

Federal Court



Cour fédérale

Date: 20121113

Docket: IMM-11456-12

Citation: 2012 FC 1315

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 13, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Applicant

and

ABDI DAOUD DAOUD

Respondent

REASONS FOR ORDER AND ORDER

[1] When a decision of a Canadian superior court specifically affirms in a particular case [TRANSLATION] “that the danger to the public is real” and that [TRANSLATION] “the allegations of irreparable harm” remain and [TRANSLATION] “are not speculative”, a trial court judge may not ignore that decision or take it lightly, thereby putting [TRANSLATION] “public safety” at risk. (Paragraph 10 below illustrates the serious consequences weighing on the decision maker.)

[2] The Minister of Public Safety and Emergency Preparedness has filed a second interlocutory motion asking this Court to stay the release of Abdi Daoud Daoud pending a ruling in an application for leave and judicial review.

[3] In a very recent decision in this case, rendered on November 5, 2012, Justice Luc Martineau of the Federal Court already granted one motion by the Minister for a stay, having found that [TRANSLATION] “in light of the applicable law and the evidence in the file, the applicant has a very strong case against the reasonableness of the impugned decision”; Martineau J. then specified that [TRANSLATION] “the respondent represents a high flight risk and the danger to the public is real”. Moreover, Martineau J. concluded that [TRANSLATION] “the applicant’s allegations of irreparable harm are not speculative, given that even after undergoing an initial detoxification treatment, the respondent reoffended and committed assault”.

[4] Since this very recent decision by Martineau J., the reality of the situation clearly shows the need for Mr. Daoud’s detention; the Minister even obtained, with respect to the avowed criminal charges, a stay to schedule the removal for December 6, 2012. (See the Federal Court of Appeal decision in *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2004 FCA 4, [2004] 3 FCR 572).

[5] The Immigration Division [ID] of the Immigration and Refugee Board committed a serious error of law that warrants the intervention of this Court.

[6] Section 244 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227

[Regulations] reads as follows:

244. For the purposes of Division 6 of Part 1 of the Act, the factors set out in this Part shall be taken into consideration when assessing whether a person

(a) is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2) of the Act;

(b) is a danger to the public; or

(c) is a foreign national whose identity has not been established.

244. Pour l'application de la section 6 de la partie 1 de la Loi, les critères prévus à la présente partie doivent être pris en compte lors de l'appréciation :

a) du risque que l'intéressé se soustraie vraisemblablement au contrôle, à l'enquête, au renvoi ou à une procédure pouvant mener à la prise, par le ministre, d'une mesure de renvoi en vertu du paragraphe 44(2) de la Loi;

b) du danger que constitue l'intéressé pour la sécurité publique;

c) de la question de savoir si l'intéressé est un étranger dont l'identité n'a pas été prouvée.

[7] Furthermore, sections 245 and 246 of the Regulations are among the key factors used to assess danger to the public and flight risk.

[8] Following the determination that Mr. Daoud's detention would continue until December 6, 2012, the date of his scheduled removal, this factor should have been weighed among the others to uphold Mr. Daoud's detention until December 6, 2012. (See paragraphs 248(b) and (c) of the Regulations.)

[9] Real danger to the public and the risk of flight should have been taken into account pursuant to paragraphs 245(c) and (d), as well as paragraph 246(a) and subparagraphs (d)(ii) and (e)(i) of the Regulations.

[10] The criminal record with convictions for assault causing bodily harm, death threats, robbery, drug trafficking and breach of conditions; and the danger opinion issued on this basis pursuant to paragraph 115(2)(a) of the IRPA and upheld by the Federal Court lead, as a whole, to a single conclusion, the one reached by this Court.

[11] The Court notes that section 3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] specifies the following:

3. (1) The objectives of this Act with respect to immigration are	3. (1) En matière d'immigration, la présente loi a pour objet :
...	[...]
(h) to protect public health and safety and to maintain the security of Canadian society;	h) de protéger la santé et la sécurité publiques et de garantir la sécurité de la société canadienne;

[12] Justice John Sopinka of the Supreme Court of Canada wrote the following in *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711:

[24] ... The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the country ...

[13] Because the three-part conjunctive test from *RJR - MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 is satisfied, the motion for a stay of Mr. Daoud's release order is granted for a second time.

[14] This Court grants the motion for a stay of Mr. Daoud's release order pending the final decision in the application for leave and judicial review or Mr. Daoud's next detention review, whichever comes first.

ORDER

THIS COURT ALLOWS the Minister's motion and grants the stay of Mr. Daoud's release pending the final decision on the application for leave and judicial review or Mr. Daoud's next detention review, whichever comes first.

"Michel M.J. Shore"

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11456-12

STYLE OF CAUSE: THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS v ABDI DAOUD
DAOUD

**MOTION CONSIDERED BY TELECONFERENCE ON NOVEMBER 13, 2012,
BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC**

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

DATED: November 13, 2012

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