

Federal Court



Cour fédérale

**Date: 20251002**

**Docket: IMM-12622-23**

**Citation: 2025 FC 1627**

**Toronto, Ontario, October 2, 2025**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**CARLINGTON ANTHONY MCKENZIE**

**Applicant**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] This is an application for judicial review of a decision of the Canada Border Services Agency's [CBSA] to refuse the Applicant's request to defer his removal from Canada for four months.

[2] On October 10, 2023, Justice Heneghan issued an order granting a stay of the Applicant's removal.

[3] For the following brief reasons, this application will be dismissed.

## II. BACKGROUND

### A. *Facts*

[4] The Applicant, Carlington Anthony McKenzie, was born on January 14, 1980. He is a citizen of Jamaica. He became a permanent resident of Canada in 1999 when he was sponsored by his grandfather.

[5] On September 15, 2015, the Applicant was convicted of sexual assault and sentenced to nine months of imprisonment and two years of probation. The judge noted the potential immigration consequences at sentencing but concluded that the offence was serious enough to warrant a nine-month custodial sentence.

[6] In February 2017, the Court of Appeal for Ontario dismissed the Applicant's appeal of his criminal conviction. Again, the court considered the collateral immigration consequences of the sentence.

[7] As a result of the conviction, a deportation order was issued against the Applicant. Because of the nature of his conviction and sentence, Mr. McKenzie did not have the right to appeal the deportation order.

B. *Procedural History*

[8] Thereafter, Mr. McKenzie sought to remain in Canada through numerous applications, all of which were unsuccessful. These include a pre-removal risk assessment [PRRA], three negative applications for permanent residence on humanitarian and compassionate [H&C] grounds, and a prior refusal to defer his removal from Canada in 2018. It appears that Mr. McKenzie did successfully challenge this deferral decision. I was informed at the hearing into this matter that the Applicant has sought judicial review of his third negative H&C application, and that this matter is pending before this Court.

[9] The Applicant also applied for a Temporary Residence Permit [TRP] on August 16, 2023. The grounds for this application were essentially the same as the grounds for his H&C applications, namely the best interests of his two Canadian children, his establishment in Canada, and the hardship of removal. I was informed at the hearing into this matter that a decision on the Applicant's TRP application remains outstanding.

[10] In September 2023, the Applicant was, once again, issued a direction to report for his removal, which was scheduled for October 11, 2023.

[11] On October 4, 2023, the Applicant requested a deferral of removal to allow time for his TRP to be processed.

[12] On October 6, 2023, CBSA refused the Applicant's deferral request. This is the decision currently under review.

[13] On October 10, 2023, this Court granted the Applicant a stay of removal based on his pending application for leave and judicial review of the deferral decision.

### III. ISSUES AND STANDARD OF REVIEW

[14] The Applicant argues that the deferral decision was unreasonable, and that it was the product of a procedurally unfair process. With this said, the Applicant did not make submissions on procedural fairness at the hearing into this matter. On my review of the Applicant's submissions on procedural fairness, I find that they are not, in reality, arguments about the fairness of the proceeding, but about the reasonableness of the outcome. As such, I will confine my reasons to the substance of the officer's decision, which is to be reviewed on the reasonableness standard.

### IV. ANALYSIS

#### A. *The Officer's Decision Was Reasonable*

[15] It is well-established that while enforcement officers have discretion to defer removal for a limited period, such discretion is limited. Deferral requests are not intended to be preliminary or "mini" H&C applications; rather, the obligation to conduct H&C assessments rests with an officer deciding an H&C application: *Shpati v Canada (Minister of Public Safety & Emergency Preparedness)*, 2011 FCA 286 at para 45; *Munar v Canada (Minister of Citizenship & Immigration)*, 2005 FC 1180 at para 36. As noted above, the Applicant has now had the benefit of three such H&C assessments.

[16] Moreover, an officer's discretion to defer removal pending an application to remain in Canada is limited to those circumstances where the application has been submitted on a timely basis. Of note in this case: the Applicant requested a deferral of removal pending the outcome of his TRP application, which had only been submitted the month before he was called in to discuss his removal. The officer in this case did consider the Applicant's pending TRP application, but reasonably found that it was not timely.

[17] The officer did not stop there, however. Beyond noting that the TRP application had only recently been submitted, the officer engaged with the evidence and accepted that the Applicant had Canadian-born children who resided with their mothers. The officer found that there was insufficient evidence to demonstrate that the Applicant financially supported his children or that his financial support was required for their care. The officer further observed that the Applicant had already submitted two separate H&C applications, and the decisions on those applications had thoroughly canvassed the best interest of his children, his establishment in Canada, and the hardship he would experience in Jamaica. The officer noted that the Applicant had not sought judicial review of those decisions.

[18] All of the above being the case, I am of the view that the Applicant's arguments in this matter amount entirely to a request that I reweigh the evidence that was before the officer. It is trite that this is not the role of the court sitting on judicial review. At the hearing into this matter, counsel argued that the officer "minimized" the weight given to the evidence related to the best interests of the Applicant's children. I respectfully disagree. As I mentioned at the hearing, this argument quite clearly goes to the officer's evaluation of the evidence, and I do not intend to re-evaluate this assessment here. In sum, given the multiple applications that the Applicant has

submitted over the past seven years, in my view, it was reasonable for the officer to conclude that no further deferral of removal was warranted.

V. CONCLUSION

[19] For all of the above reasons, this application for judicial review is dismissed. There is no question to certify.

**JUDGMENT in IMM-12622-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"Angus G. Grant"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-12622-23

**STYLE OF CAUSE:** CARLINGTON ANTHONY MCKENZIE v THE  
MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 11, 2025

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** OCTOBER 2, 2025

**APPEARANCES:**

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Christopher Ezrin	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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