

Federal Court



Cour fédérale

**Date: 20120705**

**Docket: IMM-4967-12**

**Citation: 2012 FC 850**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, July 5, 2012**

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

**BETWEEN:**

**CARMEN OFELIA DE LA CRUZ  
CLAROS DE CARMONA  
LUIS ALBERTO CARMONA MACEDO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

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

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] The removal of the applicants to Peru is scheduled for July 9, 2012.

[2] The applicants are citizens of Peru. They sought protection from Canada given the events that occurred in their country of origin starting in February 2008.

[3] The applicants decided to flee their country following their work with street children and their protection of those children.

[4] The applicants reported the fact that children were held captive and required to beg and turn money over to a police authority.

[5] The applicants reported this corruption to the police and also to a recognized human rights advocacy organization.

[6] Following the complaint, the applicants were beaten, harassed, and pursued by their attackers.

[7] According to uncontradicted evidence, the applicants were followed when they settled elsewhere in Peru.

[8] For the purposes of the motion before this Court, this motion is directly connected to the humanitarian and compassionate decision. According to the humanitarian and compassionate decision, there is no contradiction with respect to what follows. In fact, the immigration officer was in agreement that the applicants settled in Canada with the installation of a company they started up and the important work they did in their community. The work was part of their vocation to

volunteer to benefit the Canadian society and, furthermore, the applicants integrated themselves into a social network and their family, who were already settled in Canada.

[9] Considering the scope of the order to stay the removal, the threshold is such that, essentially, a serious issue should be raised for their stay to be granted. In fact, it is obvious that the serious issue exists.

[10] Regarding irreparable harm, the applicants established a reputation built on and relating to their company. This is in addition to their volunteer work and their integration into society and their family; furthermore, each element of their establishment in Canada is recognized by uncontradicted evidence.

[11] The health issue does not come into play given the tardy and inconclusive evidence on this point; also, no evidence demonstrates that medical care in their country of origin cannot be given or received. The applicants' health argument is not taken into account given that the content of those arguments is not considered valid at this stage. Furthermore, the applicants participate fully in society; if not, they would never have been able to accomplish everything they have accomplished in Canada without the energy and fortitude that they have demonstrated. This is therefore why there is a serious issue to consider. Otherwise, without their accomplishments, there would not be a serious issue to consider and, this motion, connected to their humanitarian and compassionate file, would not have been accepted.

[12] Concerning the balance of convenience, the respondents will not suffer any harm with the granting of the motion.

[13] Therefore, according to the conjunctive three-part test in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA), the applicants met the three criteria in the test.

### Conclusion

[14] For all of these reasons, the stay of the removal order is granted until docket IMM-4967-12 is processed and finalized by this Court.

**ORDER**

**THE COURT ORDERS** that the applicants' motion for a stay of removal be granted until determination of the application for judicial review in docket IMM-4967-12.

“Michel M.J. Shore”

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Judge

Certified true translation  
Janine Anderson, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-4967-12

**STYLE OF CAUSE:** CARMEN OFELIA DE LA CRUZ  
CLAROS DE CARMONA  
LUIS ALBERTO CARMONA MACEDO

v

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**MOTION HEARD BY CONFERENCE CALL ON JULY 4, 2012, BETWEEN  
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC**

**REASONS FOR ORDER  
AND ORDER:**

SHORE J.

**DATED:** July 5, 2012

**WRITTEN AND ORAL SUBMISSIONS BY:**

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