



**Date: 20120629**

**Docket: IMM-6363-12**

**Citation: 2012 FC 839**

**Montréal, Quebec, June 29, 2012**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**TAO LIN**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Subsequent to telephone conference pleadings, and in light of the oral and written material of both parties in respect of the Applicant's motion to stay the execution of imminent removal from Canada, on June 30, 2012, the Applicant has raised an issue in respect of the interpretation of s 176 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] No authority exists, in and of itself, by which to grant a deferral of removal due to one spouse of an applicant being a Convention-refugee, although the Convention-refugee spouse may be entitled to include his/her spouse in a permanent residence application.

[3] The Court has carefully considered all of the evidence in support of the deferral request in respect of any consequences which may ensue due to refugee status having been conferred on the one spouse that could impinge on the other, should the non-refugee spouse be removed to his/her country of origin; none was found to that effect. In addition, it is recognized that the couple did not marry in their country of origin, but, rather, in Canada.

[4] The separation of this family does not demonstrate more than unfortunate but usual consequences of removal. Also, the Applicant is in position to be sponsored eventually by the Convention-refugee spouse, if the relationship is *bone fide*; and, the spouse to be sponsored is eligible in respect of factors linked to his person; thus, the couple does have the likelihood of unification in due course.

[5] For all of the above reasons, the criteria that need to be satisfied in the conjunctive, tripartite *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) decision test, have not been met in any one of the three criteria.

**ORDER**

**THEREFORE, THIS COURT ORDERS that** the motion for a stay of removal be dismissed.

« Michel M.J. Shore »

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-6363-12

**STYLE OF CAUSE:** TAO LIN v  
THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**MOTION HELD VIA TELECONFERENCE ON JUNE 29, 2012 FROM MONTRÉAL,  
QUEBEC AND TORONTO, ONTARIO**

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

**DATED:** June 29, 2012

**ORAL AND WRITTEN REPRESENTATIONS BY:**

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