

Date: 20090814

Docket: IMM-4098-09

Citation: 2009 FC 830

Ottawa, Ontario, August 14, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GUAN, YUEYOU

Applicant(s)

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] [59] ... Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

(*Canada (Minister of Citizenship and Immigration v. Khosa*, 2009 SCC 12).

[67] While I agree entirely with my colleague’s approach to the “serious issue” prong of the tripartite test in the context of a motion to stay a removal order, I would add the following. In determining whether a serious issue exists so as to warrant the granting of a stay of removal, the Judge hearing the motion should clearly have in mind, first of all, that the discretion to defer the removal of a person subject to an enforceable removal order is limited, as explained in *Simoës, supra*, and, particularly, in *Wang, supra*. Second, the Judge should also have in mind that the

standard of review of an enforcement officer's decision is that of reasonableness. Thus, for an applicant to succeed on a judicial review challenge of such a decision, he or she must be able to put forward quite a strong case. In my view, the appellants herein clearly did not have such a case to put forward.

(Baron v. Canada (Minister of Public Safety and Emergency Preparedness), 2009 FCA 81.

[2] Madam Yueyou Guan, the Applicant has filed a motion for a stay of her removal scheduled for August 15, 2009.

[3] The Court has received the parties' respective documents, has read the contents, written pleadings and has heard counsel for the parties by teleconference.

[4] The assessment of this matter by the Court is fully based on the requirements of the tripartite *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.) test.

[5] The Court is not satisfied that the tripartite *Toth* test is met by the Applicant in any one of the three prongs.

[6] The Applicant has not fulfilled the necessities of the "test" on the basis of the Applicant's pending in-Canada spousal sponsorship application nor on the fact that she has two sons with temporary status in Canada.

[7] The Applicant has no argument of contention in respect of the Pre-Removal Risk Assessment (PRRA). The PRRA reasons in the Applicant's regard demonstrate that the entire

evidence (both the objective, country evidence as well as the subjective, personal specific evidence of Madam Guan) was considered reasonably without any risk to the Applicant; the officer's inherent logic is borne out in the reasons for the decision. Neither irreparable harm, nor a balance of convenience, favour the Applicant in respect of the pending spousal sponsorship application nor due to the Applicant's sons' temporary status in Canada subsequent to their studies herein.

[8] Also, no serious issue has been pointed out by counsel for the Applicant in respect of the health of the Applicant that cannot be treated in her country of origin. The separation from the Applicant's grown sons, jurisprudentially, does not change the situation (*Baron*, above).

[9] Thus, the conjunctive requirements of the *Toth* test have not been met.

JUDGMENT

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

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4098-09

STYLE OF CAUSE: GUAN, YUEYOU
v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: August 14, 5009 (by teleconference)

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

DATED: August 14, 2009

APPEARANCES:

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Ms. Amina Riaz FOR THE RESPONDENT

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