Date: 20080827

Docket: IMM-3486-08

Citation: 2008 FC 973

Toronto, Ontario, August 27, 2008

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

OSAZEE DONALD ENABULELE

Applicant

and

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

Respondents

REASONS FOR ORDER AND ORDER

[1] In this motion, Mr. Enabulele seeks a stay of his Pre-Removal Risk Assessment pending final determination on his application for leave and judicial review of a decision of an Enforcement officer not to defer the process until his application for permanent residence under the Spouse or Common-law partner in Canada Class (IP 8) had been determined. It comes about in this way.

[2] A person whose claim for refugee protection is dismissed by the Immigration and Refugee Board is entitled to ask for a Pre-Removal Risk Assessment (PRRA) in accordance with s.112 and following of the *Immigration and Refugee Protection Act*.

[3] In accordance with the *Regulations*, an Enforcement officer with the Greater Toronto Enforcement Centre met with Mr. Enabulele on July 25th of this year to inform him that he was subject to an enforceable removal order back to Nigeria and that he was eligible to apply for a PRRA. He gave him a letter and other documents which provided that if he wished to apply, he had to complete the attached form by August 8th and that he was entitled to follow that up with written submissions by August 23rd. On the other hand, if he did not wish to submit a PRRA application he was asked to return and enclose the "statement of no intention". He has done neither.

[4] Rather, Mr. Enabulele protested that he was not removal ready. He had married a Canadian citizen and an application for permanent residence from within Canada, pursuant to the Minister's policy enunciated in IP 8 "Spouse or Common-law partner in Canada Class", was pending. It was pointed out to him that, nevertheless, he was not entitled to an administrative deferral of removal. The policy clearly states that a deferral would not be granted to applicants who "have charges pending or in those cases where charges have been laid but dropped by the Crown, if these charges were dropped to effect a removal order." Charges have been laid against him.

[5] Within the 15-day delay above mentioned, Mr. Enabulele's counsel asked the Enforcement officer to stay the PRRA process pending the outcome of the application under the Spouse or

Common-law partner in Canada Class. He refused. Consequently, an application for leave and judicial review of that decision was filed the very same day. The Minister has appeared. The delays for Mr. Enabulele to perfect his record, and then for the Minister to reply have not expired.

[6] In the interim, Mr. Enabulele seeks an order staying the PRRA process until final disposition of his application for leave and judicial review. He alleges that the policy, which lumps him together with those who have been convicted of serious criminality and crimes against humanity, runs counter to his Charter rights, more particularly the presumption of innocence.

[7] Mr. Enabulele is concerned that: a) the PRRA may well be negative and decided before his application for permanent residence is determined, and b) before his trial currently scheduled for next February; and c) the Crown will then drop the charges and remove him. Indeed, the Minister's policy, if these charges were dropped to effect a removal order, contemplates that very possibility.

Analysis

[8] The applicable tri-partite test for an interlocutory stay as set out in such cases as *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 is well known. There must be a serious underlying issue, irreparable harm, and the balance of convenience must favour the applicant.

[9] The threshold on the serious issue is quite low. It must be neither frivolous nor vexatious. I am satisfied that Mr. Enabulele's motion meets that test.

[10] However, he will not suffer irreparable harm if the stay is not granted. In fact, at this stage of the proceedings, he has suffered no harm at all. He has not been issued a departure date. He may, or may not, have created some difficulty for himself by not filing the PRRA application within time, but in any event, if it is determined he has waived the PRRA, he is automatically entitled under the administrative policy in IP8 to a deferral of removal for 60 days.

[11] It would be outright speculation to set out a timetable as to when decisions may be made on his application for leave and for judicial review, on the PRRA, on his spousal application, and as to whether there will be a trial on his criminal charges, or the result of any of them.

[12] Consequently, the motion must be dismissed, without prejudice to a further motion for a stay if, as and when circumstances change.

ORDER

UPON MOTION for an Order staying a Pre-Removal Risk Assessment until the applicant's application for leave and for judicial review with respect to his challenge to the public policy respecting spousal sponsorship applications from within Canada is determined;

THIS COURT ORDERS that:

1. The motion is dismissed.

2. The style of cause is amended to add the Minister of Citizenship and Immigration as a respondent.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3486-08
STYLE OF CAUSE:	OSAZEE DONALD ENABULELE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 25, 2008
REASONS FOR ORDER AND ORDER BY:	HARRINGTON J.
DATED:	AUGUST 27, 2008

APPEARANCES:

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