

Federal Court



Cour fédérale

Date: 20160406

Docket: IMM-4337-15

Citation: 2016 FC 374

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 6, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

VOGUENS LARECHE

Applicant

And

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

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by an enforcement officer [officer], which rejected the application for administrative stay made by the applicant regarding his removal to Haiti, which was to take place on September 29, 2015.

[2] In the decision under review, with respect to the short-term interest of the younger sister [the adolescent], who is currently in the applicant's custody, the officer agreed that it was not in her best interest if she were to accompany the applicant to Haiti. Although both parents are unable to care for the adolescent, the officer found that the applicant's other sister [the older sister], who is 25 years old, [translation] "could take over and take care of her sister." In addition, according to the officer, the Direction de la protection de la jeunesse [DPJ] [translation] "could consider an alternate life path" for the adolescent. At the same time, the officer found that the applicant's removal to Haiti [translation] "will not cause his sister irreparable harm . . . but will require a period of adjustment."

[3] The only issue to be determined in this case is to decide whether the officer's above-mentioned findings of fact are speculative and unreasonable. Following discussion with counsel for the parties at the hearing, I have come to the conclusion that the application became theoretical and that even though I exercised my discretion to decide the case on the merits, this would have no practical effect in this case. In particular, I am satisfied that it would serve no useful purpose for the Court to rule today on the issue of whether or not the officer, before refusing to postpone the removal date, should have personally verified whether or not the applicant's older sister was in fact able to take care of the adolescent in Canada. It remains that following the stay granted by the Court on September 28, 2015, by Mr. Justice Harrington, the applicant did have the time to verify whether the older sister could in fact take care of the adolescent, or whether she should instead be entrusted into DPJ care—which I would find normal given that the applicant currently has custody of the adolescent.

[4] The respondent acknowledges that the question regarding what particular arrangements could be taken with respect to the adolescent's custody or protection in Canada, should the applicant be deported to Haiti, was not actually resolved by the officer in the decision under review and that, in the event that a new removal date is set, the applicant will still be able to make a new application for administrative stay in light of the new facts that have emerged since September 29, 2015. In this respect, counsel agree that the situation could have markedly changed over six months and that the entire process will need to be initiated again before another officer.

[5] The application for judicial review is therefore dismissed. Counsel agree that there is no serious question of general importance to be certified in this case.

JUDGMENT

THE COURT ORDERS THAT the applicant's application for judicial review is dismissed on academic grounds. There is no question to be certified.

"Luc Martineau"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4337-15

STYLE OF CAUSE: VOGUENS LARECHE v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 9, 2016

JUDGMENT AND REASONS: MARTINEAU J.

DATED: APRIL 6, 2016

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