

**Date: 20090721**

**Docket: IMM-3545-09**

**Citation: 2009 FC 738**

**Ottawa, Ontario, July 21, 2009**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**SURINDER KAUR PADDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Introduction

[1] This decision is in regard to a motion for a stay of execution of a removal order to be effected July 22, 2009.

[2] The Applicant's underlying application is one for leave and for judicial review of a negative Pre-Removal Risk Assessment (PRRA), dated May 15, 2009.

II. Issues

[3] To succeed in a motion for a stay of execution of removal order, an Applicant must meet all three criteria of the tri-partite test established by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.):

- a. serious issue;
- b. irreparable harm; and;
- c. balance of convenience.

(Reference is also made to: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Wang v. Canada (Minister of Citizenship and Immigration)*, [2001] 3 F.C. 682, 2001 FCT 148 (T.D.)).

### III. Analysis

#### A. **Serious Issue**

[4] The Applicant's allegations presented to the PRRA are summarized by the following:

10. **Since the I.R.B. hearing, all of the evidence of danger has been submitted to the authorities charged with deciding on her case. This information shows that the applicant's family is still persecuted because of her ... She also has several recent affidavits about the danger for her...**

...

15. **... Mrs. Padda is suffering terribly because of this inhumane treatment.**

(Emphasis added).

(Applicant's Motion Record at pp. 80 and 83).

[5] Furthermore, the Applicant explains in her Affidavit that:

14. **I believe that there is [sic] great confusion on the situation of militants as is stated in the previous IRB decision.** There is a large variety of political opinions and more than one Sikh nationalist party. It is false to say that everything is now okay in the Punjab and the documentary evidence does not say this;

(Applicant's Motion Record at p. 6).

[6] The documents in evidence are based on alleged threats and incidents which had already been taken into consideration by the Refugee Protection Division (RPD). The Applicant's Motion Record, in a document at page 75, bearing no date, states:

... **Surinder Kaur Padda wife of Nachhattar Singh Padda's life remain in danger ...**

**The police continues to harass the family of Nachhattar Singh Padda alleging him and his wife Surinder Kaur Padda helping the militants wanted by the Police...** (Emphasis added).

[7] In another letter produced by the Applicant at pages 76 and 77 of her Motion Record, the following appears:

... I am well conversant with the **past** and (sic) present circumstances related to Nachhattar Singh Padda and his wife Surinder Kaur Padda. (Emphasis added).

[8] Every threat and incident reported in the Applicant's documents is directly related to the Applicant's narrative which was in serious question at the Immigration and Refugee Board (IRB).

[9] An excerpt of the RPD decision, attached as **Exhibit "B"** to the Affidavit of Ms. Sheila Markland, reads:

When confronted with some of the inconsistencies between her narrative and the information provided to get her temporary resident visa for Canada, the claimant replied that an agent had handled all of the procedures and that she personally did not understand English. The panel notes that the claimant personally signed a number of the documents in question and that some of the documents came from public institutions. A single agent cannot therefore have been responsible for the information thus provided. **The panel determines that the inconsistencies in question undermine the claimant's overall credibility.** (Emphasis added).

[10] The very same threat that was presented at the IRB was brought forward in support of the PRRA application.

[11] The Applicant again submitted Exhibit "A" with her affidavit in her Motion Record (at pp. 10-11). It is exactly the same written narrative which she presented to the IRB two years ago.

[12] It is the same written narrative which, in testimony before the IRB, was held to be inconsistent with the information the Applicant had provided to obtain her temporary resident visa for Canada.

[13] In similar regard, Justice Sean Harrington has referred to *Kouka v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1236:

[27] ... Mr. Justice Nadon wrote the following in *Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751 (QL):

[12] ... **The Applicants seem to be of the view that if they continue to add documents to the record, the credibility findings of the Refugee Board are somehow going to be "reversed" or "forgotten". In my view, that is a mistaken view because the officer who hears an H&C application does not sit in appeal or review of either the Refugee Board or the PDRCC Officer's decision.** Thus, on the H&C application, Mr. St. Vincent could not

proceed on the basis that Mr. Hussain was an MQM member, given the Refugee Board's findings in that respect. **In short, the purpose of the H&C application is not to re-argue the facts which were originally before the Refugee Board, or to do indirectly what cannot be done directly – i.e., contest the findings of the Refugee Board.**

(Emphasis added).

[14] In a recent decision in the context of a Humanitarian and Compassionate (H&C) application following the denial of a claim for refugee protection by the IRB, *Yansane v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1213, in which, at paragraph 51, *in fine*, Justice Maurice Lagacé referred to a case in an H&C application, wherein an attempt was made to “produire des documents qui ne font que donner un nouvel emballage aux mêmes éléments de risque déjà considérés par le décideur antérieur”.

[15] A very serious allegation as to “poor representation” for the purposes of the PRRA by a “false Immigration Consultant” was made by the Applicant’s counsel in support of the motion for a stay of the execution of removal.

[16] This Court has expressed itself in regard to allegations of professional misconduct in the absence of clear proof in each individual case; Justice Denis Pelletier stated in *Nunez v. Canada (Minister of Citizenship and Immigration)*, 189 F.T.R. 147, [2000] F.C.J. No. 555 (QL):

[19] ... **evidence that the matter has been referred to the governing body for investigation. In this case, there was ample opportunity to do one or the other but neither was done. The failure to do so is inconsistent with the gravity of the allegations made...** It is a question of recognizing that allegations of professional negligence are easily made and, if accepted, generally result in the relief sought being granted. The proof offered in support of such an allegation

**should be commensurate with the serious nature of the consequences for all concerned.** (Emphasis added).

[17] It is noted that the Applicant was represented by a lawyer before the IRB and also by legal counsel who requested leave of the Federal Court subsequent to the IRB hearing; leave was denied by Justice Yvon Pinard.

[18] Due to all of the above reasons, there is no serious issue in this case.

### **B. Irreparable harm**

[19] The Applicant alleges in her Motion Record:

28. There are no guarantees at all for her personal safety in India, she could easily be killed or go to jail for a long period of time. **She has suffered detention in the past**, her husband has been severely tortured. The police believe that her brother-in-law is a member of Babbar Khalsa, a Sikh militant organization that has done many terrorist acts. This is the type of person who is clearly targeted up to this day. (Emphasis added).

(Applicant's Motion Record at p. 86).

[20] The Applicant disregards the RPD decision on the very same issues, wherein, it has discussed the alleged danger related to the Applicant's brother-in-law:

All things considered, the panel finds the claimant not credible. Accordingly, she has not shown on a balance of probabilities that, if she were to return to her country, there would be a serious possibility of persecution due to her brother-in-law's activities or that she would personally be subjected to a danger of torture or to a risk to her life by the police officers in Punjab.

(RPD decision at p. 4 *in fine*).

[21] Justice Luc Martineau, in *Akyol v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 931, 124 A.C.W.S. (3d) 1119, has stated:

[8] ... **This Court has held that where an applicant's account was found not to be credible by the Refugee Division, this account cannot serve as a basis for an argument supporting irreparable harm in a stay application:** *Saibu v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 151, 2002 FCT 103 at para. 11; *Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751 at para. 12; and *Ahmed v. Canada (Minister of Citizenship and Immigration)*, [2001] 1 F.C. 483 at 492-93 (T.D.). (Emphasis added).

(Reference is also made to: *Mahadeo v. Canada (Minister of Citizenship and Immigration)* (1999), 166 F.T.R. 315, 86 A.C.W.S. (3d) 773, by Justice Marc Nadon.); *Iyare v. Canada (Minister of Citizenship and Immigration)* (2000), 102 A.C.W.S. (3d) 153, [2000] F.C.J. No. 1995 (QL), by Justice Yvon Blais).

[22] The evidence does not establish that the Applicant would suffer irreparable harm upon removal to India.

### **C. Balance of convenience**

[23] As no serious issue has been demonstrated and no evidence of irreparable harm has been provided, the balance of convenience then favours the Respondent (*Naseem v. Canada (Solicitor General)*, [1993] 68 F.T.R. 230, 43 A.C.W.S. (3d) 293).

[24] As the required demonstration of irreparable harm has not been made per the *Toth* test, it is in the interest of the Minister to execute the removal as soon as reasonably practical in accordance with section 48 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) (*Aquila v. Canada (Minister of Citizenship and Immigration)* (2000), 94 A.C.W.S. (3d) 293, [2000] F.C.J. No.

36 (QL); *RJR-MacDonald*, above; *Singh v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 616, [1998] F.C.J. No. 828 (QL) by Justice Marshall Rothstein).

[25] The Minister is **under explicit duty to execute valid removal orders in recognition of a public interest for prompt execution of such orders**. In *Membreno-Garcia v. Canada (M.E.I.)*, [1992] F.C.J. No. 535 (F.C.T.D.), Justice Barbara Reed interpreted the public interest considerations underlying the assessment of the balance of convenience:

What is in issue, however, when considering balance of convenience, is the extent to which the granting of stays might become a practice which thwarts the efficient operation of the immigration legislation. It is well known that the present procedures were put in place because a practice had grown up in which many many cases, totally devoid of merit, were initiated in the court, indeed were clogging the court, for the sole purpose of buying the appellants further time in Canada. There is a public interest in having a system which operates in an efficient, expeditious and fair manner and which, to the greatest extent possible, does not lend itself to abusive practices. This is the public interest which in my view must be weighed against the potential harm to the applicant if a stay is not granted.

[26] The balance of convenience does not favour the Applicant.

#### IV. Conclusion

[27] Despite the utmost of efforts by Me Stewart Istvanffy, subsequent to the analysis of the interpretation of the *Toth* test as per this Court's jurisprudence, the Applicant's motion for a stay of execution of the removal is dismissed.



**JUDGMENT**

**THIS COURT ORDERS** that the Applicant's motion for a stay of execution of the removal be dismissed.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3545-09

**STYLE OF CAUSE:** **SURINDER KAUR PADDA  
v. THE MINISTER OF CITIZENSHIP  
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**PLACE OF HEARING:** Ottawa, Ontario (by teleconference)

**DATE OF HEARING:** July 21, 2009

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

**DATED:** July 21, 2009

**APPEARANCES:**

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