

Federal Court



Cour fédérale

**Date: 20100915**

**Docket: IMM-5229-10**

**Citation: 2010 FC 922**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, September 15, 2010**

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

**BETWEEN:**

**Carlos Alberto SALAZAR CASTANO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] An abuse of process represents not only a breach toward the country's judicial system, but also toward the country's legislative and executive branches given the laws passed by the legislative body and the power given to the executive branch to make decisions in accordance with the authority that comes from its own jurisdiction considering the separation of powers.

[2] Federal Court case law has consistently held that the Minister of Immigration has no obligation to defer a removal to allow a decision to be made on a humanitarian and compassionate application.

Considering that it has been consistently held by judges of this Court that there is no obligation upon the respondent to consider a Humanitarian and Compassionate Application prior to removing a person unlawfully in Canada, and that such an application, in and of itself, does not operate to bar his or her removal from Canada (see for example *Cuff v. Minister of Citizenship and Immigration* (December 1, 1999), IMM-5680-99);

...

Considering, in all the circumstances, that public interest requires that the Deportation Order be executed as soon as reasonably practicable (section 48 of the *Immigration Act*);

The requested stay is denied and the motion is dismissed.

(*Mortimore v. MCI*, IMM-3143-00, June 21, 2000 (Pinard J.); also: *Raza v. MSPPC*, IMM-6554-05, November 7, 2005 at pages 2 and 3; *Cortes v. MSPPC*, 2006 FC 934 at paragraph 4; *Adomako v. MSPPC*, 2006 FC 1100 at paragraph 16; *Wraich v. MSPPC*, IMM-6194-06, November 30, 2006; *Sanchez v. MSPPC*, IMM-503-07, February 8, 2007; *Javier v. MSPPC*, 2007 FC 445 at paragraph 11; *Duran v. MSPPC*, 2007 FC 738; *Simoës v. MCI*, [2000] F.C.J. No. 936; *Bader v. MCI*, [2002] F.C.J. No. 408; *Pavalaki v. MCI*, [1998] F.C.J. No. 338; *Davis v. MCI*, [2000] F.C.J. No. 1628; *Maharaj v. MCI*, [2001] F.C.J. No. 786).

[3] Following the motion for a stay heard by Justice Yvon Pinard two days ago, on September 13, 2010, and for which a decision was issued, this second motion for a stay before the Court demonstrates a flagrant abuse of process.

**ORDER**

**THE COURT ORDERS that**, given that the lateness of this second last-minute motion in this case is clearly a flagrant abuse of process, the Court will not hear the motion.

“Michel M.J. Shore”  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-5229-10

**STYLE OF CAUSE:** Carlos Alberto SALAZAR CASTANO  
v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE:** Ottawa, Ontario

**DATE OF MOTION  
IN WRITING:** September 15, 2010

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

**DATED:** September 15, 2010

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FOR THE APPLICANT

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FOR THE RESPONDENT