

Date: 20070904

Docket: IMM-3266-07

Citation: 2007 FC 882

Ottawa, Ontario, September 4, 2007

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**DIOGO CICHACZEWSKI and
GLORIA DANIELS**

Applicants

and

**THE MINISTER OF CITIZENSHIP & IMMIGRATION
and THE MINISTER OF PUBLIC SAFETY
& EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR ORDER AND ORDER

*“Everyone has the following fundamental freedoms:
a) freedom of conscience and religion;”*

[1] Our *Canadian Charter of Rights and Freedoms* says nothing new. Freedom of religion is, and has been, a cornerstone of Canadian society. This freedom has been recognized by the United Nations in the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*.

[2] Mr. Cichaczewski is a young man from Brazil. Gloria Daniels is his Canadian wife. He is Christian, she Jewish.

[3] He came here in 2002 and claimed refugee status. His claim was based upon his fear of a revenge attack by a drug dealer who was convicted and imprisoned as a result of information he supplied the police. The drug deal also involved a police officer. His refugee claim was declared abandoned, perhaps because of incompetence on the part of his immigration counsellor. More recently, he sought a pre-removal risk assessment (PRRA) and asked to remain in Canada on humanitarian and compassionate (H&C) grounds while his application for permanent residence status was being processed. One consideration is that he is well underway in his conversion to Judaism.

[4] Both applications were refused. He has applied to this Court for leave and judicial review thereof. In the meantime, he is scheduled to be removed from Canada on 15 September 2007. He seeks a stay of that removal pending the outcome of his applications for judicial review.

ISSUES

[5] As always in motions of this kind, the extraordinary remedy of an interlocutory stay is only to be granted if there is a serious issue, irreparable harm and if the balance of convenience favours the applicant (*Toth v. Minister of Employment and Immigration* (1988), 86 N.R. 302 and *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311).

[6] A serious issue is one that is neither frivolous nor vexatious.

[7] More to the point, would an interruption of his religious conversion as a consequence of his removal constitute a serious issue and result in irreparable harm?

DISCUSSION

[8] Mr. Cichaczewski has established a successful business as a subcontractor in the construction industry. He married his wife last year. She was gainfully employed as a teacher, but with his financial support, has now gone back to school to follow a graduate program.

[9] As aforesaid, Ms. Daniels is Jewish, and Mr. Cichaczewski is in the process of converting to that faith. His sincerity has not been put into question. It is important to emphasize that this is not an opportunistic conversion.

[10] During argument, I said I would not grant a stay pending the outcome of the PRRA.

[11] With respect to the H&C application, an inland spousal application does not lie at this time because Mr. Cichaczewski was convicted of a minor offence in 2004. While he has not been declared inadmissible, it seems he would not be eligible for a spousal sponsorship until pardoned for his offence, a pardon which could not take place before 2010. The Minister adds that a special application can be made pending that pardon, but the details are somewhat sketchy.

[12] As I have decided to grant the stay on religious grounds, I need not consider his wife's alleged financial dependency, or the many other submissions made on his behalf.

FREEDOM OF RELIGION

[13] Everyone has the right to believe, or not to believe. Everyone has the right to be a member of an organized religion, subject to the tenants of that faith, or not. Everyone has the right to give public witness to faith. Everyone has the right to change religion.

[14] As stated by the Privy Council in *Despatie v. Tremblay* (1921), 1 A.C. 702 at 714:

The religion position in the Province of Quebec in 1774, was therefore that every individual had the right to profess and practise the Catholic religion without let or endurance. But it must be borne in mind that this is a privileged granted to the individual. There is no legislative compulsion of any kind whatever. He may change his religion at will. If he remains in the Roman Catholic community he may, so far as the law is concerned, choose to be orthodox or not, subject to the inherent power of any voluntary community, such as the Roman Catholic Church, to decide the conditions on which he may remain a member of that community...

[15] The evidence before the officer was that Mr. Cichaczewski is in the middle of converting to Judaism. He has completed the classes, but there are a number of other steps still to be taken. The evidence is that he must complete the process with his wife and sponsoring rabbi in his own congregation. However, the officer was of the view that nothing prevented Mr. Cichaczewski from converting to Judaism while back in Brazil. That may be so, but at the very least his conversion would be interrupted and delayed.

[16] Article 18 of the *International Covenant on Civil and Political Rights* provides that:

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

[17] While Canada's focus is on removing an individual who has no legal status here, an unfortunate repercussion is that his conversion would be delayed; in other words, arguably impaired.

[18] Certainly, Mr. Cichaczewski's case raises a serious issue, in the sense it is neither frivolous nor vexatious. As to irreparable harm, it is noteworthy that in both *R.J.R. MacDonald* and *Toth*, above, what was at stake were commercial interests, not fundamental human rights. As Mr. Justice Robertson said in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [1999] 4 F.C. 206 at paragraph 12:

No transgression of a basic human right can be accurately measured or compensated by money.

How can the harm arising from a roadblock in Mr. Cichaczewski's right to celebrate the religion of his choice be measured?

[19] The timing of the H&C decision creates its own difficulties. If Mr. Cichaczewski were Jewish in the first place, or his conversion had been complete, religion would not have been an issue. Nor would it have been if he had no intention of converting, or, if he claimed to have that intention but had done nothing about it (*Chibani v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1167).

[20] We must take the facts as they are. The parties were represented by very experienced counsel, but neither was able to draw my attention to a case precisely on point. In the circumstances, it is far better to maintain the status quo, pending the resolution of the application for leave and for judicial review. The Ministers have not yet had the opportunity of responding thereto.

[21] The balance of convenience also favours the applicants.

ORDER

THIS COURT ORDERS that the motion for a stay of Mr. Cichaczewski's removal scheduled to Brazil scheduled for 15 September 2007 is granted. Removal is stayed pending the outcome of the application for leave and for judicial review of the negative decision based on humanitarian and compassionate grounds.

"Sean Harrington"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3266-07

STYLE OF CAUSE: *DIOGO CICHACZEWSKI and GLORIA DANIELS v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION and THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS*

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