

Federal Court



Cour fédérale

Date: 20250930

Docket: IMM-21185-25

Citation: 2025 FC 1611

Ottawa, Ontario, September 30, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

MAGDALENA NASTITI SURYANDARI

Applicant

and

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

Respondent

ORDER AND REASONS

[1] The Applicant and moving party Ms. Suryandari has brought an urgent motion for an Order staying her removal from Canada scheduled to take place on October 1, 2025, following a Canada Border Service Agency [the CBSA] officer's rejection of her request pursuant to section 48 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*] to defer her removal. The Applicant seeks to have her removal stayed and deferred until her role of caregiver to Ms. I.M., is no longer needed, or, until a decision is made on her pending application for permanent residence on humanitarian and compassionate grounds.

[2] The Applicant's motion is dismissed for the reasons that follow.

I. **The Applicable Test**

[3] To be successful on this motion, the Applicant must satisfy the tripartite and conjunctive test for interlocutory injunctive relief set out by the Federal Court of Appeal in *Toth v Canada (Minister of Citizenship and Immigration)*, 1988 CanLII 1420 (FCA), and by the Supreme Court of Canada in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC) [RJR] and in *R v Canadian Broadcasting Corp*, 2018 SCC 5.

[4] The tripartite and conjunctive test requires that the Applicant demonstrate:

- a) that there is a serious issue to be tried;
- b) that the Applicant would suffer irreparable harm if his motion was dismissed; and,
- c) that the balance of convenience lies in the Applicant's favour.

[5] The threshold for establishing that a serious question is raised in a proceeding varies by the nature of the decision that is sought to be reviewed. The standard threshold is whether the issues raised are neither vexatious nor frivolous (*RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 338-339; *Koca v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 473 at paragraph 14). The existence of a "serious issue" is determined by considering the allegations set out in the Applicant's underlying application for leave and for judicial review (*Oberlander v Canada (Attorney General)*, 2003 FCA 134 at para 15 [Oberlander]; *Bergman v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1129 at para 17 [Bergman]; *Singh v Canada (Public Safety and Emergency Preparedness)*, 2025 FC

519 at paras 11, 14, and the jurisprudence cited therein). In the absence of serious grounds to challenge an administrative decision being set out in the underlying application, seeking a stay pending judicial review would amount to no more than a free-standing request for delay. Such a request is not justified in light of subsection 48(2) of the *IRPA* which requires a removal order to be enforced “as soon as possible” (*Ogunkoya v Canada (Citizenship and Immigration)*, 2021 FC 679 at para 6).

[6] The threshold for establishing a serious question is higher when an applicant is seeking a stay of a decision that refuses a deferral of their removal because granting a stay would in effect amount to a final determination of the proceeding. An applicant in such a case must demonstrate “quite a strong case” (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paragraphs 66-67, [2010] 2 FCR 311).

[7] To establish irreparable harm, the Applicants must present clear, non-speculative evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless the stay they seek is granted. Irreparable harm is forward-looking and unavoidable (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 152, citing *Janssen Inc. v Abbvie Corporation*, 2014 FCA 112 at para 24). The harm demonstrated must constitute more than a series of possibilities and may not be based on mere assumptions, speculation, or hypotheticals and contingencies (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31; *Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 at para 14; *Ledshumanan v Canada (Public Safety and*

Emergency Preparedness), 2021 FC 1463 at paras 54–55. As summarized by Mr. Justice Denis Gascon in *Patel v Canada*, 2018 FC 882 at paras 7-8:

7. Irreparable harm is a very strict test. In the context of stays of removal, it implies a serious likelihood of jeopardy to the applicant's (or his or her family's) life, security or safety. It requires clear, convincing and non-speculative evidence going beyond the inherent consequences of deportation (*Palka v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 165 [*Palka*] at para 12; *Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 [*Selliah*] at para 13).

8. The Federal Court of Appeal has frequently insisted on the attributes and quality of the evidence needed to establish irreparable harm in the context of injunctive relief. Irreparable harm must flow from clear and non-speculative evidence (*AstraZeneca Canada Inc v Apotex Inc*, 2011 FC 505 at para 56, aff'd 2011 FCA 211; *Aventis Pharma SA v Novopharm Ltd*, 2005 FC 815 at paras 59-61, aff'd 2005 FCA 390). Simply claiming that irreparable harm is possible is not enough: "[i]t is not sufficient to demonstrate that irreparable harm is 'likely' to be suffered" (*United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200 [*US Steel*] at para 7). There must be evidence that the moving party will suffer irreparable harm if the injunction or the stay is denied (*US Steel* at para 7; *Centre Ice Ltd v National Hockey League (1994)*, 1994 CanLII 19510 (FCA), 53 CPR (3d) 34 (FCA) at 52). In addition, the evidence must be more than a series of possibilities, speculations, or hypothetical or general assertions (*Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 [*Gateway City Church*] at paras 15-16). Assumptions, hypotheticals and arguable assertions unsupported by evidence carry no weight (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 [*Glooscap*] at para 31). Quite the contrary, there needs to "be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted" (*Gateway City Church* at para 16, citing *Glooscap* at para 31).

[8] When considering the balance of convenience branch of the applicable test, the Court must determine which of the parties will face greater harm from the granting or refusal of the stay taking into account the public interest in having the *IRPA* enforced in an efficient,

expeditious, and fair manner (*RJR* at 342; *Ibrahima v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 607 at paras 66–68). The balancing exercise may consider the strength of the underlying application for judicial review. If a serious issue that calls the removal into question is identified, the public shares the applicant’s interest in granting a stay in order for the Court to decide the merits of the underlying application (*Matthew v Canada (Citizenship and Immigration)*, 2022 FC 924 at para 28; *Acti v Canada (Citizenship and Immigration)*, 2022 FC 336 at para 60).

II. **The Facts**

[9] The Applicant was born in Indonesia and is a citizen of Indonesia. She was declared inadmissible to Canada pursuant to 41(a) & 20(1)(a) of the *IPRA* and is the subject of an enforceable removal order from Canada.

[10] The Applicant entered Canada with her husband on a 6-month duration visitor’s permit in May 2022. The Applicant’s relationship with her husband ceased at some point after their arrival in Canada.

[11] The Applicant made a refugee claim on September 23, 2022, in which she claimed to a fear persecution and harm in Indonesia from the Front Pembela Islam (FPI), an extremist Islamist group. Her fear was alleged to follow her confrontation with a local mosque arising from her request to lower the volume of prayers from the mosque speakers. That claim was rejected by a Refugee Protection Board decision made on August 23, 2023, who found that the Applicant and her husband had an internal flight alternative in Indonesia. The Applicant’s appeal from that

decision was dismissed by the Refugee Appeal Division on November 16, 2023. The Applicant then sought judicial review of the Refugee Appeal Division's decision. The Applicant's application for judicial review was dismissed by Mr. Justice Angus Grant on March 25, 2025.

[12] The Applicant filed an application for permanent residence on humanitarian and compassionate grounds on July 11, 2025, and has updated her application since its time of filing [the H&C Application].

[13] A direction to report was issued to the Applicant on September 3, 2025. She had her removal interview with CBSA in person on the same date.

[14] The Applicant filed a request for the deferral of her removal on September 17, 2025. She requested that her removal be deferred until her role of caregiver to Ms. I.M., an elderly woman in home-based palliative care who is in very poor but not in a critical state of health, is no longer needed, or, until a decision is made on her pending H&C Application. The evidence filed by the Applicant is that the moment at which her role as Ms. I.M.'s caregiver would cease is the moment of Ms. I.M.'s death, which is anticipated to occur within the next two years due to her age and comorbidities. A decision on the Applicant's pending H&C Application is also suggested as being within or beyond an approximate two-year timeframe.

[15] The deferral requested by the Applicant was plainly not a short-term deferral request.

[16] The request consisted of 977 pages. An additional 89-page submission was filed with CBSA on September 21, 2023, as were additional written submissions on September 23 and 24, 2025. In total, the Applicant filed 1082 pages over one week as her deferral request. Many of the documents filed in connection with the deferral request appear to be related to the health and welfare of third parties, including medical reports and letters from medical professionals.

[17] The Applicant's request was rejected by a CBSA officer decision made on September 25, 2025.

III. **Procedural Background**

[18] The Applicant filed an Application for leave and for judicial review on September 24, 2025 [the ALJR]. The ALJR was filed prior to the deferral decision being made on September 25, 2025.

[19] The ALJR was filed on the basis of a deemed refusal of the Applicant's deferral request. It does not identify which decision is sought to be reviewed and there are no grounds alleged that contain a legal basis or material facts that could lead the Court to grant the Applicant relief on judicial review. The ALJR has not since been amended, nor has any request been made to amend the ALJR by the time of hearing to identify the decision sought to be reviewed. The Applicant offered to undertake to seek leave to amend her ALJR immediately after the hearing of this motion in order to properly plead. The Applicant will not be required to seek leave to amend her ALJR in such a short timeframe in light of the outcome of this motion.

[20] The Applicant filed her overly long motion record for this motion on September 25, 2025.

[21] The Applicant argues that the deferral decision neglects and mischaracterizes the evidence of Ms. I.M.'s care needs; is silent on a factor raised in the deferral request; contains internally inconsistent reasoning; and relies on findings that are speculative and directly contradicted by sworn evidence. The Applicant argues that she has shown is a strong *prima facie* chance of success on her Application for judicial review.

[22] The Applicant argues that if she is deported then an elderly Canadian at the end of her life will be separated from a crucial part of her health care needs and daily routine because there is a shortage of caretakers in Ontario and because there is no other person who can step into the Applicant's role. She also argues that her removal will also affect her partner, M.M., as she provides him with emotional support as well as acting with him to care for Ms. I.M.'s medical needs.

[23] Finally, the Applicant argues that while the Minister has an interest in prompt removal under the *IRPA*, where the Court is satisfied that there is a serious issue to be tried and irreparable harm will flow, the Minister's interest is diminished.

[24] The Respondent disagrees with the Applicant. The Respondent argues that the Applicant has not met any branch of the tripartite test and, more particularly, that the Applicant is relying on the harm that may be suffered by third parties to attempt to establish irreparable harm to her.

IV. **Analysis**

[25] This motion and its outcome are driven by the facts. As is set out below, I find that the Applicant has not established that she would suffer irreparable harm or that the balance of convenience falls in her favour.

A. ***Serious Issue***

[26] The Applicant has a higher than usual threshold to be met with respect to the existence of a serious issue. The Court understands that time constraints upon the Applicant have led to a situation where she argues that there is a serious issue in her written representations on this motion but has not articulated any grounds to support her argument in her ALJR.

[27] The Applicant argues that there are six issues that arise from the deferral decision. Three of these issues are directed at the CBSA's officer's assessment of the medical care and mental needs of persons who are neither the Applicant, the Applicant's family, or the Applicant's children, and the ramifications of removing a skilled healthcare worker from Ontario then there is a dearth of healthcare services available. The fourth issue argued is minimizing prejudice that the Applicant's removal will cause to her H&C Application. The fifth issue is the best interests of the Applicant's children who reside and have at all times resided in Indonesia. Finally, the Applicant argues that the CBSA officer unreasonably assessed the Applicant's concerns of future harm.

[28] The bareness of the ALJR does not allow the Court to determine whether any of these issues meet the “quite a strong case” threshold the Applicant is required to meet (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paragraphs 66-67, [2010] 2 FCR 311).

[29] Given that I conclude that the Applicant does not satisfy the irreparable harm or balance of convenience aspects of the tripartite test, I can assume that the Applicant has met the threshold for the purposes of this motion without determining whether she has or not.

B. *Irreparable Harm*

[30] A few facts with respect to irreparable harm should be kept in mind. The Applicant was trained in the medical field and found employment as a home support worker in Ontario under a temporary permit associated with her refugee claim until her right to work in Canada ended as a consequence of her removal becoming enforceable following the dismissal of her application for judicial review in March 2025. It appears from the record that the Applicant has continued to work as a home support worker since March 2025 without authorization to do so.

[31] The Applicant met Ms. I.M. when she was assigned by her employer to provide home care services to Ms. I.M in her home. She ceased providing home care services to Ms. I.M. as a matter of her employment as a home care worker at an unspecified point in time.

[32] It was also through that home care service delivery relationship that the Applicant met M.M., Ms. I.M.’s son and the owner of the home in which Ms. I.M. resides. The Applicant and

M.M. started a relationship and now cohabitate in the home where Ms. I.M. is residing and is being cared for.

[33] M.M. is Ms. I.M.'s primary caregiver. He has additional home care support provided for several hours each day by a personal support worker. The Applicant leaves the home in the morning most mornings and works outside of the home providing home care support to persons to whom she may be assigned until she returns home at approximately 5 pm before leaving again at approximately 6:30 pm to go back to work outside the home. The Applicant returns from her second work shift about or after 9:30 pm daily. Ms. I.M is often asleep by 9:30 pm, but the Applicant and M.M. jointly care for Ms. I.M. over night as needs arise.

[34] The Applicant argues that there are 7 bases for her argument of irreparable harm:

- a) Harm to Ms. I.M, for whom the Applicant is a critical caretaker
- b) Harm to M.M, including harm to mental health
- c) Family separation
- d) Loss of a healthcare worker
- e) Harm to pending H&C application
- f) Harm to minor child
- g) Need to apply for an Authorization to return to Canada

[35] The Applicant relies on *Natoo v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 402 [*Natoo*], to argue that multiple factors can cumulatively satisfy the standard for irreparable harm. The factual situation in *Natoo* was quite different from the factual matrix at

issue in this proceeding. Considering the multiple factors cited to establish irreparable harm as is argued by the Applicant does not assist her.

[36] The Applicant also relies on *Mannsbach v. Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1179 at paras 10-26 and *Arteaga Mannsbach v. Canada (Public Safety and Emergency Preparedness)*, 2023 FC 414 [collectively, *Mannsbach*] for the proposition that irreparable harm arises when someone is deprived from being present for an elderly Canadian who is terminally ill. The Applicant acknowledges that the factual situation in *Mannsbach* is distinguishable from the factual matrix in this case but argues that its holding should be applied by analogy. While I agree that with the Applicant that *Mannsbach* is factually distinguishable, I disagree that it should be applied by analogy. *Mannsbach* was decided at least in part on cogent evidence that the family separation consequences of deportation in that case were more than the usual consequences of deportation due to the specific facts of the matter. The evidence tendered on this motion does not rise to that level. There is no basis upon which to apply *Mannsbach* by analogy.

[37] The Applicant argued that the irreparable harm she relies on with respect to Ms. I.M. and M.M. as well as the harm arising from family separation, identified immediately above as harms a) to c) and f) are harms occurring to third parties and not to her, but may be relied upon by her on this motion. The Applicant also argues that the harms arising from family separation and for the loss of a healthcare worker in Ontario, prejudice to her pending H&C Application, and the need to apply for an Authorization to return to Canada are all harms that affect her directly.

[38] None of these meet the high threshold required to be met for irreparable harm to be established either individually or cumulatively.

[39] As Mr. Justice Michel M.J. Shore had noted in *Sittampalam v. Canada (Citizenship and Immigration)*, 2010 FC 562, at para 63, “the weight of the jurisprudence provides that irreparable harm must be harm to the individual seeking the stay and not to third parties”. While the jurisprudence of this Court reflects that the harm that may be suffered by third parties other than children is occasionally considered in the assessment of irreparable harm on a motion for the stay of a removal order, it remains that the harm that may be suffered by third parties is considered exceptionally and then in circumstances arising from very specific fact situations directed to short term concerns. The facts of this matter show that this is not a case that falls within those exceptional circumstances directed to short term concerns.

[40] The harm that may be suffered by Ms. I.M. is not harm suffered by the Applicant. It is the alleged harm that may be suffered by a third party over time. The Respondent argued that while the Applicant does assist M.M. in Ms. I.M.’s care, that assistance is not that of a primary caregiver. As a result, it is inaccurate to state that the Applicant’s removal will cause Ms. I.M. to lose the care of a critical caretaker. The Court agrees with the Respondent.

[41] Any potential harm that may arise to Ms. I.M. from the Applicant’s removal arises from her loss of a formerly employed caretaker who is now one of several caretakers, and one who assists sporadically throughout the day and night when she is not otherwise engaged outside of the home in other jobs. Ms. I.M. will continue to be cared for by her primary caretaker and other

support workers in the event that the Applicant is removed. While the Court understands the evidence led that retaining home care workers is very difficult in Ontario, and that Ms. I.M. appears to care for the Applicant and that the Applicant cares for Ms. I.M., the alleged harm to Ms. I.M. does not meet the high threshold of irreparable harm on the facts.

[42] The harm that may be suffered by M.M. is also not harm suffered by the Applicant. It is the alleged harm that may be suffered by a third party, albeit by a third party who is held very dear by the Applicant. The Court understands that M.M.'s relationship with the Applicant has been a protective factor in M.M.'s mental health and has been a balm to soothe him in many different ways. The Applicant's removal from Canada may indeed remove an outlet for M.M.'s stress and reduce mental support for him, but the harm that may result from the Applicant's removal may be mitigated by their continued communication over distance as the Applicant has contemplated will occur. The described harm to M.M. does not meet the high threshold for irreparable harm that warrants a stay of removal on the facts of this case.

[43] The Applicant alleges that she and M.M. have resided together for 12 continuous months and now meet the requirement of common-law spouses with the effect that the Applicant, M.M., and his mother Ms. I.M., now constitute a family and that separating this family constitutes irreparable harm that is out of the usual consequences of deportation. The harm alleged here consists of the disruptions to Ms. I.M.'s care and M.M.'s mental health as described above, in addition to M.M.'s ineligibility to sponsor the Applicant in the Spouse of Common-Law Partner in Canada class pursuant to paragraph 133(1)(k) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. M.M.'s inability to satisfy the regulatory requirements

for him to sponsor the Applicant for immigration purposes does not constitute irreparable harm. The dislocation of the Applicant's family with M.M. and Ms. I.M. have not been shown on this motion to constitute harm that is outside of the usual consequences of separation and deportation.

[44] The Applicant's argument that irreparable harm will be suffered by removing a healthcare worker from Ontario must also be rejected. The alleged harm is not personal to the Applicant, does not identify any third party affected by the alleged harm, and, in any event, fails to consider that the Applicant has been working as a healthcare worker without authorization since March 25, 2025. The Applicant had been effectively removed as healthcare worker in Ontario from the moment her removal became enforceable in March 2025.

[45] The Applicant's H&C Application can be continued whether she is located physically in Canada or not. No evidence has been led to show that her H&C Application would suffer from the Applicant being removed from Canada. There is no irreparable harm to the Applicant arising from her continuation of her H&C Application from Indonesia.

[46] The alleged harm to the Applicant's minor child living in Indonesia is that the Applicant will no longer be supporting her child through employment and income from work. If the Applicant has been working as a home care worker after Justice Grant's Judgment of March 25, 2025, then she has been working without authorization in Canada for quite some time. If she has not been working in Canada, then she is already not supporting her child through employment and income from Canada. As the Applicant will be presumably returning to her child in Indonesia, any irreparable harm as alleged from leaving Canada and returning to her child falls

short of the high non-speculative threshold required by the jurisprudence for irreparable harm to be established. While the Court appreciates that gender discrimination in Indonesia remains a concern, any argument that the Applicant will not be able to find employment in Indonesia remains speculative and fails to meet the threshold for irreparable harm.

[47] The Applicant argues, relying on *Ganeshalingam v. Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1129, that the uncertainty that will be faced by the Applicant when she applies for an Authorization to return to Canada pursuant to subsection 52(1) of the IRPA constitutes irreparable harm. Madam Justice Negar Azmudeh held in *Juneja v. Canada (Immigration, Refugees and Citizenship)*, 2024 FC 1820, at para 5, that an Authorization to return to Canada is a legal requirement and that the fact that the Applicant may face uncertainty in whether she can obtain one does not constitute irreparable harm. I agree with Justice Azmudeh. The Applicant has not established irreparable harm on this basis.

[48] The harms argued by the Applicant do not either individually or considered cumulatively establish irreparable harm on this motion. The Applicant has therefore not established that she would suffer irreparable harm if her removal was not stayed.

C. Balance of Convenience

[49] A stay of a removal is a form of extraordinary equitable relief and section 48 of the IRPA requires the enforcement of removal orders as soon as possible. It is not simply a “question of administrative convenience, but implicates the integrity and fairness of, and public confidence in,

Canada's system of immigration control": *Ghanaseharan v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at para 22.

[50] The Minister has an obligation under section 48 of the *IRPA* to ensure that enforceable removal orders may be executed as soon as possible. The prompt removal of persons who have no right to be in Canada is an element in maintaining the integrity of the immigration and refugee system and public confidence in that system. In the case of a public authority seeking to enforce legislation in the public interest, the balance of convenience test "will almost always be satisfied upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility" (*Martinez v Canada (Public Safety and Emergency Preparedness)*, 2023 CanLII 58171 (FC) at para 32 citing *RJR-MacDonald* at para 76).

[51] The Applicant argues that the balance of convenience favors her because removing her from Canada will result in the country losing a skilled caretaker, from a province that has a shortage of care providers, and because there is no risk to the public if the Applicant is granted a stay of removal. The Applicant argues that she has no charges of any kind and has paid her taxes.

[52] The Applicant's argument as to the balance of convenience implicitly asks the Court to turn a blind eye to the Applicant working without authorization in Canada because she is a caretaker who has cared for Ms. I.M. and been a source of support for M.M. While the Court appreciates that the Applicant's skill set may be in too short supply in Ontario, the public interest

in having the *IRPA* enforced in an efficient, expeditious, and fair manner and in ensuring that Canadian laws are respected outweighs the harm that may be suffered by the Applicant as a consequence of her removal.

[53] I find that the balance of convenience favours the Respondent. In the circumstances of this case, there is greater harm to the public interest if a stay is granted. The Applicant has not satisfied the third prong of the tripartite test.

V. **Conclusion**

[54] The Applicant has not met the requirements of the tripartite test applicable on this motion.

[55] For all of the reasons above, the Applicant's motion for a stay of execution of her removal is dismissed.

ORDER in IMM-21185-25

THIS COURT ORDERS that:

1. The Applicant's motion for a stay of execution of her removal from Canada to Indonesia on October 1, 2025, is dismissed.
2. No costs are awarded on this motion.

"Benoit M. Duchesne"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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