

Federal Court



Cour fédérale

Date: 20090706

Docket: IMM-2620-09

Vancouver, British Columbia, July 6, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SUNIL DUTT SHARMA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER FOR PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

ORDER

UPON motion dated June 18, 2009, on behalf of the Applicant, for a stay of the execution of a removal order which became enforceable on February 16, 2009, and was scheduled for execution on or before June 26, 2009, but deferred to July 7, 2009;

Acknowledging that, as per *bona fide* identity documents, the Applicant (48-years-old), a Hindu male, originates in Haridwar, a sacred Hindu city at the base of the Himalayas and of the Ganges and his sponsor (36-years-old) a Moslem female, originates from Kabul, Afghanistan, a traditional Moslem enclave;

Recognizing that the two, notwithstanding societal, cultural and religious differences came together and that, even if, only for appearances, due to attached stigma, that would rarely happen even to gain advantage within the immigration system for the purpose of regularizing one's status;

Acknowledging the more mature age and challenging fatigue factor from long hours of menial labour, in response to a Canadian middle class formulation of questions directed to a different population base (in regard to evening pastimes considered significant), in addition to the more-than-likely embarrassment due to cultural backgrounds, orientations, upbringing sensitivities and private couple mores, the fact that the two members of the couple (applicant being subject to sponsorship) originate from very different traditional background societies, where answers to questions could be understood in a complete opposite manner vis-à-vis orientation to family and friends of both, respectively (where the family of the respective other would not necessarily be recalled, considered and reflected upon, as would ordinarily be thought, as both would be setting aside family considerations common within the Canadian cultural setting);

Recognizing in *Kahn v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1490 as per Justice Roger Hughes who, in paragraph 16 therein, stated: “The genuineness of the relationship must be examined through the eyes of the parties themselves against the cultural background in which they lived” (underlined by the Court);

And, recognizing that each case is a case unto itself in regard to its specific merits (a rare cas d'espèce);

In addition, acknowledging that the evidence demonstrates that the date of marriage was not set, suddenly, three days after the reported overstay, nor set purposely the same day as a report was made for working without a permit;

UPON the Applicant having thus met the conjunctive tripartite *Toth* test (*Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.);

THIS COURT ORDERS that the Applicant is granted an interim order staying the execution of his removal order until the Application for Leave and Judicial Review of the officer's refusal of the Spouse or Common-Law Partner in Canada Class application is determined.

“Michel M.J. Shore”

Judge