

Federal Court



Cour fédérale

**Date: 20151006**

**Docket: IMM-4388-15**

**Citation: 2015 FC 1146**

**Montréal, Quebec, October 6, 2015**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**MUSTAPHA TILIOUINE  
NACERA KEBLADJ  
CERINE ASSIA TILIOUINE  
MOHAMED SOFIANE TILIOUINE**

**Applicants**

**and**

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

**Respondent**

**ORDER AND REASONS**

[1] The Applicants are seeking a stay of their removal to Algeria, scheduled to take place on October 10, 2015, until such time as their Application for leave and judicial review of a decision of a removal officer (the Officer), dated September 28, 2015, not to defer the said removal, is to be finally determined by the Court.

[2] The Applicants, Nacera Kebladj, her husband Mustapha Tiliouine, and their two children are citizens of Algeria. They entered Canada in the Fall of 2012 and filed for refugee protection shortly thereafter on the basis of the threats the family had received from religious extremists and of the abuse Ms. Kebladj had faced from her in-laws in Algeria. In late January 2015, the Refugee Protection Division of the Immigration and Refugee Board (the RPD) dismissed their claim on the ground that the family had an internal flight alternative in Algeria. Leave to apply for judicial review of the RPD's decision was denied by this Court on April 28, 2015.

[3] On April 17, 2015, the Applicants submitted an in-land application for permanent residence based on humanitarian and compassionate grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) (the H&C application). The H&C application was largely based on the family's traumatic past in Algeria, in particular that of Ms. Kebladj who was raped and experienced extreme physical violence at the hands of her father from the age of 12 until her mid-thirties when she married Mr. Tiliouine, and who endured, from that point on, 12 years of constant psychological abuse and occasional physical abuse at the hands of her in-laws, with whom she lived and who were opposed to her marriage to Mr. Tiliouine because of her ethnicity. The H&C application indicates that Ms. Kebladj had been under the care of a psychiatrist in Algeria since 1999 as a result of these events, and that, while under the psychiatrist's care, she had made two attempts on her life, one of them while her son was present. She also had to be hospitalized in Canada following the refusal of the family's refugee claim since the news caused her to lapse into another suicidal state. Psychiatrists in Canada following Ms. Kebladj believe that the Applicant suffers from severe and chronic

post-traumatic stress disorder (PTSD) with dissociative psychosis caused by the trauma suffered in Algeria.

[4] On September 15, 2015, the Applicants were informed that their removal from Canada had been set for October 10, 2015. Two days later, they submitted a deferral request seeking that they not be removed until they received a decision on their pending H&C application in light of the harm and risk of suicide to Ms. Kebladj if removed and in light of the children's immediate interests. Shortly after the filing of the deferral request, Ms. Kebladj was forcibly hospitalized for 24 hours as she was suicidal and considered to be in immediate danger.

[5] The Applicants' deferral request was refused on September 27, 2015. The Officer noted that "if he was able to detect sufficient evidence of H&C motives that would require a more in depth study by a H&C Officer" he may exercise his discretion to defer the removal. He found that the evidence consistently demonstrated that "Mrs. Kebladj is suicidal, especially if she is to return to Algeria." The Officer accepted Ms. Kebladj's traumatic experiences and medical interventions and found that the Applicants would suffer hardship if they were to return to Algeria. However, the Officer found that the family situation did not rise to a level of "undue hardship" or "irreparable harm" since Ms. Kebladj will have access to medical treatment before removal from Canada and upon her return to Algeria. The Officer considered the best interest of the children and found that it was in the children's interest to remain with the family, noting that it is the "responsibility of the parents to provide a safe environment for them".

[6] The Applicants claim that the Officer erred in two ways. First, they contend that the Officer misdirected his analysis by focussing on the availability of medical care in Algeria and Canada instead of focussing on whether the removal itself, given the evidence of Ms. Kebladj's acute mental health problems and the removal's potential for possibly leading to suicide, amounted to undue, undeserved or disproportionate hardship. Second, the Applicants claim that the Officer failed, in those peculiar circumstances, to reasonably consider the best interest of the children as this very real risk to their mother's life certainly engenders serious compromise to their best interests.

[7] As is well established, a stay of a removal order shall only be granted if (i) the underlying application for leave and judicial review raises a serious issue, (ii) the moving party will suffer irreparable harm if the stay is not granted and the removal order is executed, and (iii) the balance of convenience lies in favour of the moving party (*RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, SCJ No 17 [*RJR-MacDonald*]; *Toth v Canada (Minister of Employment and Immigration)*, (1988), 86 NR 302 (FCA) [*Toth*]).

[8] In cases such as this one, where the decision being challenged through the underlying application for leave and judicial review is a decision to refuse to defer removal, the standard for establishing a serious issue is more stringent since granting the relief sought in the stay motion will give the applicant the relief sought in the application for judicial review. Therefore, the test to be met is not whether the issues raised in the underlying application for leave and judicial review are neither frivolous nor vexatious, but rather whether the said application is likely to

succeed (*Wang v Canada (Minister of Citizenship & Immigration)*, 2001 FCT 148, 204 FTR 5 [Wang], at para 11; *Valdez v Canada (Citizenship & Immigration)*, 2013 FC 697, at para 20).

[9] Here, I find that the Applicants have met this tripartite test.

[10] Pursuant to subsection 48(2) of the Act, removal orders are to be enforced “as soon as possible”. The discretion to defer removal is therefore narrow and limited. However, removal officers do have such discretion where “failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment” (*Wang*, above at para 48; *Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311, at para 51 [Baron]).

[11] In the context of pending H&C applications, deferral will be justified where such applications are based upon a threat to personal safety (*Baron*, at para 51). In such context, the Court has ruled that where, as here, there is evidence of irreparable psychological harm resulting from the removal itself, it is not enough for the removal officer to simply examine the availability of health care and treatment in the home country (*Sha v Canada (Citizenship and Immigration)*, 2011 FC 1269, at para 58; *Davis v Canada (Citizenship and Immigration)*, 2011 FC 97, at para 19).

[12] Here, the deferral request was based on the fact that the removal itself placed Ms. Kebladj at risk of serious psychological damage and suicide, not that medical care or treatment was not available in Algeria or, for that matter, that medical care was superior in Canada. In my

view, the Applicant's claim that the Officer failed to consider whether the very fact of removal to Algeria would trigger suicide or cause serious psychological damage such that a deferral of removal may be warranted, raises a serious issue within the meaning of *Wang*, above. I am also inclined to conclude that such a serious issue arises with respect to the Officer's findings regarding the best interests of the children. In particular, it seems to me that to hold that it is ultimately the responsibility of parents going through a suicidal crisis to protect their children, raises some serious concerns with respect to the reasonableness of the Officer's decision.

[13] With respect to the second branch of the test applicable to a stay motion, I am satisfied that the Applicants would suffer irreparable harm if removed to Algeria at this point. As counsel for the Applicants pointed out in her submissions, the Court has found on numerous occasions that significant psychological damage and suicidal behavior constitute irreparable harm (*Melchor v Canada (Solicitor General)*, 2004 FC 372, at para 12; *Bodika-Kaninda v Canada (Citizenship and Immigration)*, 2011 FC 1484, at para 13; *Sparhat v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1384; *Koca v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 473, at para 25; *Mazakian v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 1248, at para 33).

[14] There is clear and convincing evidence on record that Ms. Kebladj is at risk because of her mental health conditions since the evidence demonstrates that Ms. Kebladj is at high risk of suicide, should removal become imminent.

[15] Being satisfied that a serious issue has been raised and that irreparable harm has been established, the balance of convenience lies with the Applicants (*Figurado v Canada (Solicitor General)*, 2005 FC 347, [2005] 4 FCR 387, at para 39).

[16] Given the above, this case presents, in my view, extreme circumstances which require that removal be deferred.

**ORDER**

**THIS COURT ORDERS that:**

1. The motion for a stay is granted.
2. The Applicants' removal to Algeria, scheduled for October 10, 2015, is stayed until such time as the Applicants' Application for leave and judicial review of the decision of the Officer, dated September 28, 2015, not to defer the said removal, is finally determined by the Court.
3. No costs.

"René LeBlanc"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4388-15

**STYLE OF CAUSE:** MUSTAPHA TILIOUINE ET AL. v THE MINISTER  
OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 6, 2015

**ORDER AND REASONS:** LEBLANC J.

**DATED:** OCTOBER 6, 2015

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