

Date: 20070926

Docket: IMM-3662-07

Citation: 2007 FC 963

Montréal, Quebec, September 26, 2007

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

RANJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

and

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

Respondents

REASONS FOR ORDER AND ORDER

[1] **UPON** motion on behalf of the applicant for an order staying his removal to India, which is now scheduled to be executed on September 30, 2007;

[2] **UPON** reading the motion records of the parties and hearing the submissions of counsel for the parties;

[3] **UPON** reserving the Court's decision;

[4] **AND UPON** directing myself to the tri-partite test articulated by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302;

REASONS FOR ORDER

[5] The requested stay must be denied on the ground that the applicant has failed to meet all aspects of the applicable tri-partite test.

[6] First, the applicant has failed to satisfy me of the existence of a serious issue with respect to his allegations that the PRRA officer erred in the assessment of the documentary evidence concerning the situation of human rights in India and that the country conditions do leave room for his alleged problems. By his arguments, the applicant essentially asks this Court to substitute its own appreciation of the facts and reweigh the evidence, which is not its role. In my view, the PRRA officer's decision is supported by documentary evidence. Although there may exist documentary evidence that presents a somewhat differing position, and since the officer made specific references throughout his decision, there is no reason for the Court to intervene (see, for example, *Malhi v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 993 (QL), 2004 FC 802, and *Sidhu v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 30 (QL), 2004 FC 39).

[7] As for the applicant's arguments based on the *Canadian Charter of Rights* (the *Charter*) and international law, it is trite law that the removal of a person after proper risk assessment is not contrary to sections 7 and 12 of the *Charter* (see *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 3 (QL), [2002] 1 S.C.R. 3; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1 (QL), [2002] 1 S.C.R. 84; and *Al Sagban v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 2 (QL), [2002] 1 S.C.R. 133). As for specific Article 3 of the *Convention against Torture*, Martineau J. stated the following in *Sidhu*, *supra*:

[26] Paragraph 97(1)(a) of the Act refers specifically to the notion of torture contained in Article 1 of the Convention and therefore integrates the principles contained in Article 3 of the Convention. Consequently, the answer to this question is contained in the law itself and does not require certification. [Our emphasis.]

[8] In such a context, considering also that there is no evidence before me which could not have been brought before the PRRA officer, not only has the applicant failed to show the existence of a serious issue, but he has also failed to support his motion with non-speculative, clear and convincing evidence of irreparable harm if he is removed to India.

[9] Finally, I find that under such circumstances, the balance of convenience is in favour of the Minister of Public Safety and Emergency Preparedness, given subsection 48(2) of the *Immigration and Refugee Protection Act* which provides that an enforceable removal order must be enforced as soon as reasonably practicable.

ORDER

CONSEQUENTLY, the motion for a stay is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3662-07

STYLE OF CAUSE: RANJEET SINGH v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION ET AL

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 25, 2007

**REASONS FOR ORDER:
AND ORDER** PINARD J.

DATED: September 26, 2007

APPEARANCES:

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Mr. Michel Pépin FOR THE RESPONDENTS

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