Federal Court Cour fédérale

Date: 20250429

Docket: IMM-8238-25

Toronto, Ontario, April 29, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

GARY MARTIN REYES VALLE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER

[1] The Applicant, Gary Martin Reyes Valle, brings a motion to stay his removal to Mexico, which is scheduled for April 30, 2025.

[2] For the following brief reasons, I have concluded that this motion must be granted.

I. Background

[3] The Applicant is a citizen of Mexico. He entered Canada in 2017. In 2022 he submitted a claim for refugee protection, which was refused, as was an appeal of that decision. As a result, the Canada Border Services Agency [CBSA] commenced removal proceedings, however, Mr.

Reyes Valle did not appear for his removal interview, following which a warrant was issued for his arrest. In September 2024, he again came to the attention of CBSA after a routine traffic stop by the Toronto Police Service.

[4] The Applicant then submitted a request for a Pre-Removal Risk Assessment, which was also refused, and the removals process was once more set in motion.

[5] In the meantime, Mr. Reyes Valle has had three children while in Canada. He has five other children who were born prior to his arrival. His first Canadian-born child is Ashlyn Yadzmin Reyes Sanchez. The mother of this child is Lina Selene Sanchez. Ashlyn suffers from a rare and serious congenital eye disease (PAX6 gene mutation), which puts her at risk of vision loss and developmental delays. Following Ashlyn's birth, Mr. Reyes Valle has had two children – Manuel and Mila – with his spouse, Ms. Chanee Lashaun Williams, who is a Canadian citizen.

[6] Very recently, in April 2025, Mr. Reyes Valle submitted an application for permanent residence in Canada, sponsored by his spouse, Ms. Williams.

[7] The Applicant attended a removal interview on April 7, 2025, wherein he was served the Direction to Report for removal on April 30, 2025. On April 16, 2025, Applicant's counsel submitted a request to defer the removal. The request was based on the fact that he has a pending spousal sponsorship application, and on his role as a primary caregiver for his children in Canada. In particular, the Applicant noted that his daughter Ashlyn was scheduled for an eye procedure on April 21, 2025, for which his presence was required. In support of the request, the

Applicant provided letters from both Ms. Sanchez and Ms. Williams outlining the role that he plays in his children's lives. The letter from Ms. Sanchez indicated that the Applicant takes Ashlyn to all doctors appointments, because she is not able to do so.

[8] The deferral request was denied on April 23, 2025. The Applicant sought judicial review of this decision, and it is based on this application that he brings this motion to stay his removal.

II. **Analysis**

[9] The Respondent notes that the Applicant does not come to the Court with clean hands, having previously failed to appear for his removal. I will not address this as a preliminary matter, but will instead consider it at the balance of convenience stage of the analysis.

[10] The applicable legal framework for this matter is the three-part test set out in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC) and *Toth v Canada (Minister of Employment and Immigration)*, 1988 CanLII 1420 (FCA) [*Toth*]. To obtain a stay of removal, applicants must establish each of the following:

1. That there is a serious issue in respect of the underlying application for leave and judicial review;
2. That they will suffer irreparable harm if the removal is not stayed; and
3. That the balance of convenience favours staying the removal.

A. *Serious Issue*

[11] I am satisfied that the Applicant has raised a serious issue in respect of the Officer's deferral decision, even on the elevated standard highlighted in cases such as *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 51; and *Shpati v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 286 at paras 42-45.

[12] The jurisprudence is clear that, despite the narrow discretion that officers have to defer removal, they do have such discretion in certain circumstances, one of which is where deferral is warranted because of the short-term best interests of any child affected by removal: *Galusic v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 223. In this case I find, as in *Ismail v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 845, that a serious issue arises as to whether the officer adequately analyzed the evidence of the short-term best interests of the children affected by the removal decision, and that simply "acknowledging" or "noting" those interests was insufficient: para 29.

[13] As noted above, the evidence in the record, while admittedly somewhat general, suggested that the Applicant is primarily responsible for the medical treatment of his daughter Ashlyn. The evidence also indicated that she was scheduled for eye surgery on April 21, 2025, and that Ashlyn had post-operative appointments on April 22, 2025, and April 29, 2025.

[14] The Officer's consideration of these facts was minimal:

> The following was submitted by Counsel to support this claim:
>
> -information pertaining to an operation for Ashlyn Yadzmin REYES SANCHEZ (DOB June 29, 2020) on April 21

> - letter from SickKids for Ashlyn Yadzmin REYES SANCHEZ for appointment with opthalmology on February 13, 2025
>
> - information sheet for postoperative care for Ashlyn Yadzmin REYES SANCHEZ April 23, 2021
>
> - note which appears to be in a text format from Mother Lina Selene Sanchez. There are no identifying features or evidence of authenticity of this note, nor is it dated.
>
> It is noted that this is a chronic issue for Ashlyn and that she recently underwent surgery for the issue.

[15] My concern with the above is, at least, twofold. First, I find the Officer failed to have adequate regard to Ashlyn's plan of care, her father's responsibilities with this plan of care, and its proximity to the Applicant's removal. Second, it is unclear to me what evidentiary basis the Officer relied on to conclude that Ashlyn's medical condition was "chronic." I do not see any such description of her condition in the record, and to the extent that the term was used to minimize the importance of Ashlyn's scheduled surgery, I find a serious issue arises.

[16] As a result of the above, I find the Applicant has raised a serious issue in respect of the underlying application.

B. *Irreparable Harm*

[17] I also find that the Applicant has met the irreparable harm threshold. In support of this motion, the Applicant has provided further evidence related to Ashlyn's medical condition. Specifically, he has adduced evidence that her planned surgery on April 21 could not proceed because she has experienced an eye infection, and that it would be rescheduled in the next few weeks.

[18] While new information is typically inadmissible on judicial review, this Court has found on many occasions that it may be considered in assessing the question of irreparable harm further to a motion for a stay of removal: *Alabi v Canada (Citizenship and Immigration)*, 2023 FC 841 at para 24.

[19] Given Ashlyn's unstable medical condition, and given the role that the Applicant plays in facilitating her medical treatment, I find that the Applicant has met the irreparable harm criterion. In arriving at this conclusion, I am mindful of the Respondent's submissions regarding the threshold for establishing irreparable harm: that it typically requires evidence that the life, security or safety of the Applicant or the Applicant's family will be jeopardized; that such evidence should be of a non-speculative nature; and that it must amount to something more than the inherent consequences of deportation. Once again, however, given the apparent seriousness of Ashlyn's medical condition, given the coming surgery that she will require, and given the role the Applicant plays in facilitating her care, I am satisfied that irreparable harm has been made out.

C. *Balance of Convenience*

[20] The Respondent rightly points to the Applicant's failure to comply with previous removal interviews as a relevant factor in the assessment of a stay of removal.

[21] When determining whether an applicant's prior conduct should bar them from obtaining subsequent discretionary relief, the Court may consider various factors, including: "the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in

question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand": *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 at paragraphs 9-10.

[22] While the Applicant's failure to appear for his removal interview, and subsequent undocumented period in Canada are relevant considerations, he appears to have had no other interactions with the law over this time. Taking this factor into consideration, and weighing it together with the other factors before me, I find that the balance of convenience weighs, slightly, in favour of granting this application.

THEREFORE, THIS COURT ORDERS that: For all of these reasons, the Applicant's motion for a stay of removal from Canada to Mexico on April 30, 2025, is granted.

"Angus Grant"
Judge