

Federal Court



Cour fédérale

**Date: 20100819**

**Docket: IMM-4731-10**

**Citation: 2010 FC 830**

**Ottawa, Ontario, August 19, 2010**

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

**BETWEEN:**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**WALFORD URIAH STEER**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Steer has been found to be a danger to the Canadian public. Should he be allowed to roam the streets of Montréal and Toronto while the authorities collect the necessary travel documents and make arrangements to deport him to his native Jamaica? At his last detention hearing, the Member of the Immigration and Refugee Board of Canada (IRB) charged with the matter said yes. The Minister asks this Court to stay that order.

[2] Put in this way, the answer seems obvious. However all is not as it seems to be. The Minister has to persuade me that he will suffer irreparable harm should Mr. Steer be released from his current detention. He has not done so, and so his motion is dismissed.

[3] In considering Mr. Steer's situation, the following matters must be kept in mind.

[4] From 1990 to 2006, he amassed 72 criminal convictions, some of which fall within the definition of serious criminality as set out in the *Immigration and Refugee Protection Act* (IRPA). Although some of the convictions carried potential imprisonment of 10 years or more, he was never sentenced to more than three months in prison, plus probation. If he were a Canadian, he would be free to roam the streets at will, despite what the Minister might think.

[5] Mr. Steer is a Jamaican, and is not even a Canadian permanent resident. Having been convicted of serious criminality, s. 36 of IRPA renders him inadmissible and he is subject to removal.

[6] However, in 2003, notwithstanding previous criminal convictions in Canada, he was determined to be a refugee by the IRB. He thus was granted protected person status but did not acquire permanent residence status because of his inadmissibility.

[7] Canada does not remove refugees to a country where they would be at risk of persecution. There is an exception to that rule. The exception is this. Section 115 of IRPA provides that a

convention refugee, who is inadmissible on grounds of serious criminality, is removable if he constitutes, in the opinion of the Minister, a danger to the public in Canada. On 3 August 2010, the Minister's delegate so found. The report balances the potential danger to Mr. Steer should he be returned to Jamaica against the potential danger to the Canadian public. The Canadian public won out. Mr. Steer has filed an application for leave and for judicial review of that decision. The following day, 4 August 2010, when he made his weekly appearance as one of the conditions imposed upon him going back to 2006, he was informed of the decision, arrested and placed in detention.

[8] Section 57 of IRPA provides that such detention is to be reviewed within 48 hours by a member of the Immigration Division of the IRB, at least one more time during the seven days following the initial review, and then at least once every subsequent 30 days. The officer shall order the release of a person so detained unless satisfied, among other things, that he is a danger to the public or unlikely to appear for his removal from Canada.

[9] At the 48-hour hearing, which was held on 6 August 2010, the Member noted that Mr. Steer had been under release since 2006 and had respected the conditions thereof, including weekly reporting. During all that time, he was aware that a Minister's delegate's opinion was being sought, an opinion which was delivered four years later. During this four-year timeframe, he has been convicted of nothing. Consequently, the Member was of the opinion that he was of no more danger to the public now than he was in 2006.

[10] However, since the risk of an adverse danger opinion had become a reality, there was more of an incentive for him to go underground, and so he might well be a flight risk. The information then available was that Mr. Steer had refused to fill out a form to allow the Canadian Border Service Agency (CBSA) to obtain a travel document to facilitate his removal. The Member noted that the information might change within the next few days and that she herself was not closed to the idea of releasing Mr. Steer but that it would be premature in the circumstances. She concluded:

So, I just wanted to reiterate that for the record so that my colleague can consider that at the next detention review, because for the time being I will be maintaining the detention for a further seven days again, because I feel that at this time there is certain information that does not need to be clarified especially in regards to the anticipated removal and the feasibility of the removal.

[11] At the seven-day hearing, which was conducted on 13 August 2010, Mr. Steer was ordered released on certain conditions. The Minister has applied for leave and for judicial review of that decision and it is in that context that he seeks a stay of the Member's order.

[12] The second Member shared the view that while Mr. Steer is a danger to the public, he is no more of a danger now than he was in 2006 and that that danger had been counterbalanced for years by the conditions imposed upon him. What had changed, or had become clearer, is that he has now stated he would cooperate in signing for travel documents if so advised by counsel, that he would ultimately comply with a removal order, and that the removal date is uncertain. During the hearing before me, counsel submitted that it would take at least one month, and perhaps two, to have everything in order. The Member saw no reason why the imposition of strict conditions would not counterbalance the flight risk. He determined that the release conditions which were already in place

would be maintained, which include weekly reports in person and that he would have to collaborate to the satisfaction of the CBSA with respect to obtaining travel documents.

[13] The Minister maintains that Mr. Steer is such a danger to the public that he should remain in detention and that he is a flight risk. He posted bail of \$5,000 some years ago. In the alternative to detention, at the very least, bail should have been dramatically increased.

### **INTERLOCUTORY STAYS**

[14] The order for Mr. Steer's release, issued on 13 August 2010, took immediate effect. It was stayed on an interim basis by Mr. Justice Martineau to allow the parties sufficient time to perfect their records and to make submissions. An interlocutory stay of proceedings, like an interlocutory injunction, only lies if the moving party establishes that there is a serious issue to be tried, irreparable harm should the stay not be granted and that the balance of convenience favours him. All three requirements must be met. Two cases invariably cited are *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.) and *RJR - MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[15] The parties strongly disagreed as to the serious issue requirement. The normal rule is that there is a serious issue if it is neither frivolous nor vexatious. I have no doubt the Minister has satisfied that test.

[16] However, in accordance with s. 58 of IRPA, the order under judicial review only has a lifespan of 30 days. If Mr. Steer remains in detention there is no way that a decision would be rendered on the application for judicial review prior to the next 30-day hearing. Thus, the Minister will have obtained everything he could have obtained in a judicial review on the merits.

[17] There are exceptions to the non-frivolous, non-vexatious standard, one of which is where the interlocutory stay will effectively decide the underlying application. In such instances, the serious issue becomes the likelihood of success on the underlying application, as held by Mr. Justice Pelletier, then in the Trial Division of the Federal Court, in *Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148, [2001] 3 F.C. 642.

[18] Mr. Steer invites me to assess the merits of the Minister's application for judicial review. The Minister counters that this Court, on previous occasions, has applied the non-vexatious, non-frivolous standard to interlocutory stays of orders releasing a person from immigration detention and has limited the more stringent test to decisions of removal officers, not to decisions of members of the Immigration Division.

[19] I need not to come to any decision on this issue, as I am not satisfied that the Minister will suffer irreparable harm. There is absolutely nothing to suggest that the Member got it wrong in his assessment of the danger to the Canadian public. The risk of harm is that Mr. Steer might flee and sums would be expended to hunt him down, a hunt which might prove to be unsuccessful. The Immigration Division, which has expertise in these matters, was of the view that Mr. Steer's risk of

flight is counterbalanced by conditions imposed, including weekly reporting and the requirement that he fully cooperate with the CBSA in arranging his travel documents. The Minister has not made out a case that he will suffer irreparable harm should Mr. Steer be released. He is on a short leash.

[20] Finally, it might be said that the balance of convenience favours the Minister, notwithstanding that Mr. Steer could not continue his employment while incarcerated. The Minister would prefer the certainty of taxpayers paying for Mr. Steer's detention rather than face the possibility that more money might have to be expended to search him out should he flee. Of course, if the Member got it right he will not flee and no additional public funds will be expended.

**ORDER**

**FOR REASONS GIVEN;**

**THIS COURT ORDERS that:**

The Minister's motion for a stay of the order of the Immigration Division of the Immigration and Refugee Board of Canada, dated 13 August 2010, freeing Walford Uriah Steer from detention, upon satisfaction of certain conditions, is dismissed.

“Sean Harrington”

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Judge



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

**DOCKET:** IMM-4731-10

**STYLE OF CAUSE:** MPSEP v. Walford Uriah Steer

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** August 18, 2010

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

**DATED:** August 19, 2010

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