

Federal Court



Cour fédérale

**Date: 20140702**

**Docket: IMM-5108-14**

**Citation: 2014 FC 641**

**Toronto, Ontario, July 2, 2014**

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

**BETWEEN:**

**XOLISILE PRUDENCE SONTOKHONTA  
VUYILE NOKUKHANYA MOTSA**

**Applicants**

**and**

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

**Respondent**

**ORDER AND REASONS**

[1] These Reasons are subsequent to a careful reading of the documents of both parties and the evidence in regard to the motion for a stay of removal.

[2] The Court heard both parties in this regard and has contemplated the late filing of the motion of the stay of removal (recognizing that the removal was scheduled for tomorrow, July 3, 2014).

[3] The principal Applicant, 44 years of age, from Swaziland, holds a management position at the Scotia Bank after two years in Canada, subsequent to study, proving herself and successfully obtaining the position as is witnessed in the file. In the management position she holds, she is responsible for a staff of 15 to 20 people.

[4] The principal Applicant is being successfully treated as she is HIV positive, unbeknownst to her, having only discovered that after a medical examination in Canada.

[5] In addition to her management position at the Scotia Bank, the principal Applicant is actively working for charitable organizations, such as the Africans in Partnership against AIDS, an organization that is contributing to the education of the public and in preventing and managing the disease. The principal Applicant is also volunteering at the Christie Refugee Welcome Centre, a transitional housing centre for refugee women and families.

[6] In addition, since the principal Applicant discovered her HIV positive status in 2012, she has taken part in a program at St. Michael's Hospital in the ongoing research branch for finding a cure for the disease. The principal Applicant's health has improved considerably since she is under doctor's supervision with evidence in that regard.

[7] Should the Applicants be returned to their country of origin, it would appear that a serious risk of peril to the principal Applicant's person would ensue. Corroborative evidence in regard to nutritional sustenance, coupled with medical care, demonstrates that the principal Applicant is successfully integrated into a special program which is improving her health and

well-being, as well as assisting in the furtherance of contributing to, and finding, a cure for the disease in a leading-edge program that is designed to help Canadians combat the disease.

[8] In the few years the principal Applicant has been in Canada, she has met every challenge with success in regard to her employment, settlement, volunteer work and has also successfully integrated her daughter into life in Canada as is evident from the evidence and her daughter has also demonstrated that she is fully integrated therein.

[9] The Applicants have met the tripartite criteria of the conjunctive *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) decision test.

[10] Therefore, in this exceptional case, unto itself, the motion for a stay of removal is granted on the very basis of its request as specified by counsel for the Applicants.

**Obiter:**

It appears that this case, bearing on the past relevant history of humanitarian and compassionate consideration decisions is a prime case for such consideration (bearing in mind the exceptional nature of establishment in Canada, significant well-documented volunteer activities, and benefit to Canadian society in addition to the peril that appears in potential to ensue otherwise).

**ORDER**

**THIS COURT ORDERS** that the Applicants' motion for a stay of removal be granted on the very basis of its request as specified by counsel for the Applicants.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-5108-14

**STYLE OF CAUSE:** XOLISILE PRUDENCE SONTOKHONTA,  
VUYILE NOKUKHANYA MOTSA v THE  
MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 2, 2014

**ORDER AND REASONS:** SHORE J.

**DATED:** JULY 2, 2014

**APPEARANCES:**

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Alex C. Kam FOR THE RESPONDENT

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