

Federal Court



Cour fédérale

**Date: 20100312**

**Docket: IMM-1228-10**

**Citation: 2010 FC 295**

**Ottawa, Ontario, March 12, 2010**

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

**BETWEEN:**

**ANNIKAH ELLIS**

**Applicant**

**and**

**MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant applies by Notice of Motion for a stay of the execution of a Removal Order scheduled for March 14, 2010 until such time as an Application for Leave and Judicial Review of the deferral refusal decision by the Enforcement Officer is disposed.

[2] The Applicant is a citizen of St. Vincent and was born on January 29, 1973. She came to Canada on July 31, 1994 after her mother requested her sister in Canada take her to escape an abusive boyfriend.

[3] The Applicant overstayed in Canada. The Applicant was taken into detention on an immigration warrant. When interviewed in detention on November 13, 2009 she signed a waiver - the Statement of No Intention to present an Application for Pre-Removal Risk Assessment (PRRA).

[4] The Applicant secured the services of counsel who requested the Director of GTEC consent to reversal of the waiver because his client was still afraid of her abusive boyfriend in St. Vincent. The Applicant also requested deferral of her removal. The Director refused to a reversal of the waiver on February 26, 2010 and, on the same date, the Enforcement Officer refused the deferral request.

[5] The test for granting an order for a stay is set out in *Toth v. Canada (Minister of Employment and Immigration)*, [1989] 1 F.C. 535 (F.C.A.):

- a. whether there is a serious question to be determined by the Court;
- b. whether the party seeking the stay would suffer irreparable harm if the stay were not issued; and
- c. whether on the balance of convenience the party seeking the stay will suffer the greater harm from the refusal to grant the stay.

[6] The Applicant deposes the waiver was signed without the full knowledge of its significance. The Applicant submits this is a serious issue since it affects her rights under the immigration process.

[7] Section 160(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations) provides an application for protection may be made after the Department notifies the person an application is possible. An application under these circumstances provides an automatic stay of the removal pursuant to section 162 of the Regulations unless, pursuant to section 232(a) of the Regulations, someone has stated in writing they do not intend to make an application. A PRRA application may be made at any other time but does not engage section 162. The Applicant is insisting on being able to make a PRRA application that engages section 162.

[8] Section 160(4) provides that a person is given notification “when the person is given the application for protection form by hand” or sent to the person by mail at the last address provided by them.

[9] In this case, the Officer says in her affidavit that she keeps a copy of the application on hand as she explains rights to all detainees “While I’m explaining all of this I have an actual blank PRRA application in front of me and I use it to point out key areas of the application”. She does not say she handed the Applicant the PRRA application as required by the *Regulations*.

[10] A serious issue arises on whether the Applicant received notification. This question in turn raises an issue of irreparable harm when no pre-removal risk assessment is conducted or properly waived. In the, circumstances, the balance of convenience favours the Applicant.

[11] I am satisfied a stay should issue until the underlying Application for Leave and Judicial Review is disposed.

**ORDER**

**THIS COURT ORDERS that:**

1. Removal Order scheduled for March 14, 2010 is stayed until the underlying Application for Leave and Judicial Review is disposed.

"Leonard S. Mandamin"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1228-10

**STYLE OF CAUSE:** ANNIKAH ELLIS v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 8, 2010

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

**DATED:** March 12, 2010

**APPEARANCES:**

Mr. Osborne G. Barnwell

FOR THE APPLICANT

Mr. John Loncar

FOR THE RESPONDENT(S)

**SOLICITORS OF RECORD:**

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