

Federal Court



Cour fédérale

Date: 20121018

Docket: IMM-10568-12

Ottawa, Ontario, October 18, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

VALENTINA LAGUTO

Applicant

and

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

Respondents

ORDER

UPON motion by the applicant for an order granting a stay against the removal of the applicant to Russia scheduled for October 21, 2012;

AND UPON reading the material filed;

AND UPON hearing the parties' oral arguments;

AND UPON considering that the applicant's humanitarian and compassionate (H&C) application was received with payment on August 27, 2012;

AND UPON considering that the Federal Court of Appeal in *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 found that when deciding whether it is reasonably practicable for a removal order to be executed, a removal officer may consider various factors such as illness, other impediments to travelling, and pending H&C applications that were brought on a timely basis but have yet to be resolved due to backlogs in the system;

AND UPON considering that the enforcement officer in the present case stated that the processing time for the H&C decision in the present case is 30 to 42 months and that "a time frame of 30-42 months does not comply with the mandate stipulated in the *Immigration and Refugee Protection Act*";

AND UPON finding that there is a serious issue as to whether the enforcement officer in the present case considered if special circumstances for discretionary deferral of removal could exist when an H&C application is in the 30 to 42 month backlog for processing applications;

AND UPON finding that, for similar reasons given by Justice Lemieux in *Bhagat v. Canada (Public Safety and Emergency Preparedness)*, 2009 FC 45 at paras 17 and 18, there is also a serious issue as to whether the officer calculated timeliness in terms of when the application would be decided instead of when the application was filed (see also *Guan v. Canada*

(Minister of Public Safety and Emergency Preparedness), 2010 FC 992 at paras 41 and 43;
Williams v. Canada (Public Safety and Emergency Preparedness), 2010 FC 274 at paras 36 and 38; *Simmons v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1123 at para 8);

AND UPON considering that the applicant, age 69, and her husband, age 70, have lived together continuously during the 45 years of their marriage;

AND UPON considering that the applicant has no family in Russia and that the Russian embassy has informed her she should not expect the Russian government to assist her with housing, living expenses or her medical conditions upon her removal to Russia;

AND UPON determining that although the applicant has some family members in Belarus, it was purely speculative of the officer to conclude that the applicant could "possibly reside" in Belarus because there is no evidence the applicant would be allowed temporary residence in Belarus if she submitted a citizenship application there;

AND UPON finding that the applicant is vulnerable in her old age and depends on her husband financially, the lengthy separation of the elderly spouses in the unique circumstances of this case would in my view constitute irreparable harm. As a result, the balance of convenience rests with the applicant;

AND UPON considering the words of Louis D. Brandeis, former associate justice of the United States Supreme Court, that “if we desire respect for the law, we must first make the law respectable”;

THIS COURT ORDERS that:

The motion for a stay is granted until the determination of the leave application and if granted, until the judicial review application is decided.

“Danièle Tremblay-Lamer”

Judge