

Federal Court



Cour fédérale

Date: 20120423

Docket: IMM-3616-12

Citation: 2012 FC 475

Montréal, Quebec, April 23, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MIRIAM NATALY PALOMO DIAZ

demandeur

et

**LE MINISTRE DE LA CITOYENNETÉ
ET DE L'IMMIGRATION**

et

LE MINISTRE DE LA SÉCURITÉ PUBLIQUE

défendeurs

REASONS FOR ORDER AND ORDER

[1] Subject to removal from Canada, the applicant has requested of this Court, a stay of removal until a final determination has been reached in respect of humanitarian considerations.

[2] This case, simply stated, as credibility is not an issue herein, is one of a young woman, the applicant, who had been subject to severe physical abuse in Canada by her alcoholic husband, who

had caused the premature birth of a child (not his own); he had outwardly stated that he did not care if the child was lost.

[3] The child, unwell and carefully followed with medical treatment, was conceived in circumstances wherein the young woman had been raped by a member of a criminal street gang who had threatened the woman if she did not abort the foetus.

[4] In addition, a criminal case is pending against the woman's husband for assault and death threats; divorce proceedings have been initiated.

[5] In her country of origin, the woman has no one to whom to turn. Both, she and her child, in a most fragile state, have resided in shelters in Canada. If returned, with no source of income, no home, no social benefits and no health care for the child, in a precarious delicate state, according to the evidence, serious peril would prevail for both mother and child.

[6] In certain exceptional cases, unto themselves, due to time spent and situations arisen in Canada wherein hearings have run their course, at each instance and ultimately all that remains prior to removal, in a near future, is the sole consideration by the Minister, and not that of the Court on the issue of humanitarian considerations; very little choice appears in such exceptional cases to the three branches of government of which the Court is only one branch and, thus, must recognize itself as one, solely able to act, but within its own jurisdiction.

[7] In these certain cases, ultimately, when the jurisprudential gamut has almost run its course, very little choice remains in the humanitarian tradition of jurisprudential interpretations, present legislative largesse, as well as executive branch policy humanitarian understanding of undertakings then put into effect.

[8] Thus, Canada becomes the recipient of the challenges of humanitarian concerns in cases such as this one. That is due to certain countries of origin, being either of a tyrannical variety or because the governments and authorities in power in certain other countries have lost control to criminal elements, including drug and human cargo smuggling cartels (as per the documentation). In such cases in certain areas of countries, crime has run amok and the population is held hostage, and of whose victims, Canada (and other democratic countries) become the recipient.

[9] Until some other national or international legislative provisions or legislative instruments (and policy) solutions are found, for a greater sharing of the humanitarian necessities, certain countries, such as Canada act to alleviate humanity's burden because of Canada's moral policies re humanitarian considerations (not often found in other countries), translated into legislative provisions and majority jurisprudential interpretations.

[10] Until such time that either the situation changes, if ever, or a rethinking takes place in respect of the three branches of the government, Canada and certain other countries as per the legislation and jurisprudential interpretation, pick up humanity's broken individuals in an attempt to make them whole by its notion of humanitarian considerations.

[11] For all the above reasons, due to the exceptional facts of this case, a case unto itself, the criteria of the tripartite conjunctive *Toth* decision are fully met by the applicant, requesting a stay of proceedings so as not to be deported with her child to her country of origin prior to the conclusion in this matter of the humanitarian considerations having been fully determined in the applicant's case.

ORDER

THIS COURT ORDERS that the application for a stay of removal be granted; thus, the deportation order re the 30th of April 2012, be stayed until a final determination be reached in file IMM-3616-12, in regard to the humanitarian considerations in respect of the applicant.

“Michel M.J. Shore”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3616-12

STYLE OF CAUSE: MIRIAM NATALY PALOMO DIAZ
et MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 23, 2012

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

DATED: April 23, 2012

APPEARANCES:

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Michel Pépin FOR THE RESPONDENTS

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