

Federal Court



Cour fédérale

Date: 20120206

Docket: IMM-994-12

Citation: 2012 FC 161

Montréal, Quebec, February 6, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

HANANYEV, HADAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

(Delivered from the Bench on February 6, 2012 in Montréal, Quebec)

[1] The applicant has applied for a stay of execution of the removal order, effective February 8, 2012.

[2] The applicant, a mother of two Canadian-born children, is awaiting a response on an application by which she would be sponsored as a spouse through the Spouse-in-Canada Class program.

[3] The applicant claims the separation from her husband for an indeterminate period defeats the Spouse-in-Canada program.

[4] The applicant claims that a decision in regard to the spousal application is due within the next month, by the beginning of March 2012.

[5] The Court has not been given any evidence as to the date when the above decision is to be rendered. It is recognized that the sponsorship application was not made in a timely manner whatsoever.

[6] Due to all of the above, the basis for a stay of removal is not considered appropriate by this Court, as the applicant has not satisfied the tri-partite conjunctive *Toth* decision test criteria:

- a. no serious question has been put forward subsequent to a negative pre-removal risk assessment, under the circumstances, an absence from the applicant's spouse until a decision is made is not considered to be in such a category;
- b. no irreparable harm has been demonstrated in the circumstances; and
- c. the balance of convenience favours the Minister.

[7] As per the above, the applicant could return to Canada, subsequent to removal from Canada, if she is accepted under a different set of circumstances, circumstances that recognize the past of the applicant in context.

JUDGMENT

For all of the above reasons, **THIS COURT ADJUDICATES** that the application for a stay of removal be denied. No question of general importance for certification.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-994-12

STYLE OF CAUSE: HANANYEV, HADAS and MCI ET AL.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 6, 2012

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

RENDERED FROM THE BENCH: February 6, 2012

APPEARANCES:

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Thomas Cormie	FOR THE RESPONDENT
Charles Junior Jean	

SOLICITORS OF RECORD:

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