

Federal Court



Cour fédérale

Date: 20120701

Docket: IMM-6519-12

Citation: 2012 FC 840

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, July 1, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**AMRITPAL SINGH ARORA
RAVINDER KAUR ARORA
ONKAR PREET AMR ARORA
TARANDEEP KAUR ARORA
HARLEEN KAUR ARORA**

Applicants

and

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

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants (two parents and three children) are seeking to be heard by the Court today, July 1, 2012, Canada Day, on an urgent basis.

[2] Since May 1, 2012, the applicants were aware that they had to leave by the end of June 2012. Since June 4, 2012, the applicants had a specific date confirming all of this, namely the date of June 30, 2012, for the removal. The applicants knew the date of the principal female applicant's surgery, July 5, 2012, since at least June 11, 2012.

[3] The filing of the motion for a stay at the last minute, the last day of their expected stay in Canada before their departure scheduled for that same day, can only serve as a strategy to put pressure on the Court and the other branches of the Canadian government. This is why the Court is faced with a case presented at the last minute, which will not be heard by this Court on its merits (also given the attached detailed history of past judicial proceedings).

[4] Justice Barnes of the Federal Court wrote the following:

[6] I dismissed this motion because of its lateness and because of the obvious prejudice to the Respondent if the matter was heard on the merits. An applicant should not enjoy a strategic advantage by bringing last-minute stay motions before the Court. . . .

Shi v M.C.I., 2007 FC 534

See also *Matadeen v M.C.I.*, IMM-3164-00, June 22, 2000.
(Pinard J.)

[5] The following is a summary of the judicial proceedings by the Canadian government's Canada Border Services Agency with details on the applicants based on uncontradicted history.

[TRANSLATION]



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Protected

Case Summary

LAST NAME, Given name: Arora Amritpal Singh

Date of birth: 08-02-1974

Country of birth: India

Country of citizenship: India

FOSS ID: 5263-7637

LAST NAME, Given name: Arora Amritpal Singh (wife)

Date of birth: 08-02-1974

Country of birth: India

Country of citizenship: India

FOSS ID: 5263-7637

LAST NAME, Given name: Arora Tarandeep Kaur (daughter)

Date of birth: 15-04-1997

Country of birth: India

Country of citizenship: India

FOSS ID: 4753-8580

LAST NAME, Given name: Arora Onkar Preet Amritpal (son)

Date of birth: 30-05-2004

Country of birth: India

Country of citizenship: India

FOSS ID: 5627-0330

LAST NAME, Given name: Arora Harleen Kaur (daughter)

Date of birth: 08-08-1998

Country of birth: India

Country of citizenship: India

FOSS ID: 4753-8581

26-02-2006

Admitted at Saint Bernard de Lacolle as a visitor (tourist) for a period ending on 25-08-2006.

02-05-2006

Filed refugee claim at CIC Montréal. Issuance of conditional removal orders.

Canada



Canada Border Agence des services
Services Agency frontaliers du Canada

19-12-2008

The IRB-Refugee Protection Division decided that it did not consider the refugee claimants Convention refugees or persons in need of protection. As a result, the refugee claim was rejected.

06-05-2009

The Federal Court dismissed the application for leave and judicial review in respect of the decision by the IRB-RPD.

24-08-2009

Family filed, with CIC, an application for permanent residence in Canada on humanitarian and compassionate grounds.

02-12-2009

Family filed an application under the pre-removal risk assessment (PRRA) program.

12-01-2011

During an interview at the Canada Border Services Agency offices, the family received two negative decisions (refusals) regarding the pre-removal risk assessment application and the application for permanent residence in Canada on humanitarian and compassionate grounds.

During the interview, no departure date was served on the family because the Canada Border Services Agency was awaiting the travel documents (for the children) sought from the Indian representative in Ottawa.

30-03-2011

The family filed, with CIC, a new application for permanent residence in Canada.

04-05-2011

The Federal Court dismissed the applications for leave and judicial review in respect of the PRRA decisions and the application for permanent residence in Canada.

26-03-2012

Family met at the Canada Border Services Agency offices regarding the documents to be completed for obtaining the travel documents for the three children from the Indian representative in Ottawa.

01-05-2012

After receiving travel documents issued by the Indian representative in Canada, the family met with an enforcement officer. During that interview, the family was informed that the removal order that they were subject to had to be enforced, more specifically that they had to leave Canada for India.

Canada



Following the interview, the enforcement officer agreed to schedule the departure date for June 28, 2012, on the sole basis of allowing the children to complete the school year ending on 22-06-2012 (medical reasons assessed and rejected).

04-06-2012

Mr. Arora, accompanied by Robert Fragasso, appeared for an interview at the CBSA offices. During the interview, the subject provided plane tickets for the entire family, departing from Canada for India on 30-06-2012.

Furthermore, he submitted a document on his wife's health and sought an administrative deferral of several months on the removal. Mr. Arora and lawyer informed of refusal and reasons.

26-06-2012

Mr. Arora appeared in an interview at the CBSA offices, accompanied by Maria Esposito, counsel.

Regarding his wife's medical situation, Mr. Arora submitted a letter dated June 15, 2012, written by Dr. Olivier, the physician treating his wife. The officer acknowledged the letter and informed the subject of his refusal to grant an administrative deferral of the removal for the reasons raised in the letter.

During the interview, the subject stated that the Air India carrier was on strike for an indeterminate period and that, as a result, they could not leave Canada for India on 30-06-2012 as planned. Subject advised to report to our agency on 28-06-2012 at 2:30pm with plane tickets for a departure from Canada for India by 05-07-2012 at the latest.

28-06-2012

Subject appeared; not in possession of plane tickets as required from the interview on 26-06-2012. Subject informed that his departure and that of his family was scheduled for 01-07-2012. Subject raised organizational barriers to their departure from Canada on that date. Subject taken into custody.

29-06-2012

Ms. Arora appeared at our agency accompanied by her brother. The officer met with her and issued a notice to appear with her children at the Montréal Trudeau airport on 01-07-2012 to leave Canada for India.

The officer received a telephone call from Dr. Olivier, the physician treating Ms. Arora. The physician asked the officer to defer the removal to allow Ms. Arora to undergo surgery on 05-07-2012 and subsequently remain under observation for at least two months.

The officer's supervisor received a call from Dr. Olivier, who was interceding in order to obtain a deferral.

Fax from Dr. Olivier received on 29-06-2012 (2:41pm) at the CBSA offices, the officer acknowledged the document. Conclusion: the departure date scheduled for 01-07-2012 was maintained.

[6] Given the case history, the Court agrees with the respondent, who raises the following:

No substantive serious or irreparable harm issues

Furthermore, even if the late filing of the proceedings is, in itself, sufficient to dismiss this application, the respondent still wishes to specify that, on the merits, the applicants do not raise any serious or irreparable harm issues.

Thus, the applicants have not submitted any evidence to the removal officer specifying that: the principal female applicant cannot travel, that she must absolutely undergo the operation on July 5, 2012, or that she cannot be operated on in India. In addition, the removal officer received confirmation from Dr. Olivier, the principal female applicant's neurosurgeon, that she can fly and that the operation scheduled for July 5 could be done in India. That information was reconfirmed by Dr. Olivier to Supervisor Léon Kabongo Katalay. Once those elements were established, there was no question as to the reasonableness of the removal officer's decision, considering his obligations under section 48 of the IRPA.

Furthermore, the principal female applicant has been living with this medical condition (epilepsy) since she was 19 years old, that is, even before coming to Canada. Her situation therefore did not prevent her from moving from her country of origin to Canada, and there is no reason to believe that she cannot do the reverse trip. [If the female applicant takes her medications as prescribed like she did during her stay in Canada, and if she follows her physician's advice regarding her case like in the first argument specified by her medical team in respect of her, she is able to make the trip and that is why an additional deferral of the stay was not granted by the officer in respect of her. The initial medical expertise within the evidence specifies that that kind of surgery can be done in India. Over time,] she herself also decided to place herself in this precarious situation by choosing to settle in Canada under unfounded pretexts (the applicants' refugee claim was found not credible).

Finally, the respondent questions the reliability of the e-mail sent by Ms. Barrière, which contains an e-mail from Dr. André Olivier stating that the principal female applicant is at risk when flying. First, the respondent notes that the language used was vague and ambiguous: there is no mention as to whether the risk is high or low.

Second, the respondent also points out Dr. Olivier's previous statements to Officer Primeau and Officer Katalay that the female applicant could travel. Finally, the [last] letter by Dr. Olivier was not produced in a context that ensures its reliability: it was not done under oath, is not even part of an affidavit, the e-mail address of a third party who calls into question the letter at issue.

ORDER

For all of these reasons, the motion for a stay will not be heard on the merits in order to ensure respect for the justice system, which, on the facts, should not be taken by surprise or caught unawares by invalidated exhibits.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6519-12

STYLE OF CAUSE: AMRITPAL SINGH ARORA ET AL.
v. MPSEP

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 1, 2012

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

DATED: July 1, 2012

APPEARANCES:

Mylène Barrière FOR THE APPLICANTS

Pavol Janura FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mylène Barrière FOR THE APPLICANTS
Montréal, Quebec

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