

Federal Court



Cour fédérale

Date: 20111107

Docket: IMM-7837-11

Citation: 2011 FC 1274

Vancouver, British Columbia, November 7, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DAVINDER SINGH SHERGILL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This is the Applicant's second request to have his motion for a stay of removal heard on short notice. This request is improper as the Court has already declined to hear this motion on short notice. Additionally, leave to hear this matter on short notice is not warranted in the circumstances, and would cause great prejudice to the Respondent Minister. The Respondent was given no notice of the Applicant's intention to make a second request that the stay be heard.

[2] In order for a motion to be heard on short leave, the Court may hear the matter if both parties consent or if the moving party can satisfy the Court of the urgency of the motion.

Specifically, Rule 362(2)(b) of the *Federal Courts Rules* states that the Court may hear a motion on less than two days notice:

(b) in any case, if the moving party satisfied the Court of the urgency of the motion.

[3] While the Applicant's removal is scheduled for tomorrow, the only urgency arises from his own previous inaction in this matter. Therefore, the Court agrees with the position of the Respondent that the Applicant does not have clean hands.

II. Background

[4] The Applicant has been in Canada since 2001. He is a failed refugee claimant and was delivered the results of a Pre-Removal Risk Assessment on December 8, 2004. He was ordered to report to Vancouver International Airport for removal, but failed to appear. He was the subject of an Immigrant Warrant for removal.

[5] On November 16, 2010, the Applicant submitted an H&C Application.

[6] On October 3, 2011, the Applicant was arrested and was advised that he was being removed from Canada.

[7] On October 26, 2011, *21 days* after being advised that he was being removed from Canada, the Applicant requested an administrative deferral of his removal until his H&C Application could be determined.

[8] On October 27, 2011, the Respondent refused to defer removal and advised the Applicant of this decision. He brought the current motion on November 3, 2011, *7 days* later.

[9] The Applicant has not acted promptly in this matter. He waited 21 days before requesting a deferral of his removal.

[10] Once receiving the Respondent's decision, he waited a further 7 days before bringing this motion. He is not permitted through his own inaction to create the "urgency" that might justify short leave and the hearing of this matter on its merits.

III. Conclusion

[11] The Court relies on its decision in *Tsiavos v Canaa (Minister of Public Safety and Emergency Preparedness)*, [2011] FCJ No 940 at paras 12-21.

[12] For all the above reasons, the application for a stay of removal is refused.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7837-11

STYLE OF CAUSE: DAVINDER SINGH SHERGILL v MCI

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: November 7, 2011

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

DATED: November 7, 2011

APPEARANCES:

Jonas Dubas

FOR THE APPLICANT

Matthew Canzer

FOR THE RESPONDENT

SOLICITORS OF RECORD:

FOR THE APPLICANT

**Myles J. Kirvan
Deputy Attorney General of Canada
Vancouver, BC**

FOR THE RESPONDENT