

**Date: 20080521**

**Docket: IMM-3293-07**

**Citation: 2008 FC 629**

**Ottawa, Ontario, May 21, 2008**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**LEMIE JANE GADDI PACIA**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This is one more of the many cases in this Court where a stay of removal was granted by the Court and the underlying judicial review of the Officer's refusal to defer eventually comes before the Court.

## II. BACKGROUND

[2] This Applicant, a citizen of the Philippines, has had the advantage of virtually every immigration process possible. Her refugee claim was abandoned; her first H&C application in March 2006 was refused; she was the subject of an arrest warrant for failure to appear; and her PRRA application was negative.

[3] Her first departure order issued on February 2, 2004 (when her refugee claim was abandoned) was scheduled to be executed on August 24, 2007. The Application requested deferral of the August 24, 2007 removal order because she was pregnant, she had a pending second H&C, she intended to marry a person who was just arriving in Canada, she had business interests in Canada, and finally she feared risks upon return to the Philippines. This deferral request was made on August 10, 2007.

[4] To complicate the situation even more, Justice Martineau issued a stay of removal pending a hearing of the judicial review of the first H&C refusal. That stay was issued August 22, 2007.

[5] In regards to the deferral decision before the Court, this time the Removals Officer addressed fully each of the grounds advanced.

### III. ANALYSIS

[6] While the decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, has effectively changed the standard of review of these deferral decisions from the previous standard of patent unreasonableness to reasonableness, any consideration of a deferral decision must take into account the highly fact specific nature of these cases and the limited discretion of a Removals Officer in the context of the whole legislated scheme of the immigration process. Justice Dawson in *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 341, has clearly explained the limited powers of the Officer in that context.

[7] There are four factors which persuade me that judicial review should not be granted:

- the date for removal has passed so any removal is stale dated.
- the deferral issue has been subsumed by Justice Martineau's decision to defer removal in respect of the first H&C decision and therefore removal is moot until at least the disposition of that judicial review.
- the factual matrix before the Removals Officer has changed significantly particularly now that the pregnancy has run to fruition.
- the Removals Officer's decision on the facts before him was reasonable.

[8] Given the overall situation governing Ms. Pacia, any removal order/direction to report will be issued and any deferral request decided on a very different factual basis than was before the Removals Officer. I therefore decline any suggestion that I should issue any order with respect to deferral based upon the pending H&C application.

IV. CONCLUSION

[9] Therefore, this judicial review is dismissed.

[10] The issues in *Baron*, above, while related to this decision, are not dispositive of this matter.

Therefore, I will not certify the same question as was certified in *Baron*.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“Michael L. Phelan”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3293-07

**STYLE OF CAUSE:** LEMIE JANE GADDI PACIA

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 7, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** May 21, 2008

**APPEARANCES:**

Mr. Daniel Kingwell FOR THE APPLICANT

Mr. Bernard Assan FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

MAMANN & ASSOCIATES FOR THE APPLICANT  
Barristers & Solicitors  
Toronto, Ontario

MR. JOHN H. SIMS, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario