

Date: 20080318

Docket: IMM-2139-07

Citation: 2008 FC 364

Toronto, Ontario, March 18, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

ELONA ISLAMI

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION
and
MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] These are the Court's reasons for finding this application for judicial review to be moot.

[2] Elona Islami is a citizen of Albania who entered Canada on March 21, 2003, and who made a claim for refugee protection on March 26, 2003. That claim was refused on December 15, 2003, and the application for judicial review of that decision was dismissed on May 27, 2004. Ms. Islami's application for permanent residence on humanitarian and compassionate grounds was

refused on October 19, 2005, and, on April 24, 2007, a negative decision was reached in respect of her application for a pre-removal risk assessment. In consequence, Ms. Islami was directed to report for removal from Canada on June 7, 2007.

[3] On May 18, 2007, Ms. Islami requested that her removal be deferred because: she had an overseas application for permanent residence pending; she was caring for her sister's two children so that her sister and brother-in-law could work full-time to support their family; and, she feared returning to Albania. On May 22, 2007, an enforcement officer refused the request for deferral. Ms. Islami then commenced this application for judicial review of that decision, and on June 4, 2007, this Court stayed Ms. Islami's removal from Canada. Leave to pursue the application for judicial review was later granted.

[4] Prior to the hearing of the application for judicial review, the Court directed that it wished to hear submissions from counsel as to whether the application for judicial review was moot because the scheduled removal date had passed.

[5] At the hearing, counsel for the parties argued that this application for judicial review was not moot because no decision had been made with respect to the pending application for permanent residence. However, during oral argument, counsel for Ms. Islami candidly acknowledged that his client's legal position would be the same whether the Court dismissed or allowed the application for judicial review. In either event, Ms. Islami would be subject to removal and entitled to seek a further deferral of removal.

[6] In reasons delivered on March 13, 2008, in *Baron et al. v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 341, I explained why, in circumstances that cannot be factually distinguished from those now before the Court, the application for judicial review was moot. For those reasons, this application for judicial review should be dismissed on the ground of mootness.

[7] In *Baron*, a question of law was certified. Counsel for Ms. Islami asked that the same question be certified in this application and counsel for the Minister did not oppose certification. Accordingly, the same question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

2. The following question is certified:

Where an applicant has filed an application for leave and judicial review challenging a refusal to defer removal pending a decision on an outstanding application for landing, and a stay of removal is granted so that the person is not removed from Canada, does the fact that a decision on the underlying application for landing remains outstanding at the date the Court considers the application for judicial review maintain a "live controversy" between the parties, or is the matter rendered moot by the passing of the scheduled removal date?

3. On the consent of the parties, the style of cause is amended to remove the Minister of Citizenship and Immigration as a party.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2139-07

STYLE OF CAUSE: ELONA ISLAMI, Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION
and MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS, Respondents

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 6, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: MARCH 18, 2008

APPEARANCES:

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ASHA GAFAR FOR THE RESPONDENT

SOLICITORS OF RECORD:

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