

Federal Court



Cour fédérale

**Date: 20081103**

**Docket: IMM-3642-08**

**Citation: 2008 FC 1224**

**Montréal, Quebec, November 3, 2008**

**Present: The Honourable Orville Frenette**

**BETWEEN:**

**Victor Aimé KOUKA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**and**

**MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] This is a motion to stay the enforcement of a deportation order issued against the applicant, scheduled for November 3, 2008 at 6:30 p.m.

[2] The applicant, a citizen of the Democratic Republic of the Congo, was born in 1953.

[3] He arrived in Canada on March 13, 2003, to visit his three children who have been living in Canada since 1998 (children now 25 to 30 years of age).

[4] On June 18, 2003, the applicant applied for refugee protection, which was refused on December 30, 2003.

[5] The applicant filed an application for judicial review of the above-mentioned decision, which was allowed on January 28, 2004, but the application was dismissed after the rehearing.

[6] On May 5, 2004, he filed an application for permanent residence which was refused in a decision dated October 18, 2006.

[7] The applicant then filed an application for judicial review against this decision, an application which was dismissed on March 1, 2007.

[8] On April 13, 2007, the applicant availed himself of a pre-removal risk assessment (PRRA) and on May 16, 2007, he filed a second permanent residence application based on humanitarian and compassionate considerations. Both of these most recent applications were heard by the same officer, i.e. Patricia Rousseau, who refused both applications on July 31, 2008.

[9] The applicant then filed an application for judicial review against both of these decisions.

[10] The applicant is seeking this stay so that he can proceed with this last proceeding in Canada. He alleges that the officer who made the decision breached her obligations of fairness

toward him in failing to ask him for information and documents that were missing in his initial application.

[11] It is understood that the applicant can file his application for judicial review from outside Canada.

[12] It is also well settled in law that the applicant has the responsibility of providing all of the documents and information relevant to his application.

[13] *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.), sets out the three requirements for a judicial stay:

1. The existence of a serious issue;
2. Irreparable harm; and
3. The assessment of the balance of convenience.

[14] An analysis of the applicant's arguments indicates that he availed himself of every available recourse to assert his arguments to date.

[15] In reality, there is no serious issue to debate at this stage, a second application for permanent residence based on humanitarian and compassionate considerations.

[16] In regard to the alleged harm, it is the same as that suffered by all those who are subject to a removal order.

[17] Accordingly, as the conditions required by *Toth* have not been respected, this motion to stay cannot be allowed.

[18] For these reasons, the Court orders that the motion to stay the removal order be dismissed.

**ORDER**

The motion to stay the enforcement of the deportation order issued against the applicant, scheduled for November 3, 2008, is dismissed.

“Orville Frenette”

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DEPUTY JUDGE

Certified true translation

Kelley A. Harvey, BCL, LLB

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3642-08

**STYLE OF CAUSE:** Victor Aimé KOUKA v. MINISTER OF CITIZENSHIP  
AND IMMIGRATION ET AL

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 3, 2008

**REASONS FOR ORDER  
AND ORDER:** FRENETTE D.J.

**DATE OF REASONS:** November 3, 2008

**APPEARANCES:**

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Patricia Noble FOR THE RESPONDENTS

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