Federal Court Cour fédérale

Date: 20250923

Docket: IMM-20117-25

Citation:2025 FC 1582

Ottawa, Ontario, September 23, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

HUMPHREY YUKELL SAVAGE

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER

I. Nature of case and background

[1] This is a motion by the Applicant for an Order to stay his removal to Jamaica, now scheduled for Wednesday, September 24, 2025, pending the determination of an application for leave to apply for judicial review of a decision by a CBSA Officer refusing to defer the removal. I heard from counsel on an urgent basis by conference call on Monday, September 22, 2025.

[2] The Applicant is a citizen of Jamaica who has been in Canada for some 54 years. He is now 56 years of age. He arrived with his family when he was two years old. Most of his family have since obtained Canadian Citizenship but he did not apply nor was such applied for him.

[3] He was diagnosed with treatment resistant schizophrenia when he was 17 which still afflicts him. He was found inadmissible for serious criminality (sexual assault) in June 2013. He has remained in Canada.

[4] The Applicant has a very lengthy and violent criminal record dating back to 1988 with 14 convictions, 9 of which for assault or sexual assault: • 30 AUG 1988 - breaking and entering with intent; • 14 JUN 1989 - s. 267(1)(b), assault bodily harm; • 14 JUN 1989 - s. 334, theft under $1000; • 26 OCT 1989 - s. 245, assault; • 10 JUN 1991 - s. 463(d), fraud; • 12 NOV 1993 - s. 434, arson; • 12 NOV 1993 - s.145(2)(b), fail to attend court; • 09 NOV 1995 - s. 270(1), assault of a Peace Officer (2 counts); • 09 NOV 1995 - s. 271, sexual assault; • 10 JUN 2010 - fail to comply with recognizance; • 28 MAR 2012 - s. 271, sexual assault; • 23 NOV 2015 - s. 266, assault; • 14 AUG 2024 - s. 267, assault causing bodily harm involving his girlfriend.

[5] The Applicant notes many of these offences are linked to his mental health or alcohol issues, but the convictions are presumptively based on the appropriate mental capacity and of course the victims did not consent. There is no evidence these convictions were appealed although the most recent – over a year old –might be reviewed at some time. I note here he did challenge his 12 year old inadmissibility finding in the Federal Court, but the challenge was dismissed.

[6] He has been the subject a deportation order twice: in March of 1996 after he was convicted of assaulting a peace officer and of sexual assault; and after being convicted of sexual assault in 2013. The Immigration Appeals Division ("IAD") issued an equitable stay of his removal for his initial deportation order.

[7] The Applicant applied for a Pre-Removal Risk Assessment (the "2013 PRRA") in 2013, which was subsequently considered and refused on March 31, 2014. The Applicant was offered a second PRRA a decade later in June 2024, which was considered and refused August 22, 2024 (the "2024 PRRA"). I note Applicant's counsel says the first involved the Applicant when his mental state was different, and that the second is flawed by inaccurate assessments of his personal mental health, as noted by Justice Whyte Nowak.

[8] That said, the central issue here is the health care situation in Jamaica, and I am not persuaded the situation in Jamaica has materially changed since either PRRA. I also appreciate it is different from Canadian mental health standards, health care frequently being below Canadian standards in countries from which foreign nationals seek to come to Canada.

[9] Notably, which Counsel disagrees with these PRRA decisions, which I agree may not comport with the evidence before the Court today, neither were challenged as both might have been in the Federal Court. It seems to me they are now conclusive and binding.

[10] I also note my colleagues Justices Grammond and Aylen have recently determined and applied the Court's jurisprudence in this respect, which is that concerns about inadequate health

care in a foreign national's home country are not relevant to irreparable harm on a motion to stay: "concerns about inadequate health care do not constitute irreparable harm: *Adeleye v Canada (Public Safety and Emergency Preparedness)*, 2019 CanLII 22862 (FC)" quoted by Justice Grammond in *Bastien v Canada (MCI)*, 2021 FC 926 at para 25. To the same effect agree with Justice Aylen who concluded in *Enodumwenbem v Canada (MPSEP)*, 2024 FC 1686 that "this Court has recognized that concerns about inadequate health care do not constitute irreparable harm [see *Adeleye v Canada (Public Safety and Emergency Preparedness)*, 2019 CanLII 22862 (FC); *Bastien v Canada (Citizenship and Immigration)*, 2021 FC 926 at para 25]."

[11] Most recently, on August 14, 2024, the Applicant was convicted of a violent sexual assault on his girlfriend, and was detained by CBSA at the Ottawa Carleton Detention Centre ("OCDC"), where he remained until early April 2025.

[12] I appreciate there are gaps in the Applicant's criminal history, but the fact is these crimes started in 1988 and continue as recently as August 2024. I note his most sexual assault conviction appears to have been alcohol fueled.

[13] On May 7, 2025, the Applicant submitted an application for permanent residence on the basis of humanitarian and compassionate grounds (H&C) (the "H&C Application") which was received by IRCC August 18, 2025. It is not disputed this will take more time to process than deferral officers generally have to offer, yet he asks for a stay pending that decision. And as the deferral Officer notes, he will obtain the benefit of that application regardless of whether he is

here or in Jamaica. This was the first ground on which he sought deferral and frankly it was and is without merit.

[14] On September 8, 2025, the Applicant applied for a subsequent PRRA (the "2025 PRRA") seeking reconsideration of the Applicant's 2024 PRRA. Again, this has not yet been processed. Notably this PRRA was filed only the day before he requested deferral of his removal. Again he seeks a stay pending the result of this PRRA, but this request is again without merit.

[15] In January 2025, the Applicant applied for a deferral re his removal scheduled for February 4, 2025, which was denied by CBSA January 23, 2025. The Applicant commenced an Application for Leave and Judicial Review (ALJR) challenging the deferral decision and brought a motion for stay of removal on January 24, 2025. On February 3, 2025, Justice Whyte Nowak granted the Applicant's motion for a stay of removal until July 14, 2025, to allow for an assessment of the Applicant's suicidal ideations and for any associated treatments to be implemented. It also required "mitigation measures that are tailored to the actual risk of harm to the Applicant upon his arrival in Jamaica." That stay has expired.

[16] On May 14, 2025, the Applicant received a new a Direction to Report for removal then scheduled for July 16, 2025 i.e., after the previous stay expired. The Applicant submitted a deferral request to CBSA based on his pending H&C application, which was denied on July 3, 2025.

[17] In fact, on July 9, 2025, CBSA postponed the July Removal to allow Jamaican authorities to make arrangements for the Applicant's removal and return to Jamaica. That same day, CBSA informed the Applicant and his counsel that the removal was postponed.

[18] While the Applicant paints a negative picture of the Applicant's mental health, I note that is disputed by the Respondent. For example in a medical report from OCDC on March 26, 2025, Dr. Hwang, a forensic psychiatrist, observed that near Christmas of 2024, the Applicant's mood was low and "had suicidal thoughts" related to "feeling hopeless due to prolonged incarceration," but that more recently "he was hopeful, and mood was 'good,'" and "he no longer had thoughts of suicide." In the mental status exam ("MSE") portion of the report, Dr. Hwang reported "no thoughts of violence or suicide."

[19] Dr. Labelle, the Applicant's own psychiatrist, provided a fairly positive report dated April 24, 2025, which notes that "[f]rom a mood perspective," the Applicant "claims that at this point he is happy he is smiling spontaneously he reports that he does not suffer from anxiety although he is concerned about potential deportation in the future." Dr. Labelle asked the Applicant specifically about suicidal preoccupation, which the Applicant denied and said "for the time being he is living as he can and will see what happens with the issue about deportation." Dr. Labelle reports "there is no evidence of active suicidal or homicidal ideation but remote preoccupation of self-harm if put in the situation of deportation."

[20] Dr. Labelle provided Applicant's counsel with an updated and in this connection also positive report on May 22, 2025. Dr. Labelle indicated that the Applicant says he is happy and

notes that while the Applicant reported “significant anxiety” from a preoccupation with the fear of his deportation, the Applicant “denies having current suicidal ideations.”

[21] On June 26, 2025, the Enforcement Officer contacted the Applicant’s counsel to obtain the Applicant’s consent to share his personal and medical information with the High Commission of Jamaica (the “JHC”) in order to allow the JHC to offer assistance specific to the Applicant’s conditions and facilitate his return and reintegration to Jamaica. The Applicant’s counsel provided the requested consent on June 30, 2025.

[22] On July 7, 2025, the Stakeholder Engagement Unit of the CBSA (the “SEU”) contacted the JHC and requested reintegration support for the Applicant. On July 8, the JHC requested that the CBSA reschedule the Applicant’s July removal date to allow Jamaican authorities in-country to prepare proper reception, including social and medical services.

[23] On August 28, 2025, the Applicant received a Direction to Report with a scheduled removal of September 24, 2025 (then almost a month out). On the same day, SEU notified the JHC of the Applicant’s new removal date. The Applicant filed for deferral September 9, 2025.

[24] On September 11, 2025, the JHC advised SEU that Jamaica’s Ministry of Health and Wellness had confirmed “Jamaica’s health care system is capable of providing follow-up support to the Applicant” but requested at least three months supply of medication be given to the Applicant on the day of his removal.

[25] Notably and as requested by the Applicant's national government, the CBSA Enforcement Officer has obtained three months supply of the Applicant's medication and has secured $450 in subsistence funds for the Applicant.

[26] CBSA has also arranged to have a nurse and three inland enforcement officers accompany the Applicant on his return to Jamaica.

[27] CBSA has also coordinated his return with his family (sister) in Jamaica.

[28] All of this evidence was before the CBSA deferral Officer who, by decision dated September 16, 2025, and I should add in careful and detailed reasons considering the almost 400 pages of affidavits and other documents filed, dismissed Counsel's request to defer.

II. The legal framework

[29] To succeed, the Applicant must meet the requirements of a tripartite test set out by the Federal Court of Appeal in *Toth v Canada (Minister of Citizenship and Immigration)*, [1988] FCJ 587, 86 NR 302 (FCA), and by the Supreme Court of Canada both in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] SCJ No 17, [1994] 1 SCR 311 and more recently in *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12, namely (1) that there is a serious issue to be tried i.e., an issue that is not frivolous or vexatious, (2) that the Applicant would suffer irreparable harm by reason of removal and (3) that the balance of convenience is in the Applicant's favour.

[30] In this case, because the underlying application for leave is a refusal to defer, the Applicant must meet the significantly higher test established by the Supreme Court of Canada in *R v Canadian Broadcasting Corp*, 2018 SCC 5 at paragraph 12, a test established by the Federal Court of Appeal in *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81. This significantly higher test requires this Court to take a hard look at the Applicant's request and decide if the underlying application is likely to succeed, i.e., to decide whether the Applicant will succeed on judicial review in setting aside the refusal to defer decision.

[31] The Federal Court of Appeal has also established that deferral decisions are meant to be limited to those cases where there is clear evidence of a ""risk of death, extreme sanction or inhumane treatment,"" or where there are temporary, short-term exigent circumstances such as facilitating appropriate travelling arrangements or allowing a child to finish a school year. See *Revell v Canada (MCI)*, 2019 FCA 262 at paragraph 50*; Lewis v Canada (MPSEP)*, 2017 FCA 130 at paragraphs 82-83; and *Ledshumanan v Canada (MPSEP)*, 2021 FC 1463 at paragraph 21.

[32] If this matter is granted leave to proceed to judicial review, the standard of review will be reasonableness, i.e., is the decision justified given the factual and legal constraints on the decision-maker, is it transparent, intelligible, and without fatal central error, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[33] It is important to understand that reweighing and reassessing the evidence and inferences made by the Officer below forms no part of the role of this Court on judicial review except in exceptional circumstances, nor it is any part of the role of the Court on this motion to stay: see *Vavilov* at para 125: "[125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from 'reweighing and reassessing the evidence considered by the decision maker" [citations deleted]. To the same effect is the Federal Court of Appeal judgment in *Doyle v Canada (Attorney General)*, 2021 FCA 237: "[3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. *Reweighing and second-guessing the evidence is no part of its role*." [Emphasis added]

[34] The law also establishes that usual consequences of removal of a foreign national to their home country, including forced separation from family and its consequences, do not establish irreparable harm: see *Atwal v Canada (Minister of Citizenship and Immigration),* 2004 FCA 427 where the Federal Court of Appeal held "separation from family consists of the usual consequences of deportation. It is not of the type contemplated by the three-stage test for granting a stay. As stated by Pelletier J.: *Melo v Canada (Minister of Citizenship and Immigration)*, (2000), 2000 CanLII 15140 (FC), 188 F.T.R. 39 at para. 21: 'If the phrase

"irreparable harm" is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak.'"

III. Application of law and facts

[35] On the first step, serious issue and likelihood of success, the Applicant argues he was denied procedural fairness because he did not know of the efforts made by CBSA with Jamaican health authorities to assist his return home and rehabilitation and re-entry and family reunification. These are as reported above.

[36] However, he did know and consented to having his medical information shared with Jamaican authorities. Moreover, while not specified than as it is now (see the next paragraph), in my view virtually all of what the Applicant now requests he put into his lengthy and fulsome deferral request. He certainly knew what he wanted in Jamaica as set out in his request to defer. In my view the Officer while presumed to have considered all the submissions did in fact address many of the matters for which the Applicant now faults the Officer's decision.

[37] He now says the decision is unreasonable because there is no assurance that: - the Jamaican High Commission is fully aware of the extent of the Applicant's integrated health care needs (but the Applicant provided no reason to doubt they had the material information including his medications); - there is a plan to oversee the administration of his many medications, including a bi-weekly injection of anti-psychotic medication (which in my view is a level of

detail beyond the scope of a deferral decision), - there is supported housing for him (I am not persuaded Canadian citizens are entitled to Court ordered supported housing, let alone foreign nationals returning to their home country), - there will be follow up with appropriate psychiatric and medical treatment that properly addresses the fact he will be without key medications within 90 days (the Jamaican authorities, to the contrary, have assured that "the Ministry of Health and Wellness has formally confirmed that Jamaica's health care system is capable of providing follow-up support to Mr. Savage," - that there will be supports to navigate a foreign country's complicated and under-resourced mental health system (again I am not persuaded this is an entitlement of Canadian citizens let alone a matter that may be court-ordered in respect of foreign nationals in their country of birth).

[38] With respect, I am not satisfied this Court is able to provide all these assurances to the Applicant, nor require that CBSA make such demands of Jamaican health authorities.

[39] As already noted and as discussed below, the preponderance of jurisprudence is precisely to the reverse, namely that concerns about inadequate health care are not relevant on immigration stays of removal.

[40] Otherwise, and with respect his counsel invites this Court to reweigh and reassess the very considerable (almost 400 pages) of submissions and material, including in some respects conflicting medical and other evidence before the CBSA deferral Officer. This as noted per binding jurisprudence of both the Supreme Court of Canada and the Federal Court of Appeal,

forms no part of this Court's role unless there are exceptional circumstances or fundamental error warranting judicial intervention, which and with respect is not the case.

[41] As one example of conflict, the Applicant's Jamaican medical affiant indicates certain drugs are not available without identifying their source. However the deferral Officer found Jamaican government web information says the opposite, that they are available. Additionally, this expert never met the Applicant and appears to the Officer to have relied on material selected by Applicant's Counsel.

[42] Overall it seems to me the Applicant made his case to the Officer, his submissions were carefully considered and rejected or are deemed to have been, and he failed to satisfy the burden that was on him to prove his case. Second-guessing the Officer is not the role of the Court.

[43] I would add I see no likelihood of a *Charter* challenge given, as already noted, the risks he identified were in fact considered or deemed to have been considered by the Officer which satisfies the jurisprudence. Nor do I see merit in faulting the Officer for not setting out details which in fact were substantially set out in the record or microscopic in detail that need not be spelled out in reasons.

[44] I also note the Applicant asks for all documents exchanged between CBSA and the government of Jamaica. There is no merit in this request. With respect, there is no general right in immigration matters to production of all documents generated before a decision is made.

Notably this is an administrative law case, not a *Charter*-informed criminal prosecution, and therefore the full disclosure rule in *R. v Stinchcombe*, [1991] 3 S.C.R. 326 has no application.

[45] I should note as well that, again in my respectful view and – especially given the jurisprudence cited above - the conditions of the stay issued by my colleague Justice Whyte Nowak are also met regarding "mitigation measures that are tailored to the actual risk of harm to the Applicant upon his arrival in Jamaica." The Office was very alive to this and concluded his review of the evidence by finding the plan developed by CBSA and Jamaican authorities was appropriately tailored to the needs of the Applicant. He will have transition medications, funding and reunification with his Jamaican family within the health care system available to Jamaicans generally; I am not persuaded his access to medical treatment will be different from others similarly situated in Jamaica.

[46] Notably, as found by the CBSA Officer, the Jamaica government has also "confirmed that the Ministry of Health and Wellness has formally confirmed that Jamaica's health care system is capable of providing follow-up support to Mr. Savage."

[47] On balance I am not satisfied the Applicant has met the first test, that is, I am not persuaded he will succeed on judicial review even if the Court were to grant leave to hear his case.

[48] That said, for the limited purposes of determining his motion to stay, I will assume the first part of the three-part test is met.

[49] On irreparable harm, the second of the three parts of the test for a stay, the onus is on the Applicant to demonstrate, through clear and convincing non-speculative evidence or irreparable harm that the extraordinary remedy of a stay of removal is warranted: *Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 [*Atwal*]. Such harm must be forward looking. Further, harm must constitute more than a series of possibilities and may not be based on mere assumptions, speculation or hypotheticals and contingencies. The Federal Court of Appeal also instructs this Court that except in relatively short term deferrals, "deferral should be reserved for those applications where failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment": see *Baron v Canada (MPSEP*), 2009 FCA 81, at paragraph 51. As already noted, without exceptional circumstances the Court is not to reconsider, reweigh or reassess the evidence before the Officer. Neither is a motion for a stay an appeal from the decision of the Officer, nor is it a de novo review of the record to arrive at a fresh determination. In addition, the officer's assessment is given a respectful deference and weight.

[50] The main thrust of the Applicant's case is that health care for those like the Applicant with schizophrenia in Jamaica are substantially different from those in Canada. With respect, the jurisprudence of this Court does not support the Applicant's reliance on this argument. As noted already, and to emphasize, both Justices Grammond and Aylen properly recently considered and assessed the law in this regard, which is that concerns about inadequate health care in a foreign national's home country are not relevant to irreparable harm on a motion to stay: "concerns about inadequate health care do not constitute irreparable harm: *Adeleye v Canada (Public Safety and Emergency Preparedness)*, 2019 CanLII 22862 (FC)" quoted by Justice Grammond in *Bastien v Canada (MCI),* 2021 FC 926 at paragraph 25. To the same effect I rely on and agree

with Justice Aylen who concluded in *Enodumwenbem v Canada (MPSEP)*, 2024 FC 1686 " this Court has recognized that concerns about inadequate health care do not constitute irreparable harm [see *Adeleye v Canada (Public Safety and Emergency Preparedness)*, 2019 CanLII 22862 (FC); *Bastien v Canada (Citizenship and Immigration)*, 2021 FC 926 at paragraph 25."

[51] The Applicant submits his mental health issues were not adequately considered or assessed by the Officer particularly with respect to suicidal ideation. However the facts of this case do not support this issue, as set out above. Nor does the jurisprudence support this argument, which is also against the Applicant. As the Respondent correctly notes the jurisprudence confirms, removal from Canada inevitably brings with it hardships and difficulties, particularly from a psychological standpoint. This Court has found irreparable harm is not established by depression or anxiety clearly linked to pending removal, even when accompanied by suicidal ideation, when these symptoms are clearly linked to a pending removal per *Mahuroof v Canada (MPSEP)*, 2019 CanLII 36998; and *Enodumwenbem; Achola v Canada (MPSEP)*, 2025 CanLII 33858.

[52] I am not persuaded that the Officer acted unreasonably or erred warranting judicial intervention in their weighing and assessing the facts of this case. Instead, the are entitled to respectful deference per *Vavilov*. The Officer in careful and detailed reasons reviewed the record in this respect and repeatedly assessed and weighed the evidence as speculative. Given the significant deference the deferral Officer is owed, and the high bar the Applicant must establish before the Court engages in reweighing and reassessing evidence already considered by the

Officer, I am not persuaded the Officer's refusal to defer is of such exceptional nature to warrant the Court's intervention.

[53] Having heard and read the submissions of both counsel, and given the jurisprudence cited regarding local health care issues, in my respectful view the requirement for clear and convincing non-speculative evidence of irreparable harm is not met in the circumstances of this case. Therefore the Applicant does meet the test of irreparable harm.

[54] The third part of the test asks if the balance of convenience favours the Applicant or the Minister. In this case the Applicant's risk has now been assessed four times: in two PRRAs, and most recently by two different deferral Officers. None were satisfied the Applicant's circumstances warranted special relief he seeks now. Nor am I. The Applicant's very substantial and serious criminal record must also be counted against him, notwithstanding his Counsel's very able submissions otherwise.

[55] Given this and my findings above, the Applicant's situation does not outweigh the Minister's legal - indeed statutory duty imposed by Parliament - to remove the Applicant "as soon as possible." Therefore the balance of convenience is not met.

[56] Therefore this motion to stay must be dismissed.

THIS COURT ORDERS that the motion for a stay of removal is dismissed.

"Henry S. Brown"
Judge