

Federal Court



Cour fédérale

Date: 20091102

Docket: IMM-5243-09

Citation: 2009 FC 1124

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, November 2, 2009

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

ANA IVETTE GONZALEZ Y LOYO
MARIO ALEJANDRO HERNANDEZ GONZALEZ
ANA IVETTE HERNANDEZ GONZALEZ
JOSE MIGUEL HERNANDEZ GONZALEZ

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion to stay the execution of a removal order to Mexico, scheduled for November 8, 2009.

[2] The motion is joined to an application for leave and judicial review of a decision of an enforcement officer dated October 23, 2009, refusing the request to defer the removal.

[3] In order to succeed, the case law required the applicants to demonstrate that there was a serious question to be tried on the application for judicial review, that they would face a risk of irreparable harm and that the balance of convenience was in their favour (*Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.)).

[4] Of all of the arguments submitted by the applicants, the only one I accept is that with regard to redress before the Ontario Criminal Injuries Compensation Board (“the Board”). The female applicant is the principal applicant.

[5] The record shows that an oral hearing will be scheduled but that the date, time and place have yet to be determined.

[6] The enforcement officer was asked to stay the removal by the female applicant, given that she [TRANSLATION] ‘... is awaiting a decision from the CAVAC for the abuse she suffered at the hands of her new spouse in Canada, and leaving the country would put an end to her claim for compensation’.

[7] In his decision, the enforcement officer wrote: “However, no document is submitted with regards to the status of that request”.

[8] According to the respondent’s counsel, the enforcement officer’s file contained letters from the Board dated June 26, 2009 stating that the file of the application for compensation was complete, that a hearing was recommended and that she would receive a notice of hearing.

[9] Therefore, the officer, when he made his decision, had not taken this information into consideration.

[10] This raises a serious issue.

[11] As to whether the female applicant's presence was required at the oral hearing, the Court consulted certain Ontario statutes and is not in a position to make a determination in this regard.

[12] If the female applicant were to leave the country, would the claim before the Board be cancelled? The Court is not in a position to answer this as Ontario legislation provides for the possibility of written or electronic hearings. The record does not show that an oral hearing is required.

[13] Irreparable harm must be real. This case does not show such harm.

[14] With regard to the balance of convenience, the Court notes the wording of section 48 of the *Immigration and Refugee Protection Act* and the factual background regarding the female applicant and her three children. The balance of convenience favours the respondent.

[15] Accordingly:

The application for a stay is dismissed.

ORDER

For the reasons read at the hearing, the Court dismisses the application for a stay.

“Simon Noël”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5243-09

STYLE OF CAUSE: ANA IVETTE GONZALEZ Y LOYO ET AL v. THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 2, 2009

REASONS FOR ORDER: NOËL J.

DATED: November 2, 2009

APPEARANCES:

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