

Federal Court



Cour fédérale

Date: 20250507

Docket: IMM-7036-25

Citation: 2025 FC 828

Ottawa, Ontario, May 7, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

**CHIGHINE FERARRI HALSON
ALBERTSTANO STORR**

Applicant/Moving Party

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent/Responding Party

ORDER AND REASONS

[1] The Applicant and Moving Party, Mr. Storr (the Applicant), is currently scheduled to be removed from Canada on May 11, 2025, at 11:10 am following a deportation order made by a member of the Immigration and Refugee Board's Immigration Division on May 9, 2024. He seeks an order staying the execution of that removal Order.

[2] Mr. Storr's motion is dismissed for the reasons that follow.

I. **Background**

[3] The Applicant is a 51-year-old citizen of the Bahamas. He entered Canada on July 21, 2023, with his fiancée and common law spouse, JML, and her daughter, GRT, as visitors. All three made claims for refugee protection upon arrival in Canada.

[4] JML and GRT were eligible to make a claim for refugee protection and their claims remain outstanding. The Applicant was referred to an admissibility hearing before the Immigration Division after he had submitted his claim. On May 9, 2024, he was found inadmissible to Canada due to serious criminality arising from a guilty plea and conviction, dated July 26, 2000, on a charge of first-degree arson in Florida, USA. He was deemed ineligible to make a claim for refugee protection in Canada pursuant to section 36 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), as a result. The Applicant deposes that the arson charge and conviction was his first and only involvement with the criminal justice system in any country. No evidence has been led to the contrary.

[5] The Applicant was the subject of a deportation order made on May 9, 2024.

[6] The Applicant submitted a pre-removal risk assessment (PRRA) request on November 11, 2024.

[7] On March 18, 2025, the Applicant received a negative PRRA decision dated January 30, 2025.

[8] On April 1, 2025, the Applicant filed an Application for Leave and for Judicial Review (ALJR). Through his ALJR, he sought judicial review of the negative PRRA decision dated January 30, 2025 (the Decision). Specifically, he sought an order quashing the Decision and remitting his matter to a different administrative decision-maker and PRRA officer for re-determination.

[9] On April 15, 2025, the Applicant requested reconsideration of the negative PRRA and submitted additional evidence in the form of two letters. There is no reconsideration decision produced in the materials filed on this motion.

[10] On April 23, 2025, the Applicant was served with a Direction to Report for removal to the Bahamas. The removal is scheduled for May 11, 2025, at 11:10 a.m.

[11] On April 30, 2025, the Applicant requested a deferral of his removal until September 5, 2025, or, in the alternative, until July 1, 2025. No deferral documentation, other than affidavits sworn by the Applicant and by JML on April 29, 2025, has been produced on this motion in respect of a deferral request that may have been made.

[12] The Applicant argues that he perfected his ALJR on May 1, 2025. Neither the Applicant's Record nor a copy of the memorandum of fact and law contained therein were filed in support of this motion.

[13] Should he be removed to the Bahamas, the Applicant alleges being exposed to risk of harm from JML's ex-boyfriend who had tracked JML and the Applicant at their workplaces and home, respectively, sent threatening messages to JML, threatened the Applicant by mimicking pointing a gun at him, and has continued to threaten JML and the Applicant while in Canada.

II. The Tripartite Conjunctive Test

[14] To be successful on this motion, the Applicant must satisfy the tripartite and conjunctive test for interlocutory injunctive relief set out by the Federal Court of Appeal in *Toth v Canada (Minister of Citizenship and Immigration)*, 1988 CanLII 1420 (FCA), and by the Supreme Court of Canada in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC) [*RJR*] and in *R v Canadian Broadcasting Corp*, 2018 SCC 5.

[15] The tripartite and conjunctive test requires that the Applicant demonstrate:

- 1) that there is a serious issue to be tried;
- 2) that the Applicant would suffer irreparable harm if his motion was dismissed; and,
- 3) that the balance of convenience lies in the Applicant's favour.

[16] The threshold for establishing a serious question is generally low. The existence of a "serious issue" is determined by considering the allegations set out in the Applicant's underlying ALJR (*Oberlander v Canada (Attorney General)*, 2003 FCA 134 at para 15 (*Oberlander*); *Bergman v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1129 at para 17 (*Bergman*); *Singh v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 519 at paras 11, 14, and the jurisprudence cited therein). In the absence of serious grounds to

challenge an administrative decision being set out in the underlying application, seeking a stay pending judicial review would amount to no more than a free-standing request for delay. Such a request is not justified in light of subsection 48(2) of the IRPA which requires a removal order to be enforced “as soon as possible” (*Ogunkoya v Canada (Citizenship and Immigration)*, 2021 FC 679 at para 6).

[17] To establish irreparable harm, the Applicants must present clear, non-speculative evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless the stay they seek is granted. Irreparable harm is forward-looking and unavoidable (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 152, citing *Janssen Inc. v Abbvie Corporation*, 2014 FCA 112 at para 24). The harm demonstrated must constitute more than a series of possibilities and may not be based on mere assumptions, speculation, or hypotheticals and contingencies (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31; *Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 at para 14; *Ledshumanan v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1463 at paras 54–55. As summarized by Justice Gascon in *Patel v Canada*, 2018 FC 882 at paras 7-8:

7. Irreparable harm is a very strict test. In the context of stays of removal, it implies a serious likelihood of jeopardy to the applicant’s (or his or her family’s) life, security or safety. It requires clear, convincing and non-speculative evidence going beyond the inherent consequences of deportation (*Palka v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 165 [Palka] at para 12; *Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 [Selliah] at para 13).

8. The Federal Court of Appeal has frequently insisted on the attributes and quality of the evidence needed to establish irreparable harm in the context of injunctive relief. Irreparable harm must flow from clear and non-speculative evidence

(*AstraZeneca Canada Inc v Apotex Inc*, 2011 FC 505 at para 56, aff'd 2011 FCA 211; *Aventis Pharma SA v Novopharm Ltd*, 2005 FC 815 at paras 59-61, aff'd 2005 FCA 390). Simply claiming that irreparable harm is possible is not enough: “[i]t is not sufficient to demonstrate that irreparable harm is ‘likely’ to be suffered” (*United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200 [*US Steel*] at para 7). There must be evidence that the moving party will suffer irreparable harm if the injunction or the stay is denied (*US Steel* at para 7; *Centre Ice Ltd v National Hockey League (1994)*, 1994 CanLII 19510 (FCA), 53 CPR (3d) 34 (FCA) at 52). In addition, the evidence must be more than a series of possibilities, speculations, or hypothetical or general assertions (*Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 [*Gateway City Church*] at paras 15-16). Assumptions, hypotheticals and arguable assertions unsupported by evidence carry no weight (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 [*Glooscap*] at para 31). Quite the contrary, there needs to “be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted” (*Gateway City Church* at para 16, citing *Glooscap* at para 31).

[18] When considering the balance of convenience branch of the applicable test, the Court must determine which of the parties will face greater harm from the granting or refusal of the stay, taking into account the public interest in having the IRPA enforced in an efficient, expeditious, and fair manner (*RJR* at 342; *Ibrahima v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 607 at paras 66–68 (*Ibrahima*). The balancing exercise may consider the strength of the underlying application for judicial review. If a serious issue that calls the removal into question is identified, the public shares the applicant’s interest in granting a stay in order for the Court to decide the merits of the underlying application for judicial review (*Matthew v Canada (Citizenship and Immigration)*, 2022 FC 924 at para 28; *Acti v Canada (Citizenship and Immigration)*, 2022 FC 336 at para 60).

III. The Application for Leave and for Judicial Review

[19] The Applicant filed an ALJR on April 1, 2025. Through his ALJR, he seeks judicial review of the Decision. He seeks an order quashing the Decision and remitting his matter back to a different administrative decision-maker and PRRA officer for re-determination.

[20] The Applicant's ALJR is very brief and contains boilerplate language reproducing the substance of subsection 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7, as the grounds of review.

[21] The ALJR pleads that, if leave is granted, the judicial review will proceed on the basis that the Decision is based on an erroneous finding of fact or without regard to the material before it. However, no erroneous finding of fact is identified or pleaded and there is no reference to the material that was before the decision-maker that is alleged to have been disregarded by the decision-maker in coming to the Decision. The allegation and ground of review is bald.

[22] The grounds alleged in support of the ALJR are not tethered to any allegation of material fact that could support granting the relief sought (*JP Morgan Asset Management (Canada) Inc. v Canada (National Revenue)*, 2013 FCA 250 at paras 38-41; *Canada (Attorney General) v Iris Technologies Inc.*, 2021 FCA 244 at para 12; *Hébert Estate v Canada (Attorney General)*, 2021 FC 1076 at para 52). The ALJR does not comply with Rule 301(e) of the *Rules*.

IV. Analysis

A) *Serious Issue*

[23] The absence of particularized grounds of review beyond vague a single, vague boilerplate allegation in the ALJR fails to sufficiently frame the issues for the Applicant's judicial review proceeding. In the absence of grounds beyond boilerplate being alleged in the ALJR, I must conclude that the Applicant has not demonstrated that his proceeding raises a serious issue (*Oberlander* at para 15; *Bergman* at para 17; *Emmanuel v Canada (Public Safety and Emergency Preparedness)*, 2021 CanLII 11765 (FC) at para 2; *Klauss v Canada (Citizenship and Immigration)*, 2022 CanLII 57306 at paras 1-2).

[24] The Applicant has raised potential grounds of review with greater particularity in his written representations filed for this motion. Raising those grounds in written representations filed for this motion does not assist the Applicant, given his bald originating document and that the tripartite test requires that a serious issue be raised and found in the ALJR itself as the originating document containing allegations to be substantiated as the proceeding would progress. Argument regarding serious issues made on a motion for a stay does not cure the defects in a bald and insufficient ALJR that fails to allege the serious issues that are argued on the motion.

[25] The Applicant does not satisfy the first part of the tripartite conjunctive test for a stay to be granted. This motion will therefore be dismissed because the Applicant does not satisfy each of the three components of the tripartite and conjunctive test.

[26] Although it is not necessary to do so for the determination of this motion, I shall nevertheless consider whether the Applicant has met the second and/or third parts of the tripartite and conjunctive test for a stay to be granted.

B) Irreparable Harm

[27] The Applicant relies on his affidavit sworn on May 1, 2025, and the exhibits attached to it in support of this motion.

[28] The evidence of irreparable harm is contained in paragraph 9 of his affidavit. It consists of one sentence: “I will face irreparable harm if I am removed before my underlying application for leave is decided.” This is conclusory and declarative evidence of little to no probative value on this motion. It does not meet the threshold of evidence that has a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted (*Gateway City Church* at para 16, citing *Glooscap* at para 31).

[29] In further support of his allegation of irreparable harm, the Applicant produces two letters from other persons who explain why they fear the Applicant’s described agent of harm. These letters are letters and are not sworn affidavits.

[30] The first of the two letters reflects that the author is afraid for JML and GRT and their family should they return to the Bahamas. The letter’s author states that they believe that JML the Applicant would be targeted and killed if they return to the Bahamas. The letter of support reflects that it was requested by JML and not by the Applicant. The letter speaks of corruption

and widespread gang activity in the Bahamas and relates events involving the agent of harm and other persons. It explicitly speaks of support from JML. There is no mention of the Applicant in the first letter except in connection with JML. More significantly, there is no identification in the letter of any particularized serious and likely risk of jeopardy to the Applicant specifically should he be returned to the Bahamas alone. The letter provides disturbing hearsay evidence of potential gender-based violence against JML and against the Applicant in connection with JML, but that potential violence is not stated as being directed solely at the Applicant independently of his association with JML.

[31] The second letter was also provided to support JML. It reflects concerns similar to those relayed in the first letter and provides some background with respect to JML and the domestic violence and gender-based abuse that she had suffered in the Bahamas at the hands of the named agent of harm. The Applicant is mentioned in the text of the letter, is believed to be in serious danger if he returned to the Bahamas, but, like the first letter, there is no identification of any particularized risk that the Applicant would face should he be returned to the Bahamas.

[32] While the Court is sensitive to the Applicant's affidavit evidence with respect to how GRT may face irreparable harm should his motion be refused, the harm described has not been established as exceeding the usual and inherent consequences of the enforcement of a deportation order. I agree with the Respondent that such consequences are insufficient to establish irreparable harm in the context of a motion to stay a removal order (*Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 at paras 14-16).

[33] This Court's decision in *Letnes v Canada (Attorney General)*, 2020 FC 636 is of no assistance to the Applicant on the matter of irreparable harm as the facts of that matter and the nature of the that proceeding are entirely distinguishable from the facts and nature of this proceeding. The Federal Court of Appeal's decision in *Tesoro v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 148 (*Tesoro*) is also unhelpful to the Applicant. *Tesoro* emphasises that determinations of irreparable harm arising from family disruptions are fact specific and are determined on the basis of the evidence filed. The Court further notes that the family separation arguments raised in *Tesoro* were not found to constitute irreparable harm.

[34] The evidence of irreparable harm that has been led on this motion is not at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless the sought stay is granted. The Applicant has not satisfied the irreparable harm component of the applicable tripartite and conjunctive test.

C) *Balance of Convenience*

[35] The Applicant has not led any evidence relating to the balance of convenience on this motion. As there is no serious issue to be determined through the ALJR, it follows that the public interest is in having the IRPA enforced in an efficient, expeditious, and fair manner (*RJR* at 342; *Ibrahima* at paras 66–68).

[36] The Applicant has not established that the balance of convenience favours his interests on this motion.

V. **Conclusion**

[37] The Applicant has not met the tripartite conjunctive test for an Order staying his removal in accordance with the Direction to Report. His motion is therefore dismissed.

ORDER in IMM-7036-25

THIS COURT ORDERS that:

1. The Applicant and Moving Party's motion for a stay of removal is dismissed.
2. There are no costs awarded on this motion.

"Benoit M. Duchesne"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7036-25

STYLE OF CAUSE: CHIGHINE FERARRI HALSON ALBERTSTANO
STORR v. MCI

PLACE OF HEARING: VIDEOCONFERENCE (OTTAWA)

DATE OF HEARING: MAY 7, 2025

ORDER AND REASONS: DUCHESNE, J.

DATED: MAY 7, 2025

APPEARANCES:

Courtney Shields FOR THE APPLICANT

Jordan Fine FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kumararatne Law FOR THE APPLICANT
Ottawa, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario