

**Date: 20071213**

**Docket: A-560-07**

**Citation: 2007 FCA 401**

**Present: NOËL J.A.**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Applicant  
(Respondent)**

**and**

**IKEJANI EBELE OKOLOUBU**

**Respondent  
(Applicant)**

Heard at Ottawa, Ontario (via teleconference), on December 13, 2007.

Order delivered at Ottawa, Ontario, on December 13, 2007.

**REASONS FOR ORDER BY:**

**NOËL J.A.**

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**REASONS FOR ORDER**

**NOËL J.A.**

[1] The applicant (respondent in the appeal) moves to stay his removal scheduled for December 13, 2007 “until the merits of the recourse pursuant to section 72 of the *Immigration Act* has been disposed of” (Notice of Motion prayer for relief). As matters stand, the applicant’s recourse has been the subject of an interim decision by Harrington J. of the Federal Court, an appeal from which is pending before this Court in the present matter.

[2] By that decision rendered on October 17, 2007, Harrington J. allowed the applicant’s judicial review application from a decision of an immigration officer denying the applicant’s request

to have his permanent residence application processed from within Canada on humanitarian and compassionate grounds. Harrington J. referred the matter back so that it may be decided again taking into account certain provisions of the *International Covenant on Civil and Political Rights*.

[3] In support of his stay application, the applicant argues that any prospect of having this permanent residence application processed from within Canada, will become illusory if the removal order is executed. The applicant further alleges that his wife and child would suffer irreparable harm if he was forced to leave them and that the Country to which he is to be removed (Nigeria) is a totalitarian regime where he would be at risk of torture.

[4] Counsel for the Minister resists the application raising essentially two grounds. First, she says that the applicant has been aware of the deportation order since November 29, 2007 and has waited until the very last minute to bring forth his stay application. According to Counsel, this, in itself, is sufficient to deny the application.

[5] Secondly, the Counsel asserts that a stay has already been refused on two occasions by judges of the Federal Court. According to Counsel for the Minister, the applicant is estopped from bringing forth a third stay application given these prior decisions.

## **DISPOSITION**

[6] As a preliminary matter, I note that this Court does not have the jurisdiction to grant the remedy as it has been framed by the applicant (see para. 1, above). The Court's jurisdiction is limited to providing interim relief pending the disposition of the appeal.

[7] Dealing with the first ground on which the Minister seeks the dismissal of the application, the record shows that although the decision under appeal was rendered on October 17, 2007, a question was not certified until later, and the applicant's Counsel was only served with the Notice of Appeal on Friday, December 7, 2007. The motion was brought on Tuesday, December 11, 2007. It could have been brought one day earlier. However, Counsel for the applicant has asserted that he was in Court on Monday the 10<sup>th</sup> pleading a stay until 4:00 p.m., and that assertion has not been challenged by the Minister. In the circumstances, I do not believe that the fact that the motion was brought at the last moment can justify its dismissal.

[8] Nor do I believe that the applicant is estopped from bringing forth his application for a stay. The issue before me is whether a stay should be granted pending the disposition of the appeal brought by the Minister before this Court. This is a question which has yet to be considered and which calls for a fresh exercise of discretion.

[9] Counsel for the Minister insists that the appeal can proceed even if the applicant is removed. I have no doubt that the appeal could theoretically proceed. However, a compelling argument could be made that the appeal is in effect moot given that even if the applicant was to succeed in resisting

the appeal, there would be no practical basis for re-evaluating his request to have his permanent residence application processed within Canada on humanitarian and compassionate grounds, as ordered by Harrington J. As the appeal has been brought by the Minister, I believe it appropriate to preserve the applicant's entitlement to an eventual remedy pending its disposition.

[10] A stay will therefore be issued preventing the removal of the applicant pending the disposition of the Minister's appeal before this Court.

“Marc Noël”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-560-07

**STYLE OF CAUSE:** **THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION and IKEJANI EBELE  
OKOLOUBU**

**PLACE OF HEARING (via teleconference):** Ottawa, Ontario

**DATE OF HEARING:** December 13, 2007

**REASONS FOR ORDER BY:** NOËL J.A.

**DATED:** December 13, 2007

**APPEARANCES:**

Me Patricia Nobl FOR THE APPLICANT

Me Stewart Istvanffy FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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