Federal Court  Cour fédérale

Date: 20111219

Docket: IMM-7645-11

Citation: 2011 FC 1489

Ottawa, Ontario, December 19, 20110

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AL-MUNZIR ES-SAYYID

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary Matter

[1] Counsel for the Applicant requested that the undersigned Judge recuse himself for reasons stated in the Background (at para 4) and when the Judge refused to do so, counsel for the Applicant requested that the undersigned Judge render his decision before the weekend, stating that she would like to have the opportunity to set aside the Judge's decision on the stay of removal before a Provincial Court and/or the Federal Court of Appeal, knowing already what his decision would be, this, before the matter was even heard. (In regard to whether the two other courts even have jurisdiction in respect to this specific context and/or content is another matter.)

II. Introduction

[2] The Applicant, a citizen of Egypt, was found inadmissible for serious criminality under paragraph 36(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. A Delegate of the Minister of Citizenship and Immigration concluded under subsection 115(2) of the *IRPA* that the Applicant posed a danger to the public in Canada.

III. Background

[3] On May 11, 1996, the Applicant, Mr. Al-Munzir Es-Sayyid, arrived in Canada at the age of seven with his family and claimed refugee protection against Egypt. The Applicant and his family had left Egypt five years earlier and had resided in a number of places including Saudi Arabia, the Peshawar area of Pakistan and Azerbaijan before arriving in Canada.

[4] On April 10, 2003, the Applicant was granted refugee protection in Canada. The Applicant's father, as was specifically specified, in oral argument in detail, by counsel of the Applicant, Mr. Mahmoud Jaballah, was named in a certificate under subsection 77(1) of the *IRPA*. The certificate, as counsel for the Applicant specified, is currently the subject of litigation before this Court and counsel of the Applicant also specified in oral argument that, in the case of the Applicant's father, Mr. Mahmoud Jaballah, that case has been and continues to be before the Federal Court for the last ten years. (In this respect, the Court also signals that counsel for the Applicant, in the initial period of the hearing, requested that the undersigned Judge recuse himself as she stated that he is prejudiced in cases of criminality in respect of his strict interpretation of the security of the public. When the undersigned Judge specified that he has no intention to recuse himself as his task was simply to ensure, as in each and every case, that he interprets the legislation

and applies the jurisprudence in light of the context of each case as he is a Judge, a member of the judiciary, and not an elected legislator of the legislative branch of government, nor a member of the executive branch of government, his task was simply to ensure that legislation was interpreted and that jurisprudence was applied reflecting both the intentions of the legislator and interpretation as specified in the context of the jurisprudence; the counsel for the Applicant also stated that she wanted the undersigned Judge to know that the Applicant's father, Mr. Mahmoud Jaballah, was "in her office" for the teleconference hearing of his son's stay of removal application to which the undersigned Judge replied that as in open Court, everyone was welcome and it was natural for a father to want to be present at the hearing of his son.)

[5] On November 13, 2009, the Immigration Division of the Immigration and Refugee Board determined that the Applicant was inadmissible to Canada for serious criminality under paragraph 36(1)(*a*) of the *IRPA* and issued him a Deportation Order.

[6] On June 14, 2010, the Canada Border Services Agency [CBSA] initiated a process to obtain a Danger Opinion regarding the Applicant which resulted in a Danger Opinion being issued on October 12, 2011.

[7] On October 28, 2011, the Applicant filed an application for leave to judicially review the Danger Opinion. The present motion for a stay of removal is made ancillary to this application.

A. *Criminal Background*

[8] The Applicant has an extensive criminal background which began when he was subject to the *Youth Criminal Justice Act*, SC 2002, c 1, and continued afterward. During the six-year period, between December 9, 2004 and December 15, 2010, the Applicant was convicted of the following criminal acts:

a. **December 9, 2004**: uttering threats; two counts of possession of property obtained by crime under $5000; attempted theft over $5000; and failure to comply with recognizance (ss 145(3) of the *Criminal Code*);
b. **January 12, 2005**: assault and theft under $5000;
c. **December 6, 2005**: conspiracy to commit robbery and failure to comply with disposition (s 137 of *Youth Criminal Justice Act*);
d. **January 18, 2006**: robbery;
e. **August 31, 2006**: obstructing a police officer;
f. **April 23, 2007**: possession of property obtained by crime under $5000 and carrying a concealed weapon;
g. **April 17, 2009**: armed robbery, use of an imitation firearm and robbery;
h. **December 15, 2010**: while incarcerated, possession of three grams of heroin.

[9] With respect to the Applicant's adult convictions, dated April 17th 2009, the Minister's Delegate noted the following facts from the Agreed Statement of Facts that was submitted in support of the guilty plea:

a. **June 25, 2007**: the Applicant and an accomplice, armed with a knife and a sawed-off shotgun, respectively, overpowered the female victim, an escort, and her friend

in her apartment and robbed them of $1,910.00 in cash, their cell phones, the victim's purse and assorted identification cards;

b. **July 1, 2007**: the Applicant and four accomplices entered a private club and robbed the patrons of $3,000.00 in cash and $1,500.00 in personal equipment. The Applicant was identified as one of the perpetrators who was carrying a shotgun;

c. **July 26, 2007**: the Applicant, armed with a gun, and an accomplice, entered the hotel room of an escort and robbed her of her purse, containing $505.00 in cash, two credit cards, two cell phones, identification cards and personal effects. The victim did not report the incident to the police but her personal effects were found by the police during the course of their investigation;

d. **August 1, 2007**: the victim, an escort, was robbed while exiting an elevator, by three men who pushed her and robbed her of her purse, cell phone, identification documents and $395.00 in cash. The Applicant admitted to having committed the crime.

B. *Danger Opinion*

[10] In written Reasons, the Minister's Delegate had considered the Applicant's criminal behaviour which evolved from schoolyard theft to pre-meditated well-planned robberies involving weapons and threats of violence against mostly vulnerable and marginalized women (Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, Applicant's Record (AR) at pp 17- 21).

[11] The Minister's Delegate also considered, in written Reasons, the Applicant's lack of rehabilitation. The Applicant committed offences while on probation for previous offences and,

while incarcerated, was cited for a number of disciplinary infractions and pled guilty to the reduced charge of possession of three grams of heroin. The Applicant also had to be transferred from the medium-security Joyceville Institution to the maximum-security Millhaven Institution because he could not be adequately supervised or controlled in a medium-security facility (Reasons for a Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at pp 21-26).

[12] Based on the Applicant's numerous and serious criminal acts involving firearms and threats of violence against a vulnerable and marginalized group, as well as his lack of rehabilitation in spite of probation and incarceration, the Minister's Delegate found, on a balance of probabilities, that the Applicant represents a present and future danger to the Canadian public whose presence in Canada poses an unacceptable risk (Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 26).

[13] The Minister's Delegate also assessed the Applicant's allegation of a risk of harm in Egypt as the son of a person considered to be a political dissident. Based on the documentary evidence on current country conditions, the Minster's Delegate found that the Applicant failed to demonstrate a well-founded fear of persecution under section 96 of the *IRPA* or a risk of harm as set out in section 97 of the *IRPA* upon return to Egypt (Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 26-33).

[14] The Minister's Delegate noted *inter alia* that the former ruling regime, which had considered the Applicant's father to be a political dissident, was overthrown; the State Security Investigations agency [SSI], the principal agency responsible for interrogations and torture of

political dissidents, had been dismantled; salvaged files detailing abuses by the SSI had been released; and some political prisoners, including members of the group Al Jihad, had been released from prison (Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 26-33).

[15] The Minister's Delegate did consider the Applicant's allegation that since the revolution, Egyptians have been arrested, detained and tried in military courts for civilian crimes. The Delegate did note that the majority of those cases involved protesters who participated in demonstrations and the other cases involved those who insulted the military in the media. None of the cases of arrest and detention involved family members of persons considered to be political dissidents and no evidence was submitted to demonstrate that family members of Mr. Mahmoud Jaballah have been targeted by the new regime (Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at pp 31-33).

[16] The Minister's Delegate also assessed the humanitarian and compassionate [H&C] considerations and found insufficient H&C factors to outweigh the risk the Applicant posed to the public in Canada (Reasons for a Determination, pursuant to para 115(2)(*a*) of the *IRPA*, AR at pp 33-37).

IV. Issue

[17] Has the Applicant satisfied each of the three parts of the conjunctive test for a stay?

V. Analysis

[18] The test for granting an order to stay the execution of a removal order is:

(1) whether there is a serious question to be tried in the principal application;

(2) whether the party seeking the stay would suffer irreparable harm if the stay were not issued; and,

(3) whether, on the balance of convenience, the party seeking the stay would suffer the greater harm from the refusal to grant the stay.

(*Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA); *RJR-MacDonald Inc v Canada (Attorney General*), [1994] 1 SCR 311).

[19] The test for a stay is conjunctive and the Applicant must therefore satisfy each branch of this tri-partite test.

[20] The Court, subsequent to reading all of the submitted materials, having heard both parties in a teleconference hearing and reflected on the matter, agrees with the position of the Respondent.

[21] The Applicant fails to raise an arguable issue in his underlying application and fails to establish that he would face irreparable harm if the stay scheduled for the 19th, 20th or 21st of December 2011, were not granted. The Court agrees with the Respondent that the balance of convenience weighs in favour of the public interest in this case. The Applicant is a foreign national who is to be removed subsequent to his having been determined to be inadmissible for serious criminality, all of which is explained below:

(1) Serious Issue

[22] The Applicant alleges that the Minister's Delegate ignored, misconstrued and cherry picked the evidence, relied on speculation, improperly relied on police reports and reports from Correctional Service Canada [CSC], and improperly considered the Applicant's record under the *Youth Criminal Justice Act*.

[23] The Court finds that the Applicant's allegations are unfounded. The Minister's Delegate carried out a balanced and reasonable assessment of the totality the evidence and properly considered the Applicant's criminal record.

[24] Contrary to the Applicant's allegation of error, the Minister's Delegate did not state that the family was not found to be Convention Refugees. On the contrary, the Minister's Delegate states that Mr. Es-Sayyid was found not to be a Convention refugee on March 19, 1999, which decision was overturned by the Court on September 8, 2010, and that Mr. Es-Sayyid was subsequently found to be a Convention refugee on April 10, 2003. The Minister's Delegate does not state that the family was not found to be Convention refugees (Reasons for a Determination Pursuant to paragraph 115(2)(*a*) of the *IRPA*, AR at pp 9-10).

[25] Similarly, the Minister's Delegate does not refer to the CSC Profile Report as "the official version of the offences". Rather, the Minister's Delegate provides excerpts from two sections of the CSC Profile Report: one entitled "Offender's Version" in the Report, which the Minister's Delegate refers to as Mr. Es-Sayyid's version, and the other entitled "Official Version" in the

Report, which the Minister's Delegate refers to as official version. The Minister's Delegate merely uses the terminology of the CSC Profile Report (CSC Profile Report, AR at pp 81-82; Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 15).

[26] There is also no merit to the allegation that the Minister's Delegate relies on speculation to find that the extent of the group's criminal activity is likely unknown, that the Applicant likely played a leadership role in the group, that the Applicant's lifestyle suggested further involvement in criminal activity, and that the Applicant was a willing participant in criminal activity when he was found in possession of heroin. All of these findings are based on the evidence.

[27] The Minister's Delegate notes that, according to the documentary evidence, the extent of the group's criminal activities was likely unknown:

> … It is noted in the documentary evidence on file that although the police had Mr. Es-Sayyid and his accomplices under surveillance, and despite the fact that Mr. Es-Sayyid pleaded guilty to a number of offences, the extent of the group's criminal activity is likely unknown, given that the victims were targeted because of their own illegal employment activities and consequent unwillingness to contact the police.

(Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 18).

[28] The Minister's Delegate also notes that, according to the documentary evidence, the Applicant stated "that most of his friends have a criminal record, and although he was not a leader in his circle of friends, he was 'getting there'" and that he later stated "that on the street, the majority of his peers were older than him, however they somehow placed him in the leadership role" (Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 18).

[29] The Minister's Delegate further notes that, according to the documentary evidence, the Applicant's lifestyle suggested involvement in criminal activity going beyond the three incidents for which the Applicant was convicted on April 17, 2009:

> … I am also satisfied that, despite the fact that Mr. Es-Sayyid was only convicted of offences arising out of three incidents, his lifestyle suggests that he was involved in criminal activity beyond those single three incidents. According to the Program Performance Report, submitted by counsel, Mr. Es-Sayyid began associating with negative peers during his father's detention, "supporting himself through criminal activity. However, as the years passed he began to want more money and more money, and at the time he was arrested he was living in a nice condo with his girlfriend, supplying all of his needs without any worries". Mr Es-Sayyid was a habitual user of recreational drugs, stating that "he did smoke marijuana regularly (like cigarettes)". Given that he was not employed, it is reasonable to conclude that his lifestyle was funded through crime, and that such activities were not limited to the three instances for which he was convicted.

(Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) *IRPA*, AR at p 19).

[30] Likewise, the Minister's Delegate relied on the documentary evidence to find that Mr. Es-Sayyid was a willing participant in the conduct leading to his institutional offences. The Minister's Delegate took into consideration the sentencing judge's remarks that the Crown had a strong case, noted the nature and extent of the disciplinary infractions for which the Applicant was cited and considered the statements of the Assessment Intervention Manager at Joyceville Institution regarding the Applicant's institutional behaviour and conduct (Reasons for a Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 21).

[31] The Minister's Delegate's findings of fact were based on the documentary evidence and were not based on speculation as alleged. While the Applicant may not agree with the Minister's Delegate's assessment of the evidence and would have preferred an alternative assessment, he fails to establish that the Minister's Delegate's assessment was not reasonably open to him to make.

(a) The Minister's Delegate does not ignore evidence

[32] Moreover, when assessing documentary evidence, the Minister's Delegate has a large amount of discretion, and is entitled to give some documents more weight than others. The failure to mention some documentary evidence is not fatal to the Officer's decision, as the Officer is assumed to have weighed and considered all the evidence presented to her/him unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL/Lexis) (CA) at para 1; *Hassan v Canada (Minister of Citizenship and Immigration)* (1992), 147 NR 317 (FCA) (QL/Lexis)).

[33] There is no merit to the allegation that the Minister's Delegate erred in his assessment of rehabilitation by ignoring the fact that the Applicant has been detained or incarcerated for four years, has stated that he cut ties with his former circle of friends and has a job offer from his brother.

[34] The Minister's Delegate specifically notes that the Applicant "has been incarcerated since he was eighteen" and that pursuant to the Program Performance Report, the Applicant "was distancing himself from negative peers" and, aside from two legitimate friends, "has cut ties with the remaining associates" with whom he used to commit crimes (Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 25).

[35] The Minister's Delegate also specifically considers the Applicant's statement that he has a job offer from his brother and notes that there is no letter from the brother indicating that he would hire the Applicant:

> Mr. Es-Sayyid's education and employment skills are limited, although both he and his parents state in their submissions that he could be employed by his older brother,

> who owns a garage-installation business. There is no letter of employment from this company, and Mr. Es-Sayyid's brother has not submitted a letter indicating that he would, indeed, be able to hire Mr. Es-Sayyid upon his release.

(Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 25).

[36] Similarly, there is no merit to the allegation that the Minister's Delegate ignored the psychological assessment conducted by Dr. Simourd in June 2011 when assessing the Applicant's rehabilitation. The Minister's Delegate specifically quotes from the report:

> The psychological assessment conducted by Dr. Simourd in June 2011 suggests that "the strength of the clinical evidence is that Mr. Es-Sayyid's antisocial conduct was not due in any significant manner to influence related to his father, but is more reflective of an immature, impressionable, and aimless individual who was exposed to an antisocial peer group at a fragile period in his life. In many respects, the factors contributing to Mr. Es-Sayyid's antisocial behaviour are quite similar to those offenders who lack the family history of Mr. Es-Sayyid.

(Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at pp 24-25).

[37] There is likewise no merit to the allegation that the Minister's Delegate, when assessing the changes to the Applicant's home life, ignored the fact that his father has been released from detention on terms and conditions. The Minister's Delegate specifically notes the effect of the father's release on terms and conditions on the home life (Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at pp 25-26).

[38] A reading of the decision reveals that the Minister's Delegate considered the information that the Applicant alleges was ignored. The Applicant's disagreement is essentially with the way in which the Minister's Delegate weighed and assessed the evidence which is not a valid ground for judicial review.

(b) The Minister's Delegate considered police and CSC reports

[39] The case law clearly allows Minister's Delegates to rely on any evidence considered to be credible and trustworthy in the circumstances.

[40] With respect to police incident reports, the case law clearly states that if the decision-maker decides to reject the Applicant's version of events in favour of those found in a police report, he is required to explain why he preferred the police version:

> [26] It is open to the Board to rely on evidence it finds to be relevant, credible and trustworthy and to determine its weight. It is also open to the Board to reject the Applicant's version of events and accept the facts as indicated in the police report. However, in so doing, it is important not to mischaracterize the nature of the police report. As my colleague, Mr. Justice Mosley indicated in *Rajagopal v. Canada (Minister of Public Safety and Emergency Preparedness)* [2007] FC 523, at paragraph 43, a police report contains allegations as recorded by the police officer upon investigation of the complaint, not the findings of fact reached by the court that convicted the Applicant and imposed sentence.
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> …
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> [29] As stated above, the police report does not record findings of fact, but rather allegations of fact following an investigation. In my view, it was not open to the Board to accept as fact the allegations contained in the police report without pointing to evidence or testimony to support an argument that on a balance of probabilities the police report characterizes the underlying facts in an accurate manner. Further, the Board failed to explain why it preferred the allegations of fact found in the police report over the Applicant's evidence, or the findings of the sentencing judge in respect of the circumstances surrounding the offence. I am left to conclude that the Board's finding was made without regard to the evidence and is consequently perverse and unreasonable. In so doing the Board committed a reviewable error.

(*Dhadwar v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 482).

[41] In the present matter, the Minister's Delegate relies on the Applicant's convictions, the Agreed Statement of Fact, the sentencing judge's remarks and CSC documents. Nowhere in the decision does the Minister's Delegate reject the Applicant's version of events in favour of the

version contained in a police report. Moreover, with respect to the Applicant's conviction for possession of heroin in the Joyceville Institution, the Minister's Delegate clearly explains the reasons for which he gave considerable weight to the expertise of the Intervention Assessment Manager who authored the report. The Minister's Delegate committed no error in his use of reports. (Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of *IRPA*, AR at p 20).

(c) Convictions under the *Youth Criminal Justice Act*

[42] There is no merit to the Applicant's allegation that the Minister's Delegate improperly considered the Applicant's record under the *Youth Criminal Justice Act*.

[43] Pursuant to subparagraph 119(2)(i) and paragraph 119(9) of the *Youth Criminal Justice Act*, a person's record as a young offender "shall be dealt with as a record of an adult" when the youth offender is convicted of an offence as an adult during the period ending three years (for summary convictions) and five years (for indictable offences) after completion of the sentence imposed under the *Youth Criminal Justice Act*:

(9) If, during the period of access to a record under any of paragraphs (2)(*g*) to (*j*), the young person is convicted of an offence committed when he or she is an adult,	(9) Si, au cours de la période visée aux alinéas (2)*g*) à *j*), l'adolescent devenu adulte est déclaré coupable d'une infraction :
…	[...]
(*b*) this Part no longer applies to the record and the record shall be dealt with as a record of an adult; and	*b*) la présente partie ne s'applique plus au dossier et celui-ci est traité comme s'il était un dossier d'adulte;

[44] The Applicant's conviction as an adult on April 17, 2009 occurred within the three-year period following the completion of his 18-month sentence as a young offender, for possession of

property obtained by crime and carrying a concealed weapon, which began on April 23, 2007. The Applicant's youth record is therefore considered to form part of his adult record and can be taken into consideration (Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*), AR at pp 10-12).

[45] The Minister's Delegate found the Applicant's convictions under the *Youth Criminal Justice Act* to be illustrative of a pattern of criminal behaviour, the details of which were not relevant to the analysis. The Minister's Delegate's consideration of the Applicant's convictions under the *Youth Criminal Justice Act* was consistent with the *Youth Criminal Justice Act (*Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at pp 19-20).

(d) Reasonable assessment of risk

[46] The Applicant alleged a risk of harm in Egypt as the son of a person considered to be a political dissident. The alleged risk was properly assessed by the Minister's Delegate in the context of the paragraph 115(2)(*a*) Danger Opinion. The record shows that the Minister's Delegate considered the Applicant's submissions and the documentary evidence on current county conditions in Egypt and found insufficient reliable evidence to support the Applicant's allegation of risk (*Cupid v Canada (Minister of Citizenship and Immigration)*, 2007 FC 176 at para. 4).

[47] In particular, the Minister's Delegate noted that the former ruling regime, which had considered the Applicant's father to be a political dissident, was overthrown; the SSI, the principal agency responsible for interrogations and torture of political dissidents, had been dismantled; salvaged files detailing abuses by the SSI had been released; and some political prisoners including

members of the group Al Jihad had been released from prison (Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at pp 28-1).

[48] The Minister's Delegate also considered the Applicant's allegation that, since the revolution, some Egyptians have been detained by the military and tried in military courts for civilian crimes. The Minister's Delegate noted that the majority of those cases involved protesters who participated in demonstrations and the others involved persons who insulted the military in the media. None of the cases of arrest and detention involved family member of a person considered to be a political dissident by the former regime and no evidence was submitted to demonstrate that family members of Mr. Mahmoud Jaballah have been targeted by the new regime (Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at pp 31-32).

[49] In his assessment of current country conditions in Egypt, the Minister's Delegate considered a document entitled "Egypt in Transition" published by the United States Congressional Service [CSR]. The CSR report is a publicly available document, an electronic copy of which is found on the UNHCR Refworld website, it predates the Applicant's submissions and the information contained in the document is not novel or significant as it elaborates on known changes in country conditions (Reasons For A Determination Pursuant to Paragraph 115(2)(*a*) of the *IRPA*, AR at p 29).

[50] In *Mancia v Canada (Minister of Citizenship and Immigration)* (1997), 125 FTR 297, the Federal Court of Appeal concluded that information on general country conditions that is publicly

available and predates an applicant's submissions does not need to be disclosed to the applicant in order to satisfy the duty of fairness.

[51] The principle in *Mancia* continues to be followed by this Court:

> [43] …
>
> > [33] The broad principle I take from *Mancia* is as follows. Extrinsic evidence must be disclosed to an applicant. Fairness, however, will not require the disclosure of non-extrinsic evidence, such as general country conditions reports, unless it was made available after the applicant filed her submissions and it satisfies the other criteria articulated in that case. [Emphasis added].

(*Lalane v Canada (Minister of Citizenship and Immigration)*, 2009 FC 5, 338 FTR 238).

[52] Similarly, in *Shokohi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 443, 367 FTR 161, this Court recently reaffirmed the principle that publicly-available documents on current country conditions need not be disclosed to an applicant to meet the principles of procedural fairness.

[53] In light of the above, the Applicant fails to raise a serious issue in his application for leave and for judicial review of the Danger Opinion.

(2) Irreparable Harm

[54] The onus is on an Applicant to demonstrate through clear and convincing evidence that irreparable harm will occur if the extraordinary remedy of a stay of removal is not granted. Irreparable harm must constitute more than a series of possibilities and cannot be simply based on assertions and speculation (*Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA

427; *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2010 FC 562, 370 FTR 23 at para 43).

[55] The Applicant alleges that he would face irreparable harm upon his removal to Egypt: the removal would render his application for leave and for judicial review of the Danger Opinion moot; there is the possibility that he may face physical harm; harm would be caused to his family by the separation; he would not be able to return to Canada until he completed his three-year compulsory military service in Egypt; and he would disadvantaged by having to make a rehabilitation application from abroad.

[56] This Court has already dealt with the mootness allegation in relation to a Danger Opinion and has determined that mootness does not constitute irreparable harm:

> [44] Jurisprudence from the Federal Court of Appeal makes clear that mootness in itself cannot establish irreparable harm. If it were otherwise, it would deny the Court the discretion to assess irreparable harm on a case-by-case basis …
>
> [45] Discretion is retained to hear appeals that are technically moot and a discretion exists in favour of hearing appeals after stays have been dismissed. The Federal Court of Appeal's decision in *Perez* which concerned a negative Pre-Removal Risk Assessment (PRRA) decision, follows the *Borowski* decision, criteria for determining whether the Court should entertain a case despite its mootness …
>
> [46] An applicant may continue his litigation by instructing counsel from abroad. Based on the jurisprudence, removal while an applicant's application is pending does not constitute irreparable harm (*Selliah*, above; *Ariyaratnam v. MCI*, IMM-8121-04, September 28, 2004; *Hussein v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1266, 162 A.C.W.S. (3d) 647 at para. 11). [Emphasis added].

(*Sittampalam*, above).

[57] The allegation that the Applicant might face physical harm is speculative and does not constitute irreparable harm. The fact that an applicant's absolute safety cannot be guaranteed if an applicant is removed does not constitute irreparable harm (*Da Silva v Canada (Minister of Citizenship and Immigration)* (2000), 182 FTR 58 (TD) at para 18; *Ram v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 883 (TD) (QL/Lexis); *Gogna v Canada (Minister of Employment and Immigration)* (1993), 68 F.T.R. 140 (TD)).

[58] This Court has also determined that separation from family pursuant to the enforcement of a valid removal order does not constitute irreparable harm:

> [63] With respect to Mr. Sittampalam's argument that his removal would result in harm to others, the weight of the jurisprudence provides that irreparable harm must be harm to the individual seeking the stay and not to third parties… Even where separation caused by removal may produce substantial economic hardship to the family unit, the test remains whether an applicant himself will suffer irreparable harm.
>
> [64] It is well-established that dislocation and disruption are the normal consequences of deportation. Whether Mr. Sittampalam's family remain in Canada or accompany him, those stresses are faced by everyone who is required to leave Canada involuntarily. They do not amount to irreparable harm. This principle was recognized by the Federal Court of Appeal in *Selliah*, above, and *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, 79 Imm. L.R. (3d) 157. In *Selliah*, Justice John Maxwell Evans commented as follows:
>
> > [13] The removal of persons who have remained in Canada without status will always disrupt the lives that they have succeeded in building here. This is likely to be particularly true of young children who have no memory of the country that they left. Nonetheless, the kinds of hardship typically occasioned by removal cannot, in my view, constitute irreparable harm for the purpose of the *Toth* rule, otherwise stays would have to be granted in most cases, provided only that there is a serious issue to be tried: *Melo v. Canada (Minister of Citizenship and Immigration)* (2000), 188 F.T.R. 29.
>
> …

> [65] A contextual factor in this case should be highlighted. While it is understandable that Mr. Sittampalam would like to remain in Canada with his wife and children, Mr. Sittampalam was in detention from October 2001 until April 2007, and so his family was living apart from him and without his support for all that time.

(*Sittampalam*, above).

[59] This Court has also determined that the requirement to perform compulsory military service does not constitute irreparable harm.

> [6] As to irreparable harm, referring again to *Tulina-Litvin v. Canada (MPSEP)* 2007 F.C. 105 at paragraphs 47 to 49, fear of discrimination in Israel, such as because of a Christian-Jewish marriage, or compulsory military service, does not constitute irreparable harm. These were two grounds raised here. Some criteria that may constitute irreparable harm were set out in *Varga v. Canada (MEI)* 2006 F.C.A. 324 at paragraphs 43 to 50. They include risk of death or torture or inhumane treatment. These issues have not been raised here. Irreparable harm has not been made out.

(*Sorokin v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 355).

[60] The allegation that the Applicant would be disadvantaged by having to make a rehabilitation application from abroad because of "the stringent review of pardon applications" and the difficulty of having "the details of his application verified" is speculative, based on assertions and does not meet the high threshold of providing clear and convincing evidence that irreparable harm will occur:

> [43] Irreparable harm involves a high threshold. The Court must be satisfied that irreparable harm will occur if the stay is not granted (*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, 132 A.C.W.S. (3d) 261 at paras. 12-20; *Stampp v. Canada (Minister of Citizenship and Immigration)* (1997), 127 F.T.R. 107, 69 A.C.W.S. (3d) 901 at paras. 15-16; *Atakora v. Canada (Minister of Employment and Immigration)* (1993), 68 F.T.R. 122, 42 A.C.W.S. (3d) 486 at paras. 11-12 (T.D.); *Legrand v. Canada (Minister of Citizenship and Immigration)* (1994), 27 Imm. L.R. (2d) 259, 52 A.C.W.S. (3d) 1301 at para. 5 (F.C.T.D.); *Akyol v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 931, 124 A.C.W.S. (3d) 1119 at para. 7).

[61] The Applicant fails to demonstrate through clear and convincing evidence that irreparable harm will occur if the extraordinary remedy of a stay of removal is not granted.

(3) Balance of Convenience

[62] Section 48 of the *IRPA* provides that an enforceable removal order must be enforced as soon as is reasonably practicable.

[63] The Applicant is seeking extraordinary equitable relief. It is trite law that the public interest must be taken into consideration when evaluating the balance of convenience:

> [10] Finally, with regards to the third branch of the *Toth* test[, t]he balance of convenience favours the respondent Minister, in view of the government of Canada protecting the public from criminals. The IAD clearly and emphatically stated its opinion that the applicant represents a danger to the Canadian public, and this conclusion was within the IAD's discretion and authority to make.

(*Grant v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 141).

[64] The protection of the Canadian public must be a paramount consideration and, in this case of serious criminality involving violence, the balance weighs in favour of the Minister:

> [53] Only in exceptional cases does an applicant’s interest outweigh the public interest. Mr. Khosa has not demonstrated an exceptional case that would warrant delaying the Minister of PSEP’s duty to ensure that the objectives of the IRPA are met (*Dugonitsch*, above, at para. 15; *Selliah*, above, at para. 22).

(*Khosa v Canada (Minister of Citizenship and Immigration)*, 2010 FC 83).

> [35] The balance of convenience favours the Minister, in that, the Applicant’s removal would satisfy the objectives, as set out in IRPA, of establishing fair and efficient procedures to maintain the integrity of the Canadian refugee system, protecting the safety and security of Canadian society, and promoting international justice and security by denying access to Canadian territory to persons who are security risks or serious criminals. (IRPA, ss. 3(2)(*e*), (*g*) and (*h*).)

(*Jama v Canada (Minister of Citizenship and Immigration)*, 2008 FC 374).

[65] Due to the nature and extent of the Applicant's serious criminality, the balance of convenience weighs in favour of the public interest to remove foreign nationals who have been found to be inadmissible to Canada on grounds of serious criminality.

VI. Conclusion

[66] For all of the above reasons, the Applicant's motion to stay the execution of the removal order is denied.

JUDGMENT

THIS COURT ORDERS that the Applicant's motion to stay the execution of the removal order be denied. The removal is to take effect as soon as it is realistically feasible to do so under the current context and circumstances.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	December 19, 2011

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