

Federal Court



Cour fédérale

Date: 20260323

Docket: IMM-5134-25

Citation: 2026 FC 395

Ottawa, Ontario, March 23, 2026

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**JOHN CHUK WUNONYENIM BAYA
FAITH ONYEMAECHI OKOH BAYA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Faith Onyemaechi Okoh Baya [Principal Applicant or PA] and her adult son John Chuk Wunoyenim Baya [Associate Applicant or AA], are Nigerian nationals. The Applicants sought refugee protection after arriving in Canada in 2018, the PA reporting a fear of violence from her in-laws in Nigeria arising from an inheritance dispute.

[2] In September 2021, the Refugee Protection Division [RPD] dismissed the Applicants' refugee claim, finding that they were neither Convention refugees, nor persons in need of protection, an outcome that was upheld by the Refugee Appeal Division [RAD] in July 2022.

[3] The Applicants later applied for a Pre-Removal Risk Assessment [PRRA] alleging a new risk of persecution were they to return to Nigeria and recent threats related to the inheritance dispute. A Senior Immigration Officer [Officer] rejected the Applicants' PRRA application on December 31, 2024.

[4] The Applicants seek judicial review of the PRRA decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], arguing that the Officer erred in assessing their new allegations of risk and made credibility findings, resulting in a breach of procedural fairness.

[5] For the reasons that follow, the application for judicial review will be granted.

II. Background

[6] In seeking refugee protection, the PA reported that the Applicants feared their in-laws because their in-laws believed she was responsible for the death of her husband in 2002, they insisted she perform traditional rituals to demonstrate she was not responsible for her husband's death, and because of an ongoing dispute over the property the AA reportedly inherited following his father's death.

[7] In refusing the Applicants' claim in September 2021, the RPD found that the Applicants had a viable internal flight alternative [IFA] in Lagos, Nigeria. In July 2022, the RAD confirmed the RPD's determination but did so on the grounds that the absence of a forward-facing risk to the Applicants in Nigeria was determinative.

[8] In August 2024, the Applicants applied for a PRRA, reporting that they faced two new risks of harm in Nigeria.

[9] First, the Nigerian police reportedly discovered the PA's sexual orientation as a bisexual woman. The Applicants alleged that, in July 2023, the PA's former same-sex partner was arrested and confessed to having been in a relationship with the PA. The Applicants reported police attended their former house in Asaba and left an investigation letter, dated July 6, 2023, inviting the PA for questioning in relation to "same sex activities" involving the PA and her former partner [Investigation Letter] with the PA's neighbour and friend. The Applicants stated that the PA's friend informed the PA of the police visit and the contents of the Investigation Letter.

[10] Second, individuals believed to be the Applicants' in-laws reportedly issued new threats in relation to the inheritance dispute. The Applicants reported that, in September 2023, three men attended a family gathering looking for the Applicants. An altercation regarding the AA's inheritance reportedly ensued which led to the injury and hospitalization of the PA's brother and the death of one of the PA's aunts. The Applicants also stated that, in January 2024, two men attended their family home in Lagos, and, in February 2024, individuals attended their former house in Asaba. On both occasions, the individuals reportedly threatened to kill the Applicants.

III. Decision Under Review

[11] In assessing the Applicants' alleged risk of persecution based on the PA's sexual orientation and the AA's support of a bisexual person, the Officer first considered the Investigation Letter. The Officer acknowledged the Investigation Letter, dated July 6, 2023, postdated the September 2021 RPD decision, but held the Applicants had not clearly explained why the PA's sexual orientation was not raised before the RPD or the RAD. The Officer also found the Investigation Letter (1) references the Nigerian Same-Sex Marriage (Prohibition) Act, which was enacted in 2014, over ten years after the end of the PA's relationship with her former partner, (2) does not state that a warrant for arrest has been issued against the PA, (3) directed the PA to report to the police on July 10, 2023 – over a year before the Applicants submitted their PRRA application – and the Applicants had not provided any evidence to demonstrate current or continuing police interest.

[12] The Officer then addressed a psychological assessment report dated August 10, 2024, and accepted the PA's diagnosis of anxiety disorder, but assigned the report limited weight because it was based on the PA's self-reporting over a single interview session.

[13] The Officer also acknowledged that bisexual women could face persecution in Nigeria. However, the Officer held the PA had not established that she faced "more than the mere possibility of persecution based on her perceived sexual orientation" in Nigeria because (1) she had provided insufficient evidence demonstrating that her former same-sex partner had been arrested, (2) the objective country evidence discloses that few women are arrested or convicted on the basis of their sexual orientation, (3) the PA's relationship with her former partner occurred

in 2002, and the PA submitted that she has not been interested in pursuing a same-sex relationship since, and (4) the PA's description of her "sexual identity is relatively brief and vague." The Officer concluded the Applicants had not demonstrated that the police had a current and forward-facing interest in pursuing the PA.

[14] Regarding the Applicants' alleged risk related to the inheritance dispute with their in-laws, the Officer found that this allegation was first raised before the RPD. Citing the RPD's and the RAD's decisions, the Officer noted that the RPD found the Applicants' in-laws did not have the means to locate them in the proposed IFA, and that the RAD found their in-laws would not be motivated to locate them if they relinquished their interest in the inheritance.

[15] The Officer accepted the evidence of the September 2023 event – where three men attended a family gathering looking for the Applicants, leading to the injury and death of the Applicants' relatives – as new evidence demonstrating the Applicants' in-laws' current and continued interest in the inheritance. However, the Officer found that the Applicants' submissions and evidence, including the objective country evidence provided, did not challenge the RPD's and RAD's findings.

[16] The Officer concluded that the Applicants still had a viable IFA in Lagos and that there was insufficient evidence to establish that the Applicants' in-laws would have any interest in pursuing them if they relinquished the inheritance.

[17] Lastly, the Officer found that an oral hearing was not required pursuant to section 113.01 of the IRPA, nor under section 167 *Immigration and Refugee Protection Regulations*, SOR/2002-227, because the Applicants' credibility was not a determinative issue.

IV. Issues and Standard of Review

[18] The Applicants identify issues of reasonableness in relation to the Officer's assessment of the identified risks and of fairness on the basis that they were denied an oral hearing despite the Officer having made credibility findings. I have framed the issues as follows:

- A. Did the Officer err in assessing the Applicants' allegations of risk in relation to:
 - 1) The PA's sexual orientation?
 - 2) The Applicants' inheritance dispute?
- B. Was there a breach of procedural fairness?

[19] The Parties submit, and I agree, that Issue A., the Officer's assessment of the Applicants' new allegations of risk – the substance of the PRRA decision – is reviewable on the presumptive reasonableness standard of review.

[20] 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 (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8). The party challenging a decision has the burden of demonstrating to a reviewing court “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).

[21] Issue B. raises a question of procedural fairness that is to be reviewed on a standard akin to correctness. This requires the Court to ask whether the procedure followed by the decision-maker was fair and just having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). The ultimate question is whether the party knew the case to meet and had a full and fair chance to respond (*Canadian Pacific* at para 56).

V. Analysis

A. *The Officer’s decision is unreasonable*

- (1) The Officer did not err in their assessment of the allegation of risk based on the PA’s sexual orientation

[22] In arguing the Officer erred in their assessment of the PA’s fear of persecution based on her sexual orientation, the Applicants submit:

- A. The Officer failed to recognize that their risk relating to the PA’s actual or perceived sexual orientation only arose following the police discovery of the PA’s 2002 relationship. They submit that not having maintained, and having lacked an interest in pursuing, a same-sex relationship since 2002, it was reasonable that the PA had not relied on this risk before the RPD and the RAD.

- B. The Officer unreasonably relied on the absence of an arrest warrant or other documentation to disclose an ongoing police interest following the Investigation Letter because the Investigation Letter alone demonstrates the police have an interest in the PA and discloses a risk of persecution.
- C. The Officer's engagement with, and interpretation of, the objective country evidence related to the persecution of persons in Nigeria on the basis of their sexual orientation was inconsistent with the evidence and unreasonable.
- D. The Officer failed to properly assess the PA's sexual orientation and "did not conduct a thorough analysis of her identity" as a bisexual woman.
- E. That having accepted the PA's diagnosis of anxiety, the Officer should have given weight to the source of the diagnosis – the risk of persecution on the basis of her sexual orientation.

[23] I am of the opinion that the Officer's finding that there was little explanation "as to why the applicant's sexuality was not brought before the RPD or RAD" and that this "speaks to the applicant's subjective fear" is unreasonable. The Applicants' explanation – her 2002 relationship was not known to anyone at the time her risk was assessed by the RPD and the RAD – does disclose an absence of subjective fear at that time. It was unreasonable for the Officer to rely on the absence of subjective fear in 2021/2022 to conclude, as it appears the Officer does, that this remained so without meaningfully engaging with the Applicant's explanation that her fear was new and the result of the Investigation Letter that disclosed a police interest in her arising from the 2002 relationship. That said, the error does not undermine the Officer's finding that the

Applicants had failed to provide sufficient evidence to establish the PA's identity as a bisexual woman, or to demonstrate a forward-facing risk of persecution in Nigeria based on her sexual orientation – this error alone does not warrant the Court's intervention.

[24] There are inherent challenges associated with establishing one's sexual orientation (*Mohammadpour v Canada (Citizenship and Immigration)*, 2022 FC 759 at para 37). However, an applicant nonetheless bears the onus of presenting sufficient evidence in support of their PRRA application. In this instance, the Applicants' personal narrative is limited to indicating when the PA first realized she was "different," that she was in two same-sex relationships in Nigeria over twenty years ago, and that she feared being arrested because of the discovery of her sexual orientation. The Officer noted the absence of evidence to demonstrate her previous partner had been arrested, that there was no evidence that the police interest extended beyond the Investigation Letter's invitation for an interview or that the interest was ongoing over a year later. It was therefore not unreasonable for the Officer to characterize the PA's description of her identity as being "relatively brief and vague" and then conclude the Applicants had failed to submit evidence demonstrating an ongoing or forward-facing interest from police or their in-laws based on the PA's sexual orientation.

[25] Nor did the Officer err in considering the country condition evidence documenting risks faced by LGBTQ+ women in Nigeria. The Officer acknowledged the evidence disclosed that bisexual women in Nigeria can face persecution, but it was reasonably open for the Officer to interpret that evidence as disclosing female arrests or convictions on the basis of sexual orientation are infrequent and then rely on this when concluding there was insufficient evidence to demonstrate the PA's former partner had been arrested.

[26] Finally, I am of the view that it was open to the Officer to assign only some weight to the PA's psychological assessment report after the Officer reasonably noted that the report was generated following a single clinical interview and based on the PA's self-reporting (*Cehade v Canada (Citizenship and Immigration)*, 2017 FC 293 at para 15). Counsel for the Applicants argued during the hearing that the Officer's statement that "the assessor does not indicate in their report that they witnessed the applicant's series of events in Nigeria or that the assessor consulted independent documentation for country of return" suggests the Officer had an illogical and unreasonable expectation that the assessor have personal knowledge of the events recounted by the PA. Counsel further argued the report should have been given full weight as corroborative of the Applicants' narrative.

[27] While the Officer's justification for attributing only some weight to the psychological assessment report is awkwardly worded, the Officer did not err in accepting the anxiety disorder diagnosis set out in the report but then attributing only some weight to the report for the purpose of corroborating the Applicants' narrative. The Officer's conclusion in this regard is both transparent and justified, and the Applicant's argument that the report should have been accorded full weight is an impermissible invitation to the Court to re-weigh evidence on judicial review.

[28] I am therefore not persuaded that the Officer committed a reviewable error in assessing the PA's fear of persecution based on her sexual orientation.

- (2) The Officer erred in their assessment of the new allegation of risk based on the inheritance dispute

[29] Regarding the assessment of risk related to the inheritance dispute, the Applicants argue that the Officer failed to grapple with their new evidence and that, while the proposed IFA may have been a possibility in the context of the RPD and RAD proceedings, the new evidence demonstrated this was no longer so.

[30] The Respondent argues that the RPD and RAD carefully considered this risk in rejecting the Applicants' refugee claim and that, contrary to the Applicants' submission, there is no indication that the Officer overlooked evidence. The Respondent correctly notes that a PRRA officer must give deference to the RPD's and RAD's findings, to the extent that the underlying circumstances and/or facts relating to the risks alleged remain unchanged (*Singh v Canada (Citizenship and Immigration)*, 2014 FC 1022 at para 50).

[31] However, where, as here, new evidence relating to a risk previously assessed by the RPD or the RAD is placed before the officer, they must engage with that evidence.

[32] In this case, the Officer did acknowledge new evidence demonstrating that the Applicants' in-laws had a continued interest in the inheritance. However, the Officer failed to engage with the supporting evidence – in the form of descriptions in their personal narrative corroborated by the affidavit of the PA's brother – indicating that, in January 2024, individuals believed to be their in-laws attended their family house in Lagos and threatened to kill them.

This event directly relates to and is potentially inconsistent with the RPD's finding that an IFA in Lagos was available.

[33] Nor does the Officer grapple with the evidence that the Applicants had sought to relinquish the AA's interest in the disputed inheritance, but that this was not an option the PA's brother-in-law, who reportedly holds the inherited property in trust, was prepared to pursue, an explanation that differed from that considered by the RAD. While it was certainly open to the Officer to reject this evidence, the Officer was required to engage with it. Again, the evidence spoke directly to and conflicted with the RAD's finding that relinquishment was possible and would end the in-laws' interest in the Applicants.

[34] The Officer's failure to meaningfully engage with the new evidence of risk renders the decision unreasonable.

B. *The Applicants' procedural fairness rights were not breached*

[35] Finally, the Applicants' argument that the Officer made findings of credibility in (1) noting that the PA failed to identify her sexual orientation as a risk before the RPD and the RAD and (2) finding that the "description of her sexual identity is relatively brief and vague" are not persuasive.

[36] As I explain above, the Officer erred in finding and relying on the absence of subjective fear because the PA had not relied on sexual orientation before the RPD and the RAD. The error was the Officer's failure to recognize that the absence of subjective fear in proceedings before

the RPD and the RAD did not negate the possibility of a change in circumstances resulting in subjective fear at a later date. The Officer's finding, while in error, did not involve a negative credibility assessment.

[37] Nor did the Officer engage in a credibility assessment in finding, for reasons set out in the decision, that the Applicants had not provided sufficient evidence to establish a forward-facing risk of persecution based on the PA's sexual orientation.

VI. Conclusion

[38] The application for judicial review is granted.

[39] Neither Party has proposed a question of general importance for certification, and I agree that none arise.

JUDGMENT IN IMM-5134-25

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is returned for redetermination by a different decision-maker.
3. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5134-25

STYLE OF CAUSE: JOHN CHUK WUNONYENIM BAYA, FAITH
ONYEMAECHE OKOH BAYA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 16, 2026

JUDGMENT AND REASONS: GLEESON J.

DATED: MARCH 23, 2026

APPEARANCES:

Ariel Hollander FOR THE APPLICANTS

Jocelyn Espejo-Clarke FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis and Associates LLP FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario