

Federal Court



Cour fédérale

Date: 20210909

Docket: IMM-6005-21

Citation: 2021 FC 936

Ottawa, Ontario, September 9, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

JOSHUA OBASEKI

Applicant

and

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

Respondent

ORDER AND REASONS

[1] Mr. Obaseki seeks a stay of his removal to Nigeria, scheduled for September 11, 2021. I am granting his motion, as I am not convinced that new evidence of the risk he would face in Nigeria has been properly considered.

[2] Mr. Obaseki is a citizen of Nigeria. He came to Canada and claimed refugee status. He alleged that he is gay or bisexual and that he would be at risk of persecution upon return to

Nigeria. The Refugee Protection Division [RPD] of the Immigration and Refugee Board dismissed his claim. It found that he was not a credible witness that his claim had no credible basis. Mr. Obaseki applied to this Court for leave and judicial review of the RPD's decision, but leave was denied.

[3] Mr. Obaseki was given a direction to report for his removal on September 11, 2021. On July 30, 2021, he applied for deferral of his removal. He alleged that he suffers from a particular form of diabetes, that treatment in Nigeria would not be accessible nor affordable and that he would be at a heightened risk of contracting COVID-19. He also provided evidence that he had begun a new same-sex relationship. On August 31, 2021, an officer of the Canada Border Services Agency dismissed the deferral request. The officer found that Mr. Obaseki's evidence of a same-sex relationship pertained to a risk that had already been assessed by the RPD. With respect to diabetes, while acknowledging that the Nigerian medical system "faces some challenges," the officer concluded that Mr. Obaseki had the ability to tend to his condition. The officer also discussed the risk associated with COVID-19, and was not convinced that Mr. Obaseki would face a greater risk in Nigeria than in Canada.

[4] Mr. Obaseki applied for leave and judicial review of the CBSA officer's negative decision. He also brought a motion for stay of removal.

[5] In *Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075, I reviewed the legal framework governing requests for deferral and motions for stay of removal. I refer the reader to that case and I will not repeat the discussion here. In a nutshell, the applicant

must show (1) that the underlying application for judicial review shows “quite a strong case;” (2) that the applicant’s removal would cause irreparable harm; and (3) that the balance of convenience favours the applicant.

[6] The specific issue arising in the present case pertains to evidence brought before the deferral officer to overcome previous findings to the effect that the applicant would not face risk upon return to their country. It is well established that an officer must defer removal if a new risk, not assessed by previous immigration decision-makers, has arisen: *Savunthararasa v Canada (Public Safety and Emergency Preparedness)* 2016 FCA 51 at paragraph 7, [2017] 1 FCR 318; *Atawnah v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144 at paragraph 22, [2017] 1 FCR 153.

[7] In *Abdulrahman v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 842 at paragraphs 15–16 [*Abdulrahman*], my colleague Justice William F. Pentney noted that this principle not only applies to new events (for example, a coup in the country of removal), but also extends to new evidence of risks that were previously assessed. In that case, the evidence pertained to a new relationship buttressing the applicant’s assertions regarding his sexual orientation. See also *Nayeb Pashaei v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 212 at paragraphs 15–16; *Mohammadpour v Canada (Citizenship and Immigration)*, 2021 CanLII 11764 (FC) [*Mohammadpour*].

[8] I am mindful that the mere fact of bringing new evidence at the deferral stage will not always be sufficient to overcome previous negative risk findings: *Akagunduz v Canada*

(*Citizenship and Immigration*), 2021 CanLII 11762; *Osagie v Canada (Public Safety and Emergency Preparedness)*, 2021 CanLII 34149; *Abu Aldabat v Canada (Citizenship and Immigration)*, 2021 FC 277.

[9] In this case, however, it appears that the officer rejected Mr. Obaseki's arguments because they did not pertain to a new risk. The officer merely stated that "the risk alleged has been assessed in the refused RPD decision and Federal Court decision." In saying this, the officer failed to contemplate the possibility that new evidence might overcome previous findings regarding the absence of risk. This is exactly what happened in *Abdulrahman*. As the matter will have to be considered by other decision-makers, I will simply say that this raises a sufficiently serious issue, or "quite a strong case," to warrant a stay of removal.

[10] Moreover, as the serious issue pertains to the assessment of risk, I also conclude that Mr. Obaseki has shown that his removal will expose him to irreparable harm and that the balance of convenience is in his favour: see, for instance, *Abdulrahman*, at paragraphs 22–27; *Mohammadpour*. Thus, the three-part test for granting a stay of removal is met.

[11] As a result, I do not need to discuss the other issues raised by Mr. Obaseki.

ORDER in IMM-6005-21

THIS COURT ORDERS that the applicant's removal to Nigeria be stayed until the final disposition of the application for judicial review.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6005-21

STYLE OF CAUSE: JOSHUA OBASEKI v THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 9, 2021

ORDER AND REASONS: GRAMMOND J.

DATED: SEPTEMBER 9, 2021

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