

Federal Court



Cour fédérale

**Date: 20120222**

**Dockets: IMM-1745-12**

**IMM-9265-11**

**Toronto, Ontario, February 22, 2012**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**Docket: IMM-1745-12**

**SIMRANJEET WALIA, SARIKA SHARMA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**AND BETWEEN:**

**Docket: IMM-9265-11**

**SIMRANJEET WALIA, SARIKA SHARMA**

**Applicants**

**and**

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

**Respondents**

**ORDER**

**UPON MOTION** by the applicants for an order staying their removal from Canada to

India which is scheduled to take place on February 26, 2012;

**AND UPON** noting that the applicants are citizens of India. The Principal applicant, Sarika Sharma, came to Canada in April 2003. The Principal applicant's husband came to Canada in September 2001. The applicants made a claim for refugee status which was denied by a decision dated November 8, 2010 and leave to judicial review the claim was dismissed. The applicants have also filed a PRRA application and an H&C application which was denied. The applicants have two Canadian born children born in March 2007 and June 2010. The applicants have been employed in Canada and have taken part in their community;

**AND UPON** noting that the Principal applicant is a Hindu and her husband is a Sikh;

**AND UPON** noting the applicants' submissions with respect to honour killings;

**AND UPON** reviewing the documentary evidence on tension in India;

**AND UPON** noting that in order to obtain a stay, the applicants must meet all three branches of the tri-partite test set out in *Toth v Canada (Minister of Employment and Immigration)* (1988) NR 302 (FCA) at page 305:

This Court, as well as other appellate courts have adopted the test for an interim injunction enunciated by the House of Lords in *American Cyanamid Co. v Ethicon Ltd.*, [1975] AC 396...As stated by Kerans JA in the *Black* case *supra*:

The tri-partite test of *Cyanamid* requires, for the granting of such an order, that the applicant demonstrate, firstly, that he has raised a serious issue to be tried; secondly, that he would suffer irreparable harm if no order was granted; and thirdly that the balance of convenience considering the total situation of both parties favours the order.

**AND UPON** noting the respondent's submissions that the motions should be dismissed because the applicants have not come to this Court with clean hands. I am not prepared to dismiss the motions on this basis. Although some of the conduct of the applicant's husband should not be condoned, I am not prepared to dismiss the motions for this reason;

**AND UPON** being satisfied that the applicants have raised serious issues to be tried. The serious issue to be tried with respect to the PRRA file (IMM-9265-11) is whether the officer properly addressed the issue of honour killings. The serious issue with respect to the H&C file (IMM-1475-12) is whether the officer carried out a proper analysis of the best interests of the children and whether the Officer applied the proper test in this aspect of the matter;

**AND UPON** being satisfied that the applicants would suffer irreparable harm if a stay is not granted and the officer's decision with respect to honour killings is in error.

**THIS COURT ORDERS that:**

1. In file no. IMM-9265-11 the style of cause is amended by adding as a respondent "The Minister of Public Safety and Emergency Preparedness";
2. The applicants' motion for a stay of their removal is granted and the removal of the applicants from Canada to India is deferred until leave is denied in their applications for judicial review and if leave is granted then their removal is stayed until their applications for judicial review is dealt with by the Courts.

"John A. O'Keefe"

Judge