Federal Court  Cour fédérale

**Date: 20170323**

**Docket: IMM-1236-17**

**Citation: 2017 FC 307**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, March 23, 2017**

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

**BETWEEN:**

**HERIBERTO TAMAREZ GARCIA**

**Applicant**

**And**

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

**Respondent**

## ORDER AND REASONS

[1] The applicant is seeking a stay of his removal to the Dominican Republic, his country of origin, which is scheduled for March 25, 2017. The stay application is dismissed, because it does not meet any of the required conditions.

[2] After having spent a few years in the United States, where the applicant was found guilty of criminal offences, he arrived in Canada illegally on February 26, 2014. He said that he came to Canada to join his wife, but they never reunited since, according to the applicant, his wife had already obtained a divorce.

[3] On June 2, 2014, the applicant was stopped by the police, who noted the applicant's clandestine arrival. Two days later, on June 4, the applicant claimed refugee protection.

[4] He was married in August 2014. His new spouse could sponsor him. On October 29, 2014, he applied for permanent residence in Canada as a spouse.

[5] The refugee claim was dismissed on May 22, 2015, under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [the Act]:

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| **Exclusion — Refugee Convention** | **Exclusion par application de la Convention sur les Réfugiés** |
| **98** A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection. | **98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger. |

[6] The applicant was therefore inadmissible because he had committed a serious non-political crime outside the country of refuge prior to his admission as a refugee. He is inadmissible in Canada under section 36 of the Act.

[7] A pre-removal risk assessment was conducted. It was dismissed because [TRANSLATION] "the applicant has not provided evidence to establish that he would be exposed to a personal risk in the Dominican Republic." (PRRA decision, page 37 of the respondent's reply record).

[8] The applicant argues that he should not have to leave Canada as long as his applications for rehabilitation and for permanent residence in Canada as a spouse have not been decided on. The permanent residence application cannot be allowed if rehabilitation has not been granted, thus lifting the inadmissibility. Rehabilitation is set out in paragraph 36(3)(c) of the Act, and persons deemed to have been rehabilitated are described in section 18 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[9] However, the evidence indicates a lack of urgency on the applicant's part to obtain that rehabilitation. On October 31, 2016, Citizenship and Immigration Canada [CIC] authorities advised the applicant that his file was not complete. On March 10, 2017, CIC reminded the applicant that the 60-day period to complete the file had elapsed and that he had been granted an additional 30 days. If the documentation is not completed, the rehabilitation application will be considered abandoned.

[10] Under these circumstances, it is difficult to understand how the enforcement officer could be criticized for refusing a stay, even if the officer could stay a removal because applications to CIC are still pending.

[11] I have serious doubts about the possibility of a stay, even if the applications were close to completion (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*,

2009 FCA 81, [2010] 2 FCR 311 [*Baron*]). It is clear to me that someone who has not demonstrated diligence cannot cite the time to dispose of his remedies to attempt to justify a stay of a removal order.

[12] It is difficult to grasp the legal framework in which the applicant tried to make his case. In fact, the record shows that on March 17, 2017, an application for leave and for judicial review was filed with respect to the notice given to the applicant by an enforcement officer on March 6, 2017, requiring him to report for removal on March 25, 2017. However, this Court has consistently held that such a notice is not a reviewable order (*Anokwuru-Nkemka v Canada (Citizenship and Immigration)*, 2016 FC 337). Essentially, the applicant is arguing that he should have been granted a stay even before he applied for an administrative stay. A stay may be granted when a serious issue is raised in an underlying judicial review. Since a serious issue ought to be decided, the Act provides for an interim measure. However, in this case, there was no direction or order made by a federal board, commission or other tribunal to give rise to an application for judicial review. Rather, the applicant is disputing the notice he received to report for his removal on March 25, 2017. It is unclear what the basis for that dispute could be. On closer scrutiny, the applicant is seeking a stay simply because other applications are pending, regardless of whether a serious issue was raised before this Court on judicial review. The stay application could have been dismissed on this basis alone.

[13] From what I understand, that administrative stay application was made on March 13, 2017, and counsel for the respondent advises us that the administrative stay was refused on March 20, 2017. We have opted to consider the application for a judicial stay to stem from the refusal of the administrative stay. This reasoning was possible because the situation did not

change between the stay application that was submitted to this Court and the application for, and refusal of, the administrative stay. Neither the applicant nor the respondent suffered any harm as a result.

[14] For his stay application to be granted, the applicant had to satisfy the Court that there is a serious issue to be examined in the underlying application for judicial review requiring the applicant's removal to be stayed. I did not see any indication of what that serious issue could be. The only issue that appears to have been raised is that the applicant should be able to remain in Canada while his rehabilitation application and permanent residence application are being processed. However, the enforcement officer's jurisdiction is very limited (*Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286, [2012] 2 FCR 133 and *Baron*, at paragraphs 48 to 50). That is not a serious issue that has any likelihood of success (*Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148; [2001] 3 FCR 682) especially since the applicant did not expedite the rehabilitation application (*Baron*, at paragraph 51).

[15] The second test is that of irreparable harm. Here again, the burden is on the applicant to demonstrate that he will suffer irreparable harm if he is removed to his country of origin. Neither the pre-removal risk assessment application, nor the arguments made to support this stay satisfy the irreparable harm test. The letters submitted have no persuasive value (*Gateway City Church v Canada (National Revenue)*, 2013 FCA 126, at paragraphs 15 and 16). The arguments relating to an alleged danger were never made plausible by the quality of the evidence submitted.

[16] Lastly, the balance of convenience favours the government in this matter. Section 48 of the Act requires the Minister to execute the removal order as soon as possible. The considerations raised by the applicant are void, and the public interest to comply with the Act must take precedence.

[17] Ultimately, for a stay application, the applicant must persuade the Court that these three criteria have been met. If a single condition is not met, that is sufficient to dismiss the application. In this case, not one of the three conditions was met. The stay application is therefore dismissed.

**ORDER**

**THE COURT ORDERS that** the stay application be dismissed.

"Yvan Roy"
Judge

Certified true translation
This 13th day of August, 2019

Lionbridge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1236-17 |
| **STYLE OF CAUSE:** | HERIBERTO TAMAREZ GARCIA v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | MARCH 22, 2017 |
| **ORDER AND REASONS** | ROY J. |
| **DATED:** | MARCH 23, 2017 |

**APPEARANCES:**

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| Zoé Richard | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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