

Federal Court



Cour fédérale

Date: 20160811

Docket: IMM-3267-16

Citation: 2016 FC 920

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 11, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**CARLOS ANDRES CASTRO LOAIZA
MARIA ANGELICA LOAIZA BALLESTEROS
MARIANA CASTRO LOAIZA
NIKOLAI ANDRE CASTRO LOAIZA**

Applicants

and

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

Respondent

**JUDGMENT AND REASONS
(judgment delivered from the bench)**

[1] The applicants, citizens of Colombia, are asking the Court to issue a stay of their removal from Canada, set for August 14, 2016.

[2] The applicants arrived in Canada on July 25, 2015, and made a claim for refugee protection.

[3] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada denied their application for refugee protection on December 21, 2015, on the grounds of lack of credibility in the applicants' accounts. In addition, the Federal Court denied their application for leave to seek judicial review of the RPD's negative decision.

[4] The applicants met with a law enforcement officer to arrange their departure from Canada, set for April 29, 2016, and asked for a postponement. They were denied a postponement; however, on April 21, 2016, the applicants' removal was postponed to allow the children to complete their school year. For this reason, the applicants discontinued their application for leave to seek judicial review, the children having in fact been granted an extension to complete their school year.

[5] Due to the postponed departure, the children had the opportunity to complete their school year. On June 16, 2016, the applicants met with a law enforcement officer to finalize the arrangements for their departure, planned for around July 4, 2016; they orally asked the officer to postpone their removal again. This time, they did so stating that the school year in Colombia would start in January 2017. This request was denied.

[6] On June 22, 2016, the applicants asked to have their departure postponed to allow them more time to prepare; they were granted a postponement to allow them to take advantage of lower prices on the plane tickets they wanted to buy. The applicants therefore agreed to depart on August 14, 2016.

[7] On June 27, 2016, the applicants nevertheless requested that their removal be suspended until January 2017 to accommodate the children with regard to the Colombian school year. On August 1, 2016, the applicants received a refusal of their request.

[8] Given that the departure dates had already been postponed several times, and despite the applicants' request due to the interruption in schooling for a few months, the Court finds that such a gap would not cause the children any irreparable harm, given that they had completed the school year in Canada and would begin a new school program in Colombia a few months later.

[9] The three criteria stated in *Toth v. Canada (Minister of Employment and Immigration)*, 86 NR 302 (FCA) must all be satisfied in order for the applicants' request to be allowed.

[10] A stay is an extraordinary measure that requires the existence of "special and compelling circumstances" for an exceptional judiciary intervention to be made. The applicants did not meet any of the three criteria in the *Toth* test.

[11] The applicants claim that the removal officer did not duly examine the evidence regarding the children's situation.

[12] The change made to subsection 48(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27, on December 15, 2012, further restricted the Court's already limited discretionary power by requiring that removal orders be enforced "as soon as possible", rather than "as soon as is reasonably practicable" as was stated in the earlier version of the Act.

[13] The evidence in no way suggests that the children would suffer irreparable harm. Furthermore, no serious issue was revealed by the applicants, nor any balance of convenience in the applicants' favour upon analysis of the grounds; even in light of the new case law cited, which ensures protection for children who could be put at genuine risk, this was in no way substantiated.

[14] For all of these reasons, the Court rules that the motion for stay of the removal order is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the motion for stay of the removal order is dismissed.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3267-16

STYLE OF CAUSE: CARLOS ANDRES CASTRO LOAIZA ET AL. v THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

**MOTION HEARD BY CONFERENCE CALL ON AUGUST 11, 2016, BETWEEN
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC**

JUDGMENT AND REASONS: SHORE J.

DATED: AUGUST 11, 2016

ORAL AND WRITTEN SUBMISSIONS BY:

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