

Federal Court



Cour fédérale

**Date: 20160830**

**Docket: IMM-3533-16**

**Citation: 2016 FC 992**

**Vancouver, British Columbia, August 30, 2016**

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

**BETWEEN:**

**TERENCIO DE JESUS RAUDALES ZUNIGA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**UPON** motion of the Applicant for an order staying the execution of a deportation order presently set for August 31, 2016 to Honduras, based on an underlying application for leave and judicial review with respect to a pre-removal risk assessment decision [PRRA Decision];

**AND UPON** considering the evidence and the submissions contained in the motion records submitted by the Applicant and by the Respondent;

**AND UPON** hearing the oral submissions of counsel for the Applicant and for the Respondent;

**AND UPON** considering that a stay can only be issued upon the Applicant convincing the Court that (i) there is the existence of a serious issue to be determined by the Court, (ii) irreparable harm will ensue, and (iii) the balance of convenience in issuing such an order lies in his favour (*Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) [*Toth*]; *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311);

**AND UPON** acknowledging that the issuance of a stay is an extraordinary remedy wherein the Applicant needs to demonstrate “special and compelling circumstances” that would warrant “exceptional judicial intervention”: *Legnin v Canada (Citizenship and Immigration)*, 2013 FC 869 at para 13; *Ramirez Bazan v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1242 at para 43; *Ikeji v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 573, at para 8;

**AND UPON** reviewing and considering the PRRA Decision, the Applicant satisfies the above-mentioned tripartite stay test, based on the findings below given that:

[1] A serious issue arises with respect to the Officer’s consideration of the recently-published UNHRC Guidelines (*Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras*, July 27, 2016) in light of the Applicant’s situation. The Officer did not consider those Guidelines in the initial PRRA Decision of 15 August 2016, but subsequently did in the later PRRA Decision of ‘Response to Additional Submissions’ dated

August 16, 2016. Specifically, the extent to which the Officer considered the impact to the Applicant of the new information provided in these Guidelines, merits further consideration, and thereby this application meets the test for the first arm of the *Toth* test. This Court has held that UNHCR evidence constitutes foremost authority: *B231 v. Canada (Citizenship and Immigration)*, 2013 FC 1218 at para 46.

[2] A related arguable issue arises as to whether the Officer properly conducted a prospective risk analysis in the August 16 reasons, which directly impacts on the generalized vs. personalized risk assessment contained in the initial (August 15) PRRA Decision.

[3] I find that given the nature of the serious issue raised, which goes to the heart of the risk analysis, that the second arm of the *Toth* test is met because the potential harm raised in the new evidence meets the requisite onus as outlined in *Akyol v. Canada (M.C.I.)*, 2003 FC 931 at para 7. The Respondent points out that risk has been assessed on four occasions previously. However, the most recent of those risk assessments was several years ago, and certainly long predated the new information presented by Applicant's counsel for this PRRA application.

[4] Finally, the balance of convenience in this case lies with the Applicant, despite his chequered history in Canada and non-compliance with immigration law, and mindful of the Respondent's clean hands arguments, I nonetheless find that the Applicant's potential risk in returning to Honduras, in light of the new evidence, merits the benefit of a full consideration on the merits of the underlying application for leave judicial review.

[5] I applaud the efforts of both counsel in preparing excellent written materials, in assisting the Court with their oral arguments during today's stay motion, and for ensuring that their clients were both so ably represented.

**THIS COURT ORDERS that:**

1. This motion for a stay of deportation is granted.
2. Given the Applicant's current detention, that the underlying application for leave and judicial review is set down by the Registry at the first available opportunity, and the parties thereafter proceed as expeditiously as possible.

"Alan S. Diner"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3533-16

**STYLE OF CAUSE:** TERCENCIO DE JESUS RAUDALES ZUNIGA V  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** AUGUST 30, 2016

**ORDER AND REASONS:** DINER J.

**DATED:** AUGUST 30, 2016

**APPEARANCES:**

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Helen Park FOR THE RESPONDENT

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