

Federal Court



Cour fédérale

**Date: 20120419**

**Docket: IMM-3385-12**

**Citation: 2012 FC 458**

**BETWEEN:**

**LEONIE MARIA THOMAS**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR ORDER**

**PHELAN J.**

[1] These are the brief reasons for the Order granting the stay of deportation which was issued yesterday.

[2] There is a significant factual point in issue on this motion which impacts the serious legal issue raised. The Applicant claims to have filed a spousal sponsorship H&C application in a timely manner. If accurate the Applicant would, arguably, be entitled to the benefit of a Ministerial policy which precludes her removal while the H&C application is being considered.

[3] The resolution of this point may be somewhere in the mysteries of Canada Post who delivered the application to CIC Vegreville approximately three months after alleged mailing. The resolution may be elsewhere but time did not permit a proper exploration of the facts either through cross-examination or further affidavit evidence.

[4] A deportation in these circumstances would, in reality, render the H&C application moot as the Applicant by virtue of the separation imposed by deportation would no longer qualify for the spousal sponsorship.

[5] The balance of convenience favours the Applicant as it flows from the first two issues.

[6] This case is somewhat similar to *Terhamba Thomas Shase v The Minister of Public Safety and Emergency Preparedness* 2011 FC 418 and I adopt Justice Lemieux's approach to the issue of whether to grant a stay.

[7] As I will also be deciding the Leave Application, the Applicant should know that this decision to grant a stay was "close to the line". The granting of leave is not in any way certain. The Court will expect to see further and better evidence if the Applicant persists in the claim of a timely finding of her H&C.

"Michael L. Phelan"

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Judge

Toronto, Ontario  
April 19, 2012

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3385-12

**STYLE OF CAUSE:** LEONIE MARIA THOMAS v  
THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 18, 2012

**REASONS FOR ORDER:** PHELAN J.

**DATED:** April 19, 2012

**APPEARANCES:**

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