

Date: 20081114

Docket: IMM-4862-08

Citation: 2008 FC 1275

BETWEEN:

ISAIAH ONWNKA OAHIMINRE

Applicant

and

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

Respondent

REASONS FOR ORDER

PHELAN J.

[1] These are the reasons for the oral decision to dismiss the Applicant's matter.

[2] The Applicant seeks a stay of removal to Nigeria scheduled for November 18, 2008. The circumstances of this case are quite unusual.

[3] The Applicant came to Canada in 2005 and applied for refugee status. His refugee claim was based upon his homosexuality and the persecution he would face in Nigeria because of his sexual orientation.

[4] The refugee claim was denied; firstly, because of credibility about his sexual orientation and secondly, because there was an IFA in Lagos. Leave was denied.

[5] On July 17, 2008, the Applicant's PRRA was rejected.

[6] On July 18, 2008, the Applicant married a female who, a month later, filed an Application for Landing under Protected Persons and Convention Refugee Class. The Applicant's wife is a Convention refugee. That Application was filed the same day as leave was sought in respect of the PRRA decision.

[7] On October 28, 2008, the Applicant sought a deferral of removal which is the legal proceeding underpinning this stay motion.

[8] As this is a deferral matter, the threshold for "serious issue" is higher than merely "not frivolous or vexatious". There must be some realistic chance of success (*Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148). The three issues raised do not meet that standard.

[9] The failure to address the potential of the Applicant being a target of persecution by his wife's persecutors in Nigeria is easily explainable by the paucity of details or seriousness of the submission. The existence of a pending spousal application, one which is clearly not imminent, is not a grounds for a stay nor is the fact that the Applicant has some pending highway traffic offences which he claims to want to contest.

[10] Having found no serious issue, the Court need not address irreparable harm. However, in any event, the finding of a valid IFA in Lagos remains unchallenged.

[11] As to the balance of convenience and other equitable factors, they do not favour the Applicant.

[12] The Court is also faced with this incredible and unexplained conversion of sexual orientation as the overarching factor in this case. Judges are not blind to the realities of life nor are they so naïve. This story, combined with the convenient timing of the spousal sponsorship, lacks any air of reality upon which to exercise equitable jurisdiction.

[13] The motion for stay of removal is dismissed.

“Michael L. Phelan”

Judge

Ottawa, Ontario
November 14, 2008

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4862-08

STYLE OF CAUSE: ISAIAH ONWNKA OAHIMINRE

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 14, 2008

REASONS FOR ORDER: Phelan J.

DATED: November 14, 2008

APPEARANCES:

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Mr. Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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