

Federal Court



Cour fédérale

**Date: 20230504**

**Docket: IMM-4925-23**

**Citation: 2023 FC 633**

**Saint-Sauveur, Quebec, May 4, 2023**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**IDAYAT OLUSHOLA OBAFEMI-  
BABATUNDE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] Ms. Obafemi-Babatunde seeks a stay of her removal to Nigeria, scheduled for May 7, 2023. I am dismissing his motion, because she has not shown that her removal would expose her to any irreparable harm.

I. Background

[2] Ms. Obafemi-Babatunde is a citizen of Nigeria. She came to Canada in May 2017 and claimed asylum shortly thereafter. She alleges that she is threatened by members of her ex-husband's family. In a nutshell, her in-laws believe it is very important for her to have a female child. She initially managed to fulfil these expectations by adopting a female child. Conflict resumed in 2016, however, when the in-laws discovered that the child was in fact adopted. Ms. Obafemi-Babatunde alleges that after being attacked by her in-laws, she fled to various places in Nigeria before travelling to the United States in February 2017.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dismissed her claim in August 2017. Ms. Obafemi-Babatunde appealed this decision to the Refugee Appeal Division [RAD] of the IRB. Her appeal was dismissed in February 2019. Relying on a biometric report issued by American authorities, both tribunals based their decision on their finding that Ms. Obafemi-Babatunde was in the United States when the alleged acts took place. Moreover, they found that she contradicted herself regarding significant aspects of the alleged attack.

[4] Ms. Obafemi-Babatunde then applied for a pre-removal risk assessment [PRRA]. In support of her application, she provided more evidence of leaving the United States, including an "I-94 report" apparently available from a US government website, as well as a travel itinerary showing a flight to the US in February 2017. She also alleged that her sister, who is still living in

Nigeria, was recently arrested on false charges at her ex-husband's behest. She is also named in the arrest warrant against her sister.

[5] On March 17, 2023, Ms. Obafemi-Babatunde's PRRA application was dismissed. The PRRA officer refused to consider documents related to her presence in the United States, because she could have presented them to the RPD. Moreover, the officer gave minimal weight to a letter written by Ms. Obafemi-Babatunde's brother regarding her sister's arrest, because it was not corroborated and was "written by an individual who has an interest in the outcome of this application." The PRRA officer also gave minimal weight to the arrest warrant. While apparently accepting that the document was issued by Nigerian authorities, the officer noted that it is vague and not identified as an arrest warrant, that it is not accompanied by the sister's identity documents, that the sister did not provide evidence herself and that, generally, the arrest warrant is not corroborated. The officer also finds that Ms. Obafemi-Babatunde could avail herself of the protection of her country.

[6] On April 13, 2023, Ms. Obafemi-Babatunde was informed that her removal from Canada would take place on May 7, 2023.

[7] Ms. Obafemi-Babatunde applied for judicial review of the negative PRRA decision. Within that application, she brought a motion for a stay of her removal.

## II. Analysis

[8] Motions for stay of removal are decided according to the well-known three-part test for interlocutory injunctions: *RJR – Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [RJR], and *R v Canadian Broadcasting Corp*, 2018 SCC 5, [2018] 1 SCR 196. The Court must determine whether: (1) the applicant has shown that the underlying application raises a serious issue; (2) the applicant will suffer irreparable harm if the stay is not granted; and (3) the balance of convenience favours the applicant. The application of this test is highly contextual and fact-dependent. As the Supreme Court of Canada explained, “[u]ltimately, the question is whether granting the injunction would be just and equitable in all the circumstances of the case”: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at paragraph 1.

### A. *Serious Issue*

[9] In *RJR*, at 337, the Supreme Court of Canada held that the serious issue prong of the test is a low threshold, which is met as long as the issue raised by the applicant is not frivolous.

[10] Here, there are several serious issues, in the sense of non-frivolous issues, with respect to the PRRA decision. Among other things, the officer discounted evidence merely because it emanated from family members; it required corroboration of the brother’s letter beyond the arrest warrant; and the expected corroboration would have come from other family members. It is at least arguable that these statements contravene the principles that I have summarized in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14, and *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968, [2020] 4 FCR 617.

[11] It may well be that some of these mistakes did not affect the outcome of the PRRA or that the reasons of the officer can be understood as a finding of insufficiency of the evidence. These issues would fall to be decided on the merits of the application. They do not preclude a finding that the PRRA decision raises serious issues.

B. *Irreparable Harm*

[12] Where the underlying decision is a PRRA, there is usually a large degree of overlap between the first and second prongs of the *RJR* test. This is because the irreparable harm alleged to flow from the applicant's removal is often the same as the harm that the PRRA officer was tasked with assessing.

[13] Where this is the case, however, these two stages of the test must be kept conceptually distinct. The first stage pertains to the reasonableness of a prior decision regarding the risks to which the applicant would be exposed upon returning to their country. At the second stage, the Court must form its own opinion regarding these risks.

[14] The role that previous decisions play in this assessment varies with the circumstances. Where previous decisions have not been challenged or appear devoid of any flaw, they are dispositive and the applicant is not allowed to raise the same issues again: *Ledshumanan*, at paragraph 62; *Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075 at paragraph 23. In contrast, where previous decisions did not meaningfully assess the risk, the Court must decide the issue afresh: *Thuvo v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 48 at paragraphs 20–21; *Surmanidze v Canada (Public Safety and*

*Emergency Preparedness*), 2019 FC 1615 at paragraph 52. The Court's role is more nuanced where serious issues have been identified with the PRRA decision. Depending on the circumstances, these serious issues may or may not be sufficient to demonstrate irreparable harm: *SKGO v Canada (Citizenship and Immigration)*, 2023 FC 83.

[15] In this case, two decision-makers, the RAD and the PRRA officer, assessed the risk that Ms. Obafemi-Babatunde faces. While I have identified serious issues with the PRRA decision, the RAD's decision was not challenged. Therefore, the serious issues with the PRRA decision are not sufficient to prove irreparable harm, because they do not affect the previous findings of the RAD regarding Ms. Obafemi-Babatunde's credibility.

[16] The RAD found that Ms. Obafemi-Babatunde's allegations of persecution were false, because she was in the United States, not in Nigeria, during the relevant period. It also found her narrative internally inconsistent. These findings have not been challenged before this Court. Ms. Obafemi-Babatunde cannot now bring evidence that purports to contradict these findings. If it were otherwise, an applicant could always split their case and wait until a motion for a stay of removal to bring additional evidence regarding the issues decided by the RAD: *Melay v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1406 at paragraph 17 [*Melay*]. Here, the additional evidence pertains to Ms. Obafemi-Babatunde's presence in Nigeria in 2016 and 2017. She does not explain why it would have been impossible to put this evidence before the RAD.

[17] Turning to the evidence regarding the arrest warrant and the charges against Ms. Obafemi-Babatunde and her sister, I am of the view that they are a continuation of the story that

she put forward before the RPD and RAD. It is true that she claims that her husband turned against her after she left Nigeria, sought divorce and pressured the police to bring false charges against her and her sister. This change of mind, however, would be the result of the persuasion of her in-laws. The facts that allegedly took place in 2021, therefore, are an evolution of the risk initially asserted.

[18] Given that the initial story was found to be false, Ms. Obafemi-Babatunde bears a heavy burden of persuading me that the evidence she now puts forwards overcomes the RAD's credibility findings: *Melay*, at paragraph 17. She has failed to discharge this burden. There is little information in her brother's letter as to how he obtained a copy of the arrest warrant and how he learned that her ex-husband "told lies" to the police.

[19] As a result, I am not persuaded that Ms. Obafemi-Babatunde will suffer irreparable harm if she returns to Nigeria.

C. *Balance of Convenience*

[20] As Ms. Obafemi-Babatunde failed to prove irreparable harm, it is not necessary to assess the balance of convenience.

III. Disposition

[21] Ms. Obafemi-Babatunde does not meet the three prongs of the *RJR* test. As a result, her motion for a stay of her removal will be dismissed.

**ORDER in IMM-4925-23**

**THIS COURT ORDERS** that the motion for a stay of the applicant's removal from Canada is dismissed.

"Sébastien Grammond"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4925-23  
**STYLE OF CAUSE:** IDAYAT OLUSHOLA OBAFEMI-BABATUNDE v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION  
**PLACE OF HEARING:** BY VIDEOCONFERENCE  
**DATE OF HEARING:** MAY 3, 2023  
**ORDER AND REASONS:** GRAMMOND J.  
**DATED:** MAY 4, 2023

**APPEARANCES:**

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