

Date: 20090417

Docket: IMM-1903-09

Citation: 2009 FC 387

Ottawa, Ontario, April 17, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

KARLA TERESINA OSORNIO RUIZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND FINAL ORDER

[1] The Court issued an Interim Order staying the deportation of the Applicant and her accompanying handicapped child, subject to a final order to be issued today.

[2] The only merit in this emergency stay is the effect of removal on an 11-month old child who, as a result of problems at birth, suffers from significant developmental (physical and mental)

impairment. The medical evidence from reliable sources (St. Michael's Hospital and Toronto's Hospital for Sick Children) suggests that removal at this time would be harmful to the child.

[3] The Court recognizes that this evidence did not specifically address all aspects of the practicality of removal including health care available in Mexico. Nor was the Respondent given sufficient time to address the issue fairly. The Applicant's failure to take timely steps to deal with removal issues placed the Respondent and this Court in the position at the hearing, held barely two hours before flight departure, of making a determination on a sparse and incomplete assessment of all of the facts.

[4] However, there is sufficient evidence at this stage to justify a stay pending a more fulsome record and hearing. The stay was granted without in any way suggesting that it should continue for any extensive period nor suggesting that the stay should impact the leave process.

[5] Bearing in mind the tripartite test, the Court concludes that, whatever the frailties of the Applicant's case here and on the leave may be, the overarching equities in this very unique circumstance require a stay. The Court has a special responsibility to protect society's most vulnerable and precious members – its children - at least until a proper consideration of their interests can be made.

[6] Therefore, the Court concludes that the most prudent and fair result is to grant a brief stay to permit a more complete assessment of the facts and to permit the child to attend the next medical appointment on June 9, 2009.

ORDER

THIS COURT FURTHER ORDERS that the stay granted shall extend up to and including June 9, 2009. The Applicant may apply for a continuation of the stay before any judge of this Court.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1903-09

STYLE OF CAUSE: KARLA TERESINA OSORNIO RUIZ

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: April 16, 2009

**REASONS FOR ORDER
AND FINAL ORDER:** Phelan J.

DATED: April 17, 2009

APPEARANCES:

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