

**Date: 20090318**

**Docket: IMM-695-09**

**Citation: 2009 FC 280**

**Ottawa, Ontario, this 18<sup>th</sup> day of March 2009**

**Present: The Honourable Orville Frenette**

**BETWEEN:**

**AVIS CASANDRA JAMES  
KESBURN LENIS DURRANT  
ATESHA ALCENIA DURRANT  
NASHBORN ANTHONIA JAMES**

**Applicants  
(Responding parties in this motion)**

**and**

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

**Respondent  
(Moving party in this motion)**

**REASONS FOR ORDER AND ORDER**

[1] This is a motion pursuant to Rules 369 and 397(1) and (2) of the *Federal Courts Rules*, 1998, SOR/98-106, for reconsideration of a stay of a removal order I made on February 16, 2009.

[2] The respondent submits that the Order of February 16, 2009 was made without jurisdiction because it was made in an underlying application for leave and for judicial review of a negative Pre-Removal Risk Assessment (“PRRA”) decision and invoking the pending H&C application.

[3] The respondent alleges the application for leave and for judicial review of the PRRA application was not the underlying application since it was made in a separate file and there was no discussion of granting a delay of deferral pending the outcome, were leave granted, of the H&C application.

[4] The applicants take no position on the motion in question, but state: “However, if the motion is not granted or a question of general significance is certified, the applicants reserve the right to file additional materials.”

[5] The file reveals that there was an underlying PRRA application for leave, made in another file (IMM-496-09, on February 5, 2009) and an H&C application for leave and judicial review. But here, the applicants’ motion was to obtain leave for judicial review of the removal officer’s decision of February 13, 2009, refusing a deferral until leave and judicial review of the negative PRRA and H&C decisions.

[6] Therefore I do not agree that the Court acted without jurisdiction. However, I believe the conclusion of the stay order could be clearer. Rule 397 of the *Federal Courts Rules, 1998* is broad enough to authorize an amendment of an Order.

[7] The Order should have been to grant a deferral request until leave and judicial review of the removal officer's negative decision of February 13, 2009, is disposed of.

**ORDER**

Therefore the Court orders that paragraph 3 of my Order of February 16, 2009 is now amended to read:

3. Grants the deferral request against the removal order which is stayed until leave and the application for judicial review of the removal officer's decision of February 13, 2009 is disposed of.

No questions are certified.

\_\_\_\_\_  
"Orville Frenette"  
Deputy Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-695-09

**STYLE OF CAUSE:** AVIS CASANDRA JAMES, KESBURN LENIS  
DURRANT, ATESHA ALCENIA DURRANT,  
NASHBORN ANTHONIA JAMES v. THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**MOTION IN WRITING PURSUANT TO RULE 369**

**REASONS FOR ORDER  
AND ORDER:** The Honourable Orville Frenette, Deputy Judge

**DATED:** March 18, 2009

**SOLICITORS OF RECORD:**

Solomon Orjiwuru  
Barrister & Solicitor  
Toronto, Ontario

FOR THE APPLICANTS (Responding parties in this  
motion)

Alexis Singer  
Department of Justice  
Toronto, Ontario

FOR THE RESPONDENT (Moving party in this  
motion)