

De Lira Nunez v. Canada (Citizenship and Immigration), 2026 CanLII 107995 (FC)

This decision forms part of Courtready.ca's Canadian AI-Hallucination Cases Database, which tracks Canadian legal decisions addressing fabricated citations and other misuse of artificial intelligence in legal submissions. Courtready.ca obtained this decision from the Canadian Legal Information Institute (CanLII).

FULL DATABASE

<https://courtready.ca/fictitious-citations-in-canadian-courts/>

Federal Court



Cour fédérale

Date: 20261014

Docket: IMM-23603-26

Fredericton, New Brunswick, October 14, 2026

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

CRISTIAN DE LIRA NUNEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND
THE MININSTER OF PUBLIC SAFETY
AND EMERGENY PREPAREDNESS**

Respondents

ORDER

UPON MOTION by the Applicant filed on September 25, 2026, for an Order staying the Applicant's scheduled removal from Canada to Guadalajara on October 29, 2026, until such time as the underlying Application for Leave and for Judicial Review [ALJR] challenging the August 11, 2026 decision of the Refugee Protection Division [RPD] refusing to reopen the Applicant's claim for refugee protection has been finally disposed of;

AND UPON reviewing the Parties' motion records, including their written submissions;

AND UPON hearing the Parties' oral submissions by Zoom videoconference on October 13, 2026;

AND UPON noting the Minister of Public Safety and Emergency Preparedness is properly added as a Respondent;

AND UPON considering that the stay of a removal order is a form of extraordinary equitable relief requiring the exercise of the Court's discretion having regard to all the relevant circumstances;

AND UPON considering that to succeed on this motion, the Applicant must satisfy the tripartite conjunctive test set out in *Toth v Canada (Minister of Employment and Immigration)*, 1988 CanLII 1420 (FCA) [*Toth*], by demonstrating that (1) a serious issue exists; (2) he would suffer irreparable harm if the removal is not stayed; and (3) the balance of convenience favours staying the removal;

AND UPON considering that the *Toth* test is conjunctive, that each component is important, and that, although an applicant must satisfy all three components of the test, the components are not discrete compartments; instead, the test is to be applied in a holistic fashion, where strengths with respect to one component may overcome weaknesses with respect to another (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 135; *Spencer v Canada (Attorney General)*, 2021 FC 361 at para 51; *Power Workers Union v Canada (Attorney General)*, 2022 FC 73 at para 56);

AND UPON considering the threshold to establish a serious issue is low and an applicant need merely demonstrate that the issues raised are not frivolous or vexatious (*RJR-MacDonald*

Inc v Canada (Attorney General), 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at 335;
Thanabalasingham v Canada (Minister of Public Safety and Emergency Preparedness), 2006 FC 486 at para 7);

AND UPON noting that irreparable harm must be more than the harm or prejudice that is inherent in the removal process (*Melo v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15140 (FC) at para 21); that an applicant must demonstrate through clear and non-speculative evidence that there is a likelihood of harm that is more than a series of possibilities (*Perez v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 627 at paras 44–45; *Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 at para 14); and that the harm must be real, definite and unavoidable – not hypothetical and speculative harm – that cannot be repaired later (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 24);

AND UPON noting that the third part of the *Toth* test requires an assessment of which party would suffer greater harm from the granting or refusal of a stay of the removal order pending a decision on the merits of the ALJR (*SKGO v Canada (Citizenship and Immigration)*, 2023 FC 83 at para 15);

AND UPON determining that the Applicant has failed to satisfy the *Toth* test for the following reasons:

I. Background

[1] The Applicant, who is self-represented on this motion, entered Canada in 2019, reportedly because he feared local gang members in Mexico.

[2] The Applicant asserts that in early 2025, six years after entering Canada, he contacted a representative, who appears to have been an unlicensed “ghost” representative, to explore the possibility “of applying for my permanent residence on humanitarian grounds.” The ghost representative’s response to the Applicant’s inquiry was that “[w]e can apply for refugee protection and change to [...]” [remainder of message not provided].

[3] The Applicant reports that he agreed to retain the ghost representative. The Applicant provided identity documents and access/verification codes to the ghost representative who, initiated a claim but in doing so, and without the Applicant’s knowledge, identified the Applicant as a self-represented claimant.

[4] Having failed to submit an Intention to Proceed Form by February 24, 2026, the RPD issued a Notice to Appear for an abandonment hearing. The Applicant failed to attend the hearing. On March 13, 2026, the RPD determined the claim to have been abandoned.

[5] That the Applicant received all relevant RPD correspondence and had actual knowledge of the abandonment hearing is not disputed.

[6] The Applicant has twice requested the RPD reopen the claim. Both requests were dismissed. It is this second refusal decision, rendered on August 11, 2026, that is challenged in the underlying ALJR.

II. Analysis

A. *The Hearing*

[7] At the outset of the hearing, the self-represented Applicant advised he was unable to communicate in English and was required to fully rely upon the interpretation and translation services of an accompanying individual, Mr. Oscar Piedrasanta, to interpret the proceedings and make oral submissions.

[8] Despite the Applicant's obvious inability to communicate in either official language, the Applicant's motion record is supported by a 48-paragraph affidavit written in English, that was sworn before a court registry officer. The affidavit does not indicate that it has been orally translated into Spanish to allow the Applicant to understand its contents (Rule 80(2.1) of the *Federal Courts Rules*, SOR/98-106 and Form 80C).

[9] The motion record also includes detailed English language submissions addressing the conjunctive tripartite *Toth* test that the self-represented Applicant could not have prepared given his lack of ability in the English language. It appears the Applicant again relied on an undeclared ghost representative in bringing this motion and I suspect the undeclared use of generative Artificial Intelligence [AI] in preparing submissions, contrary to the Court's May 7, 2024 *Notice to the Parties and the Profession the Use of Artificial Intelligence in Court Proceedings*.

[10] The Applicant's lack of ability in English raises serious credibility concerns with the content of the supporting affidavit on this motion, a concern that the content of the record exacerbates. For example, there are translated extracts from text conversations between the

Applicant and the ghost representative that indicate the Applicant did not initially seek to commence a refugee claim and that he was unaware of the basis upon which that claim was made. Further, the BOC narrative that was submitted by him or on his behalf differs significantly from the narrative set out in the affidavit filed with this motion.

[11] All of these circumstances undermine the Applicant's credibility, including the Applicant's assertions of risk on this motion (*Akanni Allimi v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 623 at para 20). These concerns alone are sufficient to refuse the stay motion; however, I have nonetheless considered the tripartite test.

B. *Serious Issue*

[12] The Applicant submits that the RPD's failure to reasonably consider the second request to reopen his claim and the prejudice resulting from incompetent representation both raise serious issues satisfying the first branch of the *Toth* test. I disagree.

[13] In suggesting the RPD may have unreasonably applied the thresholds for considering and granting a second request to reopen an abandoned claim, the Applicant simply argues that this provides a reviewing court "a concrete issue to examine." The Applicant's mere suggestion that the RPD may have misapplied the exceptional circumstances and new evidence thresholds where a request to reopen is under consideration does not establish a serious issue, even on the low "not frivolous or vexatious" standard.

[14] With respect to the alleged breach of natural justice, I accept that an authorized representative's ineffective or incompetent assistance may provide the basis to find a breach of fairness (*Satkunanathan v Canada (Citizenship and Immigration)*, 2020 FC 470 at para 33) thereby raising a serious issue. However, in the absence of any evidence to demonstrate the ghost representative(s) on the original claim or on the request to reopen are licenced and authorized representatives in immigration matters, the Applicant cannot rely on an argument that counsel was ineffective or incompetent (*Dini v Canada (Citizenship and Immigration)*, 2024 FC 1969 at para 54 [*Dini*]).

[15] As my former colleague Justice Henry Brown noted in *Dini*, applicants are responsible for the content of their applications and cannot abdicate that responsibility by simply asserting they relied on others, including a consultant:

[55] Overall, I accept settled law that all applicants under IRPA are responsible for the contents of their applications whether they file it or it is filed by others including fraudsters like Mahdi. Foreign national applicants have the onus to review it and ensure their submissions are complete and accurate. If they chose to rely on a consultant, and are not given the opportunity to review the application, it is contrary to the applicant's duty of candour to permit the applicant to rely on their failure to review their own application. It was their responsibility to ensure their application was truthful and complete — they were negligent in performing this duty.

[16] Further, even if there were some evidentiary basis upon which to conclude the Applicant was incompetently represented by an authorized representative, there is no evidence to suggest that, but for the allegedly incompetent representation, the RPD would have come to a different decision on the second request to reopen, an essential element of the test where incompetence is alleged (*Yang v Canada (Citizenship and Immigration)*, 2015 FC 1189 at para 16).

[17] In refusing the second request to reopen, the RPD expressly addressed the fact that the Applicant had been provided notice of the abandonment hearing and, despite that notice, failed to appear. The Applicant does not dispute this finding or the RPD's finding that there was no explanation provided for the failure to comply with the RPD's direction.

[18] The Applicant has not identified any serious issues arising from the RPD's finding that the Applicant had failed to establish a breach of natural justice or the existence of compelling evidence of extraordinary circumstances that would justify the reopening of the claim.

C. *Irreparable Harm*

[19] In considering the irreparable harm branch of the test, the credibility concerns noted above are of relevance. However, I need not engage with those concerns as the Applicant's evidence at best discloses that the agents of persecution continue to pose a risk only within the Applicant's local region or community.

[20] As was noted by Justice Sébastien Grammond in *Espinoza v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1922, refugee law concepts, such as the availability of an internal flight alternative, are relevant when assessing irreparable harm on a stay motion (para 15). The Applicant has failed to provide clear and non-speculative evidence disclosing that the reported agents of persecution have either the means or motivation to pursue the Applicant elsewhere in Mexico. The Applicant's subjective belief does not satisfy his burden on this branch of the test.

[21] Finally, that the underlying ALJR will be rendered moot does not amount to irreparable harm, particularly in light of my conclusion that the Applicant has not raised a serious issue.

D. *Balance of Convenience*

[22] Having failed to demonstrate either a serious issue or irreparable harm, the balance of convenience in this matter favours the Respondent.

III. Conclusion

[23] The Applicant has not satisfied the tripartite *Toth* test. The motion must therefore be dismissed.

THIS COURT ORDERS that:

1. The style of cause is amended to add the Minister of Public Safety and Emergency Preparedness as a Respondent on this motion only.
2. The Applicant's motion for a stay of removal is dismissed.

"Patrick Gleeson"
Judge