

Federal Court



Cour fédérale

Date: 20131206

Docket: IMM-7637-13

Citation: 2013 FC 1228

Toronto, Ontario, December 6, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**BONNIE MARILYN FURBERT
KHALIL SHEAQWON HAYWARD
AKEYLE KALONJI FURBERT
TENDAI ALALE FURBERT**

Applicants

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicants, a mother and her three children are seeking a stay of removal from deportation to Bermuda. They are challenging an Enforcement Officer's decision to refuse to defer the Applicants' removal on the basis of a pending two month Humanitarian and Compassionate Considerations application [H&C].

[2] This Court has already dismissed leave of the Applicants' negative refugee claim on the basis of state protection and the possibility of obtaining citizenship from the United Kingdom [U.K.].

[3] Upon reading all the materials submitted by both parties and, also, having heard the parties, the Court has considered the matter in its entirety.

[4] This Court recognizes the application of the tripartite conjunctive *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) decision test criteria and has determined that no serious issue remains to be determined; no irreparable harm would ensue for the Applicants if the stay is not issued; nor is there a balance of convenience that favours the Applicants.

[5] The discretion of the Enforcement Officer is limited. As no special circumstances in regard to the H&C are in evidence, other than the usual hardships of departure for adults and children, the Enforcement Officer's margin of manoeuvre in such cases is non-existent (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311)

[6] The lack of a Pre-Removal Risk Assessment [PRRA] does not necessitate deferral on the basis of constitutionality (*Toth v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 1051; *Sangarapillai v MPSEP* (6 January 2013) IMM-13249-12).

[7] Also, subsequent to the coming into force of the *Balanced Refugee Reform Act*, SC 2010, c 8, subparagraph 112.(2)(b.1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27, no person subject to removal may apply for a PRRA if removal takes place within twelve months of the Refugee Protection Division's decision that the refugee claim was abandoned; any Charter challenge must demonstrate a real risk of mistreatment, none of which was shown (*Farhadi v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 315, 144 FTR 76 (TD)).

[8] The right to an automatic citizenship is, also, not contested by the Applicants in regard to the United Kingdom.

[9] No outstanding risks or irreparable harm have been manifested to this Court.

[10] Therefore, none of the three conjunctive criteria of the *Toth* (FCA) decision test have been satisfied by the Applicants.

[11] Thus, the motion for a stay of removal is denied.

ORDER

THIS COURT ORDERS that the motion for a stay of removal be denied.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7637-13

STYLE OF CAUSE: BONNIE MARILYN FURBERT
KHALIL SHEAQWON HAYWARD
AKEYLE KALONJI FURBERT
TENDAI ALALE FURBERT
v
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 6, 2013

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

DATED: DECEMBER 6, 2013

APPEARANCES:

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John Provart FOR THE RESPONDENT

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