

Federal Court



Cour Fédérale

Date: 20110526

**Docket: IMM-2948-11
IMM-2950-11
IMM-3228-11**

Citation: 2011 FC 619

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 26, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

BUTCHER ABIGAIL ELIZABETH

Applicant

and

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

Respondents

REASON FOR ORDER AND ORDER

[1] A child should not be used for the purposes of a legal proceeding where the evidence is nonexistent, where a void is filled by a fact that is not in evidence.

[2] There is no evidence in the file to indicate that custody of the child is shared between the child's father and mother; therefore, the mother has sole responsibility for her child in this case.

[3] In *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 NR 302, 11 ACWS (3d) 440 (FCA), the established test is tripartite and conjunctive. The three components of the test are met in favour of the applicant.

[4] Considering custody of the child is not shared; and considering the applicant, the mother, was educated in Canada and works and participates in community activities with children and adults; and she has forged strong ties to Canada according to the evidence; and the father does not seem to be in the picture; the case merits reconsideration on the inherent humanitarian and compassionate grounds. There is no assumed tie with the child's father and therefore, as a mother with no support, the applicant could, in the conditions of her country of origin, find herself in a precarious and impoverished situation after her removal with the child.

[5] For the reasons summarized, the Court orders a stay solely for humanitarian and compassionate (H&C) considerations (docket IMM-2950-11) to be reconsidered by another officer. (The two other dockets (IMM-2948-11 and IMM-3228-11) are not applicable further to the considerations of the respondent's statements with which the Court agrees entirely and accepts).

[6] The applicant has met the criteria from the *Toth* test for a judicial stay. The motion for a stay is granted until the application for leave is determined or, if applicable, until judgment is rendered on the application for judicial review.

ORDER

THE COURT ORDERS that the applicant's motion for a stay of removal be granted until the application for leave is determined or, if applicable, until judgment is rendered on the application for judicial review.

"Michel M.J. Shore"
Judge

Certified true translation
Elizabeth Tan, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: IMM-2948-11, IMM-2950-11 and IMM-3228-11

STYLE OF CAUSE: BUTCHER ABIGAIL ELIZABETH v.
MINISTER OF CITIZENSHIP AND IMMIGRATION
AND MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

**MOTION CONSIDERED BY CONFERENCE CALL ON MAY 25, 2011, BETWEEN
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC**

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

DATE OF REASONS: May 26, 2011

APPEARANCES:

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