Federal Court  Cour fédérale

Date: 20210914

Docket: IMM-6013-21

Citation: 2021 FC 941

BETWEEN:

ANNABEL ERHIRE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER

NORRIS J.

I. OVERVIEW

[1] The applicant, Annabel Erhire, was scheduled for removal to Nigeria on September 7, 2021. On September 2, 2021, she asked the Canada Border Services Agency ("CBSA") to defer her removal for 60 days so that she could make arrangements in Nigeria to address her mental health needs. On September 3, 2021, an Inland Enforcement Officer with the CBSA refused her request. The applicant has filed an application for leave and judicial review of this decision. She has also sought a stay of her removal pending the final determination of

this application. I heard the stay motion on an urgent basis on Monday September 6, 2021. In a brief order issued the same day, I granted the motion for reasons to follow. These are those reasons.

II. BACKGROUND

A. *The Applicant's Immigration History*

[2] The background to this matter is described in *Canada (Public Safety and Emergency Preparedness) v Erhire*, 2021 FC 908, my decision granting a motion by the Minister to stay an order for the applicant's release from detention. For the sake of convenience, I will review that background again here, adding or clarifying some details on the basis of the record on the present motion.

[3] The applicant was born in Nigeria in 1998. In September 2016, when she was 18 years of age, she came to Canada with her mother and four siblings. Once in Canada, they all sought refugee protection on the basis that the applicant's mother's bisexuality put them at risk in Nigeria. The claims for protection were rejected by the Refugee Protection Division of the Immigration and Refugee Board of Canada ("IRB") on September 20, 2017, because the applicant's mother was found not to be credible on material issues. It appears that an appeal was filed with the Refugee Appeal Division but it was not perfected and was eventually dismissed accordingly. With the rejection of her refugee claim, the applicant became subject to removal from Canada.

[4] Apparently in conjunction with her mother and her siblings, in May 2018 the applicant submitted an application for permanent residence on humanitarian and compassionate ("H&C") grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). A request for deferral of her removal from Canada was granted in October 2018. It appears that a deferral of removal was also granted to the other members of the applicant's family.

[5] On October 23, 2018, the applicant's mother, on her own behalf and on behalf of her children, applied for a pre-removal risk assessment ("PRRA") under subsection 112(1) of the *IRPA*. This application was based on the same risk as had been alleged in the refugee claim – namely, a risk of persecution because of the applicant's mother's bisexuality. After the application was received by Immigration, Refugees and Citizenship Canada ("IRCC"), on November 9, 2018, IRCC sent the applicant notification that, since she was over the age of 18, she had to submit her own PRRA application. She did not do so.

[6] In April 2019, the applicant's mother and her siblings withdrew their PRRA applications because they had decided to return to Nigeria. The applicant (who by then was 20 years of age) did not wish to return to Nigeria so her PRRA application was continued. The application was refused on May 25, 2019. The IRCC decision maker noted that, since the applicant had not submitted a separate application, the decision was based solely on the information on file. As reflected in the decision, that information related exclusively to risks arising from the applicant's mother's alleged bisexuality.

[7] The applicant's H&C application was refused on May 29, 2019. As noted below, the negative PRRA and H&C decisions were not served on the applicant until nearly two years after they were made.

[8] The CBSA issued a direction to the applicant to report for a pre-removal interview on August 22, 2019. She failed to appear for this interview. As a result, a warrant for her arrest was issued. The CBSA attempted to locate the applicant in November 2019 but was unable to. As will be discussed further below, it is at least an open question whether the applicant was aware that she was required to report for an interview in August 2019.

[9] On April 24, 2020, the applicant had an encounter with the police. After being notified of this, the CBSA executed the warrant for her arrest and then released her on conditions. In a record of the arrest, a CBSA officer noted that it did not appear that the applicant "has attempted to evade CBSA." The officer also noted that, despite the applicant being removal ready, "given the current situation with COVID 19 this subject was released on conditions."

[10] The applicant was served with the negative PRRA and H&C decisions a year later, on April 12, 2021. It appears that at or around this time, the process for her removal was recommenced.

[11] A few weeks after learning that her PRRA and H&C applications had been refused, the applicant videotaped herself naked, going onto the balcony of a high rise building, and threatening to kill herself. She posted this video on social media. Friends who saw the video

contacted the authorities. The applicant was apprehended and committed to hospital involuntarily under the *Mental Health Act*, RSO 1990, c M-7, from May 5 to May 26, 2021.

[12] The applicant was discharged from the hospital with a diagnosis of either bipolar disorder or cannabis-induced psychosis (her psychiatrist was unable to determine at that time which was the correct diagnosis). She was prescribed medication.

[13] The CBSA conducted a pre-removal interview with the applicant by telephone on June 16, 2021.

[14] On June 18, 2021, the applicant was assessed by Dr. Gerald M. Devins, a Consulting and Clinical Psychologist. In a report of the same date, Dr. Devins stated that, on being asked what she would do if she were refused permission to remain in Canada, the applicant responded that she might try to harm herself again. When asked directly if she intended to take her own life, she said she did not know; however, at another point in the interview she said she may do so if she could not stay in Canada. Dr. Devins was of the opinion that the applicant's attempted suicide in early May was directly related to her being informed by the CBSA that they were taking removal action against her.

[15] The CBSA directed the applicant to attend for another pre-removal interview on June 21, 2021, but she did not appear. The applicant called the CBSA later that day and said she had been feeling unwell. She also said she did not understand the purpose of the interview.

[16] As she was directed to do, the applicant attended for another interview the next day. She was served with a Direction to Report for removal on July 22, 2021.

[17] On July 3, 2021, the applicant submitted a written request to the CBSA (with the assistance of her former counsel) to defer her removal. The request was based on the risk of harm she faced in Nigeria because of her mental health and the lack of accessible treatment there.

[18] The applicant attended a pre-removal interview on July 13, 2021. She provided her consent for the CBSA to obtain a Medical Requirements for Removal Report to determine whether she was fit to fly. This report, provided on July 14, 2021, determined that the applicant was fit to fly. The CBSA conducted a further pre-removal interview with the applicant by telephone.

[19] Included with the documentation supporting the deferral request was a follow-up report from Dr. Devins dated July 15, 2021, which stated the following:

> I spoke to Ms. Erhire, again, this evening to assess her current state of mind. She stated clearly and unequivocally that she intends to take her life should steps be undertaken to remove her from Canada. When I asked about her plans should she be required to leave Canada, Ms. Erhire responded directly and without hesitation, "Kill myself . . . I've researched how to open the plane doors and everything and, well, there's knives." When I asked her whether she truly intends to take her life should she be refused, she replied without hesitation, "That's exactly what I'll do."

[20] The deferral request was refused by an Inland Enforcement Officer on July 19, 2021. The applicant filed an application for leave and judicial review of this decision (Court File No.

IMM-4845-21). In connection with that application, the applicant sought an order from this Court staying her removal.

[21] Meanwhile, the applicant was required to attend for COVID-19 testing and another pre-removal interview on July 20, 2021. She failed to do so. Later that day, she called the CBSA after-hours line to say she had been unwell again.

[22] Around this time, the removal date was changed from July 22, 2021, to August 10, 2021. It does not appear that this was because of the applicant's failure to attend on July 20, 2021. Rather, it appears that the change was made because the CBSA had determined that the applicant should be escorted by CBSA officers on her flight to Nigeria.

[23] The motion to stay the applicant's removal was heard by Justice Bell on August 4, 2021. Justice Bell reserved his decision pending receipt by the end of the day on August 5, 2021, of further information from the applicant regarding irreparable harm and confirmation from the respondent of the removal date.

[24] On August 5, 2021, the applicant was re-admitted to hospital with symptoms of psychosis in the context of cannabis use. It is unclear from the record on the present motion how long she remained in hospital. According to a note from her psychiatrist dated August 10, 2021, the applicant was still hospitalized at that time and her date of discharge was unknown. In any event, this hospitalization resulted in the cancellation of the scheduled removal on

August 10, 2021. This, in turn, led to the withdrawal of the stay motion pending before Justice Bell. Evidently the applicant was discharged from hospital sometime later in August.

[25] The applicant's escorted removal was eventually re-scheduled for August 24, 2021.

[26] On or about August 13, 2021, the applicant submitted a second written request to defer her removal (again with the assistance of her former counsel). As summarized by the Inland Enforcement Officer who dealt with the request, it was a request "to remain in Canada indefinitely for mental health treatment." The request was refused on August 20, 2021. The applicant filed an application for leave and judicial review of this decision (Court File No. IMM-5650-21). She also moved for a stay of her removal pending the final determination of that application.

[27] The applicant attended for a COVID-19 test and a pre-removal interview on August 22, 2021. She was scheduled to attend for a second COVID-19 test and yet another pre-removal interview on August 23, 2021, but she failed to appear. The applicant texted the CBSA officer she had been dealing with to say she was running late but in the end she never arrived.

[28] The stay motion was heard by Justice McVeigh on August 23, 2021. It was dismissed the same day. In the order dismissing the motion, Justice McVeigh noted that she had agreed to hear the stay despite the fact that the applicant did not come to court with clean hands. Justice McVeigh found that "there is no doubt it was the Applicant's fault that she did not attend

for a removal interview on August 22, 2019." She also found that the applicant had failed to attend for a pre-removal interview and her second COVID-19 test on August 23, 2021, and, as a result, the removal would have to be rescheduled. Despite this, Justice McVeigh stated that she was "still willing to consider [the applicant's] arguments given that she has mental health issues."

[29] With regard to the merits of the motion, Justice McVeigh concluded that the applicant had not met the irreparable harm part of the test for a stay. More specifically, Justice McVeigh found that the applicant had provided no evidence that she had no support in Nigeria, that she could not obtain her prescribed medication there, or that her recommended treatment was not available there. Justice McVeigh also stated: "Of importance in the analysis of irreparable harm in returning to Nigeria is the fact that her refugee claim failed because she was not credible that she was bi-sexual thus eliminating that previously alleged fear." (This conclusion appears to have been based on incorrect information provided to Justice McVeigh about the applicant's claim for refugee protection.) Justice McVeigh also noted that the applicant would be escorted by two CBSA officers to Nigeria "to ensure her health and safety, given her mental health issues." Justice McVeigh concluded: "The Applicant did not provide evidence of an irreparable harm of the type needed to meet this branch of the test as there is no irreparable harm other than the harm associated with the removals process."

[30] On August 24, 2021, CBSA officers found the applicant at the home of her estranged husband. She was placed under arrest and detained at the Immigration Holding Centre.

[31] The applicant's 48 hour detention review took place before the Immigration Division ("ID") of the IRB on August 26, 2021. Counsel for the Minister opposed release on the basis that the applicant was a flight risk and no effective alternative to detention was available. Counsel for the applicant submitted that she should be released on conditions under the supervision of her aunt, Prisca Ese Bazarin.

[32] While the hearing was underway, the CBSA confirmed a new removal date for the applicant of September 7, 2021. The ID was informed of this development after submissions were completed but before it rendered its decision.

[33] For reasons delivered orally on August 26, 2021, the ID found that the applicant was unlikely to appear for her removal. Indeed, the applicant posed a "moderate to high" risk of flight. However, the ID also found that this concern could be managed with an appropriate alternative to detention. The ID concluded that release under the supervision of Ms. Bazarin as a bondsperson was an appropriate alternative to detention. Ms. Bazarin was required to provide a cash deposit of $2500 and a performance bond of $10,000. Among other conditions, the applicant was required to reside with Ms. Bazarin, to cooperate with the CBSA, to report for removal as directed and, in the meantime, to report to the CBSA weekly.

[34] The Minister immediately applied for leave and judicial review of this decision. He also sought a stay of the order for the applicant's release from detention pending the final determination of that application.

[35] On August 27, 2021, Justice Roy granted an interim stay of the release order pending a hearing of the motion for an interlocutory stay. He set that hearing down for August 31, 2021. I heard the matter then and reserved my decision. In a decision released on September 1, 2021 (cited above), I allowed the motion and stayed the ID's order for the applicant's release from detention. I understand that the ID's order has now been superseded by the ID's decision at the applicant's 7 day detention review (heard on September 2, 2021) to continue her detention.

B. *The September 2, 2021, Deferral Request*

[36] On September 2, 2021, the applicant (with the assistance of counsel from the Refugee Law Office) submitted a third written request to defer her removal. The request was based on the applicant's risk of self-harm flowing from her mental health issues if she were to be removed to Nigeria in the absence of trusted reception arrangements to address her needs. In summary, counsel submitted as follows:

> We are requesting deferral because Ms. Erhire's mental health has deteriorated significantly since the refusal of her previous deferral request and her arrest and detention by CBSA last week. She is in crisis. Removing her now in her current state without proper reception arrangements poses a serious risk to her life.
>
> Today, based on the compelling evidence that Ms. Erhire would harm herself if released, the Federal Court found that it is in the public interest for her to remain in detention so that she can receive the medical care and supervision she requires. We submit that it is therefore similarly in the public interest for CBSA to grant additional time to make proper reception arrangements for Ms. Erhire in Nigeria to ensure that she receives this same medical care and supervision upon her removal.

[37] The applicant requested a deferral of 60 days to give her time to make these arrangements. (Since she was now detained, obviously the applicant would be heavily reliant on

others to make those arrangements on her behalf. Counsel noted that the applicant's aunt, Ms. Bazarin, was willing to assist in this regard.)

[38] The deferral request was supported by a comprehensive record and detailed submissions. It was supplemented by additional information and submissions on September 3, 2021.

C. *The September 3, 2021, Refusal to Defer*

[39] The deferral request was refused in a decision dated September 3, 2021. In summary, the Inland Enforcement Officer concluded that deferral was not warranted for the following reasons:

- While counsel had submitted that it would be in the public interest to allow time for reception arrangements to be made, the officer noted that the applicant "will be travelling under an escort of CBSA officers and CBSA is in the process of arranging a nurse for the flight." The officer also noted "that CBSA is in the process of arranging the reception in Nigeria so that Mrs. Annabel ERHIRE has the proper supervision upon arrival in Nigeria." The officer continued: "I note that the nurse will be travelling along with the escort officers to address any medical issues that may arise during the travel, and CBSA is in the process of arranging the reception in Nigeria. Considering the above, the counsel did not provide sufficient evidence to warrant a deferral of removal on that basis."

- While counsel had submitted that the applicant suffers from severe mental illness and was showing signs of currently being in a mental health crisis, the officer noted that "CBSA was continuously working with Mrs. Annabel ERHIRE to address any issues, provided a

nurse and escort officers to travel with Mrs. Annabel ERHIRE to Nigeria and is in the process of arranging reception for her in Nigeria. Based on the above the counsel did not provide sufficient evidence to warrant a deferral of removal from Canada."

- While counsel had submitted that the necessary care and treatment for the applicant's mental health needs will be difficult to access in Nigeria, the Inland Enforcement Officer concluded that insufficient new evidence in this regard had been provided to disturb the finding in response to the first deferral request (made by the same officer) that deferral on this basis was not warranted. (I note parenthetically that counsel had asked for 60 days to prepare for reception arrangements because mental health care was difficult to access in Nigeria. In contrast, the first request – submitted by former counsel – had sought an indefinite deferral so that the applicant could receive treatment in Canada that was not available in Nigeria.)

III. ANALYSIS

A. *Introduction: The Clean Hands Doctrine*

[40] The applicant seeks a stay of her removal from Canada pending the final determination of her application for leave and judicial review of the decision refusing to defer her removal. The decision whether to grant or refuse interlocutory relief like this is a discretionary exercise (*R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 27). In determining whether the applicant is entitled to this relief, the fundamental question is whether the granting of a stay is just and equitable in all of the circumstances of the case. This will necessarily be a context-specific determination. See *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25.

[41] Over and above the elements of the well-known three-part test for an interlocutory stay, which will be discussed further below, when determining whether to grant such relief, the court may consider whether the moving party comes to the court with clean hands. The respondent contends that the applicant does not have clean hands and this disentitles her from the relief she now seeks.

[42] In *Canada (National Revenue) v Cameco Corporation*, 2019 FCA 67, the Federal Court of Appeal states that "clean hands" is "an equitable doctrine, under which a party may be disentitled to relief to which it was otherwise entitled as a consequence of past conduct or bad faith. Importantly," the Court continues, "for past conduct to justify a refusal of relief, the conduct must relate directly to the very subject matter of the claim" (at para 37, references omitted).

[43] In *Canada (Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14, Evans JA held that, "if satisfied that an applicant has lied, or is otherwise guilty of misconduct, a reviewing court *may* dismiss the application without proceeding to determine the merits or, even though having found reviewable error, decline to grant relief" (at para 9, emphasis in original). As Evans JA went on to explain, in exercising this discretion, a reviewing court "should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights" (at para 10).

[44] While Evans JA was speaking in terms of the discretion to refuse to determine an application for judicial review on its merits, there is no question that the same discretion applies in respect of a request for interlocutory relief. It is also well-established that this discretion extends to whether to hear a motion at all. Thus, there appear to be three potential adverse outcomes for a party who does not have clean hands:

- The court may decline to hear the matter;
- After hearing from the parties, the court may find that the lack of clean hands is determinative and therefore decline to address the merits of the matter; or
- After hearing from the parties, the court may find that, while a case for relief has been made out, the applicant is not entitled to that relief because of the lack of clean hands.

[45] When an application for relief is sought on an urgent basis – in the immigration and refugee context, typically in the form of a request for a stay of removal when the removal date is but a day or two (if that) away – an additional concern arises. This is whether hearing the matter would unnecessarily or unfairly prejudice either the respondent in its ability to respond to the request or the court in its ability to deal with the request properly. This is an additional discretionary determination that is separate from any question of clean hands, although the two can certainly arise in the same case. In either respect, when the question is whether to hear the matter at all, that discretion should be exercised with caution. See *Beros v Canada (Citizenship and Immigration)*, 2019 FC 325, for a very helpful discussion of the factors that may inform the exercise of the discretion not to hear a matter brought on an urgent basis. See also the Federal

Court's Practice Guidelines concerning urgent motions to stay removal from Canada dated February 18, 2021.

[46] In the present case, the respondent asked the court not to hear the applicant's urgent motion for a stay of removal because she does not have clean hands. The respondent did not contend that it would be prejudiced in having to respond to the matter on an urgent basis. In a Direction issued on Friday September 3, 2021, I confirmed that I would hear the motion on Monday September 7, 2021. This determination was made expressly without prejudice to the right of the respondent to raise the issue of clean hands in connection with the test for a stay.

[47] As I will explain in more detail below, in the particular circumstances of this case, in my view the issue of clean hands is best dealt with under the balance of convenience part of the test for a stay. It goes without saying that there may be other circumstances (particularly in combination with prejudice to the respondent or to the court flowing from the timing of an application) where the fact of unclean hands can lead the court to decline to hear the matter at all. The governing consideration will be whether it would not be in the interests of the administration of justice even to hear the matter. To repeat, such a determination should be made with caution.

B. *The Test for a Stay of Removal*

[48] The purpose of interlocutory relief like an injunction or a stay is to preserve the subject matter of the litigation so that effective relief will be available when the underlying litigation is ultimately heard on the merits: see *Google Inc* at para 24. As already noted, the decision to grant

or refuse such relief is a discretionary one that turns on what is just and equitable in all of the circumstances of the case.

[49] The test for obtaining an interlocutory stay of a removal order is well-known. The applicant must demonstrate three things: (1) that the underlying application for judicial review raises a "serious question to be tried;" (2) that she will suffer irreparable harm if the stay is refused; and (3) that the balance of convenience (i.e. the assessment of which party would suffer greater harm from the granting or refusal of the injunction pending a decision on the merits of the judicial review application) favours granting the stay: see *Toth v Canada (Employment and Immigration)* (1988), 86 NR 302, 6 Imm LR (2d) 123 (FCA). More generally, see also *Canadian Broadcasting Corp* at para 12; *Manitoba (Attorney General) v Metropolitan Stores Ltd*, [1987] 1 SCR 110; and *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334.

[50] While each part of the test is important, and all three must be met, they are not discrete, watertight compartments. Each part focuses the court on factors that inform its overall exercise of discretion in a particular case: *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 135. The test should be applied in a holistic fashion where strengths with respect to one factor may overcome weaknesses with respect to another: see *RJR-MacDonald* at 339; *Wasylynuk* at para 135; *Spencer v Canada (Attorney General)*, 2021 FC 361 at para 51; and *British Colombia (Attorney General) v Alberta (Attorney General)*, 2019 FC 1195 at para 97 (rev'd on other grounds 2021 FCA 84). See also Robert J Sharpe, "Interim Remedies and Constitutional Rights" (2019) 69 UTLJ (Supp 1) at 14.

[51] Together, the three parts of the test help the court to assess and assign what has been termed the risk of remedial injustice (see Sharpe, above). They guide the court in answering the following question: Is it more just and equitable for the moving party or the responding party to bear the risk that the outcome of the underlying litigation will not accord with the outcome on the interlocutory motion?

C. *The Test Applied*

(1) Serious Question

[52] Typically, the threshold for establishing a serious question to be tried is a low one. An applicant only needs to show that at least one of the grounds raised in the underlying application for judicial review is not frivolous or vexatious: *RJR-MacDonald* at 335 and 337; see also *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 at para 11 and *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 25.

[53] The Supreme Court of Canada has held that one exception to the usual rule that this low threshold applies in the first part of the test is "when the result of the interlocutory motion will in effect amount to a final determination of the action" (*RJR-MacDonald* at 338). In such circumstances, the moving party must meet an elevated threshold to be entitled to interlocutory relief.

[54] This is the case here. If granted, a stay of removal effectively grants the relief sought in the underlying judicial review application – namely, the setting aside of the refusal to defer

removal: see *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FC 682, 2001 FCT 148 (CanLII) at para 10; and *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311 at paras 66-67 (per Nadon JA, Desjardins JA concurring) and para 74 (per Blais JA).

[55] This elevated standard has been expressed in different ways. In *RJR-MacDonald*, the Court spoke of having to undertake "a more extensive review of the merits" (at 339). In the specific context of a stay of removal, as I understand it, the core idea is that the judge must be satisfied, after a hard look at the grounds advanced, that the application for judicial review is likely to succeed: again, see *Wang* and *Baron.*

[56] In the context of the present case, there are at least two important constraints on the court's assessment of the merits of the underlying application for judicial review. First, the strength of the grounds for review must be assessed in light of subsection 48(2) of the *IRPA* – which provides that an enforceable removal order "must be enforced as soon as possible" – and the very limited discretion available to an officer to defer enforcement (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 54-61; see also *Toney v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1018 at para 50; and *Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075 at paras 15-19). Thus, it may be difficult to establish that a serious question arises with respect to a decision denying a deferral request that clearly exceeds the scope of the decision maker's authority to grant. That being said, in my view, this difficulty does not arise here. The time-limited deferral for a specific purpose

related to the applicant's welfare that was requested appears to fall squarely within the scope of the Inland Enforcement Officer's discretion and legal authority.

[57] Second, the strength of the grounds for judicial review must also be assessed in light of the applicable standards of review. The substance of the Inland Enforcement Officer's decision is reviewed on a reasonableness standard (*Lewis* at para 43). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). Thus, to meet this part of the test with respect to grounds of review relating to the substance of the decision, the applicant must show that she is likely to be able to demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[58] On the other hand, where the grounds for review relate to issues of procedural fairness, the reviewing court must conduct its own analysis of the process followed by the decision maker and determine for itself whether the process was fair having regard to all the relevant circumstances, including those identified in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21 to 28: see *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54; and *Elson v Canada (Attorney General)*, 2019 FCA 27 at para 31. This is functionally the same as applying the correctness standard of review: see *Canadian Pacific Railway Co* at paras 49-56 and *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA

196 at para 35. To meet this part of the test with respect to grounds of review relating to the process followed by the decision maker, the applicant must show that she is likely to be able to demonstrate that the requirements of procedural fairness were not met.

[59] For the purposes of this motion, the applicant advances three grounds for review of the officer's decision which I would state as follows:

a) Was it unreasonable for the officer to conclude that additional time to make arrangements for the applicant's reception in Nigeria was not warranted because the CBSA was in the process of making these arrangements?

b) To the extent that the officer relied on extrinsic evidence concerning the arrangements being made for the applicant's reception in Nigeria, were the requirements of procedural fairness breached because the applicant was not given an opportunity to comment on that evidence before the decision was made?

c) Was it unreasonable for the officer to conclude that deferral was not warranted because the applicant had not provided evidence of a personalized risk in Nigeria?

[60] In my view, the first of these grounds clearly meets the elevated threshold for being a serious question. The officer does not reject the evidence suggesting that arrangements for the applicant's care once she arrives in Nigeria were required. Indeed, to do so would run counter to determinations by other CBSA officials (including senior management) that reception arrangements should be made. The officer may well have presumed that whatever was ultimately put in place by the CBSA would be suitable and effective. The problem is that simply

knowing that arrangements were in the process of being made without knowing what those arrangements were (or even if they could in fact be made) does not provide a reasonable basis for this presumption or the ultimate determination that deferral was not warranted. This is a fundamental gap in the chain of analysis that calls the overall reasonableness of the decision into question: see *Vavilov* at para 96.

[61] Turning to the second ground for review, at this stage this ground is somewhat hypothetical because we do not know what extrinsic evidence, if any, the officer relied on in making the decision. According to the decision itself, the officer simply relied on the fact that the CBSA was "in the process of arranging" for the applicant's reception in Nigeria. While this fact was not shared with the applicant before the decision was made, it is difficult to see how this would be anything more than a technical breach of the requirements of procedural fairness. On the other hand, if the officer did rely on more information than this (something that can be determined only once the Certified Tribunal Record is available), the argument that the requirements of procedural fairness were not met becomes stronger. Standing on its own, the second ground for review may not meet the elevated threshold. However, I am satisfied that it does meet this threshold in conjunction with the first ground for review. In effect, taken together, the two grounds for review put the respondent on the horns of a dilemma: if the officer only relied on the fact that arrangements were in the process of being made, the reasonableness of the decision is highly doubtful but, if the officer did rely on other information about those arrangements, procedural fairness arguably required that the applicant have an opportunity to comment on that information before the decision was made.

[62] Since this is sufficient to meet the first part of the test, it is not necessary to address the merits of the third ground for review.

(2) Irreparable Harm

[63] Under the second part of the test for a stay, "the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicant[']s own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application" (*RJR-MacDonald* at 341). This is what is meant by describing the harm that must be established as "irreparable". It concerns the nature of the harm rather than its magnitude (*ibid.*). Importantly, in the context of a case such as this, the impact on the applicant's interests is to be assessed on the assumption that the eventual decision on the underlying application for judicial review does not accord with a refusal to grant a stay. That is to say, the question at this stage is whether, if the stay is refused, the applicant will suffer any harm that cannot be remedied in the event that her application for judicial review is successful.

[64] Generally speaking, irreparable harm is harm that cannot be quantified in monetary terms or that could not be cured for some other reason even if it can be quantified (e.g. the other party is judgment-proof). This notion of what is or is not reparable is easily understood in private law and commercial disputes. It is perhaps more difficult to incorporate in a case where the underlying litigation is an application for judicial review, damages are not available in any event, and other interests besides economic ones are paramount.

[65] To establish irreparable harm, the applicant must show that there is "real, definite, unavoidable harm – not hypothetical and speculative harm" (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 24). She must adduce clear and non-speculative evidence that irreparable harm will follow if the stay is refused. Unsubstantiated assertions of harm will not suffice. Instead, "there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result" unless the stay is granted: *Glooscap Heritage Society* at para 31; see also *Canada (Attorney General) v Canada (Information Commissioner)*, 2001 FCA 25 at para 12; *International Longshore and Warehouse Union, Canada v Canada (Attorney General)*, 2008 FCA 3 at para 25; *United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200 at para 7.

[66] At this point it is important to underscore the comment in *RJR-MacDonald* that, particularly when an elevated threshold is applied under the first part of the test, the anticipated result on the merits should be borne in mind when considering the second and third parts of the test (at 339).

[67] In the context of a motion to stay an order releasing a party from detention, Justice Little observed in *Canada (Public Safety and Emergency Preparedness) v Thomas*, 2021 FC 456, that "in these particular motions for interim relief, the first and second stages of the *RJR-MacDonald* framework are often very closely related, in a way that may not arise in interlocutory injunction or stay applications in other areas of the law. A serious issue and irreparable harm may follow or flow from one another" (at para 46). In my view, this observation is equally applicable to stay

applications sought in connection with an application for judicial review of a refusal to defer removal.

[68] I am satisfied that, if the applicant were to be removed before the final determination of her application for judicial review of the deferral decision, she would suffer irreparable harm because she would be deprived of a meaningful and effective remedy in that proceeding. Having persuaded me that she is raising serious issues on her application for judicial review (on an elevated standard, no less), the applicant has also persuaded me that she will suffer irreparable harm if the *status quo* is not preserved by staying her removal from Canada. An order setting aside the refusal to defer and remitting the matter for reconsideration would be meaningless and ineffective if the applicant was already in Nigeria when it was made. No other available remedy could make up for this.

[69] This is sufficient to satisfy the second part of the test. However, because it has a bearing on the balance of convenience part of the test, I would also find that the irreparable harm to the applicant is compounded by the real probability of harm to her in Nigeria if she were removed there now.

[70] It is necessary at this point to set out some additional background.

[71] There is evidence before me on this motion that the CBSA has arranged for the applicant to be admitted to Novacrest Hospital in Abuja, Nigeria, on her arrival there. These arrangements were finalized after the Inland Enforcement Officer’s decision refusing to defer removal was

made. The hospital has agreed to admit the applicant for 14 days. They will also send a nurse to meet her at the airport and accompany her from the airport to the hospital. The Government of Canada will cover the costs of this stay.

[72] Very little is known at this point about the hospital. It is one of two facilities that had been suggested by the CBSA Liaison Officer in Abuja. According to its website (excerpts of which are part of the applicant's record on this motion), the hospital is a "Centre of Excellence for Bio-Psychological Medicine, Management of Mental disorders, Neurological diseases, and Alcohol & Drug Rehabilitation services." The website states: "We deliver first-class healthcare services tailored to individual needs in a serene and exclusive environment. We pride ourselves in offering holistic care, hence, our motto; Caring for the whole man." Available services are listed as follows:

- Psychological Services
- Alcohol And Drug Rehabilitation
- Psycho Education
- Stress Management And Anger Management
- Management Of Mental Disorders
- Medical Services/Intensive Care Management
- Hospice And Palliative Care
- Laboratory Services

[73] This same generic list of services is reproduced in a September 5, 2021, email to the applicant's counsel from one of the escort officers scheduled to accompany the applicant to Nigeria. No plan of care for the applicant has been offered. This is not surprising since, not

having the applicant's consent to disclose personal, medical or mental health information to the hospital, the CBSA did not do so. The email from the escort officer simply states: "The client will be assessed and treatment provided accordingly." Efforts by the applicant's counsel to learn more about the hospital and its services in the limited time available between when they learned of the arrangements and the hearing of this motion were unsuccessful.

[74] Returning to the test for irreparable harm, unlike the harm identified above, which follows as a matter of logic from the issues engaged in the underlying application for judicial review, the question of harm in Nigeria relates to empirically contingent future events. At the moment, this harm is only apprehended; it is a harm that is expected to occur at some future time, if at all, if the applicant is removed from Canada to Nigeria. As Justice Gascon observed in *Letnes v Canada (Attorney General)*, 2020 FC 636, "The fact that the harm sought to be avoided is in the future does not necessarily make it speculative. It all depends on the facts and the evidence" (at para 57). See also *Delgado v Canada (Citizenship and Immigration)*, 2018 FC 1227 at paras 14-19; and *Wasylynuk* at para 136.

[75] As I have stated elsewhere, the idea of a "real probability of harm," particularly as applied to apprehended future harms, is fundamentally a qualitative as opposed to a quantitative assessment: see *Singh v Canada (Citizenship and Immigration)*, 2021 FC 846 at para 29; and *Erhire* at para 37. The harm that is relied on certainly cannot be merely hypothetical or speculative but at the same time it is unrealistic to demand evidence establishing a precise level of risk when the harm to which the relief is directed will only occur in the future, if at all. As well, as my colleague Justice Grammond held in *Cerrato v Canada (Public Safety and*

Emergency Preparedness), 2018 FC 1231, "the true overall risk of irreparable harm will always be a function of both the likelihood of the harm occurring and its size or significance should it occur. A sound analytical approach should take this into account" (at para 22).

[76] The respondent contends that the harm the applicant alleges is merely hypothetical and speculative because suitable arrangements have been put in place in Nigeria to address the applicant's mental health needs. The respondent also relies on the fact that, on a previous motion to stay her removal, the applicant was unable to persuade Justice McVeigh that she would suffer irreparable harm if removed to Nigeria. For her part, the applicant contends that she has established a real probability of harm in Nigeria because there is compelling evidence of her need for medical treatment and support and there is insufficient evidence to demonstrate the effectiveness of the arrangements that have been put in place for her by the CBSA. As I will explain, I agree with the applicant.

[77] To begin with Justice McVeigh's findings regarding irreparable harm, in my view, they are of limited assistance on this motion. I say this essentially for three reasons. First, they are findings of mixed fact and law that were made on the basis of the record before her. There is no suggestion that the doctrine of issue estoppel applies. Second, while the record before me contains evidence that was also before my colleague, the record on the present motion includes additional evidence suggesting that the applicant's mental state has deteriorated recently and that she is experiencing acute mental health crises. Much of the evidence relating to the applicant's mental health was before me on the Minister's motion for a stay of the order for the applicant's release from detention. This evidence was, in part, what led me to grant the motion: see in

particular paragraphs 38 to 42 of my earlier decision, dealing with the question of irreparable harm. The harm at issue there was not the same as here but the two share common roots in the applicant's mental health challenges. Third, the irreparable harm alleged on this motion is not the same as what was alleged in the motion heard by my colleague. As summarized by Justice McVeigh, the applicant's position in the previous motion was that "to remove someone that has mental health issues back to Nigeria where there is no support system and people are treated 'with hostility and ill treatment' is clearly irreparable harm as well as unreasonable." This position is also reflected in the fact the request in issue was for an indefinite deferral of removal so that the applicant could receive mental health treatment in Canada. The underlying request here – a 60 day deferral to make arrangements for the applicant's reception in Nigeria – is quite different. So too is the risk of harm that has been identified.

[78] The applicant relies on a risk of serious psychological damage and self-harm should she be removed before there are effective measures in place for her care and treatment. Indeed, her counsel submits that the applicant is at a heightened risk of suicide if she were to be removed without trusted reception arrangements in place. It is indisputable that if there is a real probability of any of this occurring, this would satisfy the second part of the test: see *Tiliouine v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1146 at para 13; and *Konaté v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 703 at paras 12-22. I am satisfied that the evidence establishes a real probability of these outcomes unless suitable measures are in place for the applicant when she arrives in Nigeria. The determinative question is whether the arrangements that have been made by the CBSA will be effective in meeting the applicant's needs. The respondent contends that they will be but, on the evidence before me, I

cannot agree. Rather, I agree with the applicant that there is insufficient information with respect to the hospital and its plan of care for her to demonstrate that it is an appropriate facility that she can and should trust with her care, and where she will be safe.

[79] Further, in addition to the lack of information about the facility and its suitability for the applicant, the effectiveness of the measures the CBSA has put in place depends on the applicant engaging with them voluntarily. (There has been no suggestion that she could be held at Novacrest against her will. Had there been, a different set of concerns would have arisen.) The applicant's willingness to cooperate with these measures in turn depends on her accepting that they are appropriate. The problem at the moment is that she has been given no reason to trust that this is so. Very little is known about the facility the CBSA has contracted with and nothing is known about the specific treatment they would provide for the applicant. What the applicant does know is that these arrangements were made by her adversary in this proceeding. Consequently, as things stand, it would be entirely reasonable for her to be sceptical about the arrangements and to choose not to cooperate. This would then leave her without any supports whatsoever, which in turn would put her at serious risk of harm. Moreover, I cannot ignore the fact that, until they are properly addressed, the applicant's mental health challenges could make her prone to make decisions that are not in her own best interests.

[80] The arrangements that have been put in place for the applicant on her arrival in Nigeria may very well be entirely appropriate, are the best available option, and are sufficient to address the risk of harm to the applicant if she is removed (at least in the short term). However, on the record as it stands at the moment, I am unable to make this determination. This is because I have

no way of knowing that the hospital can provide the applicant with the care she requires. And even if it can, I cannot say that it would be unreasonable for the applicant not to cooperate with those arrangements.

[81] Finally, I note that the risk of harm in Nigeria the applicant relies on under this aspect of the second part of the test is the same as the one assessed by the deferral officer. As Justice Grammond observed in *Gill v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1075, in such a case, "given that the CBSA officer's role is to assess the harm flowing from the removal of the applicant, the first two prongs of the RJR test overlap significantly" (at para 22). This overlap can cut both ways. On the one hand, the court may be persuaded that the officer's determination deserves some weight – perhaps even significant weight – in its own independent assessment of irreparable harm. On the other hand, if persuaded under the first part of the test that there is a serious flaw in the officer's determination, the court can be expected to give much less weight, if any, to that determination in its assessment of irreparable harm. Given that I have found that there are serious questions raised regarding the reasonableness and fairness of the officer's decision, I give no weight to the officer's conclusion that the applicant would not be at risk of irreparable harm if she were removed to Nigeria at this time.

(3) Balance of Convenience

[82] Under the third part of the test, the applicant must establish that the harm she would suffer if the stay is refused is greater than the harm the respondent would suffer if the stay is granted. This weighing exercise is neither scientific nor precise: see *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2020 FCA 181 at para 17. But this is not to say

it is unprincipled. On the contrary, it is at the heart of the determination of what is just and equitable in the particular circumstances of the case at hand.

[83] In assessing the balance of convenience, the impact of refusing the stay on the applicant's private interests must be considered. Since this case involves actions by a public authority, the public interest must also be taken into account (*RJR-MacDonald* at 350). However, the assessment of which party would suffer greater harm from the granting or refusal of the stay pending a decision on the merits of the underlying judicial review application is not necessarily a straightforward, binary determination. This is because the public interest is not a singular factor that weighs exclusively on the respondent's side of the scale. For example, there is a clear public interest in ensuring that justice is done in the underlying application for judicial review. This includes providing the applicant with a meaningful remedy and effective relief should she succeed in her challenge to the refusal to defer her removal. The applicant's private interests and the public interest thus align in this important respect, even if they diverge in other respects.

[84] The applicant is subject to a valid and enforceable removal order. This order was made pursuant to statutory and regulatory authority. It is therefore presumed that it was made in the public interest. The effective enforcement of this order is also presumed to be in the public interest. Further, as noted above, under subsection 48(2) of the *IRPA*, a removal order "must be enforced as soon as possible" once it is enforceable.

[85] It is also presumed that an action that suspends the effect of an order made in the public interest (as would an interlocutory stay) is detrimental to the public interest: see *RJR-MacDonald*

at 346 and 348-49. That being said, the impact of that suspension on the public interest is a matter of degree and this must be determined in light of the particular circumstances of the case at hand. For example, as *RJR-MacDonald* states, the impact on the public interest of exempting an individual litigant from the application of lawfully enacted legislation is less than suspending the effect of that legislation entirely. The impact of suspending temporarily the implementation of a removal order is arguably of an even lesser degree than this (although again the extent of that impact will depend on the particular circumstances of the case). The impact of the suspension of a removal order on the public interest can also depend on how long the effect of that order would be suspended: see *Canadian Council for Refugees* at para 27.

[86] As I will explain, I have concluded that the balance of convenience favours the applicant. Before doing so, however, it is necessary to say something more about the issue of clean hands and how it applies in this case.

[87] In *Thanabalasingham*, Evans JA suggested a non-exhaustive list of factors to consider when attempting "to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights" (at para 10). These are:

- the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question;
- the need to deter others from similar conduct;

- the nature of the alleged administrative unlawfulness and the apparent strength of the case; and
- the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.

[88] There is significant overlap between these factors and the test for obtaining an interlocutory stay. In the circumstances of this case, nothing would have been gained by considering these factors under the clean hands doctrine as a free-standing test before engaging with the three-part test for a stay. What must be determined under the clean hands doctrine is whether the applicant's misconduct should disentitle her to the relief she now seeks. This question fits neatly into the overall assessment of the equities of the case that is called for under the third part of the test for a stay.

[89] The respondent relies heavily on Justice McVeigh's findings regarding the applicant's lack of clean hands in arguing that this factor (among others) tips the balance of convenience in the respondent's favour. I have given careful consideration to my colleague's findings. However, I have concluded that they do not provide as much support to the respondent's position in the present motion as the respondent might have wished. I say this for the following reasons.

[90] First, Justice McVeigh's application of the clean hands doctrine is only tangentially related to what remains to be determined here. This is because my colleague applied it to the preliminary question of whether she should even hear the stay motion. She concluded that she would, despite the applicant's lack of clean hands. Further, Justice McVeigh found that the applicant's failure to establish irreparable harm was determinative of the motion before her.

Consequently, she did not assess the lack of clean hands at all in connection with the balance of convenience, the part of the test I have now reached.

[91] Second, as I will explain, while there are key points on which my colleague and I agree about the applicant's misconduct, I have reached a different conclusion than my colleague did about the scope of that misconduct.

[92] There is no dispute that the applicant's failure to attend for a pre-removal interview and COVID-19 testing on August 23, 2021, led to the cancellation of her removal on August 24, 2021. Nor is there any dispute that the deliberate frustration of the removal process undermines the integrity of the immigration system and causes significant harm to the public interest: see *Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332 at para 25; and *Wu v Canada (Citizenship and Immigration)*, 2018 FC 779 at paras 14-15. In these respects, Justice McVeigh and I are wholly in agreement. Moreover, on the record before me, there is at least some evidence supporting the conclusion that the blameworthiness of the applicant's misconduct is mitigated by the disordered thinking and impaired judgment associated with her diagnosed mental conditions. Justice McVeigh appears to have reached a similar conclusion in this regard given that she found that while the applicant had not come before the court with clean hands, she was nevertheless willing to hear the matter "given that [the applicant] has mental health issues."

[93] On the other hand, and with respect, unlike my colleague, I would not conclude that "there is no doubt that it was the Applicant's fault that she did not attend for a removal interview

on August 22, 2019." On the record before me, which appears to include additional evidence that was not before Justice McVeigh (most importantly, the notes of the officer who arrested and then released the applicant in April 2020), it is at least an open question whether the applicant was even aware of this interview. (Of course, if the applicant was not aware of the interview, this may very well be because she failed to keep the CBSA up to date on her contact information. While this is also a serious matter, it pales in significance compared to the deliberate thwarting of removal arrangements.)

[94] Thus, while I have given careful consideration to Justice McVeigh's findings regarding the applicant's lack of clean hands, in my view, they have only a limited bearing on the present motion.

[95] After conducting my own assessment of the applicant's misconduct in the context of the balance of convenience, I have concluded that, although the misconduct was serious, it should not, either on its own or in combination with other factors favouring the respondent's position, disentitle her from the relief she now seeks. I have taken the following considerations into account:

- The applicant's misconduct relates to the very subject matter of the present motion – namely, when she should be required to leave Canada. Had the applicant reported as directed on August 23rd, it is likely that she would have been removed as scheduled and the present motion would never have been brought. Consequently, the clean hands doctrine is squarely engaged: see *Cameco Corporation* at para 37.

- While the applicant's misconduct on August 23rd tends to undermine the integrity of the immigration system, it does not undermine the integrity of the present proceeding (as could, for example, the submission of false or misleading evidence).

- As discussed in connection with the first and second parts of the test, in the language of *Thanabalasingham*, the apparent strength of the applicant's case and the likely impact on her if the impugned administrative action is allowed to stand both favour not denying her the relief she seeks.

- As noted above, the gravity of the applicant's misconduct is mitigated by her mental health challenges.

- Concluding that the applicant is not disentitled to the relief she seeks does not risk creating the impression that there will not be meaningful consequences for failing to comply with one's obligations under Canadian immigration law. The applicant has already suffered serious consequences because of her misconduct. She has been detained in custody. There is a possibility that she will remain in detention until she is removed. This should be sufficient to deter others from engaging in similar conduct. There is no need to add further consequences.

[96] In finding that the balance of convenience favours the applicant, I have also considered the following:

- The applicant has established strong grounds on which she seeks judicial review of the decision refusing to defer her removal.

- To permit the applicant to be removed now would leave her without any meaningful or effective remedy in the event that she were successful in her application for judicial review.

- The applicant has also established that she would suffer irreparable harm in Nigeria if her removal is not stayed.

- There is a strong public interest in avoiding both of these outcomes.

- There is an adverse impact on the public interest in the effectiveness of the removal process if a stay is ordered but this impact is limited. To the extent that the applicant's prompt removal is in the public interest, this will be frustrated. However, the public interest in the removal process is more multifaceted than this. There is also a strong public interest in having the removal process carried out in a fair and reasonable manner and in accordance with the law. In this case, these considerations outweigh the public interest in the applicant's prompt removal.

- It is open to the respondent to request that the underlying application for leave and judicial review be case managed and disposed of on an expedited basis. Doing so would help to limit any adverse impact on the public interest of an order staying the applicant's removal.

- The applicant had several months to make her own arrangements for treatment and care in Nigeria and, it would appear, she did not even attempt to do so. However, the significance of this in the balance of convenience is mitigated by her mental health challenges.

- The respondent raises legitimate concerns about the constant relitigation of issues relating to the applicant's removal from Canada. The present motion relates to the second request for deferral of removal in the span of less than three weeks and the third in two months. This motion is the applicant's third request for a judicial stay of removal since July. However, there is no basis to conclude that the applicant has abused either the protections inherent in the removal process or this court's process.

(4) Conclusion

[97] In summary, considering that the applicant has met all three parts of the test for an interlocutory stay of her removal from Canada, I am satisfied that it is more just and equitable for the respondent and not the applicant to bear the risk that the outcome of the underlying litigation will not accord with the outcome on this motion. Accordingly, the applicant is entitled to a stay of her removal from Canada pending the final determination of her application for leave and judicial review of the September 3, 2021, decision refusing her request for a deferral of her removal.

IV. CONCLUSION

[98] For these reasons, on September 6, 2021, I granted the applicant's motion to stay her removal.

[99] Finally, I thank counsel for their comprehensive records and very helpful written and oral submissions. All counsel had to work under demanding time constrains over the Labour Day long weekend. Their diligent efforts on behalf of their respective clients are to be commended.

"John Norris"
Judge

Ottawa, Ontario
September 14, 2021

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6013-21
STYLE OF CAUSE:	ANNABEL ERHIRE v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 6, 2021
REASONS FOR ORDER:	NORRIS J.
DATED:	SEPTEMBER 14, 2021

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