

Date: 20080819

Docket: IMM-3592-08

Citation: 2008 FC 958

Ottawa, Ontario, August 19, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

KARIM MAJERBI

Applicant

and

SOLICITOR GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant is requesting a stay of enforcement of the removal order against him to Tunisia, which takes effect on August 21, 2008.

[2] The motion for a stay is accompanied by an application for leave and judicial review of a negative decision by the pre-removal risk assessment officer (PRRA), Martine Beaulac, dated June 10, 2008.

[3] To succeed, the applicant must demonstrate that there is a serious issue to be tried in the application for leave and judicial review; that he will suffer irreparable harm if he is deported to Tunisia; and that the balance of convenience lies in his favour (*Toth v. Canada (Minister of Employment and Immigration)* (1988), 6 Imm. L.R. (2d) 123, 86 N.R. 302 (F.C.A.)). These three tests are conjunctive.

[4] At the respondent's request and with the applicant's consent, the style of cause is amended to show the Minister of Citizenship and Immigration as the sole respondent in the originating Notice of Application.

[5] Since his arrival in Canada in 1999, the applicant has been convicted of various offences under the *Criminal Code*. *Inter alia*:

- (1) April 24, 2000: Breaking and entering a place other than a dwelling house located at 1626 St-Laurent, Montréal, and theft; file 500-01-5217-002;
- (2) May 9, 2000: Failure to comply with an undertaking, an offence punishable on summary conviction under section 145(3)(b) of the *Criminal Code*;
- (3) Nov. 30, 2000: Convicted of unlawfully entering a business to break and enter on April 24, 2000, at 1626 St-Laurent, Montréal, to commit theft;
- (4) Nov. 30, 2000: Convicted of breaching a condition;

- (5) March 27, 2001: Applicant was arrested by Montréal police for death threats, offence committed on March 26, 2001, released on March 28, 2001 on conditions, trial scheduled for May 7, 2001, at the Court of Sessions of the Peace; also for simple possession of marijuana (not returnable);
- (6) Oct. 15, 2000: Convicted of failure to comply;
- (7) Aug. 9, 2007 Assaults and forcible confinement
- An appearance in Municipal Court is scheduled for September 22, 2008, for the latest charges.

[6] The record also shows that the applicant did not attend various interviews with Immigration authorities, as required. Clearly, the applicant does not come to Court with clean hands.

[7] In addition, the application for leave and judicial review is almost four weeks out of time, and the applicant did not file a request for an extension of time as prescribed by Rule 6(1) of the *Federal Courts Immigration and Refugee Protection Rules* (the Rules).

[8] These preliminary issues raised by the respondent could be determinative of this stay motion where the relief sought is equitable. I nonetheless considered the stay motion on the merits.

I. Serious issue

[9] In his submissions in support of the stay motion, the applicant particularly attacks the decision by the removal officer, André Pelletier, not the decision by the PRRA officer, which is the subject of the application for leave and judicial review that underlies this motion. The decision by the removal officer, Mr. Pelletier, is not the subject of any proceeding before this Court. At the hearing of the motion, the applicant stated in a general way that the PRRA officer failed to consider all the evidence before making his decision. This is not sufficient to show that a serious issue exists.

[10] After hearing the parties by teleconference and considering their arguments, and based on all the evidence in the record, it is my view that the applicant has not demonstrated that there is a serious issue to be tried in the application for leave and judicial review.

II. Irreparable harm

[11] In this case, the risks alleged by the applicant regarding Tunisia were assessed and dismissed by the Immigration and Refugee Board (the Board), Citizenship and Immigration Canada (CIC) and this Court. Thus, they cannot serve as a basis for irreparable harm. Moreover, on these issues, the IRB determined that the applicant was [TRANSLATION] “not credible at all.”

[12] On the issue of harm vis-à-vis his family life and, in particular, for the applicant’s spouse as well as the economic harm suffered by the applicant and third parties, I am of the view that the evidence adduced does not support the allegations of harm that have been put forward. The evidence is insufficient and cannot serve as a basis to support harm on a stay motion.

III. Balance of convenience

[13] In the circumstances, considering the applicant's criminal record and his history with the Canadian authorities, I am of the view that the balance of convenience favours the respondent. I note that subsection 48(2) of the *Immigration and Refugee Protection Act* (the IRPA) provides that a removal order must be enforced as soon as is reasonably practicable.

IV. Conclusion

[14] For these reasons, the motion will be dismissed.

ORDER

THE COURT ORDERS:

1. The motion is dismissed.
2. The style of cause is amended by adding the Minister of Citizenship and Immigration as the only respondent.

“Edmond P. Blanchard”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3592-08

STYLE OF CAUSE: KARIM MAJERBI v. SOLICITOR GENERAL OF CANADA

PLACE OF HEARING: by teleconference from Ottawa with the parties in Montréal

DATE OF HEARING: August 19, 2008

REASONS FOR ORDER AND ORDER BY: Mr. Justice Blanchard

DATE: August 19, 2008

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