

Federal Court of Canada



Cour fédérale du Canada

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COMMENTSREMARQUES

Form - 9919-12 Please find the Court's Order
dated June 25/12.

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Federal Court



Cour fédérale

Date: 20120625

Docket: IMM-4919-12

Toronto, Ontario, June 25, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ALLINAH MESO MOROKE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER

UPON MOTION by the Applicant for a stay of her removal to Botswana scheduled for July 17, 2012 pending her application for leave and judicial review of her negative Pre-Removal Risk Assessment decision (PRRA) dated April 10, 2012;

AND UPON reading and considering all materials filed and hearing counsel on behalf of the Applicant and the Respondent;

AND UPON noting, concluding and finding as follows:

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1. Given the low standard for serious issue applicable in this case (not frivolous or vexatious), I think the Applicant has clearly established:
 - a. That PP3 at 5.19 directs that new evidence submitted "up to the point where Applicant is notified that a decision has been made, must be considered by the PRRA officer" and the "principle of *Functis officio* does not preclude the making of submissions up to that point." See *Chudal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1073. In the present case the two corroborative affidavits were submitted after the decision was made but before the Applicant was notified;
 - b. That she did submit new evidence (in addition to the two new affidavits) in her own declaration where she said that her former boyfriend had continued with his threats. The officer says that "no new evidence was provided to support this application," so he either overlooked what the Applicant had presented in her declaration (and he certainly did not look at the new affidavits), or he saw what she had written in her declaration and did not believe her, in which case he was dealing with credibility matters and should have considered conducting an interview.
2. The Applicant has also established irreparable harm. There is now evidence that her former boyfriend intends to kill or harm her if she returns to Botswana which the officer has not considered (the two new affidavits), so that returning to Botswana at this point

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would make her leave and judicial review moot and would expose her to the very risk that has yet to be assessed.

3. Given these findings, I think the balance of convenience favours the Applicant.
4. All of which means that I think the Applicant has satisfied the conjunctive, tri-partite *Toth* test for a stay of removal.

THIS COURT ORDERS that the stay of removal is granted until such time as the Court has dealt with the underlying leave and judicial review.

"James Russell"

Judge