

Federal Court



Cour fédérale

Date: 20121025

Docket: IMM-10876-12

Citation: 2012 FC 1256

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 25, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**ESTHER ALVAREZ MJIA
JAIME UBALDO MELGAR CARIAS
NATHALIE G. MELGAR
SHIRLEY D. MELGAR**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a decision on an application for a stay of removal submitted to the court just prior to a removal that has been scheduled since September 19, 2012; and where the applicants themselves were advised on September 19, 2012, that they had to leave Canada this weekend.

[2] After a thorough review of the record, the court notes that the applicants chose the departure date (that is, today, seven hours from now at 3:00 a.m.). Moreover, the applicants also purchased plane tickets and had to leave Canada by October 26, 2012; otherwise, they would have been required to leave Canada prior to that date.

[3] A stay of removal is an exceptional measure that is granted in exceptional cases only. These exceptional measures are recognized as injunctions. Unless the applicant has clean hands, that is, honest actions towards the administration of justice, the court does not even hear applications for injunctions (or exceptional measures).

[4] The challenges identified by the applicants have been known for a long time, and yet their application was made strategically “at the last minute” with no valid reason. The court does not consider it acceptable to put pressure on the administration of justice without an honest reason (see *El Ouardi v. Canada (Solicitor General)*, 2005, a decision of Mr. Justice Marshall Rothstein).

[5] The court will not exercise its discretion to hear the application given the conduct specified. In addition, this unfair practice does not respect the most significant interests of justice, that is, to not take the opposing party by surprise or put pressure on the court without a reason that the court considers valid.

[6] This decision, made after reviewing both parties' documents, stems from the court's responsibility to ensure that respect is maintained for the administration of justice and the integrity of the immigration system.

[7] Therefore, the application for a stay of removal will not be heard because the notion of clean hands was not respected.

ORDER

THE COURT ORDERS that the application for a stay of removal will not be heard.

“Michel M.J. Shore”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-10876-12

STYLE OF CAUSE: ESTHER ALVAREZ MJIA
JAIME UBALDO MELGAR CARIAS
NATHALIE G. MELGAR
SHIRLEY D. MELGAR v MINISTER OF
CITIZENSHIP AND IMMIGRATION

WRITTEN MOTION CONSIDERED ON OCTOBER 25, 2012

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

DATED: October 25, 2012

APPEARANCES:

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