Federal Court  Cour fédérale

Date: 20190130

Docket: IMM-539-19

Citation: 2019 FC 132

Vancouver, British Columbia, January 30, 2019

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

DAVINDER SINGH, JASPREET KAUR, HARJAAP SINGH SANDHU AND JASLEEN KAUR SANDHU

Applicants

and

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

Respondents

ORDER AND REASONS

[1] The Applicant on this stay motion, Davinder Singh, sought the stay of his removal on Thursday, January 24, 2019, the day which was slated for his departure. That followed a series of events that precipitated an exclusion order on January 22, 2019 with a departure date of January 25, 2019, at 00:15. I note that the exclusion order concerns Mr. Singh. The other

Applicants appearing in the style of cause are the members of his immediate family who arrived with him in Canada. Given the tight timeline, the Court ordered an interim stay on January 24, with a hearing to be held on the stay motion on January 29. That allowed the Respondents to file a response to the motion on January 28.

FACTS

[2] The Applicant, together with his spouse and their two children, arrived in Canada on October 18, 2018, on temporary resident permits. According to the information made available at the time the spouses sought visitor's visas, they were to reside at a hotel in Toronto. It is in the period of April-May 2018 that the two spouses thought to get visitor's visas, with the assistance of an agent in India. Two Applications were made on May 5, 2018. Once the visitor's visas for the adults were approved, the parents then obtained visas for the children; the delay in obtaining visas was due, we are told, to the fact that they did not have passports and authorizations from the schools were required as they would be on holidays from school.

[3] It does not seem that the Applicants ever reached Toronto. Instead they stayed in the Greater Vancouver region with a "close family friend". They decided not to go back to India using their return tickets on November 21, 2018 because of the upcoming (December 31, 2018) birthday of that close family friend's daughter.

[4] Actually, sometime in mid-November, Davinder Singh noticed a job opening for a position of farm supervisor in Prince George, British Columbia, a city located more than 700 kilometers north of Vancouver. Mr. Singh was offered a contract of employment on December 15, 2018.

[5] Coincidentally, perhaps, the employer had made an application for a Labour Market Impact Assessment (LMIA) to Employment and Social Development Canada on April 16, 2018 for 10 farm supervisors, around the same time Mr. Singh showed an interest about visiting Canada. The record shows that the LMIA found that "in the specified occupation and at the specified work location, the hiring of foreign nationals is likely to have a positive or neutral impact on the Canadian Labour Market". The positive LMIA, dated January 16, 2019, expires on February 8, 2019.

[6] The main Applicant, Davinder Singh, states that he sought the required work permit on Saturday, January 19, 2019. In his affidavit, he testifies that he "flagpoled" from the United States of America and re-entered Canada at the border post at Peach Arch, in Surrey, British Columbia. In fact, it seems that the main Applicant and his family have been residing in Surrey since their arrival in Canada.

[7] However, a work permit was not issued on that date. The CBSA officer noticed that Mr. Singh is inadmissible in Canada. Correspondence dated December 14, 2018 concluded that Mr. Singh is inadmissible for directly or indirectly misrepresenting or withholding material facts. It seems that as early as October 25, 2018, the visa had been inactivated and was not valid for travel. A so-called "fairness letter", dated November 23, 2018, advised Mr. Singh of "concerns regarding the travel history you provide for your spouse." Ten days are afforded for a response. None was forwarded as the fairness letter likely never reached the main applicant who was residing in Surrey. The evidence indicates that the letter went to Mr. Singh's agent in India who apparently did not forward it to him. On January 19, 2019, Mr. Singh was reported under subsection 44(1) of the *Immigration and Refugee Protection Act*.

[8] The main Applicant was informed that he had to leave Canada by January 26, 2019. His passport and nationality identity card seized, he was directed to present proof of departure by the following day, January 20, 2019. The main Applicant in fact purchased tickets for India and confirmed his planned departure with his family. A change of heart about the voluntary departure resulted in a removal order issued on January 22 with a departure date of January 25, at 00:15, the date on the airline tickets.

[9] The Applicants are from the Punjab region of India. The main applicant claims he manages "his farms in India" and is also a trader of farm equipment; the equipment is purchased in China (where it is said he has a "registered company") and sold throughout South America where the main applicant travels regularly. However, the interview conducted on January 19, 2019 revealed that Mr. Singh has not worked for that company since September 2016, information that is confirmed in the *curriculum vitae* filed in support of his job application in Canada.

THE PROCEEDINGS

[10] There is pending a judicial review application challenging the visitor's visas cancellation, resulting in an inadmissibility finding, and the removal order of January 22, 2019. The Court heard the stay application in spite of the apparent irregularity of having two decisions challenged in the same application for judicial review (Rule 302 of the *Federal Courts Rules*). The stay is sought pursuant to s. 18.2 of the *Federal Courts Act*.

ANALYSIS

[11] As is well known, applicants seeking a stay of whatever order must satisfy the conjunctive *tri-partite* test of *RJR-MacDonald Inc. v. Canada (Attorney General),* [1994] 1 SCR 311:

- there has to be a serious issue to be tried in the underlying application;
- there will be irreparable harm suffered if the stay is not granted; and
- the balance of convenience must be in favour of the applicants.

[12] In my view, the Applicant fails on each prong of the test. Given that he had to satisfy each of them, it will suffice to expand somewhat on irreparable harm where the failure is at its most obvious.

[13] The Federal Court of Appeal caselaw has been consistent that the evidence of irreparable harm must be clear and compelling (*Newbould v. Canada (Attorney General)*, 2017 FCA 106, [2018] 1FCR 590 at para 28). A clear articulation of the test was presented in *Gateway City Church v. Canada (National Revenue)*, 2013 FCA 126:

> [15] General assertions cannot establish irreparable harm. They essentially prove nothing:
>
> > It is all too easy for those seeking a stay in a case like this to enumerate problems, call them serious, and then, when describing the harm that might result, to use broad, expressive terms that essentially just assert – not demonstrate to the Court's satisfaction – that the harm is irreparable.
>
> (*Stoney First Nation v. Shotclose*, 2011 FCA 232 (CanLII) at paragraph 48.) Accordingly, "[a]ssumptions, speculations, hypotheticals and arguable assertions, unsupported by evidence, carry no weight": *Glooscap Heritage Society v. Minister of National Revenue*, 2012 FCA 255 (CanLII) at paragraph 31.
>
> [16] Instead, "there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is

> granted": *Glooscap, supra* at paragraph 31. See also *Dywidag Systems International, Canada, Ltd. v. Garford Pty Ltd.*, 2010 FCA 232 (CanLII) at paragraph 14; *Canada (Attorney General) v. Canada (Information Commissioner)*, 2001 FCA 25 (CanLII), 268 N.R. 328 at paragraph 12; *Laperrière v. D. & A. MacLeod Company Ltd.*, 2010 FCA 84 (CanLII) at paragraph 17.

(my emphasis)

(See also Canada (Attorney General) v. Oshkosh Defense Canada Inc., 2018 FCA 102, at para 25, and Ahlul-Bayt Centre, Ottawa v. Canada (National Revenue), 2018 FCA 61, at paras 15-18.)

[14] Here, the Applicants put the alleged irreparable harm at its highest as the "actions of the Respondents have a serious possibility of adversely affecting the livelihood of the applicant Davinder Singh (memorandum of fact and law, para 62)" because he travels to conduct his business. Not only is the "serious possibility" far removed from the required real probability, but this constitutes no more than a general assertion that carries no weight.

[15] But there is more. The allegation of adverse effect on Mr. Singh's livelihood refers to this employment which ceased more than two years ago. As pointed out by Crown Counsel the passport seized on January 19 reveals that visas in South America expired in 2016. Furthermore, the interview conducted on January 19 confirms that the employment ceased in September 2016.

[16] It is to be remembered that the Applicant came to Canada to visit and had a return flight to India on November 21, 2018. He and his family claim that they chose to stay one extra month (no indication is given about the children's school year in India or Mrs. Kaur's job in India) because of an upcoming birthday, yet the main Applicant sought a job in Prince George in

mid-November. Once a contract of employment was concluded, he "flagpoled" in order to obtain a work permit on Saturday, January 19, 2019. That is when it is discovered that the temporary resident visa had been cancelled and he was inadmissible (together with the accompanying family member, s.42 of the IRPA). There is room for a not so insignificant suspicion about the bona fides of the situation.

[17] At any rate, it suffices to find that the test for a stay is not satisfied on the record presented by the Applicant. There is no irreparable harm that has been shown to exist. The stay motion cannot succeed.

THIS COURT ORDERS THAT:

The motion for an order staying the removal of the Applicant pending the disposition of a judicial review application concerning the said removal is dismissed.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-539-19
STYLE OF CAUSE:	DAVINDER SINGH, JASPREET KAUR, HARJAAP SINGH SANDHU AND JASLEEN KAUR SANDHU v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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