

**Date: 20080516**

**Docket: IMM-2227-08**

**Citation: 2008 FC 622**

**Vancouver, British Columbia, May 16, 2008**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**HUGO FRANKLIN VILLANUEVA CRUZ  
aka HUGO FRANKLIN VILLANEUVA CRUZ**

**Applicant**

**and**

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

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Villanueva Cruz is seeking an order staying the execution of the removal order made against him until such time as his application for leave and judicial review of the decision of the Minister's Delegate that he constitutes a danger to the public is granted or denied.

[2] The Applicant is a citizen of El Salvador. On February 24, 1999, he was determined by the Immigration and Refugee Board of Canada to be a Convention refugee. As such, he is protected

from refoulement to his homeland pursuant to section 115(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, unless he is considered by the Minister to be a danger to the public.

[3] On October 17, 2007, the Minister's delegate formed the opinion that the Applicant, who had previously been convicted of serious criminality (trafficking in cocaine), constitutes a danger to the public. On May 12, 2008, he was served with the Minister's opinion and arrested by the Canada Border Services Agency for removal from Canada. He is scheduled to be deported to El Salvador on Tuesday, May 20, 2008, unless a stay is granted.

[4] As enunciated in such cases as *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (FCA) and *RJR-MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, the test for an interim injunction is a conjunctive tripartite one: there must be a serious issue in the underlying proceeding, there must be a risk of irreparable harm and the balance of convenience must rest with the party seeking the relief. This Court has held in *Akyol v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 931 at paras. 6-7, that “irreparable harm must not be speculative nor can it be based on a series of possibilities. The Court must be satisfied that the irreparable harm will occur the relief sought is not granted”.

[5] In my view the Applicant's request for a stay fails on the basis that he has failed to establish irreparable harm should the stay not be granted.

[6] The Applicant submits that he is at risk of death, detention or physical abuse if he is returned to El Salvador. In his affidavit filed in support of this motion he states the following:

I continue to fear returning to El Salvador for the same reasons as those upon which my claim [for refugee status] was based. I continue to fear the same people who threaten me and tried to shoot me, and who murdered my brother Carlos. These people are military, ex military and ex guerrillas who join together in a criminal gang after the end of the civil war in 1992.

According to my family in El Salvador, some of the same criminals are targeted near now affiliated with the MS-13 gang. I have every reason to believe that I am still at risk of being killed by these individuals out of vengeance for my refusal to join them in the past. If I'm not killed by them immediately, I will be put under extreme pressure to join them and/or provide money to them, and if I refuse, I will be killed.

My family members have been attacked and exhorted by MS-13 over the past number of years. MS knows that I'm living in Canada, enforces my parents to pay \$150 per month. Currently my parents live with one of my nephews, in fear for their lives. They have guns and a pit bull to protect themselves.

In addition, I would be at risk of harm from the Salvadoran authorities and gang members because of my tattoos. I have a tattoo on my face and tattoos on my arms. These are not gang related tattoos, but currently in El Salvador anyone with a tattoo is suspected of being a gang member. Deportees are detained at the airport and investigated. I believe that my deportation, criminal record in Canada, and tattoos could lead the Salvadoran authorities to believe I am affiliated with a gang, I would be at risk of torture and or extrajudicial execution. Gang members also suspect that persons having tattoos are members of rival gangs. I would therefore be at risk of harm from various gangs.

For all these reasons, the security of my person is at risk and I would suffer irreparable harm if deported to El Salvador before my application for leave and judicial review is decided.

[7] The Applicant relies on a report entitled “No Place to Hide: Gang, State and Clandestine Violence in El Salvador” prepared by the International Human Rights Clinic, Human Rights Program, Harvard Law School, February 2007.

[8] Counsel for the Respondent pointed out that this report deals with and describes “youth gangs”. The Applicant was born in 1972 and is nearing 36 years of age. Even with an extended definition of youth, it is no more than mere speculation that the Applicant would be pressured to join any of the youth games referenced in the report.

[9] The report also makes reference to tattooed individuals being targeted by these youth gangs and by the police. A close reading of the report indicates that those tattooed persons being targeted are also largely the youth population. Accordingly, the fact that the Applicant is tattooed, amounts to more than no more than mere speculation that he may be subject to some of the violent actions referenced in the report.

[10] The Applicant further submits that he remains in fear of those who caused him initially to leave El Salvador and submits that if he is returned to El Salvador he will face the risk of injury or death by these individuals.

[11] Counsel for the Respondent pointed out that it is very unclear from the various statements made and filed by the Applicant throughout his stay in Canada which group or groups he feels has been targeting him. The Minister's delegate in her risk analysis stated as follows:

Given that 10 years have passed, I am not satisfied that he would be singled out amongst a population of over 6 million people. In addition, there is no evidence before me to support his claim that he would be of interest to the authorities upon his return due to his criminal conviction in Canada or that he would be at a greater risk than other citizens returning to El Salvador. I also appreciate that Mr. Villaneuva Cruz states it is difficult to relocate in a different area from family in El Salvador however, in my view and from my reading on country reports, it is not unreasonable to suggest that he could relocate to another part of El Salvador where he is not known, and where he would not be at any more risk than any other citizen of El Salvador.

[12] While the delegate's observations are made in the context of the interest of "authorities", it holds true as well for the group or groups Mr. Villanueva Cruz claims he fears. There is nothing in the materials filed by the Applicant that would counter the observation that the Applicant could relocate to another part of El Salvador where he is not known. In such circumstances, it cannot be said that the risk to Mr. Villanueva Cruz is more than a mere possibility.

[13] Lastly, the Applicant submits that once he is deported to El Salvador, his application for judicial review of the decision of the Minister' Delegate will be rendered nugatory. Alternatively, he argues, if the judicial review proceeds and is successful he will have already been returned to El Salvador and will have no right to return to Canada.

[14] Similar arguments have been rejected in *Thuraisingham v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 72, *Nagalingam v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 153, and *Palka v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 153.

[15] Counsel for the Applicant noted that those authorities were in a context different than this Applicant's situation as he had refugee status. She submitted that his situation was different as a result because he had a right to remain in Canada as a Convention refugee. However, his right to remain in this country is not unlimited. Section 115 of the *Act* provides that a person may be returned to a country where he or she would be at risk of persecution if that person is inadmissible on grounds of serious criminality and if in the opinion of the Minister he constitutes a danger to the public in Canada. Accordingly, it is my view that the principle enunciated in the three cases cited by the Respondent applies in this circumstance.

[16] Accordingly, it is my view that the Applicant has failed to establish irreparable harm if they stay is not granted and his motion is dismissed.

**ORDER**

**THIS COURT ORDERS that** the Applicant's motion for an order staying the execution of the removal order made against him until such time as his application for leave and judicial review of the decision of the Minister's Delegate that he constitutes a danger to the public is granted or denied is dismissed.

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"Russel W. Zinn"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2227-08

**STYLE OF CAUSE:** HUGO FRANKLIN VILLANUEVA CRUZ aka HUGO FRANKLIN VILLANEUVA v. MCI et al.

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** May 16, 2008

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

**DATED:** May 16, 2008

**APPEARANCES:**

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