

Federal Court



Cour fédérale

**Date: 20130503**

**Docket: IMM-3204-13**

**Citation: 2013 FC 467**

**Ottawa, Ontario, May 3, 2013**

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

**BETWEEN:**

**MARCELLINUS AIMABLE**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant has filed, yesterday, Thursday, May 2, 2013, in the late afternoon, a motion for a stay of removal, which removal is scheduled for Sunday, May 5, 2013, without having requested a stay of removal from the Referrals Unit of the Canada Border Services Agency [CBSA].

[2] The Applicant was arrested on November 27, 2012, at his place of employment; and, subsequently released on condition that any change of address would be given to the CBSA authorities prior to any move by the Applicant.

[3] Subsequent to a Pre-Removal Risk Assessment [PRRA], which was rejected on March 22, 2013, a bond compliance check at the Applicant's said place of residence did not find that the Applicant resided therein; rather, that the Applicant had not been known to have been registered as a tenant, nor had he been known to have attended the address in question.

[4] A negative PRRA decision was delivered to the Applicant only when he was found; and, the officer conducting the arrest, determined that the Applicant was a flight risk, unlikely to appear for removal.

[5] It is recalled that the Applicant's case history, as per November 27, 2012, reveals that he stated he had no fear of returning to St. Lucia.

[6] This Court determined that the tripartite conjunctive *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) decision test had not been met for any of the criteria, the Court, thus, concluded that the Applicant's motion for a stay of removal is denied.

[7] The fact that a spousal sponsorship application has been made in December of 2012, does not change the evaluation as to the *Toth* test in the Applicant's case; the Applicant had not resided with his said partner until February 2013, although he had allegedly been married for more than a

year prior to that. In respect of the two children of the Applicant's spouse, any significant relationship he may have allegedly had is left in question due to the very short period of time during which he resided with his spouse and her adolescent children.

[8] The health issue which was raised by the Applicant is evidenced only by diagnostic tests that have been prescribed on what appears to be, a non urgent basis as the tests are for the end of June and anti inflammatories were prescribed. No evidence as to any specific health issue, other than complaints about foot and arm pain have been registered with a request by a medical practitioner for cardiological testing without demonstration of any urgency.

[9] For all of the above reasons, the Applicant's motion for a stay of removal is denied.

**ORDER**

**THIS COURT ORDERS that** the Applicant's motion for a stay of removal be denied.

“Michel M.J. Shore”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3204-13

**STYLE OF CAUSE:** MARCELLINUS AIMABLE v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**MOTION HELD VIA TELECONFERENCE ON MAY 3, 2013 FROM OTTAWA,  
ONTARIO AND TORONTO, ONTARIO**

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

**DATED:** May 3, 2013

**APPEARANCES:**

Marcellinus Aimable

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Neeta Logsetty

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE APPLICANT  
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FOR THE RESPONDENT