

Date: 20071031

Docket: IMM-4473-07

Citation: 2007 FC 1128

BETWEEN:

NADIR OZSOY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

PHELAN J.

[1] This is another last minute stay application caused in this case by the Applicant having retained new counsel when he would otherwise have had more than sufficient time to have filed a timely stay. The reason for the change of counsel's application is the Applicant's desire to find a less expensive lawyer. If this had been clear when this matter was filed on the day of the hearing, even with deportation scheduled for the next day, I would have refused to hear this matter. Such lateness is unfair to new counsel, to the Respondent and to the Court. It does not provide a fair opportunity to the Respondent most particularly. It must be remembered that a stay is an exceptional equitable remedy and urgent stays are not to be "standard operating" procedure.

[2] Despite the efforts of counsel I am not convinced that a stay should be granted and the parties were so advised at the conclusion of the Applicant's argument.

[3] Whatever may be said about the "serious issue", I am not satisfied that the Applicant has established irreparable harm. I accept that for purposes of analysis removal to Turkey is relevant even though the imminent removal is to the United States from which removal to Turkey is likely. Turkey is relevant because the PRRA decision on which the stay is based examined only removal to Turkey.

[4] The psychological opinion relied upon can only, like so much other opinion evidence, be as good as the facts upon which it is based. The Applicant has not made out those facts. Indeed some of the matters upon which the doctor based his opinion were matters which had previously been found not credible.

[5] While there is evidence that lawyers representing Kurds have been beaten and that a cousin of the Applicant is one of a number of lawyers representing the principal Kurdish leader, there is no evidence that the Applicant is likely to be affected by the alleged animosity between the government and lawyers representing Kurds. Indeed the Applicant filed evidence that shows that his cousin openly practices law and advertises his Kurdish connection and yet no evidence that the cousin has been targeted by the government.

[6] As to the balance of convenience, this is the Applicant's second attempt to stay in Canada having been denied refugee status on May 29, 2001 on facts somewhat similar to those alleged here, including being beaten. He was found not be credible.

[7] The Applicant has lived in the United States for a number of years where his wife currently resides. He has returned to Turkey twice since being denied status in Canada. Although he said that he went back under duress to look for his son, he was able to leave without difficulty – a matter somewhat inconsistent with allegedly being a likely subject for state persecution.

[8] Therefore, this stay has been denied. A formal order will issue.

“Michael L. Phelan”

Judge

Toronto, Ontario
October 31, 2007

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4473-07

STYLE OF CAUSE: NADIR OZSOY v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 30, 2007

REASONS FOR ORDER: PHELAN J.

DATED: October 31, 2007

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