

Federal Court



Cour fédérale

Date: 20110323

Docket: IMM-6220-09

Citation: 2011 FC 357

Ottawa, Ontario, March 23, 2011

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

Q.A.

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] In a motion pursuant to Rule 369, the Respondent (Applicant on this motion) seeks to have the Court reconsider its order of February 11, 2011 in which the Court quashed the decision to refuse deferral of removal. The Court also set aside the removal order without prejudice to issuing a new removal order.

The Respondent also invokes Rule 397.

[2] The Respondent's complaint is that the Court quashed not only the deferral decision but the removal order upon which the deferral decision was based. The Respondent argues that the Court has no jurisdiction to make such an order.

[3] Rule 397 has no application here. The decision to quash and the basis is well set out in the Reasons, nothing was overlooked or accidentally omitted nor were there clerical mistakes, errors or omissions.

[4] Rule 399(1) has no application as well as this was not an *ex parte* order nor one made in the absence of a party. Rule 399(2) has even less relevance as there was nothing new arising subsequent to the order nor was there any fraud in obtaining the order.

[5] This is one of those rare occasions where the whole substrata of the removal order has disappeared and where the deferral decision had no basis.

[6] The Court has the jurisdiction under s. 18.1 to make the order quashing the deferral decision as both primary and also as ancillary relief. The alternative flowing from the Court's decision was to leave in place an order which ceased to have any factual support. This would then lead to multiple and wasteful subsequent proceedings to enforce or to enjoin, or defer execution of an infirmed removal order. This would then lead to matters of *res judicata* and issue estoppel, which if not prejudicial to one or more parties, would be an unwarranted drain on judicial economy. In the exercise of the Court's discretionary powers, it was necessary to ensure that any removal order was factually grounded.

[7] The Respondent is free to issue a new removal order unburdened by the infirmities of the previous process. The Respondent suffers no prejudice.

[8] Therefore, even if this Court had jurisdiction to reconsider its decision through some creative use of Rules 47 and 50, it would not do so. The situation in this case is unique and the result turns on its special facts.

[9] Therefore, this motion is dismissed without costs.

ORDER

THIS COURT ORDERS that the motion is dismissed without costs.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6220-09

STYLE OF CAUSE: Q.A.

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369**

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

DATED: March 23, 2011

WRITTEN REPRESENTATIONS BY:

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FOR THE APPLICANT

Ms. Jocelyn Espejo Clarke

FOR THE RESPONDENT

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