



Date: 20120906

Docket: IMM-8890-12

Citation: 2012 FC 1057

Toronto, Ontario, September 6, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**STELLA REGINA DARIO DE MIRANDA,
RUTH NOEMI MIRANDA DARIO,
RUBEN ENRIQUE MIRANDA DARIO,
MARTHA LIGIA MIRANDA DARIO**

Applicants

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants filed a motion on short notice seeking a stay of their removal from Canada. The respondent submits that the “the case for urgency has not been made out on the facts of this case, and that the Court should not exercise its discretion to hear this motion on an “urgent” basis.” The Court agrees with the respondent, for the following reasons.

[2] The applicants are failed refugee claimants. This Court refused leave to review that decision on September 19, 2011. The applicants have had the benefit of Pre-Removal Risk

Assessments which were done on March 5, 2012 and were negative. On March 5, 2012 the applicants requested and were granted a deferral of their removal in order that Ruben could complete his high school diploma in June 2012. On April 10, 2012, during this deferral period, the applicants filed an application for a humanitarian and compassionate exemption to permit them to make an in-Canada application for residency. That application remains outstanding.

[3] On June 27, 2012 the applicants were granted a further deferral of their removal date as Ruben needed an additional credit to graduate and would obtain it in July 2012. At that time the applicants were told by the enforcement officer that they needed to prepare for their removal in August 2012.

[4] On August 3, 2012, the applicants attended a pre-removal interview and were told that their removal would now be scheduled. On August 10, 2012 they were served with a Direction to Report for removal on September 7, 2012.

[5] On August 27, 2012, although dated August 23, 2012, the applicants submitted another request for deferral. They requested a decision be made on the deferral request before August 28, 2012 at 5 p.m. Their request was 279 pages. It was followed by additional submissions of information: twice on August 27, 2012 (20 pages and 22 pages), August 28, 2012 (22 pages), and August 29, 2012 (3 pages). With the last submission the applicants stated that if a decision was not rendered by 10:00 a.m. August 31, 2012, they would presume that the decision was negative. No decision was rendered by the unilaterally imposed date.

[6] By letter dated September 4, 2012, but filed in the morning of September 5, 2012, the applicants filed a motion for an urgent stay based on the “deemed decision” refusing the deferral request, seeking a hearing on either September 5 or 6, 2012 on an urgent basis. The Court refused to accept the motion for filing for the following reasons:

Counsel for the applicants in her correspondence of September 4, 2012 writes that “the underlying application is an immigration matter, relating to a deemed refusal of the enforcement Officer to defer removal.” The respondent in the letter of September 5, 2012 asks that the motion not be heard because the test for urgency has not been made out.

A deemed refusal to defer removal is not a decision justiciable in this Court: *Duitama Gomez v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 593. Accordingly, there is no basis for the stay motion and it will not be set down for a hearing until such time as the Court is informed that there has been a decision rendered. At that time, if the decision does not favour the applicants and they wish to file a motion on an urgent basis, the Court will consider the submission of the Minister that it ought not to be heard.

[7] Later that afternoon, the respondent provided the Court with the decision of the enforcement officer refusing the stay request and the Minister’s request not to hear this matter was then considered.

[8] These applicants have known for some time that they were subject to removal. Without the deferrals already granted, they would have been removed shortly after the negative Pre-Removal Risk Assessment decision made March 5, 2012.

[9] By August 10, 2012 they knew the date of their removal and yet failed to make their most recent deferral request until August 27, 2012. At that time and in the days immediately

following they filed nearly 350 pages of information that the enforcement officer was required to review and consider. It is remarkable that the officer was able to render any decision at all.

[10] The motion record filed on the motion is 315 pages long and it is simply not fair to either the respondent or this Court that they be put to the task of reading and digesting it and making reasoned submissions and a decision within approximately 36 hours because the applicants failed to act promptly in seeking their third deferral. I further note that the written submissions of the applicants were made without the benefit of the deferral decision and are of little value to the respondent or the Court in preparing for the hearing of the requested motion.

[11] This Court has refused to hear such last minute stay motions for the reasons stated by Justice Pinard in *Matadeen v Canada (Minister of Citizenship and Immigration)* (FCTD), June 22, 2000, (IMM-3164-00):

Indeed “last minute” motions for stays force the respondent to respond without adequate preparation, do not facilitate the work of the Court, and are not in the interests of justice; a stay is an extraordinary procedure, which deserves thorough and thoughtful consideration.

[12] The tardiness of these applicants in taking steps to seek a deferral has resulted in a situation where neither the respondent nor the Court is in a position to be able to give anything more than a cursory consideration of the materials, and accordingly the interests of justice are not served in having this matter heard.

ORDER

THIS COURT ORDERS THAT the motion for a stay on an urgent basis will not be entertained by the Court as it would not be in the interests of justice so to do.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8890-12

STYLE OF CAUSE: STELLA REGINA DARIO DE MIRANDA,
RUTH NOEMI MIRANDA DARIO, RUBEN ENRIQUE
MIRANDA DARIO, MARTHA LIGIA MIRANDA
DARIO v
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

**CONSIDERED AT TORONTO, ONTARIO, WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

**REASONS FOR ORDER
AND ORDER BY:** ZINN J.

DATED: September 6, 2012

WRITTEN REPRESENTATIONS BY:

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