

Federal Court



Cour fédérale

Date: 20250704

Docket: IMM-4231-24

Citation: 2025 FC 1188

Ottawa, Ontario, July 4, 2025

PRESENT: Madam Justice Conroy

BETWEEN:

**LAWAL RASHIDAT AINA
AYOADE MOHAMMED OLAYEMI AINA
AYOADE ABDULRAHMAN AINA**

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of a Canada Border Services Agency [CBSA] officer [Officer], dated March 10, 2024, denying the Applicants' request for a deferral of their removal from Canada [Deferral Decision].

[2] The judicial review is moot and I decline to exercise my discretion to determine the matter on its merits. The application is dismissed.

I. Background

[3] Ms. Lawal Rashidat Aina [Principal Applicant] is a citizen of Nigeria, where she lived with her husband. She has four children with her husband, including two of their sons, Mohammad and Abdulrahman who are also applicants in this matter [Dependant Applicants, and together with the Principal Applicant, the Applicants].

[4] The Principal Applicant was pregnant with her youngest child, Mohammad, when she left Nigeria for the United States [US]. Mohammad was born in the US and is therefore an American citizen. The Applicants lived in the US for two years. Her two oldest children and her estranged husband remain in Nigeria.

[5] In November 2019, the Principal Applicant relocated to Canada and made a refugee claim. The Applicants' Canadian immigration history is summarized below:

30 November 2019	Entered Canada and make refugee claim
12 November 2021	Refugee claim refused by Refugee Protection Division [RPD] for having no credible basis
9 December 2021	Application for Leave and Judicial Review [ALJR] of RPD decision filed with Federal Court
27 June 2022	Leave denied on ALJR of RPD decision

31 October 2022	First application for permanent residence on humanitarian and compassionate [H&C] grounds
15 May 2023 – 13 June 2023	Three removal interviews – Directed to apply for US passport
28 June 2023	Pre-Removal Risk Assessments [PRRA] initiated
18 August 2023	First H&C application refused
18 August 2023	Negative PRRA decision
10 October 2023	ALJR of first H&C application refusal filed
22 November 2023	Removal Interview
6 January 2025	Second application for permanent residence on H&C grounds
8 January 2024 – 4 March 2024	Removal Interviews – US passport obtained; Direction to Report on March 14, 2024 served
6 March 2024	Deferral of removal requested until June 30, 2024, so that Dependent Applicants can complete current school year in Canada
8 March 2024	Leave denied on ALJR of first H&C application refusal

8 March 2024	ALJR filed in anticipation of negative deferral decision
10 March 2024	Negative deferral decision
13 March 2024	Stay of removal granted by Federal Court: 2024 CanLII 20701

II. Issues

[6] In addition to raising the style of cause as a preliminary issue, the Respondent raises a preliminary objection, arguing that the judicial review is moot and therefore ought to be dismissed without a determination on the merits.

[7] The Applicants frame their grounds for judicial review as follows:

- A. The Officer unreasonably found certain corroborative documents not to be authentic;
- B. The Officer engaged in speculation, made findings of fact that lacked justification and ignored relevant evidence; and
- C. The Officer improperly engaged in a long-term assessment of the best interests of the Dependant Applicants in Nigeria, instead of a short-term assessment.

[8] Notably, the Respondent acknowledges that the Officer's decision with respect to ground (C) above, the best interests of the Dependant Applicant children, was unreasonable. The Respondent submits that the Deferral Decision was otherwise reasonable.¹

[9] With respect to remedy, the Applicants written material seeks to have the Deferral Decision set aside and remitted back to a different Officer for reconsideration.

[10] During oral argument, the Applicants requested further relief should the Court determine that the judicial review was moot; specifically, they sought declarations regarding the two grounds for judicial review that the Respondent did not concede (issues (A) and (B) above) [Unresolved Grounds].

III. Preliminary Issue – Style of Cause

[11] The proper respondent on judicial review of a CBSA officer's decision is the Minister of Public Safety and Emergency Preparedness. In error, the Applicants named the Minister of Citizenship and Immigration as the Respondent in this matter.

[12] The style of cause will therefore be amended in accordance with Rule 76(a) of the *Federal Courts Rules*, SOR/98-106, to name the proper Respondent.

¹ The Minister unsuccessfully sought summary judgment on this basis. In an Order dated June 11, 2024, Justice Battista denied summary judgment, concluding that the Respondent conceded on only one of multiple issues raised, and noting that the decision staying the Applicants' removal found there to be a "serious issue," in-part based on issues not conceded by the Respondent. Justice Battista concluded that it was in the interest of decision-making economy to deny summary judgment, to prevent the unresolved issues from being raised in future deferral requests, stay motions, and ALJR's.

IV. Analysis

A. *Mootness*

[13] This application for judicial review is moot.

[14] In deciding whether an application concerning a deferral decision is moot, “the characterization of the request for the deferral is a relevant consideration”: *Adesemowo v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 249 at para 40 [*Adesemowo*]; *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 29 [*Baron*]. It is not the passing of the requested removal date that is determinative, but the passing of the event(s) that an applicant says justify a deferral: *Sosic v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 13 at para 21.

[15] The Applicants’ removal was scheduled for March 14, 2024. The Applicants asked that the removal date be deferred “until the end of the school year, June 30, 2024, so that [the Dependant Applicants] can finish their current school year in Canada.”

[16] As a result of the decision to stay the removal issued by this Court on March 13, 2024, (one day before the scheduled removal date) the Applicants were, in effect, granted the relief they sought in the deferral decision.

[17] In this case, the event for which the deferral was requested – the end of the 2024 school year – has passed. Once the event that underpins the deferral request has passed, the case law

confirms that the judicial review of the deferral decision is moot: *Adesemowo* at para 43; *Dimikj v Canada (Citizenship and Immigration)*, 2024 FC 2066 at paras 33-34 [*Dimikj*].

B. *Discretion to Hear Moot Application*

[18] Where an issue has become moot, the Court may nevertheless exercise its discretion to hear the case on its merits: *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC) at 353 [*Borowski*]. In making this determination, the Supreme Court of Canada outlined the following non-exhaustive list of factors for consideration: (1) the existence of an adversarial relationship between the parties; (2) the concern for judicial economy; and (3) the need for the court not to intrude into the legislative sphere: see *Baron* at para 44; *Borowski* at 358-363.

[19] The parties will continue to have an adversarial relationship regardless of whether this judicial review is determined on the merits. The underlying controversy is the Applicants' desire to remain in Canada in the face of CBSA's efforts to remove them. A deferral of removal is a temporary measure: *Dimikj* at para 24. It will not provide the type of permanent relief that would end the adversarial relationship between the parties.

[20] I am not convinced that a decision on the merits of the present judicial review will result in any judicial economy in this case. No matter the outcome of the present judicial review, the Applicants will have a fresh opportunity to seek a deferral of any new removal date. If they are unhappy with that decision, it is open to them to seek recourse from this Court.

[21] I agree with the Respondent that the Unresolved Grounds are largely fact-driven and case specific. They do not present a legal issue calling out for judicial clarification. In contrast to *Baron*, a decision on the Unresolved Grounds is unlikely to result in any kind of overarching guidance for future cases: *Baron* at para 45.

[22] At the hearing, the Applicants raised a concern about the potential collateral impacts arising from some of the conclusions the Deferral Decision draws with respect to the Unresolved Grounds. The concern is that these parts of the Deferral Decision could adversely impact the Applicants' downstream and could colour a future decision-maker's assessments. On this point, the Applicants rely on *Gill v Canada (Citizenship and Immigration)*, 2024 FC 1453; *Ramizi v College of Immigration and Citizenship Consultants*, 2025 FC 692 at paras 35-43; and *Nshimyumuremyi v Canada (Citizenship and Immigration)*, 2024 FC 1352 paras 16-23.

[23] I do not find this argument persuasive on the present facts.

[24] First, the Applicants will have an opportunity to explain to future decision-makers that this Court dismissed this application for judicial review on a preliminary objection and that no analysis of the merits occurred.

[25] Second, the Applicants have other options to obtain the outcome they seek: *Dimikj* at para 37. They have the pending second H&C application and, as noted, if the CBSA resumes removal proceedings, the Applicants will have an opportunity to request another deferral.

THIS COURT'S JUDGMENT is that

1. This application for judicial review is dismissed.
2. The style of cause is amended to replace the Minister of Citizenship and Immigration with the Minister of Public Safety and Emergency Preparedness.
3. There is no question for certification.

"Meaghan M. Conroy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4231-24

STYLE OF CAUSE: LAWAL RASHIDAT AINA ET AL v. MPSEP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 7, 2025

JUDGMENT AND REASONS: CONROY J.

DATED: JULY 4, 2025

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