

Federal Court



Cour fédérale

Date: 20120206

Docket: IMM-952-12

Citation: 2012 FC 155

[ENGLISH TRANSLATION]

Montréal, Quebec, February 6, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

YAPA MUDIYANSELE, JAYATHILAKA BANDA

Applicant

and

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

Respondent

REASONS FOR JUDGMENT AND JUDGMENT
(Delivered from the Bench at Montréal, Quebec, February 6, 2012)

[1] Following a notice of application by the applicant to stay the enforcement of the removal order that is scheduled for February 8, 2012, this Court has determined that the application is dismissed for the following reasons.

[2] The Refugee Protection Division of the Immigration and Refugee Board (the RPD) refused the applicant's refugee claim, after finding that none of the reasons for fear argued by the applicant had merit.

[3] Following the applicant's challenge of the RPD's decision, the Honourable Mr. Justice Yves de Montigny dismissed the application for leave.

[4] A pre-removal risk assessment (PRRA) submitted by the applicant was refused on August 25, 2011 and was not challenged by the applicant.

[5] An application for permanent residence for humanitarian and compassionate reasons was refused on October 12, 2011. That decision is challenged and is therefore pending.

[6] Case law has clearly stipulated that the existence of an application for humanitarian and compassionate reasons does not constitute grounds to stay the removal (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311, at paragraph 50).

- a. Knowing that the removal officer's discretion is limited, the application for leave and judicial review in this case does not raise a serious question.
- b. In light of the alleged risks already considered before the RPD and the RPD's decision, which was confirmed by this Court, the applicant has not established that he would suffer irreparable harm if he was removed from Canada before his application for leave was decided.

- c. Given the circumstances, the balance of convenience tilts in favour of the respondent, who must proceed with the removal.

[7] For all these reasons, the Court orders the dismissal of the applicant's stay application. No questions of general importance are to be certified.

JUDGMENT

THE COURT ORDERS that the application to stay the removal order is dismissed. No questions of general importance are to be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: IMM-952-12

STYLE OF CAUSE: YAPA MUDIYANSELE, JAYATHILAKA BANDA
and MPSEP ET AL.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 6, 2012

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

DELIVERED FROM THE BENCH: February 6, 2012

APPEARANCES:

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