**Date: 20081208**

**Docket: IMM-5276-08**

**Citation: 2008 FC 1360**

**Ottawa, Ontario, this 8th day of December 2008**

**Present: The Honourable Orville Frenette**

**BETWEEN:**

**GRATIANA DIONE EWANG**

**Applicant**

**and**

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

**Respondent**

## REASONS FOR ORDER AND ORDER

[1] This is a motion seeking a stay of execution of an order of removal to the United States, scheduled for November 9, 2008 at 9:00 a.m.

[2] The applicant is a native of Cameroon, who came to Canada from the United States on September 22, 2002 and claimed refugee status. She had not claimed that status in the U.S.

[3] The Refugee Protection Division (the "RPD") refused her refugee claim on February 18, 2004. Her application for judicial review of that decision was denied on June 11, 2004.

[4] The applicant applied for permanent residence on Humanitarian and Compassionate ("H&C") grounds; this was refused. Her Pre-Removal Risk Assessment ("PRRA") application was rejected and the reasons were communicated to her on November 5, 2008.

[5] The applicant requested a deferral of the removal order issued, but it was refused on November 17, 2008.

[6] She now applies to obtain a stay of the execution of the removal order until the disposition of an application for judicial review of the PRRA decision and the refusal of the deferral.

[7] The evidence on file shows that since she is in Canada, the applicant is gainfully employed and participates in community and church activities.

[8] In 2002, she met Mr. Leslie Donova Black and co-habited with him; they were married on November 17, 2008.

[9] In *Toth v. Minister of Employment and Immigration* (1988), 86 N.R. 302, the Federal Court of Appeal established a tri-partite conjunctive set of conditions to determine if a stay should be granted, i.e.:

1. There is a serious issue to be tried;

2. Irreparable harm will be caused if the stay is not granted; and

3. The balance of convenience favours granting the stay.

[10] The threshold test to establish that there is a serious issue is, according to Justice Pelletier in *Wang v. Minister of Citizenship and Immigration*, [2001] 3 F.C. 682, at paragraph 11: the serious issue is not "frivolous and vexatious", but rather that it has a "likelihood of success" in the underlying application.

[11] The applicant seeks a stay of removal until the applications for leave and for judicial review of the PRRA decision and the removal officer's decision are determined. She submits that the PRRA officer erred in not interviewing her after he examined the "new evidence" (i.e. a newspaper article which was not part of the evidence in the Refugee Protection Division's hearing of 2004) (see *Elzi v. Minister of Citizenship and Immigration*, 2007 FC 240).

[12] She alleges the officer did not properly assess the extreme hardship she would suffer if returned to Cameroon. She also pleads that the officer did not assess her establishment in Canada and the effects of the removal on her marriage.

[13] The respondent answers that the PRRA officer did not commit any error because he examined the 2006 newspaper article, which showed a picture of the applicant as "young people operating under SCYL and who have made an impact with their activities". He states this is a general article which lacks sufficient detail and presumably refers to incidents which occurred

before April 2002, and shows no indication as to why the applicant would be included four years later about being arrested and detained in Cameroon.

[14] The officer analyzed all the evidence and there was no valid reason requiring the applicant to be re-consulted about this evidence which she had offered.

[15] The officer also addressed all the other issues raised by the applicant.

[16] In my view, I do not perceive any issues which would have any “likelihood of success” in the judicial review.

[17] The applicant submits the PRRA officer did not address properly the following matters:

1. the psychological impact of the deportation;
2. the hardship of separation from her husband and Canada; and
3. the hardships and risks of a return to the established danger in Cameroon.

[18] The respondent submits that the PRRA officer did address all of these concerns. All of the concerns raised are speculative and therefore cannot be accepted (*Atakora v. Minister of Citizenship and Immigration*, [1993] F.C.J. No. 826 (T.D.)). Furthermore, the applicant is to be removed to the U.S. and no evidence was presented to justify concluding that she would automatically be deported to Cameroon.

[19] An analysis of these submissions leads to the conclusion that the applicant will suffer harm and inconvenience by a deportation but these are usual consequences that cannot be considered as "irreparable harm" in a stay application (*Melo v. Minister of Citizenship and Immigration*, [2000] F.C.J. No. 403 (T.D.), at paragraphs 20 and 21; *Wright v. Minister of Citizenship and Immigration*, [2002] F.C.J. No. 138 (T.D.)).

[20] The applicant has had the benefit of the usual range of remedies under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the "Act") and the Minister has the obligation to execute removal orders as soon as practicable (see subsection 48(2) of the Act). The applicant has not advanced any reason that prevails over this obligation.

[21] Finally, public interest in having final decisions on the merits in immigration and refugee cases, weighs heavily against stays. See, for example, *Minister of Citizenship and Immigration v. Fast* (2000), 188 F.T.R. 150, affirmed by the Federal Court of Appeal (2001), 288 N.R. 8.

[22] The applicant submits that the removal officer wrongly exercised his discretion in refusing a deferral of the date of execution of the removal order. The removal officer has no expertise and possesses no powers to assess risk factors as a PRRA officer does and is limited to practical problems in deferrals. He or she may consider factors such as illness, or other impediments to travelling and perhaps in cases of long-standing H&C applications that were brought on a timely basis but have yet to be resolved. This is not the case here. Since 2002, the applicant has exhausted most legal recourses she could invoke under the Act.

[23] The argument based upon waiting a decision of judicial control of a PRRA decision is not a valid reason for a removal officer to defer the execution of the order (*Simoes v. Minister of Citizenship and Immigration*, 187 F.T.R. 219, at paragraph 12).

[24] Considering the above conclusions, this motion is dismissed.

**ORDER**

The motion for a stay of execution of the removal order scheduled for December 9, 2008 at 9:00 a.m. is hereby dismissed.

"Orville Frenette"
Deputy Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5276-08 |
| **STYLE OF CAUSE:** | GRATIANA DIONE EWANG v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | December 3, 2008 |
| **REASONS FOR ORDER AND ORDER:** | The Honourable Orville Frenette, Deputy Judge |
| **DATED:** | December 8, 2008 |

**APPEARANCES:**

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|---|---|
| Mr. Matthew Tubie | FOR THE APPLICANT |
| Ms. Mary Matthews | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| John H. Sims, Q.C.<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |