

Federal Court



Cour fédérale

**Date: 20121026**

**Docket: IMM-10792-12**

**Citation: 2012 FC 1248**

**Ottawa, Ontario, October 26, 2012**

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

**BETWEEN:**

**BLANCA ELODIA PENA GONZALEZ  
RODRIGO HERNANDEZ PENA  
DAMIAN HERNANDEZ PENA**

**Applicants**

**and**

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

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The respect for the administration of justice and the maintenance of the integrity of the Canadian immigration system must not be placed in jeopardy by motions for stays of removal in the “11<sup>th</sup> hour” of a strategic nature prior to a weekend. When a judgment or previous judgments demonstrate a serious lack of credibility by applicants, who have been in Canada for a significant number of years, having had the opportunity to plead their cases before numerous instances without success, as pleaded by the Respondent, that surely must be taken into account by this Court.

[2] The application in this 11<sup>th</sup> hour, “last minute case”, is for a request for a stay of removal for removal that is scheduled for this weekend, Sunday, October 28, 2012 at 8:00 p.m.

[3] In this case, the Applicant emphasizes that a spousal sponsorship application is central to the application for a stay of removal; yet, the principal Applicant did not submit an In-Canada Spousal Sponsorship Application until only after being called to a pre-removal interview to discuss removal from Canada, that after having spent four years in attempting to obtain residence status.

[4] The Applicants arrived in Canada in 2007. In May of 2011, the Refugee Protection Division of the Immigration Refugee Board determined that the Applicants lacked credibility.

[5] On September 29, 2011, subsequent to the negative decision by the Refugee Protection Division, this Court refused to hear the case by denying it leave to be heard.

[6] On December 10, 2011, a Pre-Removal Risk Assessment notice was given to the Applicants. During that specific time period, the principal Applicant filed a spousal application sponsorship.

[7] On March 20, 2012, subsequent to a significant analysis by a Pre-Removal Risk Assessment officer, a determination was made that the Applicants were not at risk if returned to their home country.

[8] In addition, the actual application for sponsorship is incomplete and a September 11, 2011 letter requesting further information has been left unresponded to this day.

[9] On October 2, 2012, the Applicants were notified that they had to leave Canada by October 28, 2012.

[10] On October 10, 2012, the Applicants requested that the immigration authorities defer the removal order.

[11] On the same day, subsequent to the above request, an Enforcement Officer refused the request for deferral. The Officer specified that the permanent residence application was filed only in December of 2011, that is after the November 24, 2011 date, when the Applicant became aware of the Pre-Removal Risk Assessment consideration in place.

[12] Then, on October 23, 2012, on the heels of a request for judicial review, filed on October 22, 2012, the Applicants submitted a motion for a stay of removal subsequent to the determination of the Removal Officer's decision of October 10, 2012.

[13] It is important to specify that the Applicants have been "removal ready" since November 24, 2011, the date on which they were called to an interview with the removals officer; yet, the spousal application was only filed on December 8, 2011.

[14] It is also important to recall that the spousal application is not complete as personal documents are still missing, such as information in respect of the father of the minor teenaged Applicants, the sons of the principal female Applicant.

[15] As specified in the decision of *Banwait v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 522 FCTD, at para 16:

**16** I see no transgressions in the conduct of the Minister; no expectations granted the applicant; if he chose to marry while still not having his situation favourably determined by Canadian authorities, it is at his peril, not that of the Minister who has a duty to uphold the laws of Canada.

[16] As heard by this Court, the only arguments of note of the principal Applicant were focussed on the desire for the family unit to remain together as the recent husband of the principal Applicant is a Canadian citizen.

[17] Also, the husband (not the father of the principal Applicant's children) is unemployed and relies on the earnings of the work of the principal Applicant; otherwise, as was pleaded, he would have to go on welfare as stated by the counsel of the Applicant.

[18] In view of all of the above, and, as the sponsorship application can be reinstated from Mexico, the tripartite conjunctive *Toth* decision test (*Toth v. Canada (Minister of Employment and Immigration)* (FCA), [1988] 86 N.R. 302), in respect of 1) a serious question; 2) irreparable harm; and 3) a balance of convenience, has not been met. All three criteria have not been satisfied; thus, an injunction, an extraordinary legal measure, for extraordinary circumstances, when called for, is not possible in this case in view of the pleadings as a whole.

[19] Thus, as a result of all of the above, the Court comes to the conclusion, subsequent to analysis of all the documents on file and all the written and oral pleadings of both parties, that the application for a stay of removal is dismissed.

**ORDER**

**THIS COURT ORDERS that** the application for a stay of removal is dismissed.

“Michel M.J. Shore”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-10792-12

**STYLE OF CAUSE:** BLANCA ELODIA PENA GONZALEZ  
RODRIGO HERNANDEZ PENA  
DAMIAN HERNANDEZ PENA

and

THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**MOTION HELD VIA TELECONFERENCE ON OCTOBER 26, 2012 FROM  
OTTAWA, ONTARIO AND MONTREAL, QUEBEC**

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

**DATED:** October 26, 2012

**APPEARANCES:**

Lydie-Magalie Stiverne FOR THE APPLICANTS

Mario Blanchard FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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