

Date: 20080926

Docket: IMM-3998-08

Citation: 2008 FC 1078

BETWEEN:

MARIA FELICITY ALEXANDER

Applicant

and

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

Respondents

REASONS FOR ORDER

TANNENBAUM D.J.

[1] The applicant is seeking the stay of execution of a removal order which was to take place on September 18, 2008, but which has been temporarily stayed pending a decision on the stay motion.

[2] Briefly, the history respecting the applicant and her attempts to remain in Canada are the following:

- 1) Applicant came to Canada from Grenada on April 5, 1988, and was granted visitor status until July 5, 1988.

- 2) Applicant did not leave upon the expiry of her visitor status and has been living and working illegally since then.
- 3) On March 6, 1998, the applicant was arrested by immigration authorities and released 2 days later on a cash bond of \$2,000. She never renewed an extension of her visitor status.
- 4) On February 18, 1999, a departure order was issued. The applicant filed a Convention refugee claim which she abandoned and withdrew on June 15, 1999.
- 5) On June 25, 1999, the applicant filed for residency on H & C grounds. This application was denied on April 19, 2000.
- 6) A PRRA application was filed on October 30, 2007 and denied on January 28, 2008.
- 7) A second H & C application was filed on November 28, 2007.
- 8) On March 10, 2008, a request to defer removal was treated as premature, and an application for leave and for judicial review was filed.
- 9) A request to defer removal was filed on March 20, 2008 based upon the second H & C application filed on November 28, 2007. This request was denied on March 25, 2008.
- 10) On June 23, 2008, the application for judicial review was dismissed.
- 11) On September 6, 2008, the applicant was served with a removal order for September 18, 2008.
- 12) On September 8, 2008, a request to defer the applicant's removal was filed, and was rejected in a well reasoned decision on September 9, 2008.

[3] While the second H & C application is still pending, this does not prevent a removal order from being executed.

[4] In a decision rendered on a motion to stay in the matter of *Palka*, (2008 FCA 165), Justice Evans of the Federal Court of Appeal, in dismissing the motion, stated:

“[21] In my view, the balance of convenience does not favour a stay. True, the Palkas have been in Canada for more than nine years, and appear to have been successful in establishing themselves and to have led blameless lives. Given the length of time that they have been here, the presence of family members in Canada, the health of Jadwiga’s father, and the enhanced life opportunities available to them, it is very understandable that they wish to remain.

[22] However, that is not the test on a motion for a stay of removal. Despite numerous attempts, through administrative and legal channels, they have been denied status in Canada. There has to be some finality. To grant yet another deferral of their removal is contrary to the public interest as expressed in the Act. The appellants have not persuaded me that their interest in remaining in Canada outweighs the public interest in the due enforcement of the law. I decline to defer their removal yet again.”

[5] In the case at bar the applicant has made numerous failed attempts to obtain status in Canada. As Justice Evans stated in *Palka, supra*, “there has to be some finality”.

[6] To grant a stay in these circumstances would be contrary to the public interest and would be contrary to the intention of Parliament, as set out in the immigration law.

[7] For the above reasons, the application to stay the removal order is dismissed.

"Louis S. Tannenbaum"

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3998-08

STYLE OF CAUSE: Maria Felicity Alexander v. MCI and MPSEP

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 26, 2008

REASONS FOR ORDER: TANNENBAUM D.J.

DATED: September 26, 2008

APPEARANCES:

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