Federal Court Cour fédérale

Date: 20250113

Docket: IMM-1385-23

Citation: 2025 FC 64

Ottawa, Ontario, January 13, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

YANNICK JOCELYN NGANHOU TCHOUDI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Tchoudi [Applicant], seeks judicial review of a Canada Border Services Agency [CBSA] Inland Enforcement Officer's [Officer] decision, refusing the Applicant's third request to temporarily defer his removal from Canada.

[2] Following two refusals by this Court to grant a stay of the removal order, Mr. Tchoudi was removed from Canada on January 30, 2023 to his home country of Cameroon.

[3] For the reasons that follow, this application is dismissed because it is moot.

II. Background Facts

[4] Mr. Tchoudi is a national of Cameroon who came to Canada in January 2012 to undertake studies for a Master's degree in Linguistics. Upon completion of his degree, he was issued a post-graduate work permit, which expired in 2017. After the expiry of his work permit, Mr. Tchoudi remained in Canada without status.

[5] On February 21, 2019, Mr. Tchoudi filed a claim for refugee protection on the basis of his homosexuality. On February 9, 2021, the Minister of Citizenship and Immigration intervened in the matter, having discovered on the Applicant's Facebook page that he was married to a woman, which had been the case since November 2019. On June 20, 2022, at his Refugee Protection Division hearing, Mr. Tchoudi was allowed to withdraw his claim for refugee status.

[6] Following the withdrawal of his refugee claim, the Applicant had until August 11, 2022 to leave Canada. Mr. Tchoudi did not leave Canada voluntarily nor provide proof of his departure. As a result, CBSA seized his Cameroonian passport. A Direction to Report for Removal was issued to Mr. Tchoudi with a date of September 16, 2022 for removal from Canada.

[7] On August 16, 2022, Mr. Tchoudi filed an application for leave and for judicial review of his removal order, and sought a deferral, stay or cancellation of his removal order. The Applicant discontinued that application on September 21, 2022.

[8] Mr. Tchoudi also requested two deferrals of his removal from the CBSA. The first request was dated August 11, 2022 and denied on August 16, 2022; and the second request for a deferral was dated August 31, 2022 and denied on September 9, 2022.

[9] On September 15, 2022, Justice Bell dismissed Mr. Tchoudi's motion for a stay of removal, finding that (i) there was no serious issue to be determined, (ii) the Applicant had failed to demonstrate that he would suffer irreparable harm should he be returned to Cameroon, and (iii) the balance of convenience favours removal, given the Applicant's disregard of Canada's immigration system and unclean hands.

[10] Mr. Tchoudi did not appear for his removal on September 16, 2022. A warrant was issued for his arrest on that same date. Mr. Tchoudi was arrested by the Royal Canadian Mounted Police at his home on December 6, 2022.

[11] On December 15, 2022, Mr. Tchoudi was advised that his removal would take place on January 30, 2023. Mr. Tchoudi sought a third deferral of his removal from the CBSA on January 19, 2023, which was denied on January 25, 2023.

[12] On January 26, 2023, Mr. Tchoudi filed a second motion for an order staying his removal to Cameroon. On January 27, 2023, Justice Rochester (as she then was) dismissed the motion on essentially the same grounds as found earlier by Justice Bell.

[13] The Applicant was removed on January 30, 2023, as scheduled.

[14] The Applicant seeks judicial review of the third refusal to temporarily defer his removal.

III. Issues and Standard of Review

[15] As Mr. Tchoudi has already been removed from Canada, the determinative issue in this matter is whether it is moot, and, if it is moot, whether the Court ought to exercise its discretion to hear the application in any event.

IV. Analysis

[16] In *Harvan v Canada (Citizenship and Immigration)*, 2015 FC 1026 at paragraph 7 (see also *Mbaogu v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 28 at paras 21–25 [*Mbaogu*]), applying the criteria set out by the Supreme Court of Canada in *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 [*Borowski*], Mr. Justice Diner reviewed the test for mootness:

> [7] The test for mootness comprises a two-step analysis. The first step asks whether the Court's decision would have any practical effect on solving a live controversy between the parties, and the Court should consider whether the issues have become academic, and whether the dispute has disappeared, in which case the proceedings are moot. If the first step of the test is met, the second

> step is—notwithstanding the fact that the matter is moot—that the Court must consider whether to nonetheless exercise its discretion to decide the case. The Court's exercise of discretion in the second step should be guided by three policy rationales which are as follows:
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> i. the presence of an adversarial context;
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> ii. the concern for judicial economy;
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> iii. the consideration of whether the Court would be encroaching upon the legislative sphere rather than fulfilling its role as the adjudicative branch of government.

[17] In determining whether the present matter is moot, the first step is to ask whether a decision on the Applicant's application for judicial review would have any practical effect in solving the issue between the parties.

[18] Mr. Tchoudi is seeking a judicial review of a CBSA refusal, for a third time, to defer his removal order. However, it is no longer possible to defer the Applicant's removal at this time, since Mr. Tchoudi has already been removed to Cameroon. The relief that Mr. Tchoudi sought, which is to defer his removal, cannot be granted. There is therefore no live controversy between the parties. Consequently, on the first step of the analysis for mootness, I find that the matter is moot, given that Mr. Tchoudi was removed from Canada and his removal cannot be "temporarily deferred."

[19] The second step is to consider whether the Court's discretion should be exercised to hear the matter despite its mootness, in consideration of the factors set out in *Borowski*. These factors are: a) the presence of an adversarial context; b) concern for judicial economy; and c) whether,

by hearing the matter, the Court would be encroaching into the legislative sphere rather than fulfilling its adjudicative function.

[20] In this case, I do not find any presence of an adversarial context between the parties given that Mr. Tchoudi has already been removed from Canada (see *Da Silva v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1154 at paras 5–9). The Applicant relied on a pending Humanitarian & Compassionate [H&C] application as a basis for his request for deferral. However, the H&C application may run its course and continue to be considered in his absence from Canada (*Borowski* at 363; *Mbaogu* at para 27).

[21] In any event, as held by Justice Noël in *Sogi v Canada (Minister of Citizenship and Immigration)*, 2007 FC 108 at paragraph 47 (see also *Huo v Canada (Citizenship and Immigration)*, 2021 FC 1230 at para 11 [*Huo*]), an adversarial context should also be supplemented by at least one of the other two criteria to support an exercise of the Court's discretion to hear a matter despite its mootness. In this case, Mr. Tchoudi does not meet any of the other two criteria.

[22] The criterion of judicial economy does not support Mr. Tchoudi's request. This factor requires that a court examine the circumstances of a case to determine if it is worthwhile to allocate scarce judicial resources to resolve the moot issue (*Borowski*; *Huo* at para 12). In this case, Mr. Tchoudi has had the benefit of two motions for a stay of removal that were dismissed because he did not meet the test of a serious issue, irreparable harm, or balance of convenience. As such, in my view, this is not a situation wherein scarce judicial resources should be devoted

to rendering a decision, especially since the usual remedy of redetermination would not be effective in the usual course, given the Applicant having already been removed from Canada.

[23] Moreover, exercising the Court's discretion to hear this case despite its mootness would intrude on the legislative scheme established by Parliament and which the Applicant availed himself, including two motions for a stay of removal, which were dismissed. Hearing this case would therefore not only constitute a review of the Officer's decision not to grant a deferral of his removal, but rather also amount to a review of the Court's dismissals of the Applicant's motions for a stay of removal. This Court held in *Nalliah v Canada (Minister of Citizenship and Immigration)*, 2005 FC 759 and in *Huo* at paragraph 13 that sending a decision back for redetermination after an applicant is removed would be akin to sitting in review of the merits of the other Justices' decisions on the dismissal of the Applicant's motion for a stay of removal. This is not the proper role of this Court and would intrude on the legislative scheme adopted by Parliament.

[24] Finally, and in any event, Mr. Tchoudi's main oral submission on judicial review of the Officer's refusal to defer his removal relates to an allegation of persecution he faces in Cameroon. In my view, the Officer's decision in that regard is reasonable. The Officer considered the arguments and evidence presented by the Applicant and noted that he did not raise any fear of returning to Cameroon in his first request for deferral on August 11, 2022, and instead waited until his second request. Mr. Tchoudi had at that time been in Canada for approximately 10 years and never raised any such fear, especially since his claim for asylum, which he later withdrew, was based on a completely different ground. It was therefore reasonable

for the Officer to reject that argument and rule that it should have been raised earlier, and that the risk of persecution was not sufficiently obvious or serious to be entertained on a request for deferral (*Jamal v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 494 at para 7).

V. Conclusion

[25] Under all of these circumstances, the Court can see no reason why discretion should be exercised to hear this matter substantively.

[26] The application for judicial review is therefore dismissed for mootness.

[27] No party has proposed a question for certification and I agree that none arise.

JUDGMENT in IMM-1385-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1385-23
STYLE OF CAUSE:	YANNICK JOCELYN NGANHOU TCHOUDI v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 8, 2025
JUDGMENT AND REASONS:	RÉGIMBALD J.
DATED:	JANUARY 13, 2025

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