

Federal Court



Cour fédérale

Date: 20131209

Docket: IMM-7746-13

Citation: 2013 FC 1235

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 9, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

EVELIA JOSEFINA CASTEJON SANTOYO

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] This case will not be heard because the applicant does not have “clean hands”. The applicant, a Mexican citizen, filed a motion to stay removal scheduled for December 10, 2013, to Mexico.

[2] The applicant arrived in Canada in November 2007 and claimed refugee status. The claim was rejected by the Immigration and Refugee Board as not credible. The application for leave filed with respect to that decision was dismissed by this Court.

[3] In September 2010, the pre-removal risk assessment [PRRA] led to a rejection of the application in this regard.

[4] In November 2010, also, the applicant signed a copy of the notice of her removal scheduled for December 11, 2010. The applicant did not appear for her removal.

[5] On November 19, 2012, Montréal police arrested the applicant for immigration purposes after her former spouse, Antonio Reyes Huerta, attempted to murder her.

[6] Given that the applicant testified at the trial of her ex-husband, her removal was delayed.

[7] Following a new PRRA decision in March 2013, this Court dismissed the applicant's application for leave in July 2013.

[8] After the applicant had surgery and began treatments, the applicant requested a stay of removal until the summer of 2014.

[9] In early November 2013, Dr. Thériault of Citizenship and Immigration Canada [CIC] was in contact with the immigration officer following an analysis of the latest medical reports. As a result of the intervention of the CIC's physician, the applicant's removal was rescheduled to December 10, 2013, two months after the surgery.

[10] On December 3, 2013, Dr. Thériault told the immigration officer that he had communicated with Dr. Carbajal in Mexico and that he was ready to admit the applicant to continue treatments in a medical institution in Mexico.

[11] On December 3, 2013, the immigration officer rejected the applicant's request for a stay as a result of Dr. Thériault's remarks.

[12] The Court notes that the 2010 removal date was ignored by the applicant, who has lived in Canada clandestinely and therefore illegally, without status, during the previous period already noted above.

[13] The Court notes, also, that the applicant's misconduct in failing to report to the authorities as scheduled can lead in itself to dismissal of the motion (see *Garcia v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 1341).

[14] A person who ignores a deportation and then comes to this Court for a stay of removal, an extraordinary measure, is behaving illegally with respect to Canadian immigration authorities.

[15] The applicant has not had "clean hands" for a number of years:

[13] It is important to note that the Applicants chose to disobey a valid deportation order, and a warrant was issued for their arrest. The Applicants were represented by counsel at the time. The Applicants did not approach this Court for relief until after their arrest.

[14] This Court has held that the equitable remedy of a stay can be denied to those who do not come to the Court with clean hands, including those who deliberately choose to disobey deportation orders. (*Araujo v. Canada (Minister of Citizenship and Immigration)*, (27 August 1997), IMM-3660-97 (F.C.T.D.) *Ilyas v.*

Canada (Minister of Citizenship and Immigration) (1 December 2000), IMM-6126-00 (F.C.T.D.))

[15] In the case at bar, the Applicants have ignored a validly issued removal order. As such, they have purposely violated Canada's immigration laws and have undermined the integrity of the system. The Respondent submits that this reason alone justifies the dismissal of his application. (*Homex Reality and Development Co. v. Wyoming (Village)*, 1980 CanLII 55 (S.C.C.), [1980] 2 S.C.R. 1011 see also *Basu v. Canada*, [1992] 2 F.C. 38 (F.C.T.D.))

(*Manohararaj v Canada (Minister of Public Safety and Emergency Preparedness)* 2006 FC 376).

[16] Also, “those who seek equity must do equity” (*Wright v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 113).

[17] In addition, Canadian immigration authorities have done everything in their power to ensure that care and medical treatments will be available for the applicant in Mexico.

[18] For all the above reasons, the applicant's motion for a stay is dismissed.

ORDER

THE COURT ORDERS that the applicant's motion for a stay is dismissed.

“Michel M.J. Shore”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7746-13

STYLE OF CAUSE: EVELIA JOSEFINA CASTEJON SANTOYO v
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO. PURSUANT TO
RULE 369**

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

DATED: DECEMBER 9, 2013

WRITTEN SUBMISSIONS BY:

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