Federal Court  Cour fédérale

Date: 20100817

Docket: IMM-4381-10

Citation: 2010 FC 823

Ottawa, Ontario, August 17, 2010

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

IN HEE KANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Kang has been directed to report to Pearson International Airport, in Toronto, tomorrow evening, in order to be removed to South Korea. She brought on a motion for a stay of that removal pending the outcome of her application for leave and for judicial review of a decision denying her the privilege of applying for permanent residence status from within Canada on humanitarian and compassionate grounds. At the conclusion of the hearing, I stated that I would grant a stay.

[2] The test for a stay, like that of an interlocutory injunction, is well-known. Two cases invariably cited are that of the Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.), and that of the Supreme Court of Canada in *RJR - MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. It is incumbent on Ms. Kang to establish a serious issue, irreparable harm, and that the balance of convenience rests with her.

[3] On her particular fact-situation, the serious issue test is met if she has raised a non-frivolous, non-vexatious issue. She submits, which is not contested, that the officer who rendered the negative decision must have been working from a template. She submits it follows that no independent analysis of her particular fact-situation was made. However, it is not necessary for me to reach any conclusion on that submission as I am satisfied that what we have in this case is a recital of facts followed by a conclusion, without a proper analysis.

[4] As stated by Mr. Justice Pelletier, speaking for the Court of Appeal, in *North v. West Region Child and Family Services Inc.*, 2007 FCA 96, [2007] F.C.J. No. 400 (QL), basing himself on *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at paragraph 4:

> If the decision-maker does not provide reasons which set out his findings and the basis upon which they are made, there is no substrate for the application of the standard of review.

[5] Ms. Kang is a 56 year old divorcee who provided considerable information as to discrimination and lack of job opportunities facing similarly placed women in Korea. The officer was not satisfied that she would face unusual and undeserved or disproportionate hardship should

she return there. However, no analysis was set out. No reasons were given for this conclusion. A serious issue has been raised.

[6] As to irreparable harm, there is case law going both ways as to one's need to earn a living. The officer noted her success in Canada and concluded, without analysis, that she would have no difficulty in South Korea. Given that both *Toth*, above, and *RJR McDonald*, above, dealt with irreparable harm in an economic sense, not in an actual risk to life and limb, I am satisfied that a case has been made out for irreparable harm.

[7] Finally, there is no basis for suggesting that the balance of convenience rests with the Minister. It is preferable to maintain the *status quo ante*. A decision as to whether or not leave should be granted to judicially review the officer's decision should, in the normal course, be rendered in the next few months.

[8] Nor was argument made that Ms. Kang did not come to the Court with clean hands.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that a stay of removal is granted pending the outcome of the underlying application for leave and for judicial review.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4381-10
STYLE OF CAUSE:	*Kang v. MCI*
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	August 17, 2010
REASONS FOR ORDER:	HARRINGTON J.
DATED:	August 17, 2010

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