

Federal Court



Cour fédérale

Date: 20250302

Docket: IMM-4487-25

Citation: 2025 FC 387

Ottawa, Ontario, March 2, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**MOHAMMED ABOUCHEKEIR
KEVWE EUNICE ABOUCHEKEIR**

Applicants

and

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

Respondent

ORDER AND REASONS

[1] The Applicants seek an Order staying their removal from Canada to Nigeria on March 3, 2025. An enforcement officer denied the Applicants' request for a deferral of removal on February 28, 2025. The Applicants seek to stay their removal pending the disposition of their application for leave and judicial review of the officer's decision.

[2] I have reviewed the materials submitted by the parties and have considered their representations delivered by videoconference on March 2, 2025. I find the Applicants have not met the tripartite test for a stay (*Toth v Canada (Minister of Employment and Immigration)*, 1988 CanLII 1420 (FCA); *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81). Although the Applicants have identified a serious issue in the negative deferral decision, they have not demonstrated the decision would cause them irreparable harm.

[3] The Applicants have raised a serious issue with the officer's treatment of their medical evidence. In their deferral request, the Applicants included a letter from their family doctor stating that the Associate Applicant, Kevwe Eunice Abouchekeir, is not fit to fly. The letter states the Associate Applicant has been diagnosed with type 3 spinocerebellar ataxia and may experience a pain crisis or health complications during the flight from Toronto to Nigeria.

[4] The officer discounted this letter because the Applicants' family doctor "is not a medical geneticist." The officer noted that the doctor has authored a "nationally recognized refugee health guideline" and has "collaborated with the National Collaborating Center for Infectious Diseases (NCCID) for refugee health," concluding that the Applicants' family doctor "is not unbiased toward refugees."

[5] With respect, these observations have no bearing on whether the doctor's letter should be relied upon as evidence. Although the doctor is not a medical geneticist, "[s]he is," by the officer's own assessment, "a practicing family physician." The diagnostic report of the medical geneticist states "[the Associate Applicant] is aware that her ongoing management will be

coordinated by [the referring doctor] and/or Dr. [P] and her family physician” [emphasis added].

That the doctor is not a medical geneticist is therefore not an indicator that she is unqualified to address the Associate Applicant’s spinocerebellar ataxia. The doctor’s previous work with respect to refugee health is similarly not a basis for discounting her medical expertise. In fact, prior work in the context of refugee health would enhance the expertise of the Applicants’ doctor, rather than reducing it as the officer has found. I therefore agree with the Applicants that the officer erred in their treatment of the Applicants’ medical evidence, as the officer’s reasons are unintelligible and at odds with the evidentiary record.

[6] However, I do not find the Applicants have established irreparable harm.

[7] The Applicants have not brought sufficient evidence of their mental health conditions. The Applicants’ submissions to the officer on this issue consisted of letters from their family doctor which stated that the Principal Applicant, Mohammed Abouchekeir, “suffers from severe post-traumatic stress disorder (PTSD), depression, and frequent panic attacks” and the Associate Applicant “suffers from depression, anxiety, and PTSD.” The Applicants submitted an additional medical letter stating that the Associate Applicant “has...depression.” These materials are not “psychological assessment[s] from a mental health specialist.” I therefore agree with the officer that the Applicants have not adequately established their mental health conditions.

[8] The Applicants’ submissions concerning the physical health of the Principal Applicant do not establish irreparable harm. In their deferral request, the Applicants referred to the Principal Applicant’s “multiple serious health conditions,” including: “mono-ocular vision,” diabetes,

“bilateral renal calculi and prostatic enlargement,” kidney issues, and obesity. However, the Applicants did not adequately explain how these conditions would render the Principal Applicant unfit to fly. They also did not submit that treatment for these conditions would be unavailable in Nigeria. The Applicants have not demonstrated irreparable harm on this basis.

[9] With respect to the Associate Applicant, the Applicants brought insufficient evidence that medication and treatment for her illnesses would be unavailable in Nigeria. The Applicants describe type 3 spinocerebellar ataxia as a serious genetic condition that must be managed in the long term as it cannot be cured. Although the Applicants have brought sufficient evidence to confirm the Associate Applicant’s diagnosis, they have not substantiated their assertion that they would be unable to access treatment upon removal. As in *Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427, the Applicants’ materials in this case “contain only assertions and speculation” (at para 15). I therefore agree with the Respondent that the Applicants have not “demonstrate[d] a real probability that unavoidable irreparable harm will result unless a stay is granted” (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31).

[10] For these reasons, I find the Applicants have not established that the negative deferral decision would cause them irreparable harm. It is unnecessary, therefore, to consider the balance of convenience.

ORDER in IMM-4487-25

THIS COURT ORDERS that this request for a stay is dismissed.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4487-25

STYLE OF CAUSE: MUHAMMED ABOUCHEKEIR AND KEVWE
EUNICE ABOUCHEKEIR v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 2, 2025

ORDER AND REASONS: AHMED J.

DATED: MARCH 2, 2025

APPEARANCES:

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