

Federal Court



Cour fédérale

Date: 20120328

Docket: IMM-2451-12

Citation: 2012 FC 368

Ottawa, Ontario, March 28, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

B147

Respondent

REASONS FOR ORDER AND ORDER

[1] B147 assisted persons who were not in possession of a visa, passport or other document to enter Canada.

[2] B147 was found by the Immigration Division of the Immigration and Refugee Board to have been engaged in a transnational crime, that of human cargo smuggling operations; and, thus, the Immigration Division decided the Respondent is inadmissible pursuant to paragraph 37(1)(b) of

the *Immigration and Refugee Protection Act*. A deportation order was issued in the Respondent's regard on August 16, 2011.

[3] The Applicant is now seeking a stay of an Immigration Division Release from Detention Order of March 7, 2012, by which B147 would be released from detention.

[4] B147 has been in detention since arriving in Canada on August 13, 2010. This, according to reasons previously rendered, as specified in the file, by which B147 was found not to be credible in his exchanges with the Canada Border Services Agency and apprehension that the Respondent would not appear for his admissibility hearing; and, subsequently, if he was to be removed, he would not appear for his removal.

[5] Due to the release from the detention order issued by the Immigration Division member on March 7, 2012, the Applicant is seeking a stay, thus, the continued detention of the Respondent.

[6] The length of the Respondent's detention has been put into question by the Respondent in respect of its duration and due to uncertainty as to how much longer it will last.

[7] In order to obtain a stay, an applicant must demonstrate (1) a serious issue to be tried; (2) irreparable harm, if no order is granted; and (3) a balance of convenience which favours the granting of the order (*Toth v Canada (Minister of Employment and Immigration)* 1986, 86 NR 302 (FCA)).

[8] Upon hearing counsel for both parties and upon taking cognizance of the material filed, the Court is satisfied that a serious issue exists:

- (a) the Respondent is inadmissible under section 37(1)(b) as discussed above;
- (b) a deportation order is in effect against the Respondent; and
- (c) the Respondent has been considered to lack credibility on issues pertaining to his person and his previous activities.

[9] The Court does not find the serious issue to be speculative. Due to real credibility concerns, detailed in the file, irreparable harm to the administration of justice and to the integrity of the immigration system would arise, if the Respondent becomes clandestine.

[10] Finally, due to the background facts, the Court considers the balance of convenience does favour the Applicant.

[11] As considered by Justice Marshall Rothstein (then of the Federal Court) in *Sahin v Canada (Minister of Citizenship and Immigration) (TD)*, [1995] 1 FC 214 at para. 31:

... There is also public interest, although perhaps somewhat less than in the case of public danger, in detaining a person when there are grounds for believing he or she would not appear for examination, inquiry or removal. This public interest must be weighed against the liberty interest of the individual but expedite the immigration proceedings.

(Reference is also made to the whole paragraph, re-expedition.)

[12] Therefore, for all of the above reasons, the recent order releasing the Respondent from detention is to be stayed, although not on all the terms proposed by the Applicant but rather until the earlier of either for the purposes of expedition:

- (a) the application for leave and for judicial review of that release from detention order is determined on its merits; or
- (b) the day on which a Pre-removal Risk Assessment (PRRA) is determined.

ORDER

THIS COURT ORDERS that the March 9, 2012 order, releasing the Respondent from detention be stayed until the earlier of either:

- (a) the application for leave and for judicial review of that order be determined on its merits; or
- (b) the day on which the Pre-removal Risk Assessment be determined.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2451-11

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

and

B147

**MOTION HELD VIA TELECONFERENCE ON MARCH 28, 2010 FROM OTTAWA,
ONTARIO AND VANCOUVER, BRITISH COLUMBIA**

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

DATED: March 28, 2012

ORAL AND WRITTEN REPRESENTATIONS BY:

Aman Sanghera FOR THE APPLICANT

Gurpreet Badh FOR THE RESPONDENT

SOLICITORS OF RECORD:

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