Federal Court  Cour fédérale

Date: 20110330

Docket: IMM-1798-11

Citation: 2011 FC 394

BETWEEN:

HERMAN MITCH ST. CLAIR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

RENNIE J.

[1] The following are the reasons in relation to my decision, dated March 27, 2011, dismissing the applicant's motion dated March 24, 2011 for an Order to stay the execution of a removal Order made against him, scheduled to be executed on Monday, March 28, 2011 to St. Lucia, pending the final resolution of the applicant's Application for Leave and for Judicial Review of a negative decision by a Pre-Removal Risk Assessment (PRRA) Officer, dated February 11, 2011.

[2] On Saturday, March 26, 2011, I heard the submissions of counsel, on short notice, by telephone conference in chambers, in Ottawa, Ontario.

[3] On Sunday, March 27, 2011, I ordered the motion to be dismissed, and indicated that I would give reasons.

[4] I have considered the evidence and the submissions of the parties. I have also considered the conjunctive tri-partite test, set forth in RJR – *MacDonald Inc. v Canada (Attorney General)* [1994] 1 SCR 311, that must be satisfied before a stay of removal can be granted.

[5] Insofar as the serious issue is concerned, the applicant contended that the refusal to defer pending a decision on his in-land application for permanent residence under the spousal sponsorship class breached his right to procedural fairness, and was also irreparable harm.

[6] Section 25(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) provides a broad discretion on the Minister to grant an exemption from "any applicable criteria or obligation". Hence the discretion to grant an exemption which might have been exercised favourably under CIC Operational Policy Bulletin 126 for in-land spousal sponsorship remains equally open to the applicant under section 25(1) of the *IRPA*. He has not lost any right to advance a claim for an exemption by reason of removal and hence no serious issue can be said to arise.

[7] The second serious issue advanced is the existence of new evidence in the form of psychiatric and medical reports from the hospital in St. Lucia where he was treated after an attack by gang members in 2008. These reports were not before the Refugee Protection Division (RPD)

even though they existed at the time. The explanation as to why they were not put before the RPD was based on the applicant's depressive state and does not, given the lengthy passage of time, constitute a sufficient or reasonable explanation.

[8] The applicant was convicted in 2004 of carrying a weapon. The sentence of one year reflects the seriousness of the offence. The applicant had received a negative PRRA in 2004, which he did not challenge. Upon his return to Canada in 2008, his claim for refugee status was denied on July 15, 2010, and leave to commence judicial review was denied on October 28, 2010. On December 28, 2010 he applied for another PRRA for which he received a negative result on March 3, 2011. As well the application for in-land sponsorship was only filed February 7, 2011. Even if I were satisfied that a serious issue existed, the balance of convenience would not be in the applicant's favour.

THIS COURT ORDERS that this motion be dismissed.

"Donald J. Rennie"
Judge

Toronto, Ontario
March 30, 2011

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1798-11
STYLE OF CAUSE:	HERMAN MITCH ST. CLAIR AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION

CONSIDERED AT TORONTO, ONTARIO. TELECONFERENCE WAS HELD ON MARCH 26, 2011 IN OTTAWA, ONTARIO.

REASONS FOR ORDER:	RENNIE J.
DATED:	March 30, 2011

REPRESENTATIONS:

Joseph S. Farkas	FOR THE APPLICANT
Teresa Ramnarine	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT