Federal Court  Cour fédérale

Date: 20121109

Docket: IMM-10878-12
IMM-10399-12
IMM-10874-12

Citation: 2012 FC 1308

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 9, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DURO SILJES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR ORDER AND ORDER
(Amendment only to the format of the Order dated October 27, 2012, to reflect the Reasons for Order and Order)

[1] The applicant is requesting a stay of the removal order scheduled for tomorrow, Sunday, October 28, 2012, pending final disposition of challenges to three decisions about him: a negative decision on his pre-removal risk assessment (hereinafter "the PRRA officer"), (IMM-10878-12); a

negative decision on his application aimed at the exclusion order made against him (IMM-10399-12); and his application concerning the refusal to defer his removal (IMM-10874-12).

[2] After a conference call on Saturday evening, October 27, 2012, of almost three hours with counsel for the parties and after having the opportunity to review the documents submitted in the three separate dockets, the Court has determined that the applicant has not established a serious question in the three decisions. Accordingly, the stay requested three respective times, taking into account the three respective decisions in question, is dismissed.

[3] The tripartite and conjunctive tests for granting a stay in these circumstances are well known. The applicant must demonstrate that

a. there is a serious question to be tried;

b. he will suffer irreparable harm if the injunction is not granted; and that

c. the balance of convenience lies in his favour.

[4] Since the applicant has not satisfied the first test, which was to establish that there is a serious question to be tried with respect to the three respective decisions, the stay of the removal order is dismissed for the three respective files.

[5] Since the respondent's statement of neutral facts was not contradicted, the Court accepts the statement of facts as set out by the respondent:

1. On September 24, 2012, the applicant arrived in Canada.

2. He asked permission to be admitted to work in Canada for three to six months. The applicant did not have a work visa or a letter of employment.

3. It was only when the immigration officer confronted the applicant with the fact that he did not have either a visa or a letter of employment that he changed his version to say that he was coming to Canada to visit. He knew only the nickname of the person he said he was coming to visit and did not know his address.

4. The Canadian immigration authorities asked the applicant three times if he feared returning to Croatia and whether he had come to claim refugee protection. Each time, the applicant replied in the negative.

5. Following the immigration officer's 44 report, the Minister's delegate issued a removal order, specifically an exclusion order against the applicant.

6. It was not until the exclusion order was made that the applicant stated he had come to Canada to seek refuge.

7. The applicant was informed that he could request a pre-removal risk assessment (PRRA).

8. On October 9, 2012, the applicant filed a PRRA application, claiming that he feared returning because he had been involved in the armed Serbo-Croatian conflict on the Serb side, he was of Hungarian ethnicity and his spouse and their four children were of Roma ethnicity.

9. In support of his PRRA application, the applicant submitted documents in the Croatian language.

10. On October 9, 2012, the applicant asked the enforcement removals officer to stay his removal administratively until his PRRA application was reviewed.

11. The PRRA officer issued his decision on October 17, 2012; he never received a translation of the applicant's documents.

> 12. On October 19, 2012, the PRRA decision was sent to the applicant along with the date for his removal.
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> 13. On October 23, 2012, the enforcement officer informed the applicant that his request for an administrative stay, filed on October 9 and reiterated on October 23, 2012, was therefore no longer needed.
>
> 14. The applicant's departure is scheduled for October 28, 2012.

[6] The Court is repeating the facts for the purposes of analysis. When he arrived, the applicant stated that he had come to Canada to work for a period of three to six months, all without a work visa or a letter of employment.

[7] Following this version of his account, the applicant changed his account after being challenged by the immigration officer where he spoke again, saying that he had come for a visit to meet a person whom he knew only by his nickname, without even knowing his name or address.

[8] In addition, the applicant was asked three times if he feared returning to Croatia, to give him the opportunity to claim refugee status; and, despite the three times, he said that he was not claiming refugee status.

[9] Accordingly, the immigration officer issued a 44 report; the Minister's delegate issued an expulsion order against the applicant.

[10] Despite the applicant's responses, the applicant was granted the right to file a PRRA application following an expulsion order issued against him.

[11] In his PRRA application, the applicant alleged that he was afraid because the Croatian authorities had forced him to confess to crimes (stemming from the war in the context of the armed Serbo-Croatian conflict) so that he would be incarcerated and killed like two members of his family who died in this way.

[12] In addition, he added a third version to his account, i.e. a fear of returning to Croatia as a Hungarian, a member of a minority group, and also because his spouse and children are Roma.

[13] The Court also notes that the applicant is alleging a medical condition as a result of stopping some medication, which caused him to be confused when he arrived in Canada.

[14] In the wake of a number of versions of the applicant's account, what should this Court believe?

[15] The applicant alleges that he experienced a breach of natural justice or even a breach of procedural fairness because he was not given more time to add other information to the PRRA file and even says that he should have had an interview with the PRRA officer.

[16] The applicant claims that additional information (included in a supplementary document that the Court accepted for filing) and a meeting with the PRRA officer were essential because his interpreter did not have the time required to add more information to complete the applicant's file with respect to the context of the Serbo-Croatian war and his Roma family, as a result of time

difficulties caused by the interpreter, a person in particular to whom the applicant had confided his account.

[17] For the purposes of a stay, adding information concerning a context with respect to an account may not be added to reinforce or validate a case if a previous decision-maker did not find the account in itself logically coherent on a balance of probabilities or credible; in this type of context, the additional documentation in itself may not support either a serious question to be tried or irreparable harm, as Justice Marc Nadon found, *mutandis mutandi*, in *Hussain v Canada* [Minister of Citizenship and Immigration] 2000 FCJ 751; and also as noted in *Padda v Canada* [Minister of Citizenship and Immigration] 2009 FC 738.

[18] The Court's conclusion is derived from the following findings: the evidence adduced by the applicant must be clear and obvious; it must not be speculative or based on probabilities. The Court must be satisfied that (irreparable) harm will occur if the stay is not granted (see *Akyol v Canada* [Minister of Citizenship and Immigration] 2003 FC 931; and *Atwal v Canada* [Minister of Citizenship and Immigration] 2004 FCA 427).

[19] In *Akyol v Canada* (already cited), Justice Luc Martineau stated:

> [8] . . . This Court has held that where an applicant's account was found not to be credible by the Refugee Division, this account cannot serve as a basis for an argument supporting irreparable harm in a stay application

[20] If there is no serious question or irreparable harm, the balance of convenience favours removal. It is a matter of the integrity of the immigration system as well as public confidence in the system. A removal order must be enforced as soon as is reasonably practicable.

[21] A removal decision or a refusal to grant an administrative stay may not serve as a basis for an appeal from a PRRA officer's decision; and also, a decision to remove, deport or refuse an administrative stay is based on the facts for which the respective officers' discretion is limited, as counsel for the respondents argues with regard to the exclusion order and the refusal to defer the removal.

[22] Therefore, based on the facts assessed by this Court, including the fresh evidence that the applicant submitted to this Court, nothing changes the overall picture expressed through this decision in three parts.

[23] For all these reasons, the stays requested respectively are dismissed.

ORDER

THE COURT ORDERS that the respective stays requested are dismissed.

"Michel M.J. Shore"

Judge

Certified true translation

Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10878-12 IMM-10399-12 IMM-10874-12
STYLE OF CAUSE:	DURO SILJES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION HEARD BY TELECONFERENCE ON OCTOBER 27, 2012, BETWEEN OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC

REASONS FOR ORDER AND ORDER:	SHORE J.
DATED:	November 9, 2012

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