

Federal Court



Cour fédérale

Date: 20140306

Docket: IMM-1380-14

Toronto, Ontario, March 6, 2014

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

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

Applicant

and

GEORGE SIDAMONIDZE

Respondent

ORDER

UPON motion of the Applicant for a stay of the Order of Release granted by the Immigration Division of the Immigration and Refugee Board of Canada (Release Order) rendered March 4, 2013 based on the pending Application for Leave and Judicial Review filed March 5, 2014;

AND UPON considering the evidence and the submissions contained in the motion records filed by the parties;

AND UPON hearing at an urgent special sitting the oral submissions of the parties via teleconference in Toronto on March 6, 2014 at 3:30 pm;

AND UPON considering the conjunctive tri-partite test, set forth in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) (*Toth*), that must be satisfied before a stay of removal can be granted;

AND UPON noting that, in determining the “serious issue” prong of the tri-partite test for a stay of removal, the judge “should take a hard look at issues raised in the underlying application” (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 (*Baron*));

AND UPON considering that the Federal Court can exercise its discretion after taking into consideration the factors set out by the Supreme Court in *Borowski* and hear the pending judicial review even though it is moot (*Canada (Minister of Public Safety and Emergency Preparedness) v Dragicevic*, 2013 FC 41);

AND UPON determining that this motion should be dismissed for these reasons:

[1] In taking a hard look at the issue raised in the underlying application, I do not find that there is a serious issue as presented by the Applicant.

[2] The Member looked at all of the factors and made a reasonable determination in providing a conditional release. The reasons and record before this Court on this special sitting, in the form that was before the Court, though far from ideal do meet the test of allowing me to understand why the Immigration Division made the decision it did. (*Tursunbayer v Canada (Minister of Public Safety and Emergency Preparedness* [2014] FCJ No 27 at paras 32-39).

[3] As no serious issue has been identified, I need not address the question of irreparable harm and balance of convenience.

[4] I conclude that the test for the extraordinary equitable relief of a stay has not been met and it will not be granted.

AND UPON concluding therefore that the test for a stay has not been met;

THIS COURT ORDERS that:

1. The stay motion is dismissed.

“Glennys L. McVeigh”

Judge