

CANADA / JUDGMENT

Yogesh v. Canada (Citizenship and Immigration)

2026 FC 260

COURT

Federal Court

DECIDED

24 February 2026

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Decision Content

Date: 20260224

Docket: IMM-223-26

Citation: 2026 FC 260

Toronto, Ontario, February 24, 2026

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

YOGESH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

UPON THE MOTION by the Applicant Mr. Chambers [the Applicant], for an Order staying his removal from Canada to India, in which removal is scheduled for February 25, 2026;

AND UPON READING and CONSIDERING the materials filed by the parties in support of their respective positions on the Applicant's motion;

AND UPON HEARING and CONSIDERING the oral submissions made by the parties by videoconference on February 24, 2026;

AND CONSIDERING that an order staying a removal is a form of extraordinary equitable relief requiring the exercise of the Court's discretion having regard to all of the relevant circumstances, that the applicable test is highly contextual and fact dependent, and that "Ultimately, the question is whether granting the injunction would be just and equitable in all the circumstances of the case" (*Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 1);

AND CONSIDERING that to be successful on this motion the Applicant must satisfy the conjunctive tripartite test described in *Toth v Canada (Minister of Citizenship and Immigration)*, 1988 CanLII 1420 (FCA), 86 NR 302 [Toth] and in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 [RJR-MacDonald].

AND CONSIDERING that this legal test requires that the Applicant demonstrate that, 1) their application raises a serious issue to be tried; 2) they would suffer irreparable harm if their removal is not stayed; and 3) the balance of convenience favours staying their removal. The test is conjunctive (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 14) in that the "failure of any of the three elements of the test is fatal" (*Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 212 at para 15), even though the three parts of the test are not "watertight compartments" (*Pak v. Canada (Public Safety and Emergency Preparedness)*, 2025 FC 1898, at para 24, and the jurisprudence cited therein [Pak]);

AND CONSIDERING that the threshold for establishing a serious question to be determined is generally low, and that the judge on the stay motion must make a preliminary assessment of the merits of the case to ascertain whether the application is neither vexatious nor frivolous and, if satisfied that the proceeding is neither vexatious or frivolous, then proceed to consider the second and third prongs of the test, even if of the opinion that the applicant is unlikely to succeed on the merits (*RJR-MacDonald*, at page 337);

AND CONSIDERING that, in the absence of serious grounds to challenge an administrative decision, a stay pending judicial review amounts to no more than a free-standing request for delay which is not justified in light of subsection 48(2) of the Immigration and Refugee Protection Act, SC 2001, c 27 [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);

AND CONSIDERING that the second prong of the test requires that the moving party establish that irreparable harm would be suffered between the date of removal and the hearing of their proceeding on the merits without the stay being granted;

AND CONSIDERING that the prejudice to be established must be more than the harm or prejudice that is inherent in the removal process, and that the moving party has the onus to present clear and non-speculative evidence at a convincing level of particularity demonstrating a real probability that unavoidable irreparable harm will result in the absence of the extraordinary remedy of a stay (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31 [Glooscap]; *Erhire v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 941 at para 65);

AND CONSIDERING that the harm alleged and proven must constitute more than a series of possibilities and may not be based on mere assumptions, speculation or hypotheticals and contingencies, or assertions (*Atwal v Canada (Citizenship and Immigration)*, 2004 FCA 427 at paras 14-15);

AND CONSIDERING that the last prong of the test requires balancing the prejudice the applicant would suffer if removed against the prejudice suffered by the Respondent who would be prevented for enforcing the law, and determining who would suffer the greatest harm from the granting or refusal of the stay (*Metropolitan Stores (MTS) Ltd v Manitoba Food & Commercial Workers, Local 832*, 1987 CanLII 79 (SCC), [1987] 1 SCR 110 at para 36; *Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, 2025 FCA 164 at para 50);

AND CONSIDERING that the public interest favours having removal orders promptly enforced as scheduled and in the Respondent Minister exercising his statutory duty to apply the IRPA (Pak, at para 71). Section 48 of the IRPA requires the enforcement of removal orders as soon as possible, not simply a “question of administrative convenience, but as a matter that implicates the integrity and fairness of, and public confidence in, Canada’s system of immigration control” (*Ghanaseharan v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at para 22);

AND CONCLUDING that the Applicant’s motion for stay of proceedings should be dismissed for the following reasons:

A) Serious Issue [1] The Applicant seeks to judicially review a negative pre-removal risk assessment [PRRA] decision made on November 20, 2025. The PRRA officer determined that the Applicant would not be subject to a risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment as defined in sections 96 and 97 of the IRPA if returned to India.

- [2] The Applicant had submitted that he would be personally targeted for the repayment of loans taken out by his father to pay for his studies in Canada if he is returned to India. The Applicant argued that he feared that such targeting from loan creditors would expose him to harassment, violence and inadequate protection from local authorities.
- [3] The Applicant first argues that the PRRA decision maker erroneously failed to consider and erroneously considered the totality of the evidence provided by the Applicant in support of his PRRA Application and that this raises a serious issue that is neither frivolous nor vexatious. I disagree.
- [4] The Applicant's argument that the PRRA officer did not consider the whole of the evidence submitted for their consideration is inconsistent with the wording used by the PRRA officer in their decision when they write, "I have evaluated all documentary evidence, including the PRRA application, affidavits, counsel submissions and any other submitted documents, whether mentioned specifically or not in the following analysis." The Applicant has not led evidence to the contrary. The Applicant's first argument fails to raise a serious issue.
- [5] The Applicant submits that the Applicant erroneously considered the Applicant's family members' affidavit evidence of threats from their loan creditors and how these threats would extend to the Applicant should he return to India. He argues that the PRRA officer erroneously considered the evidence submitted when they determined that the family member evidence provided narrative support for the Applicant's claim of threats, but lacked corroboration and failed to substantiate specific incidents with verifiable evidence of the threats faced by the Applicant should be returned to India. I disagree.
- [6] The PRRA officer assigned limited probative value to these documents as evidence regarding the likelihood of the Applicant facing a risk of cruel or unusual treatment, punishment, or threats to life under section 97 of the IRPA. The PRRA officer's manner of proceeding and considering the evidence led is consistent with how a decision maker may consider evidence tendered by a witness with a personal interest in the matter (*Perampalam v Canada* (MCI), 2018 FC 909, at para 43; *Ferguson v. Canada* (Citizenship and Immigration), 2008 FC 1067, at para 27).
- [7] The Applicant's argument that the PRRA officer erred in his consideration of the Applicant's family members' affidavits as to the existence of risk and threats is really an invitation for the Court to reassess and reweigh the evidence tendered while acting as a reviewing court. That is not this Court's function on judicial review (*Doyle v. Canada* (Attorney General), 2021 FCA 237, at paras 2 to 4). In any event, the affidavit evidence tendered by the Applicant's family was bald and without corroboration except from other interested family members. Bald assertions, rather than detailed, specific evidence, cannot justify a stay (*Pierre v. Canada* (Public Safety and Emergency Preparedness), 2020 FC 887, at para 2(e); *Nagy v. Canada* (Citizenship and Immigration), 2021 CanLII 103638). The Applicant has not raised a serious issue with this argument.

[8] The Applicant's third argument closely tracks his first two arguments in its substance, although the focus is on the PRRA officer's allegedly erroneous consideration of the unavailability of state protection for the Applicant should he return to India. The Applicant argues that the PRRA officer failed to consider state authority corruption evidence found in the national documentation package that was not suggested or put before the PRRA officer, and that the PRRA officer erroneously considered the Applicant's brother's affidavit evidence that his family reported the threats they have received to the police, but that no action had been taken. The availability of state protection becomes relevant only if there is a risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment to the Applicant. The PRRA officer found that there was no such risk because the evidence before them did not establish one. The Applicant's third argument fails to raise a serious issue because it is not relevant.

[9] I conclude that the Applicant has failed to raise a serious issue.

B) Irreparable harm [10] The Applicant has also failed to lead clear and non-speculative evidence at a convincing level of particularity demonstrating a real probability that he will suffer unavoidable irreparable harm in the absence of the extraordinary remedy of a stay (Glooscap).

[11] The Applicant argues that the mootness of his underlying application for judicial review if he is removed constitutes irreparable harm. As held by my colleague Justice Angus Grant in *Yacoubou v. Canada (Citizenship and Immigration)*, 2025 CanLII 39070, at paragraph 17, the Applicant's position is not supported by the jurisprudence which has established that mootness of litigation will not necessarily establish irreparable harm (*Shpati v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 286 at paras 30, 38-39). I find in this case that the mootness argument does not support a finding of irreparable harm, particularly so given the absence of a serious issue being raised.

[12] The Applicant argues that his removal will cause negative consequences and irreparable harm to his community members in Canada. The evidence led consists of letters from his landlady, and other friends. The Applicant has not provided the Court with any authority for the proposition that the Court should consider the harm to the community at large as satisfying the irreparable harm component of the tripartite test. Considering that the Court is to consider irreparable harm to the Applicant in its assessment of irreparable harm (*RJR MacDonald*), I find that the Applicant's argument must be rejected as unsound in law and undemonstrated in fact.

[13] The consequences to the Applicant of his loss of contact with friends and acquaintances in his community in Canada have not been shown to be inconsistent with the usual and inherent consequences of removal and therefore do not constitute irreparable harm (*Melo v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15140, at para 21).

[14] The Applicant argues that his mental health will suffer irreparable harm if he is removed. He argues that he is suffering from depression, takes prescribed medication, and has upcoming appointments for psychotherapy. There is no evidence in the record that the

Applicant has taken any steps to determine whether he can access the same medication and health services in India. There is similarly no evidence before the Court that the Applicant is in need of urgent mental health treatment or in-patient mental health supports, or is otherwise unable to travel due to his mental health. The Applicant's arguments regarding his mental health do not establish irreparable harm (*Enodumewnben v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1686).

- [15] Finally, the Applicant argues that he will not be able to support himself financially if he returns to India. The Applicant's evidence is bald and speculative. There is no evidence in the record that the Applicant cannot find employment or return to reside with his family when he returns to India until such time as he finds gainful employment. The evidence led does not meet the threshold required to establish irreparable harm.
- [16] I conclude that the Applicant has not established that he would suffer irreparable harm if the stay he seeks is not granted.
- [17] As the Applicant has failed to meet the first two prongs of the conjunctive tripartite test, I must dismiss his motion. There is no requirement in the circumstances to consider the balance of convenience.

THIS COURT ORDERS that:

1. The Applicant's motion for a stay of removal is dismissed.

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"Benoit M. Duchesne"

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Judge

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Prepared on 29 October 2026 · Esheria