



Date: 20120704

Docket: IMM-6264-12

Citation: 2012 FC 845

Ottawa, Ontario, July 4, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**HARBHAJAN SINGH
SURINDER KAUR**

Applicants

and

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

Respondents

REASONS FOR ORDER AND ORDER

[1] [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"...

(As sated by Justice Marc Nadon in *Hussain v Canada (Minister of Citizenship and Immigration)*,

[2000] FCJ No 751 (QL/Lexis)).

[2] It is important to specify that a motion for a stay, if based on a narrative, that the Refugee Protection of the Immigration and Refugee Board found not to be credible then it cannot serve to support an alleged serious issue and/or irreparable harm for a stay of deportation as stated in *Padda v Canada (Minister of Citizenship and Immigration)*, 2009 FC 738.

[3] On June 28, 2012, the Applicants filed a motion before the Court to obtain a stay of execution of the removal order scheduled for July 4, 2012.

[4] As the background of this case stands uncontradicted, it is reproduced below:

STATEMENT OF FACTS

15. The Applicants are citizens of India.

16. The Applicants first entered Canada on **January 2, 2006** and claimed asylum on **January 26, 2006**¹⁰.

17. On **November 18, 2008** the Applicants' protection claim was rejected by the Refugee Protection Division ("RPD") of the Immigration and Refugee Board ("IRB"). On **March 25, 2009**, the Applicants' *ALJR* against that decision was denied by Justice Martineau in file IMM-5456-08.

18. On **April 25, 2012**, the Applicants' both H&C and Pre-Removal Risk Assessment ("PRRA") were denied by Citizenship and Immigration (CIC) Officer D. Fournier (the "H&C Officer")¹¹.

19. Allegedly "*around*" **June 5, 2012**, the Applicants received the disputed decision. However, they waited until **June 12, 2012**, to consult with their counsel.

20. On **June 18, 2012**, counsel sent a letter to the Removals Officer Henry Kwan to request a deferral of the Applicant[s'] removal to India, which correspondence to the Canada [Border] Services Agency (CBSA) was accompanied by a **June 11, 2012**¹² letter from D^r Juan Carlos L. Chirgwin to inform the Officer that Mrs. Kaur is unfit to travel.

21. On **June 19, 2012**, the Applicants' counsel requested again a deferral of the Applicants' removal. The Removals Officer refused to grant a deferral without first consulting with a CIC [Citizenship and Immigration of Canada] doctor¹³.

22. On **June 19, 2012**, the Removals Officer sent a convocation letter to inform the Applicants that they would be removed from Canada on **July 4, 2012, at 20:15** at P.E. Trudeau Airport.

23. On **June 22, 2012**, the *ALJR* is filed against the H&C decision rendered on **April 25, 2012**.

24. On **June 25, 2012**, counsel for the Applicants sent a follow-up letter to the Enforcement Officer. Enclosed with this letter were a second letter dated **June 22, 2012**, from D^r Chirgwin¹⁴ and another letter also dated **June 22, 2012** from M. Woodbury, psychologist, to inform CBSA that Ms. Kaur is unfit to travel on a short-term basis¹⁵.

25. On **June 27, 2012**, the Enforcement Officer sent a letter to inform counsel that, after obtaining the medical opinion of CIC Medical Officers, there were insufficient grounds to grant a stay of removal for Ms. Kaur¹⁶.

¹⁰ PRRA decision, p. 214 of the Applicants' Record.
¹¹ H&C decision of April 25 2012, pp. 212 and 217 of the Applicants' Record.
¹² June 11, 2012 Letter of Dr. Juan Carlos L. Chirgwin, pp. 77 to 79 of Applicants' Record.
¹³ See Exhibit "B, en liasse" to the Affidavit of Dominique Toillon.
¹⁴ June 11, 2012 Letter of Dr. Juan Carlos L. Chirgwin, pp. 81 to 83 of Applicants' Record.
¹⁵ June 11, 2012 Letter of M. David Woodbury, p. 84 of Applicants' Record.
¹⁶ June 27, 2012 Letter from Enforcement Officer, pp. 85 of Applicants' Record.

[Emphasis added].

[5] As shown above, in respect of every level of decisions taken and in each jurisdiction, the Applicants were denied each and every application in the past by every preceding decision-maker.

Additional Information

[6] It is important to note that, in regard to risk, the Applicants are relying most heavily on evidence of several years ago in regard to the jurisprudence and matters related thereto, rather than

the situation as it currently exists in the their country of origin as is related in the *Sidhu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 decision.

[7] In addition, this stay application is in respect of the Humanitarian and Compassionate [H&C] determination decision and not the Pre-Removal Risk Assessment decision.

[8] Also, the Court notes that new medical evidence presented by the Applicants is submitted subsequent to having had their H&C matter determined; this evidence was not before the H&C officer in question. In addition, the Court recalls that the Applicants have been in Canada since January 2006 to bring any significant evidence to light.

[9] The Court duly notes that a medical escort is to be provided if needed for the Applicants for their return flight, although medical evidence demonstrates that it is not necessary for medical care to be provided on board the flight which the Applicants are to take on their return to their country of origin due to the needed medication being taken. Nevertheless, a medical escort will be provided, if needed.

[10] It was noted that a very large number of passengers have the same medical histories as the Applicants; and, they travel routinely with these medical conditions controlled with appropriate medication prescribed. (Examples given during the hearing of Canadian citizens who travel in exactly the same conditions).

N.B. Also, it was specified that India now has both the medication and medical services to treat the Applicants.

[11] Due to all of the above reasons, the tripartite conjunctive *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) decision test has not been satisfied in any one of the three criteria.

[12] The application of the Applicants in respect of the stay of removal is denied.

ORDER

THIS COURT ORDERS that

- 1) the Style of Cause be amended to include the Minister of Public Safety and Emergency Preparedness as a Respondent along with the Minister of Citizenship and Immigration;
- 2) the application for a stay of removal of the Applicants be denied.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6264-12

STYLE OF CAUSE: HARBHAJAN SINGH
SURINDER KAUR
v
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDENESS AND THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

**MOTION HELD VIA TELECONFERENCE ON JULY 3, 2012 FROM OTTAWA,
ONTARIO AND MONTREAL, QUEBEC**

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

DATED: July 4, 2012

ORAL AND WRITTEN REPRESENTATIONS BY:

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