Federal Court  Cour fédérale

Date: 20210212

Dockets: IMM-5332-20
IMM-728-21

Citation: 2021 FC 144

Fredericton, New Brunswick, February 12, 2021

PRESENT: Madam Justice McDonald

Docket: IMM-5332-20

BETWEEN:

MUJAHED KAYED AJLOUNI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-728-21

AND BETWEEN:

MUJAHED KAYED AJLOUNI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER AND REASONS

[1] The Applicant has filed two Motions seeking a stay of his removal to Jordan currently scheduled for February 13, 2021.

[2] Underlying the Applicant's Motions are two judicial review applications he has filed seeking review of the following decisions: (1) the March 2, 2020 Pre-removal Risk Assessment (PRRA) Decision (Court File IMM-5332-20); and (2) the February 3, 2021 Canada Border Services Agency (CBSA) Decision (Deferral Decision) (Court File IMM-728-21).

[3] Arguments on both Motions were heard by videoconference on February 9, 2021. These Order and Reasons apply to both Motions filed in IMM-5332-20 and IMM-728-21.

Relevant Background

[4] The Applicant is a 30 year-old male citizen of Jordan. He arrived in Canada in July 2019 with his mother, his sister, and his sister's two sons. The Applicant was not eligible to apply for refugee status consideration because of a previously filed refugee claim. The Applicant was eligible for and did receive a Pre-Removal Risk Assessment (PRRA). The PRRA decision determined that he would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Jordan.

[5] Upon receiving notification that he was scheduled for removal from Canada, the Applicant requested a deferral from CBSA. In the Deferral Decision, the CBSA Officer found

that the risks he raised on returning to Jordan had already been considered in the PRRA decision. The CBSA Officer also found that the other arguments raised by the Applicant did not qualify as temporary impediments to removal.

[6] On these Motions, the Applicant argues that the PRRA Decision and the Deferral Decision both failed to recognize that the risk of harm he faces in Jordan from his brother-in-law and his uncle. He argues that the risk he faces is religious and family based arising from refusing to agree to an arranged marriage, for assisting his sister when she stopped wearing her hijab, and for assisting his sister in obtaining a divorce from her husband.

The Legal Test on a Stay of Removal Motion

[7] The applicable legal test on a motion for a stay of the removal order is outlined in *Toth v Canada (Minister of Employment and Immigration)*, (1988) 86 N.R. 302 (F.C.A.). The *Toth* test requires that the applicant must satisfy the following conjunctive three-part test: (1) that there is a serious issue to be tried; (2) that the applicant would suffer irreparable harm if the stay is not granted; and (3) that the balance of convenience favours granting the stay.

[8] The test outlined in *Toth* applies to both Motions filed by the Applicant. However, the assessment of the first branch of the test, whether there is a serious issue, applies differently to the PRRA decision than to the Deferral Decision. There is no difference in the application of the remaining two branches of the *Toth* test, irreparable harm and the balance of convenience, to the relief sought by the Applicant. I would also note that despite there being two underlying

decisions, the Applicant relies upon the same arguments to challenge both the PRRA decision and the Deferral Decision.

Serious Issue

[9] To establish that there is a serious issue with respect to the PRRA decision, the Applicant need only show that his underlying application for judicial review of this decision is neither frivolous nor vexatious *(Copello v Canada (Minister of Foreign Affairs)*, [1998] F.C.J. No. 1301).

[10] The Applicant argues that the PRRA decision is wrong because the Officer failed to recognize the nexus of the risks asserted to a recognized ground of protection under s. 96 of the *Immigration and Refugee Protection Act* (*IRPA*). According to the Applicant, the nexus is religion and particular social group - his family. The Applicant argues that the PRRA Officer erred in his consideration of the facts and this led the Officer to wrongly conclude that state protection would be available.

[11] The Applicant claims that he was threatened by his brother-in-law. He also claims to have been almost run over by a car and to have been beaten by two men while he was on public transit. However, the PRRA Officer noted that the Applicant did not raise the issue of the threat posed by his brother-in-law in his interviews with US authorities. The Officer also noted that the Applicant advised US authorities that he was not afraid of returning to Jordan.

[12] The Applicant also relied upon country documentation regarding tribal law in Jordan in his PRRA application. However, as noted by the PRRA Officer, the Applicant provided no evidence of his membership in a particular tribe and how that would preclude him from accessing state protection. In fact, the PRRA Officer noted that the evidence relied upon by the Applicant related to women who disobey males, which does not apply to the male Applicant.

[13] On the issue of state protection, the PRRA Officer noted that Jordan is a low crime country and that there was no evidence that Jordan's police forces would be unwilling or unable to assist the Applicant with respect to threats made by family members.

[14] The PRRA Officer considered the risks raised by the Applicant. The Officer concluded that the risks were not linked to race, religion, nationality, political opinion or membership in a particular social group, within the meaning of section 96 of *IRPA*. The PRRA Officer also found that the Applicant was not at risk of cruel or unusual treatment within the meaning of section 97 of *IRPA*.

[15] The Applicant argues that the issues he raises with the decision of the PRRA Officer are not frivolous and vexatious and meet the serious issues part of the *Toth* test.

[16] While I acknowledge that the threshold to establish a serious issue with respect to the PRRA decision is lower, that does not mean that arguments focused solely on how the decision-maker treated the evidence will meet the threshold. Fundamentally, the Applicant takes issue with how the PRRA officer treated the evidence. The burden was on the Applicant to provide

evidence of a convincing and compelling nature to establish that he is at risk in Jordan under grounds recognized in section 96 or 97 of *IRPA*. The Officer was not satisfied based on the evidence relied upon by the Applicant that such risk had been established.

[17] I do not agree with the Applicant's submissions that the PRRA Officer erred in considering the risks and state protection. Considered in the context of the evidence provided, the decision of the PRRA Officer is reasonable. The Applicant relied upon vague contradictory and non-personalized allegations of risk. In the circumstances, I do not agree that a serious issue arises with the PRRA Officer's treatment of the evidence.

[18] Even if I were to accept that the issues raised by the Applicant with respect to the PRRA decision meet the threshold of not being frivolous or vexatious, the Applicant does not meet the irreparable harm branch of the test, which I will address below.

[19] The threshold to establish a serious issue with respect to the Deferral Decision is high, because the stay of removal, if granted, effectively grants the Applicant the relief he seeks in the underlying judicial review application, which is a deferral of his removal from Canada *(Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148, [2001] F.C.J. No. 295 (T.D.).

[20] In assessing whether a serious issue exists in a refusal to defer case, the Court must consider that the discretion to defer the removal of a person is limited, and that the standard of review of an Enforcement Officer's decision is that of reasonableness, with the result that an Applicant must put forward quite a strong case: *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, at para. 67.

[21] The Applicant argues that the Deferral Decision suffers from the same flawed reasoning as the PRRA decision on the issue of his risk of harm in returning to Jordan. The Deferral Officer noted that the Applicant was relying upon the same risk factors as those considered by the PRRA Officer. In this regard, the Deferral Officer correctly noted the restrictions on his discretion by stating: "I may assess whether removal at this time would expose the applicant to risk of death, extreme sanction or inhumane treatment. I note that insufficient new risk allegations have been presented in the deferral request that were not previously reviewed by the PRRA officer."

[22] I agree with the Deferral Officer that the risk allegations raised by the Applicant in support of his deferral request were the same risks as fully considered by the PRRA Officer. Therefore, I am satisfied that the Deferral Officer, within his limited discretion reasonably assessed the risks raised by the Applicant and rendered a reasonable decision *(Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286).

[23] The Applicant has not established any serious issues with the Deferral Decision as required to satisfy the first branch of the *Toth* test.

[24] In conclusion, the Applicant has not satisfied me that there is a serious issue with either the PRRA decision or the Deferral Decision.

[25] Having concluded that the Applicant has failed to establish a serious issue with either the PRRA Decision or the Deferral Decision is a sufficient basis to deny the relief claimed by the

Applicant on these motions. However, I will address the irreparable harm issues raised by the Applicant below.

Irreparable Harm

[26] In support of the Applicant's arguments that he will suffer irreparable harm, the Applicant relies upon his current psychological condition, the best interests of his nephews, and the risks associated with COVID-19.

[27] With respect to his psychological condition, the Applicant relies upon a report stating that he suffers from severe depression and post traumatic stress disorder. The Officer noted the report relied upon by the Applicant. However, the Officer noted that there was no evidence that the applicant would suffer permanent psychological damage if removed. The Deferral Officer also noted that there is no evidence that the Applicant could not get the necessary treatment in Jordan. The lack of evidence in support of this claim does not support an irreparable harm finding.

[28] With respect to his nephews and their best interests, the Officer reasonably noted that the Applicant's nephews would continue to reside in Canada in the care of their mother with access to Canadian social programs. In the circumstances, this does not amount to irreparable harm.

[29] The Applicant argues that the risks associated with COVID-19 amount to irreparable harm. However as the Officer reasonably noted, Jordan currently has a lower rate of COVID-19 per capita than Canada.

[30] Finally, in addition to the other grounds raised by the Applicant in his request for a deferral of removal, the Applicant also asked that his removal be deferred on the strength of an Humanitarian and Compassionate application (H&C) that was filed in December 2020 and an "intended" Spousal Sponsorship application. The Deferral Officer reasonably noted that a recently filed H&C application where no decision is imminent does not support a deferral request. Likewise, an intention to file a spousal sponsorship application cannot be used as a ground to support a deferral request.

[31] Overall, the Applicant has not established with clear and non-speculative evidence that he will suffer irreparable harm if he is removed from Canada.

Balance of Convenience

[32] In the circumstances, the balance of convenience favours the Minister and the Minister's obligations under the *Immigration and Refugee Protection Act* and in particular the statutory obligation under section 48 of the Act to enforce removal orders as soon as possible may be executed.

[33] The Applicant has not satisfied the *Toth* test therefore his motions are dismissed.

ORDER IN IMM-5332-20 AND IMM-728-21

THIS COURT ORDERS that the Applicant's Motions are dismissed.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS :	IMM-5332-20 MUJAHED KAYED AJLOUNI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION IMM-728-21 MUJAHED KAYED AJLOUNI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN FREDERICTON, NEW BRUNSWICK, AND TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 9, 2021
ORDER AND REASONS	MCDONALD J.
DATED:	FEBRUARY 12, 2021

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