond their control (*Semenduev v. Canada (Minister of Citizenship and Immigration)* (2003), 234 F.T.R. 222 at para. 2 (F.C.T.D.), [1997] F.C.J. No. 70 at para. 2 (F.C.T.D.) (QL)). Manifestly, those conditions are not satisfied in the present case.
>
> [. . .]
>
> [9] As the applicants have failed to put before me evidence upon which I could conclude that their request for an extension raises a serious issue, it follows that I cannot consider their application for judicial review as raising a serious issue. Since the first requirement of the tripartite test (serious issue, irreparable harm and balance of convenience) set out in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.), (1988), 6 Imm. L.R. (2nd) 123 (F.C.A.) is not met here, the present motion for stay must fail.

See, to the same effect, *Dessertine et al. v. Minister of Citizenship and Immigration* (August 14, 2000), IMM-3931-00; *Paredes v. Minister of Citizenship and Immigration* (October 20, 1997), IMM-3889-97; *Shellner v. Minister of Citizenship and Immigration* (April 23, 1996), IMM-1378-96 and *Semenduev*, above.

[6] What is more, I believe that the applicant failed to prove the existence of a serious question related to his underlying application for leave and judicial review, which, in the case's current state, clearly appears to be without merit from my point of view.

[7] Indeed, I do not see anything reprehensible about the PRRA officer's assessment of the facts, which led to his conclusion that in the absence of specific and precise evidence in this case, the risk of falling victim to a criminal gang in Guatemala is a general risk as opposed to a personal risk (see *Perez et al. v. Minister of Citizenship and Immigration*, 2009 FC 1029 and *Menendez et al. v. Minister of Citizenship and Immigration*, 2010 FC 221).

[8] Finally, the PRRA officer did not err by excluding the humanitarian and compassionate reasons and by not considering the best interests of the applicant's child when he assessed Mr. Vasquez's application. In *Varga v. Canada (Minister of Citizenship and Immigration)*, [2007] 4 F.C.R. 3, at paragraphs 6 to 13, the Federal Court of Appeal clearly indicated that the mandate of the officer called upon to make a decision on a PRRA application consists of considering whether the person who is making the application meets the conditions set out in sections 96 to 98 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act). The Court specified that the PRRA application must not be confused with the application set out at subsection 25(1) of the Act, which allows individuals to apply for an exemption for humanitarian and compassionate reasons.

[9] As a result, the applicant's failure to prove the existence of a serious question related to his underlying application for leave and judicial review is fatal and must result in the dismissal of his stay motion.

[10] Thus, the motion is dismissed.

ORDER

The stay motion for the removal order to which the applicant is subject—and which is intended to send him back to Guatemala on January 17, 2011—is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-171-11
STYLE OF CAUSE:	MANUEL ANTONIO FLORES VASQUEZ v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
DATE OF TELECONFERENCE:	January 12, 2011
REASONS FOR ORDER AND ORDER:	Pinard J.
DATED:	January 14, 2011

APPEARANCES:

Claudia Aceituno	FOR THE APPLICANT
Sébastien Dasylva	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudia Aceituno Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT