

**Date: 20090914**

**Docket: IMM-34-09**

**Citation: 2009 FC 907**

**Ottawa, Ontario, September 14, 2009**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**PATRICIA IRABOR**

**Applicant**

**and**

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of an Enforcement Officer's decision on December 23, 2008, rejecting the Applicant's request for a deferral of her removal to Nigeria. When the matter came before the Court for hearing the Respondent took the position that the application was moot and ought to be dismissed. After hearing both counsel I indicated to the parties that it was my view that the application was moot but that I would hear submissions on whether I ought to exercise my discretion and hear the

application on its merits. Having considered the able submissions of counsel, I have determined that I will not exercise my discretion to hear the application on its merits. The following are brief reasons for the finding that the application is moot and for refusing to hear the application on its merits.

[2] On August 18, 2005, Ms. Irabor applied for a work permit under the Live-in-Caregiver program. This application was refused on August 18, 2005, and leave to judicially review the decision was denied by this Court on December 28, 2006.

[3] Nonetheless, Ms. Irabor came to Canada on July 12, 2006. An Inadmissibility Report was prepared and signed on August 16, 2006, pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, on the grounds that she had entered Canada with an intention to establish permanent residence, without first applying for or obtaining the proper visa, as is required by the Act. A departure order was made and, on the same day, Ms. Irabor submitted a refugee claim.

[4] The refugee claim was based on allegations of spousal abuse by her common law partner. She has consistently reiterated these allegations in a subsequent Pre-Removal Risk Assessment (PRRA) application, and in the current application for judicial review. Ms. Irabor alleges that she was subjected to multiple instances of physical and sexual violence by Chief Chinedu Ugo, her common law partner. She alleges that despite multiple reports to the police she received no state protection. She states that she fled

Nigeria because she feared that Chief Chinedu Ugo would kill her. She also states that her relationship with Chief Chinedu Ugo caused her to contract HIV.

[5] The Refugee Protection Division (RPD) found Ms. Irabor's evidence on her relationship with Chief Chinedu Ugo to be not credible as were her allegations of abuse. The RPD concluded that Ms. Irabor was not a Convention refugee or person in need of protection. An application for judicial review of that decision was denied by this Court on April 8, 2008.

[6] On June 30, 2008, Ms. Irabor filed a PRRA application. This application was rejected on October 20, 2008. The Officer considered the allegations of abuse that were reiterated, as well as the new submissions of Ms. Irabor's HIV status and the risk that return to Nigeria posed to her health. The Officer determined that persons living with HIV are subjected to discrimination and stigma in Nigeria but that this did not necessarily rise to the level of persecution in the given circumstances. The Officer also determined that Ms. Irabor had failed to rebut the presumption of state protection. Consequently, Ms. Irabor's PRRA was rejected.

[7] On December 1, 2008, Ms. Irabor signed a Direction to Report for a scheduled removal on January 10, 2009. A request to defer removal pending an application for leave and judicial review of the PRRA decision was made on December 23, 2008. This request was rejected the same day, and it is from this decision that the Applicant seeks judicial review.

[8] On January 7, 2009, Justice O’Keefe, granted a motion to stay Ms. Irabor’s removal until her PRRA leave application was denied, or if leave was granted, then until the application had been dealt with by the Court.

[9] On June 10, 2009, the Court granted leave to judicially review the refusal of the deferral request – the application now before this Court. On June 22, 2009, Justice Mandamin dismissed Ms. Irabor’s application for leave and extension of time to judicially review the negative PRRA decision and accordingly, the stay Order granted by Justice O’Keefe no longer has any effect since leave to review the PRRA decision was rejected. Since leave was rejected there is no outstanding Court Order preventing the removal of the Applicant.

[10] The Applicant’s request was for a deferral of removal pending the outcome of the PRRA leave request (buttressed by the “new” medical evidence). Given that the PRRA leave request is now settled – having been denied – I am of the view that this application is moot. The remedy sought in this application was to refer the matter back to an enforcement officer to redetermine the deferral request. Given that the deferral request was a deferral pending the happening of an event that has now occurred, there is no longer any purpose to be served by adjudicating on this matter. The application is moot.

[11] The Applicant submits that while there is no longer a live controversy between the parties, there remains an adversarial relationship between them and that the Court ought to exercise its discretion and hear the merits of the application. In *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, the Supreme Court held that when deciding whether to exercise discretion to hear a matter, notwithstanding that it is moot, the judge should consider three factors: (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. The Applicant submits that only the first two of these factors are present on these facts.

[12] The Applicant submits that there remains an adversarial relationship between the parties in that they are of the view that there is “new” evidence consisting of the letter regarding the Applicant’s HIV status that was not before the PRRA Officer, that the Applicant may seek a second PRRA on the basis of this letter, and that a determination by this Court on the merits of the current application may short-circuit such an application and result in a saving of judicial resources.

[13] In spite of counsel’s submissions in this respect, I am unconvinced that any of the conditions established in *Borowski* are met.

[14] It is clear from the Enforcement Officer’s decision that he considered this “new” evidence. His observation was that it is not new and was of questionable authenticity.

According to counsel, the note is evidence not available at the time of the PRRA application. However, insufficient

evidence was presented to indicate why, since the subject has been diagnosed with HIV since December 2006 and has been receiving treatment at the Centre since February, 2007, she could not have obtained such a note for submission with her PRRA application. Moreover, I note that the copy of the note provided by counsel is not signed and does not indicate from whom the note has been written by, thus rendering its authorship dubious.

[15] I fail to see how a decision on the application currently before this Court will change those facts. Whether the Applicant submits a new PRRA application or not, with the existing note or a new one, the issue of delay will still arise. Nothing this Court does in this application will change that fact. Accordingly, this is not an appropriate case for the Court to exercise its discretion to hear the merits of an application that is moot.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the application is moot and is hereby dismissed.

“Russel W. Zinn”

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Judge

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

**DOCKET:** IMM-34-09

**STYLE OF CAUSE:** PATRICIA IRABOR v. MINISTER OF PUBLIC  
SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 3 and 11, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN J.

**DATED:** September 14, 2009

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