

Federal Court



Cour fédérale

Date: 20121116

Docket: IMM-11660-12

Toronto, Ontario, November 16, 2012

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

**BETWEEN:**

**ADRELINA DE OLIVEIRA SILVA, AMANDA  
SILVA CARVALHO AND GUSTAVO SILVA  
CARVALHO**

**Applicants**

**and**

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

**Respondents**

**ORDER**

**UPON MOTION** by the Applicants for a stay of their removal to Brazil scheduled for November 16, 2012 pending the Court's dealing with and deciding their leave and judicial review application with respect to Officer McDonald's refusal to defer removal dated November 14, 2012;

AND UPON reading and assessing all materials filed and hearing counsel on behalf of the Applicants and the Respondent;

AND UPON noting, concluding and finding as follows:

Purely on the facts of this particular case, and given the Respondents' concession that a removal's officer does have the discretion to defer removal until a full PRRA has been completed, I think the Applicants have established a serious issue as to whether the Officer properly considered (or was qualified to consider) the evidence regarding the threat of death faced by the Principal Applicant if she is returned to Brazil. The same evidence is also clear and convincing enough to me to support a finding of irreparable harm, and the balance of convenience favours the Applicants.

I am convinced that the Applicants have satisfied the tri-partite *Toth* test for a stay of removal.

**THIS COURT ORDERS that:**

The motion is granted. The removal of the Applicants is stayed until such time as the underlying leave and judicial review application is dealt with by the Court.

I HEREBY CERTIFY that the above document is a true copy of the  
original issued out of / filed in the Court on the 16  
day of NOV A.D. 20 12  
Dated this 16 day of NOV 20 12

"James Russell"  
Judge

Federal Court



Cour fédérale

**Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur**

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Facsimile / Télécopieur :

**DATE : November 16, 2012**

**TIME / HEURE : 11:39 AM**

Total number of pages (including this page) /  
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**SUBJECT / OBJET : IMM-11660-12**

**COMMENTS / REMARQUES : Order dated 16-oct-2012 of Russell J.**

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