

Federal Court



Cour fédérale

**Date: 20100915**

**Docket: IMM-5229-10**

**Citation: 2010 FC 912**

[ENGLISH TRANSLATION]

**Montréal, Quebec, September 15, 2010**

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

**BETWEEN:**

**CARLOS ALBERTO SALAZAR CASTANO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

Applicant's motion for a stay of the execution of a removal order scheduled to be carried out on September 16, 2010.

**REASONS FOR ORDER AND ORDER**

[1] At the start of the hearing of this motion, the applicant wanted to file an application to amend the underlying application for leave and judicial review; the respondent vehemently objected.

Counsel for the applicant did not prove to my satisfaction that there were valid reasons to explain

his clearly late application, which was denied, especially since it had no impact on the issue of irreparable harm that the applicant must prove to obtain the stay he seeks.

[2] Assuming that the underlying application for leave and judicial review includes a serious issue, the Court is not convinced, for the reasons that follow, that the applicant will suffer irreparable harm if he is returned to Colombia:

- A removal officer does not have to stay a removal because there is no *res judicata* application based on humanitarian and compassionate considerations and on the mere fact that there are Canadian children, even if an applicant has been granted visitation or custodial rights. (See *Sookdeo v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 174, *J. H. and F. A. v. The Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness*, 2009 ONCA 17 and *Idahosa v. Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 418).
- Loss of employment and forced separation from family, spouse, children and friends is an inherent consequence of the removal (See *Melo v. Canada (M.C.I.)*, [2000] F.C.J. No. 403 (F.C.T.D.) (QL) and *Malagon v. Canada (Citizenship and Immigration)*, 2008 FC 1068). Here the applicant is not living with his children and does not seem to be their main source of financial support. He has lived with his new spouse for only a few months and does not seem to have a job. As for the "Joie de Vivre" centre with which the applicant was involved, it appears that it is currently closed and that its possible reopening, which does not depend solely on the applicant's presence in Canada, is purely uncertain.

- It does not appear that the applicant's removal calls his rehabilitation efforts into question; he can continue them in Colombia.
- Lastly, the irreparable harm stated by the applicant regarding a fear for his life related to the Revolutionary Armed Forces of Colombia and/or the Camargo family was already considered by the Immigration and Refugee Board and the Pre-removal Risk Assessment Officer whose decisions were the subject of two applications for leave and judicial review that were denied by this Court. No additional evidence in this respect supports the applicant's allegation.

[3] Under the circumstances, the balance of convenience favours the respondent, the public interest requiring that the removal order be applied as soon as the circumstances allow (See subsection 48(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[4] Consequently, the requested stay is denied and the applicant's motion is dismissed.

**ORDER**

The requested stay is denied and the applicant's motion is dismissed.

"Yvon Picard"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5229-10

**STYLE OF CAUSE:** CARLOS ALBERTO SALAZAR CASTANO v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 13, 2010

**REASONS FOR ORDER  
AND ORDER:** Pinard J.

**DATED:** September 15, 2010

**APPEARANCES:**

Roland Carrier FOR THE APPLICANT

Jocelyne Murphy FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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