

Federal Court



Cour fédérale

Date: 20130305

Docket: IMM-1530-13

Citation: 2013 FC 220

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, March 5, 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

AMATH DIOUF

Applicant

and

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

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant, Amath Diouf, filed a motion for a stay of the deportation order scheduled for March 9, 2013.

[2] To obtain this stay, the applicant must satisfy the Court that a serious question is to be argued, that the stay is necessary to prevent irreparable harm to him and that the balance of

convenience is in his favour (*RJR - Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311; *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (FCA)).

[3] The facts of this matter, for the purposes of the motion for a stay, may be summarized as follows:

- a. The applicant arrived in Canada on January 24, 2006, holding a valid study permit;
- b. The applicant was married on April 13, 2007, to a Canadian citizen. An application for his permanent residence was filed in 2007 by the applicant's spouse;
- c. The said application for permanent residence was refused on December 7, 2009. An appeal from this refusal was brought on January 27, 2010, but the applicant's spouse discontinued her appeal later in 2010;
- d. The applicant claimed refugee status on June 6, 2011; his application was rejected on August 24, 2012, the very day that the application was heard, and no judicial review of this decision was requested;
- e. The applicant has been involved in divorce proceedings since November 17, 2011. He alleged that issues may have to be argued pertaining to the partition of family patrimony. Counsel for the applicant also noted in his letter of February 21, 2013, at the Canada Border Services Agency, through which he requested a stay of the removal order, [TRANSLATION] "Mr. Diouf is entitled to request support from Ms. Diouf".

[4] The motion for a stay was filed on February 21, 2013, following the decision of February 13, 2013, to set the removal date to March 9, 2013.

[5] The applicant made two arguments in support of his motion for a stay. First, he states that he fears for his life if he returns to Senegal. This is the essence of the argument made for the refugee claim, which was rejected in court on August 24, 2012. The motion for a stay is not for the purpose of appealing a refugee status decision: the application for judicial review is the appropriate remedy. Therefore, it is easy to rule on this argument.

[6] The second argument can be summarized by a request to stay in Canada to complete the divorce proceedings initiated 15 months ago.

[7] A law enforcement officer gave the reasons for which he refused to stay the removal order scheduled for March 9, 2013, in a document dated February 27, 2013. The enforcement officer found [TRANSLATION] “that there is no obstacle to removal”. Noting his limited power to intervene, he pointed out subsection 48(2) of the *Immigration and Refugee Protection Act* and stated that the [TRANSLATION] “removal would not cause him irreparable harm”. In fact, the law enforcement officer had stated that the applicant may put forward his arguments with respect to his divorce case after his removal from Canada.

[8] The applicant argued in this Court that the law enforcement officer’s decision was unreasonable. The serious question relates to the need to challenge the grounds for divorce and the relief corollary to divorce (partition of patrimony and a right to request support); the applicant claimed that the law enforcement officer breached the principle of natural justice, allegedly because

he refused to use his discretion to defer removal. It is alleged that the officer had not correctly assessed the evidence.

[9] I would reject the motion for a stay on this basis alone from this Court. The applicant failed to persuade me that there is a serious question that may entitle him to a stay. The applicant stated in his affidavit that he should stay in Canada to [TRANSLATION] “to allow me to settle my divorce according the law”, affidavit of February 26, 2013, paragraph 27). The Court does not see how the law enforcement officer could have failed to observe a principle of natural justice (*Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FC 682). In addition, the reasons given by the officer with respect to his limited discretion, satisfy the requirements in *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador*, [2011] 3 SCR 708, specifically paragraphs 14 to 16.

[10] But there is more. Neither the criteria of irreparable harm nor the balance of convenience are in the applicant’s favour. Further, it is the applicant’s burden to persuade the Court of these.

[11] The applicant would like the Court to decide that the inconvenience of not being in Canada to attend divorce proceedings would become an irreparable harm. With respect, there would have to have been a stronger demonstration from the applicant with supporting evidence to show irreparable harm. The vague statement alone is not sufficient.

[12] It then follows that the balance of convenience is not in the applicant’s favour. The Act provides that the removal order be relatively expeditious (section 48). The public interest in the removal taking place to maintain the integrity of the system (*Membreno-Garcia v Canada (Minister*

of Employment and Immigration, [1992] 3 FC 306) also prevails when there is no serious question or irreparable harm.

[13] Accordingly, the application to stay the removal order scheduled for March 9, 2013, is dismissed.

ORDER

THE COURT ORDERS that the application to stay the removal order scheduled for March 9, 2013, is dismissed.

“Yvan Roy”

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1530-13

STYLE OF CAUSE: AMATH DIOUF V
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 4, 2013

REASONS FOR JUDGMENT BY: ROY J.

DATED: March 5, 2013

APPEARANCES:

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Margarita Tzavelakos FOR THE RESPONDENT

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