

Federal Court



Cour fédérale

Date: 20111130

Docket: IMM-7894-11

Citation: 2011 FC 1384

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

BETWEEN:

**DUMITRU CHRISTIAN SPARHAT
CARMEN LILIANA SPARHAT
ILINCA SPARHAT**

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS AND THE
CANADA BORDER SERVICES AGENCY**

Respondent

REASONS FOR ORDER

LEMIEUX J.

I. Introduction

[1] For the following reasons, on November 10, 2011, I granted a stay of removal to Romania of the Sparhat family, the father Dumitru, the mother Carmen and their daughter Ilinca, 12 years old.

[2] This application for judicial review is attached to an application for leave and judicial review (ALJR) of a decision of November 4, 2011, rendered by a removal officer.

[3] The youth, Ilinca, is at the centre of the arguments advanced by the applicants, who applied for protection from Canada on December 4, 2007, out of fear of the Romanian mafia, which it seems, had allegedly kidnapped Ilinca in September 2007 outside of her school and was confined for several hours.

[4] On March 22, 2010, the Refugee Protection Division rejected the applicants on the ground that they were not credible. Ilinca did not testify. Their ALJR and their pre-removal risk assessment application were dismissed by a judge of this Court.

[5] Their application for permanent residence in Canada, filed on December 6, 2010, and based on humanitarian and compassionate grounds, was apparently not reviewed before August 12, 2012.

II. The officer's decision

[6] The Sparhat family's stay application was supported by two psychological assessments; (1) the first by psychological services at the Commission Scolaire Marie-Victorin dated October 20, 2011, and (2) the other by Doctor Woodbury dated October 24, 2011.

[7] Doctor Woodbury's findings are the following:

I am in complete agreement with the findings of the School Psychologist, Mme Suzanne Comeau. In addition, it is my professional judgement that, as Ilinca is in an extremely fragile

psychological state, she is at extreme risk of irreparable psychological damage if she were forced to return to Romania.

...

If, however, she is forced against her will to go to Romania, a place she associates with the terror of her kidnapping, her symptoms will be exacerbated and her suffering increase. The stress of deportation is always acute, and any child can be expected to dread such a wrenching transition. But in Ilinca's case, given her already severe reactions, and the present decrease in functioning, she is uniquely vulnerable to further deterioration.

...

This deterioration will be worsened by the lack of any social safety net in Romania. The re-traumatization of deportation will, almost certainly, cause her irreparable psychological damage. Any psychiatric or psychological interventions after the fact can only attempt to repair what has been broken: In this case, the mental health of a gifted young girl.

[Emphasis mine]

[8] The removal officer based the decision on several elements, including that of Ilinca's psychological state, which is determinative. The officer reasoned as follows:

4. The problem that is perceived for the daughter is that of permanent psychological scaring therefore leaving one to believe that it is possibly untreatable. After reading the documents submitted by the client's representative, one is to perceive the problem as possibly permanent therefore the solution of deferring the removal is not questionable due to the fact that the problem will always exist and an indeterminate deferral cannot be the solution.

5. Clients were given the negative PRRA decision on the 14Sep2011. A deferral of removal has already been given indirectly seeing on how they have already benefited from two months to prepare for their departure. According to CBSA policy, "The IRPA stipulates that if a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as reasonably practicable."

6. Deferring the removal until the H&C decision is rendered is only a temporary solution for the client's daughter. The problem will still exist if the H&C results are not in their favour and as mentioned previously deferring the removal indefinitely cannot be a future solution.

[Emphasis added]

III. Analysis and conclusion

[9] It is not in dispute that, to obtain a stay from this Court, the Sparhat family must show this Court the following elements:

- a. One or more serious questions to argue assessed on the basis of "quite a strong case" (See *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311, at paragraph 67);
- b. That she will suffer irreparable harm if the stay is not granted; and
- c. That the balance of convenience is in its favour.

[10] In my view, the plaintiffs have established the existence of the following serious questions to debate, judged on a high standard:

- Did the officer exceed jurisdiction in assessing the psychology reports in this case without consulting the Department's medical service.
- Did the officer assess the best interests of the child poorly by refusing the stay on the ground that "one is to perceive the problem as possibly permanent therefore the solution of deferring the removal is not questionable due to the fact that the problem will always exist and an indeterminate deferral cannot be the solution."
- Did the officer commit an error in speculating that in Romania "we can safely expect that programs offered in the educational environment would all be adequate."

[11] The Sparhat family demonstrated the existence of irreparable harm on the basis of the assessment of Doctor Woodbury, who determined that “the re-traumatization of deportation will, almost certainly, cause her irreparable psychological damage.”

[12] In the circumstances of this case, the balance of convenience favours the applicants.

“François Lemieux”

Judge

Ottawa, Ontario
November 30, 2011

Certified true translation
Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7894-11

STYLE OF CAUSE: DUMITRU CHRISTIAN SPARHAT, CARMEN
LILIANA SPARHAT, ILINCA SPARHAT v THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS CANADA BORDER SERVICES
AGENCY

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 10, 2011

REASONS FOR ORDER BY: The Honourable Mr. Justice Lemieux

DATE: November 30, 2011

APPEARANCES:

Serban Mihai Tismanariu FOR THE APPLICANTS

Thi My Dung Tran FOR THE RESPONDENT

SOLICITORS OF RECORD:

Serban Mihai Tismanariu FOR THE APPLICANTS
Montréal, Quebec

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