Federal Court  Cour fédérale

Date: 20111107

Docket: IMM-7853-11

Citation: 2011 FC 1273

Vancouver, British Columbia, November 7, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MYUNGAH ROH

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Roh is a citizen of South Korea who came to Canada two and a half years ago and made an unsuccessful refugee protection claim. In making arrangements for Ms. Roh's removal from Canada, the Canada Border Services Agency (CBSA) has acted throughout with both caution and respect for Ms. Roh's safety and dignity. CBSA has been attempting to remove Ms. Roh since June 30, 2011.

[2] Ms. Roh's circumstances in Canada are sad and difficult. She has no family or assets in Canada; has never worked in Canada and is being supported by social assistance. She has become so fearful of removal that she is suicidal. However, she has failed to establish an objective basis for her fear. If she remains in Canada, she will continue to live under threat of removal under her existing deportation order.

[3] Ms. Roh's claims for protection have been rejected three times: once by the Refugee Protection Division (RPD) and in two negative Pre-Removal Risk Assessment (PRRA) decisions. Her refugee protection claim and her first PRRA application both alleged a risk of harm from a loan shark from whom Ms. Roh and her mother had borrowed money. Her applications to judicially review the RPD and first PRRA decision were denied.

[4] CBSA had ongoing consultations with, and obtained approval from, her medical doctor about appropriate arrangements for Ms. Roh's removal from Canada. Her doctor has consulted with a psychiatrist who treated her. CBSA is obtaining an assessment from a psychiatrist about her fitness to travel.

[5] CBSA has arranged for Ms. Roh to be escorted by a psychiatric nurse and an officer on her trip home; to be met by a medical escort for admission and treatment in a specialized hospital, in addition to a Canadian Migration Integrity Officer and a South Korean government official to ensure her physical protection. Thereby, to fulfill the specific commitment undertaken by the South Korean government to the Canadian government in regard to ensuring the well-being and safety of

their citizen, having acknowledged that bringing under control criminality and victimhood has now become a key priority for the South Korean government.

[6] Ms. Roh's second PRRA application added her fear that South Korea would be unable to provide her with adequate mental health care. Ms. Roh is seeking a stay of the execution of her removal order pending judicial review of her second negative PRRA decision.

[7] In lengthy reasons for decision, the first PRRA Officer carefully considered the evidence presented by Ms. Roh and rendered a reasonable decision. The PRRA Officer also denied Ms. Roh's application for an exemption from the law on Humanitarian and Compassionate (H&C) grounds.

[8] The Respondent Minister submits that Ms. Roh's motion should be dismissed as she has failed to establish the elements necessary to obtain a stay of her removal order: she has not raised a serious issue; not shown that she would suffer irreparable harm; and the balance of convenience favours the Minister.

[9] Ms. Roh is scheduled to be removed from Canada on or about Tuesday, November 8, 2011. Ms. Roh is under a 24-hour suicide watch in a separate unit at the Surrey Pre-Trial Centre, where medical care is available, pending her removal from Canada.

[10] Ms. Roh previously attempted suicide when she was in South Korea and she was admitted to hospital there. She has provided no evidence of any concerns about her treatment during that stay in hospital. She is being returned into the care of that hospital in South Korea.

II. Judicial Procedure

[11] The Applicant is seeking a stay of removal to South Korea on November 8, 2011, pending the determination of her application for leave and for judicial review.

III. Background

[12] The Applicant, Ms. Myungah Roh (aka Stella Roh), is a South Korean national born on December 10, 1973. The Applicant is a highly vulnerable woman with documented physical and mental disabilities caused by her treatment in South Korea. The Applicant fled to Canada on March 11, 2009, and applied for refugee protection upon arrival.

[13] The Applicant fears persecution and cruel and unusual treatment from South Korean criminal loan sharks that have violently assaulted her and attempted to kidnap her in the past. The Applicant has sustained long-term physical and psychological disabilities from these attacks. These criminal gangs have continued to harass the Applicant's family members in South Korea and repeat their threats to force her into prostitution (sex trafficking) to pay back her family's loan (Personal Information Form [PIF]; First Pre-Removal Risk Assessment [PRRA], dated December 10, 2010; Affidavit of Myungah Roh, dated July 16, 2011; Translated Certificate of Person with Disability, dated January 13, 2004; Medico-legal Letter, dated March 25, 2010).

[14] The Applicant's refugee claim and first PRRA application have documented the persecutory harassment she experienced in South Korea since 2000, when she guaranteed a family loan. Her mother's business went bankrupt and criminal loan sharks began sending men to harass Ms. Roh for loan repayment. When the harassment started, Ms. Roh and her family members tried to report the incidents to the South Korean police many times but they were not helpful. Rather than assisting to stop the harassment and escalating threats, the police only instructed Ms. Roh's family members to negotiate themselves with her criminal aggressors. Around December 2000, the men tried to kidnap Ms. Roh and she had to leave her home. Ms. Roh was also fired from her job because the aggressors harassed her at her workplace. Ms. Roh had tried to relocate and continually lived in-hiding due to fear of her criminal loan shark aggressors, but each time her persecutors were able to locate her.

[15] The criminal gang members went to her home and demanded payment of USD$100,000 (illegally high interest). After the men left her home, Ms. Roh tried to report the matter to the police and again they were unhelpful. The criminal gang members repeatedly harassed and threatened Ms. Roh by telephone. The men told her they would sell her body into prostitution at the brothels or kill her and leave no evidence behind. Around the fall of 2006, the criminal gang members damaged Ms. Roh's home by hitting a wall until there was a crack in it.

[16] Around March 2007, the criminal gang members came to Ms. Roh's home and destroyed her furniture, TV and computer with bats. Ms. Roh was home at the time and attempted to stop them. She was pushed down and could not breathe. Ms. Roh seriously hurt her back during this physical attack incident. For one week, Ms. Roh could not move and she had to remain prone.

As a result of this attack Ms. Roh suffers from permanent back injury (bulging degenerating disc) and disabling back pain to this day. Ms. Roh attempted to file a police report about this attack incident. The South Korean police refused to accept the report unless she could obtain a medical report. At the time in 2007, Ms. Roh was unable to get a medical report because she could not afford the exorbitant private medical fees. Without a medical report, the South Korean police refused to take her complaint about the March 2007 attack. The Applicant continued to live in-hiding and fear her persecutors in South Korea until she fled to Canada in March 2009.

[17] In the Applicant's H & C application, submitted on July 18, 2011, she has provided affidavit evidence about recent on-going threats from the criminal loan sharks targeting her for forced prostitution or death threats. The Applicant's mother received phone calls as recently as June 12, 2011 targeting her daughter. When the Applicant's mother reported the phone threats to the police they refused to help stating that her daughter is in Canada and there is no need to worry.

[18] Due to her persecutory and traumatic experiences in South Korea, the Applicant continues to suffer from high suicidality risk, Post Traumatic Stress Disorder and Major Depression and disabling back pain in Canada. Ms. Roh has been hospitalized for suicidality in July 2011. After Ms. Roh's deferral request was denied by the CBSA, she attempted to kill herself on October 24, 2011. Ms. Roh was found unconscious in her apartment with suicide notes. She was hospitalized at the Intensive Care Unit of St. Paul's Hospital when on October 26, 2011, CBSA Officers attempted to arrest her while she was unconscious (Involuntary Committal Order (Motion Record [MR] at p 489); further PRRA/H&C Suicide Attempt Evidence (MR at pp 490-492); Second CBSA Deferral

Request (MR at pp 493-498); Letter CBSA Detentions (MR at p 525); Second PRRA Decision and Reasons (Tab 2); H&C Decision and Reasons (MR at pp 501-516)).

IV. Issues

[19] To obtain an interim stay of a removal order, an applicant must establish all three elements of the *Toth* test:

1. That there is a serious issue to be tried;
2. That the applicant will suffer irreparable harm if the stay is not granted; and
3. That the balance of convenience is in the applicant's favour.

(*Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302, 11 ACWS (3d) 440 (FCA)).

V. Analysis

[20] Due to the specific circumstances of the case and extraordinary provisions made by the Canadian and South Korean authorities, the Court is in agreement with the position of the Respondent that the Applicant has failed to establish any of the three essential elements of the *Toth* test.

A. *Serious Issue*

[21] Ms. Roh argues that she has raised the following serious issues in the underlying application for leave and for judicial review of the PRRA decision:

a) the second PRRA Officer erred in applying the law on state protection;

b) the second PRRA Officer erred by not applying the Immigration and Refugee Protection Board's Gender Guidelines; and

c) the second PRRA Officer disregarded certain evidence.

[22] The Applicant has failed to establish a serious issue in her underlying application for leave and for judicial review of the second PRRA decision.

(1) General

[23] The nature of the decision of a PRRA Officer warrants considerable deference on judicial review and should not be set aside unless it is unreasonable (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 44-64).

[24] Further, it is not the role of this Court to reweigh the evidence and submissions with respect to state protection and substitute its discretion for that of a second PRRA Officer. Where there is nothing unreasonable in the PRRA decision, there will be no serious issue for the purposes of a stay application (*Tharumarasah v Canada (MCI)*, 2004 FC 211, at para 6; *Ramos v Canada (MCI)*, 2008 FC 179).

(2) Second PRRA Application

[25] Ms. Roh alleged the same risks in her PRRA application that she alleged at her failed refugee hearing and her first PRRA application; namely, that if she is forced to return to South Korea she will be harmed or sold into prostitution by the loan shark. She was found not to be at risk on this basis by the RPD and in her first PRRA application.

[26] In addition, in her second PRRA application, she submitted that the state of South Korea was unable to provide her adequate mental health care.

[27] The second PRRA Officer found that Ms. Roh is not at risk on any of these grounds. The Officer found, as did the RPD on June 9, 2010 and the first PRRA Officer on December 20, 2010, that state protection is available to Ms. Roh in South Korea from the loan shark. In coming to this conclusion, the second PRRA Officer considered the general status of women in South Korean society.

[28] In addition, the second PRRA Officer thoroughly analyzed the evidence regarding medical and mental health care in South Korea, including evidence of ongoing improvements to the mental health care system in South Korea. The Officer concluded:

> South South Korea's universal health care system, while not perfect, is vigorously and continuously, in collaboration with the WHO, taking steps to improve health care for mentally ill patients in the country. The government clearly has undertaken many of the NHRCK's [National Human Rights Commission of South Korea] recommendations to fruition and maintains a good relationship with this patient advocacy group. Clearly, the system still has its failings, as do all progressive health care systems; however, the more persuasive independent evidence shows that the governments is serious about improving the mental health care systems and has implemented measures that make it today a very progressive medial system, including addressing both within the medical field and within families, the social stigma recognized against mental health patients.

(Second PRRA Decision, Wunderlich Affidavit, Respondent's Motion Record (RMR), Vol 2 at Tab 2).

(3) Gender Guidelines

[29] Ms. Roh also claims that the second PRRA Officer erred by failing to engage in a gender-based analysis as required by the Immigration and Refugee Board's (IRB) "Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution" (Gender Guidelines).

[30] Ms. Roh relies on case law regarding the IRB's obligation to consider the Guidelines established by its Chairperson, although the Guidelines have not been known to apply to Respondent Minister's officers. In any event, the second PRRA Officer was sensitive to Ms. Roh's particular circumstances, as required by the IRB Gender Guidelines.

[31] The IRB is an independent administrative tribunal created under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The IRPA gives the Chairperson of the Board the power to issue guidelines "to members of the Board to assist members in carrying out their duties…" (IRPA at para 159(1)(*h*)).

[32] The PRRA Officer is not a member of the RPD and is instead a federal civil servant employed as an officer of the Respondent Minister, which Minister has a right to participate, make submissions, and intervene in RPD proceedings. The IRB's Guidelines do not apply to PRRA officers (IRPA at ss 4(1), para 170(*d*) and (*e*)).

[33] As stated by this Court, “the purpose of the Guidelines is to ‘ensure that gender-based claims are heard with sensitivity.’” There is no requirement even for RPD members to refer to the Guidelines themselves (*Martinez v Canada (MCI)*, 2010 FC 31at para 22).

[34] In any event, the second PRRA Officer’s reasons for decision demonstrate that the Officer was sensitive to the gender-based aspect of Ms. Roh’s claim. The Officer dedicated a separate section of her reasons to consideration of evidence regarding the status of women in South Korean society. Further, Ms. Roh has not specified how the Officer allegedly failed to apply the Guidelines, or how this might have affected her decision. Ms. Roh has failed to raise a serious issue (*Martinez*, above, at para 23).

(4) Second PRRA Officer Correctly Interpreted the State Protection Law

[35] Ms. Roh argues that the second PRRA Officer did not consider whether the state protection available to her in South Korea is adequate. Ms. Roh’s claims, based on her fear of the loan shark, been repeatedly rejected on the basis that state protection is available to her. In addition, the Officer did consider the adequacy of state protection as she considered evidence of how the laws against loan sharks were actually implemented, with crackdowns resulting in 1000 loan sharks being put out of business.

[36] In addition, the Officer also considered the adequacy of protection and availability of protection to women and concluded that it would not be objectively unreasonable for Ms. Roh to seek protection from the loan sharks.

[37] The second PRRA Officer also considered the adequacy of protection for Ms. Roh with respect to her medical and mental disabilities. The Officer considered the changes that have been implemented, protections available and support for persons with disabilities in South Korea. The Officer concluded that Ms. Roh would not be at risk on this basis.

[38] Further, Ms. Roh does not identify any evidence that it is not adequate or that the laws are not being implemented in her particular situation.

[39] The Supreme Court of Canada held in *Canada (AG) v Ward*, [1993] 2 SCR 689, that there is a presumption that state protection is available to a claimant and that claimants have the onus of providing clear and convincing evidence that state protection is not reasonably forthcoming.

[40] Further, it is trite law that in order to rebut the presumption of state protection in developed democracies, such as South Korea, a more onerous burden is placed on Ms. Roh to demonstrate that the avenues of state protection were indeed exhausted (*Kadenko v Canada (SG)*, (1996), 124 FTR 160, 143 DLR (4th) 532; *Hinzman v Canada (MCI)*, 2007 FCA 171 at para 57).

[41] The second PRRA Officer found that the loan shark's incarceration (for a period of approximately three years) was indicative of the capacity and willingness of the South Korean state to protect its citizens from criminal elements (second PRRA Decision, RMR, Vol 2, at Tab 2, Exhibit "YY" of Wunderlich Affidavit).

[42] It is evident that the second PRRA Officer interpreted and applied the correct legal test for state protection and reasonably concluded that Ms. Roh had failed to rebut the presumption regarding the availability of state protection.

(5) Second PRRA Officer Considered the Evidence

[43] Ms. Roh claims that the second PRRA Officer ignored the causal link of her physical and medical disabilities to her persecutory experiences in South Korea and, thus, failed to consider evidence. To the contrary, the Officer's reasons explicitly disclose that she considered all of Ms. Roh's submissions regarding her disabilities and alleged persecutory experiences.

[44] No serious issues have been raised with respect to the underlying judicial review application challenging the second PRRA Officer's decision.

B. *Irreparable Harm*

(1) General

[45] In order to satisfy the second branch of the *Toth* test, the onus is on an applicant to establish the existence of a risk of harm that is not speculative or based on a series of possibilities. An applicant must satisfy the Court that the harm will occur if the relief sought is not granted (*Molnar v Canada (MCI)*, 2001 FCT 325, at para 15; *Akyol v Canada (MCI)*, 2003 FC 931, at para 7; *Selliah v Canada (MCI)*, 2004 FCA 261, at para 13-15; *Atwal v Canada (MCI)*, 2004 FCA 427, at para 16-17).

[46] In the present case, Ms. Roh asserts that she will suffer irreparable harm because:

a. She is at risk in South Korea from the loan shark and his associates who will force her into prostitution, and because she has a mental illness requiring psychiatric treatment;

b. She will harm herself because the prospect of removal and the removal process triggers her suicidal ideation; and

c. Her application for leave and for judicial review of the second PRRA application will become moot.

[47] None of these allegations meets the threshold of "irreparable harm" for the purposes of staying the valid deportation order against Ms. Roh.

(2) Ms. Roh's allegations of risk in South Korea do not meet the threshold for irreparable harm

[48] This Court has held that where an applicant's allegations of risk already have been assessed and previously been found not to be well-founded by triers of fact, including the RPD and prior PRRA Officers, those same allegations cannot then serve as the basis for an argument supporting irreparable harm in a stay application (*Akyol*, above, at para 8; *Iwekaogwo v Canada (MCI)*, 2006 FC 782, at para 17; *Saibu v Canada (MCI)*, 2002 FCT 103, at para 11).

[49] The RPD, first PRRA Officer, and second PRRA Officer all have assessed Ms. Roh's evidence, considered her allegations, and found that she is not at risk. This Court ought not now to review allegations that have been fully evaluated by several triers of fact.

[50] Moreover, insofar as Ms. Roh claims that if she is forced to return to South Korea the loan shark and his associates would continue to harass her and possibly force her into prostitution, this was the exact same claim that Ms. Roh made before the RPD and in her first PRRA application. These allegations of risk of return were fully examined and reviewed by both the RPD and the first PRRA Officer. In both instances, Ms. Roh's allegations of risk of return were rejected (RPD Reasons and Decision, Wunderlich Affidavit, Exhibit "E"; PRRA #1 Decision and Reasons, Wunderlich Affidavit, Exhibit "I").

[51] Further, this Court dismissed applications for leave and for judicial review of both the RPD and the first PRRA decisions (Federal Court Orders Dismissing Leave for Judicial Review, Wunderlich Affidavit, Exhibits "M" & "P").

[52] In addition, Ms. Roh argues that news of her potential deportation has exacerbated the deterioration of her mental health and that there would obviously be irreparable harm if she were to act on her suicidal thoughts upon confirmation of her deportation from Canada; however, the Federal Court of Appeal has held that psychological stress, depression or anxiety arising solely from the removal does not constitute irreparable harm (*Palka v Canada (MPSEP)*, 2008 FCA 165, at para 17).

[53] Further, CBSA has gone to extraordinary lengths to ensure that all possible measures have been taken to keep Ms. Roh safe until she is removed, during the removal process, and upon her arrival in South Korea.

[54] Ms. Roh is currently under 24-hour suicide watch and is being checked every 15 minutes, in a separate part of the detention facility. She will be accompanied at all times by a CBSA escort officer and a psychiatric nurse on her trip to the airport, on the flight, and on her arrival in South Korea.

[55] Once informed of Ms. Roh's removal arrangements, her medical doctor assisted with medical needs for those arrangements. Ms. Roh's medical doctor has cooperated to ensure that she is being removed in the safest way possible and has communicated all necessary medical information to the accompanying psychiatric nurse. The South Korean Consulate has met with Ms. Roh to determine which hospital she had been admitted to previously in South Korea so that she can go to the same hospital, as she has never expressed any concerns about that hospital. The South Korean government has committed itself to the Applicant's receiving proper medical attention and safekeeping from loan sharks. The word and honour of the South Korean government is implicated as it is that government that has committed itself to ensure the commitment is kept. The safety of the Applicant's person is tied to the face-saving gesture by the South Korean government to bring under its control the criminality which it has stated it is facing, challenging, and which the South Korean government has stated it is establishing to have under its control. To that end, a Migration Integrity Officer in South Korea has been assigned to her case as has a South Korean government official.

[56] Once Ms. Roh reaches South Korea she will be met by a South Korean medical escort and a Canada Immigration Migration Integrity Officer to ensure her safe delivery to the hospital where she can get a proper psychiatric assessment and necessary care. CBSA has been informed that Ms.

Roh's family in South Korea will come to meet her at the airport and is looking forward to her return.

[57] Ms. Roh has failed to demonstrate irreparable harm based on any of the grounds cited in her argument due to the strong commitment of the South Korean government for the Applicant's well-being.

(3) No Irreparable Harm from Judicial Review being Rendered Moot or Nugatory

[58] Ms. Roh argues that she will suffer irreparable harm if the stay is not granted because her judicial review application will be rendered moot or nugatory.

[59] With respect to mootness, the Federal Court of Appeal has held that the rendering of an underlying application for leave and for judicial review of a PRRA decision is not "irreparable harm." This is because, if such mootness were "irreparable harm" for the purposes of a stay motion, it would apply to virtually all removal cases where a stay is sought and deny the courts the opportunity to examine irreparable harm on a case-by-case basis (*Sittampalam v Canada (MCI)*, 2010 FC 562, 370 FTR 23, at para 44; *Palka*, above, at para 18-20).

[60] In this case, three different decision-makers have found that Ms. Roh would not be at risk if returned to South Korea and, therefore, there are no other considerations in aid of her mootness argument.

[61] Further, as the Court of Appeal has noted, even if an applicant's judicial review application does become moot, the Court may exercise its discretion to hear it in any event. A discretion lies in favour of hearing appeals after stays have been dismissed (*Perez v Canada (MCI)*, 2009 FCA 171; *Sittampalam*, above, at para 45).

[62] Furthermore, Ms. Roh can continue her litigation by instructing counsel from abroad. Removal while her application is pending does not constitute irreparable harm due to the commitment of the South Korean government (*Selliah*, above, at para 20; *Sittampalam*, above, at para. 46).

[63] In short, Ms. Roh's argument on this point is simply incorrect in law. Indeed, in its recent decision in *Canada (MPSEP) v Shpati*, 2011 FCA 286, the Federal Court of Appeal again reinforced the principle that mootness of a PRRA application does not constitute irreparable harm for the purposes of a stay of removal:

> [34] … does the potential mootness of the pending PRRA litigation warrant deferral of removal?
>
> [35] In my view, the answer to this question is no. If it were otherwise, deferral would be virtually automatic whenever an individual facing removal had instituted judicial review proceedings in respect of a negative PRRA. This would be tantamount to implying a statutory stay in addition to those expressly prescribed by the IRPA, and would thus be contrary to the statutory scheme.
>
> [36] Indeed, counsel for Mr Shpati were not prepared to go this far. Their position and, perhaps, that of the Judge (at para. 42) was that the potential mootness of the PRRA litigation was not determinative in every case, but that it is an error of law for an enforcement officer not to take it into account when determining requests for the deferral of removal pending the disposition of judicial review proceedings challenging a PRRA.

> [37] I disagree with this argument. First, the potential mootness of the PRRA litigation would be a factor whenever an enforcement officer is asked to defer a removal pending the determination of a judicial review of a negative PRRA. As a result, it would be formalistic to insist that officers' reasons must refer to it in every case as a condition precedent of the validity of their decision.
>
> [38] Second, the potential mootness of the underlying judicial review application resulting from the removal of the applicant does not necessarily constitute irreparable harm to the applicant under the tripartite test so as to warrant the grant of a judicial stay: *El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42 at para. 8; *Palka v. Canada (Minister of Public Safety and Emergency Preparedness)* 2008 FCA 165 at para. 20. However, the Judge's decision granting Mr Shpati's motion for a stay seems to have given rise to divergent views in the Federal Court: see paras. 37-40 of his reasons for the decision that is the subject of the present appeal.
>
> [39] If mootness does not in itself amount to irreparable harm for the purpose of the tripartite test for the grant of a judicial stay of removal, I see no reason why enforcement officers should always be legally required to consider it when determining a request for deferral pending the disposition of PRRA litigation.

[64] Ms. Roh has failed to show that she will face irreparable harm on her removal from Canada.

C. *Balance of Convenience*

[65] The balance of convenience in this case strongly favours the Minister. Ms. Roh has had full access to Canada's immigration processes in the two and a half years she has resided in Canada. She has had the benefit of a refugee claim, two PRRA applications, and an H&C application. All her claims have received negative determinations. Her applications to judicially review her refugee claim determination and the first PRRA decision were dismissed by the Federal Court (*Selliah*, above, at para 21-22).

[66] Ms. Roh is ill. She needs proper, ongoing care and support, and a stable environment. Her situation in Canada is tenuous. She has exhausted her immigration remedies, and remains under the threat of deportation. She has been unemployed, transient, and on social assistance. She has no family support in Canada and while she has continued her counselling, she appears to have been avoiding medical attention at times.

[67] Further, Ms. Roh's outlook in Canada is bleak as Social Assistance BC is in the process of cutting her off assistance because she is now an unsuccessful refugee claimant. If she remains in Canada she will continue to have the threat of removal under her enforceable removal order hanging over her head.

[68] Ms. Roh's circumstances in South Korea are much more hopeful, with her family eager to welcome her and assist with her care. Her family would be able to provide her a home, supervision, support, and assist with her medical and mental disabilities. The balance of convenience does not favour delaying her removal.

[69] In assessing the balance of convenience, the Court must consider the public interest in the enforcement of laws that have been enacted by democratically-elected legislatures and passed for the common good. If a statute charges a public authority with undertaking a particular action, the Court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action (*RJR- MacDonald Inc v Canada (AG*), [1994] 1 SCR 311).

[70] The Minister of Public Safety and Emergency Preparedness is mandated by statute to enforce Ms. Roh's deportation order as soon as reasonably practicable. This Court has held that the public interest supports the efficient, expeditious and fair administration of Canada's immigration laws. The public interest favours Ms. Roh's prompt removal from Canada (*IRPA* at ss 48(2); *Membreno-Garcia v Canada (MEI)*, [1992] 3 FC 306, 93 DLR (4th) 620 (TD)).

[71] As stated by the Federal Court of Appeal, "[i]f the administration of immigration law is to be credible, the prompt removal of those ordered deported must be the rule, and the grant of a stay pending the disposition of legal proceedings, the exception (*Tesoro v Canada (MCI)*, 2005 FCA 148, at para 47).

VI. Conclusion

[72] In this specific case, recognizing the commitments the South Korean government made to the Canadian government authorities, the Applicant has failed to establish any of the three elements necessary for this Court to grant an order staying execution of the removal order. Consequently, the Applicant's motion to stay the execution of the removal order is denied.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's motion to stay the execution of the removal order be denied.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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