Federal Court  Cour fédérale

Date: 20260417

Docket: IMM-8844-25

Citation: 2026 FC 513

Ottawa, Ontario, April 17, 2026

PRESENT: Justice Andrew D. Little

BETWEEN:

ABDUL BASIT DUROJAYE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The respondent filed this motion under Rule 369 for an order granting the application for judicial review. The applicant opposed the motion.

[2] The application for judicial review challenged a decision made by an officer of Canada Border Services Agency ("CBSA") dated April 28, 2025 (the "Decision"). The Decision refused the applicant's request to defer his removal from Canada to Nigeria. The applicant had asked for a deferral for eight months based on unassessed risks in Nigeria due to his sexuality and the best interests of his younger siblings.

[3] By order dated April 29, 2025, this Court stayed the removal of the applicant until the application for judicial review of the Decision is finally determined: *Durojaye v. Canada (Public Safety and Emergency Preparedness)*, 2025 FC 780.

[4] Following the stay order, the applicant requested permanent residence with an exemption on humanitarian and compassionate ("H&C") grounds. Although the H&C application is not in the record on this motion, I understand that the applicant raised the hardship and risks he faces as a bisexual man returning to Nigeria.

[5] By decision dated January 15, 2026, the applicant's H&C application was refused. As of the filing of this motion, the applicant had not received the reasons for the negative H&C decision. On January 20, 2026, the applicant filed an application for judicial review of that negative H&C decision.

[6] On the present motion, the respondent seeks a Judgment that sets aside the CBSA officer's Decision made in April 2025, without remitting the request for deferral back for redetermination and without costs.

A. *The parties' positions*

[7] The respondent submitted that motions for judgment should be granted if the respondent and the Court conclude that the applicant's judicial review application should be granted. If so, the respondent argued that there is no live controversy between the parties and there is no basis for devoting scarce judicial resources to the hearing of the application.

[8] For this motion, the respondent conceded that in reaching the Decision not to defer the applicant's removal from Canada, the officer erred under paragraph 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7, by basing the Decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before the officer. Specifically, the respondent confirmed that the Decision did not consider and assess the objective evidence and written submissions filed by the applicant addressing the risk the applicant would face in Nigeria due to his sexuality and the applicant's explanation for why he did not disclose this risk earlier.

[9] The respondent also maintained that the applicant would experience no prejudice because the applicant's request for a deferral sought to delay his removal until his pending H&C application was decided. The respondent submitted that the pending H&C application has now been decided and accordingly, the matter should not be remitted for redetermination.

[10] The applicant resisted this motion for judgment. Referring to the Supreme Court's decision in *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342, the applicant maintained that there remains a live controversy between the parties because the respondent only conceded two of the four grounds raised by the applicant to set aside the Decision as unreasonable. The applicant argued that he requested a deferral until the risks to him in Nigeria were assessed and he has not obtained that relief because he has not received the reasons for the H&C decision. Without the reasons, he does not know whether the H&C decision addressed the relevant risks to him in Nigeria.

[11] The applicant also argued that the absence of full judicial scrutiny on the basis of a full evidentiary record could lead to injustices and a revolving door of deferral requests and decisions affecting the applicant without the benefit of the Court's guidance on the unresolved issues.

[12] In reply, the respondent submitted that the respondent need not concede all issues in order to succeed on this motion for judgment and that there was no need for the Court to provide guidance to deferral officers as there is a large body of jurisprudence to guide officers (citing *Goitom v. Canada (Public Safety and Emergency Preparedness)*, 2026 FC 190, at paras 43-44). The respondent also argued in reply that the application for judicial review is moot because the applicant's H&C application has been decided.

B. *The respondent's motion must be granted because the Decision was unreasonable*

[13] I conclude that the respondent's motion must be granted, on the terms requested by the respondent. The request for a deferral will not be remitted for redetermination.

[14] To determine whether an administrative decision was unreasonable, the Court applies the principles set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically, contextually and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally

coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106, and 194.

[15] A reviewing court may intervene if a decision was "untenable in light of the relevant factual … constraints" – if the decision maker fundamentally misapprehended the evidence, failed to account for critical evidence in the record that runs counter to a material conclusion, ignored evidence, or if there was no evidence to rationally support a finding: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 64, 66, 73; *Vavilov*, at paras 101, 126 and 194; *Kahkewistahaw First Nation v. Canada (Crown-Indigenous Relations)*, 2024 FCA 8, at paras 56-57; *Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93, at paras 116-117; *Federal Courts Act*, paragraph 18.1(4)(d).

[16] In addition, the Court may set aside a decision as unreasonable if there has been a significant failure to account for or meaningfully grapple with a party's key issues or central arguments: *Mason*, at para 74; *Vavilov*, at paras 127-128; *Giffen v. TM Mobility Inc.*, 2024 FCA 213, at paras 41-42.

[17] The applicant raised four issues in his submissions on this application for judicial review:

A. Did the Officer err by not justifying their decision in relation to the applicant's evidence for why he did not previously disclose his sexual orientation?
B. Did the Officer err by relying upon stereotypes in rejecting the applicant's evidence for why he did not previously disclose his sexual orientation?

C. Did the Officer err by not justifying their decision in relation to the objective evidence regarding risks faced by LGBTQ persons in Nigeria?
D. Did the Officer err by not justifying their decision in relation to the negative impact that removal will have on the applicant's mental health?

[18] The respondent has made specific concessions on two issues raised by the applicant's submissions on the application for judicial review: (i) the Decision did not consider and assess the objective evidence and written submissions filed by the applicant addressing the risk the applicant would face in Nigeria due to his sexuality (essentially, Issue C immediately above); and (ii) the Decision did not consider and assess the applicant's explanation for why he did not disclose this risk earlier (essentially, Issue A immediately above). The applicant's request for deferral prominently raised the unassessed risks in Nigeria due to his sexuality and made express submissions concerning the "threats facing LGBTQ people in Nigeria", with supporting references in the National Documentation Package for Nigeria. He also described his prior inability to disclose his sexuality to his family and that despite disclosing it to his prior immigration consultants, it was not included in an earlier H&C application.

[19] In this light, I am satisfied that by failing to consider and address the objective evidence and the written submissions filed by the applicant in relation to these two issues for deferral purposes, the Decision did not respect the factual constraints bearing on it and did not provide a responsive justification for denying the deferral request by grappling with a central issue raised by the applicant in relation to the risk he faced in Nigeria: *Mason*, at paras 64, 66, 73-74; *Vavilov*, at paras 125-128. These failures were sufficiently important to vitiate the Decision overall and render it unreasonable: *Vavilov*, at para 100.

[20] While I have reached my own conclusion concerning the reasonableness of the Decision, this conclusion reflects the concessions made by the respondent on this motion. I also note that the Court's reasons for granting a stay of removal identified these two issues (together with Issue B above) as sufficient to meet the elevated standard of a "likelihood of success" on the judicial review application: *Durojaye,* at paras 12-21.

[21] For these reasons, I agree with the respondent that the Decision was unreasonable. Before addressing the appropriate remedy, I will address the applicant's position on this motion.

C. *Mootness, alleged "live issues" and judicial economy*

[22] The applicant did not resist this motion on the grounds that the Decision did not contain the two errors conceded by the respondent or that the errors were not fundamental to the Decision. As noted, the two concessions were substantially the same as two arguments raised in the applicant's own submissions.

[23] Instead, the applicant submitted that while the respondent appeared to argue that the application for judicial review was moot, in the applicant's view there were live issues that remained. On that basis, the applicant maintained that the motion for judgment should not be granted. As noted, the respondent argued in reply that the Court may grant an application upon finding a single reviewable error without addressing all issues. The respondent also submitted in reply that the matter is, in fact, moot because the H&C decision has been rendered.

[24] I am unable to agree with the applicant's position on mootness, although I appreciate that some of the factual circumstances prior to this motion relate to mootness. The parties' submissions on those factual circumstances are relevant to the remedy on this motion. I will explain.

[25] The applicant's mootness arguments based on the factors in *Borowski* do not arise on this motion for judgment. There are two reasons. First, it is not material to the determination of the respondent's motion for judgment that the applicant raised two additional arguments (Issues B and D above) to support his position on the application for judicial review. The Decision has been subjected to judicial scrutiny, following the filing of the applicant's application record and with an opportunity for the applicant to be heard on this motion. The Court's conclusion is that the Decision was unreasonable and should be set aside on two grounds raised by the applicant and conceded by the respondent. The applicant's two additional arguments also concern whether the Decision was substantively unreasonable, and the respondent made no concessions on them. These two remaining issues require no analysis because the two conceded grounds are sufficient to dispose of the application: see *Goitom*, at para 43 (the Court "may grant an application [for judicial review] upon finding a single reviewable error and need not address each argument or each alleged error"). The remaining issues are therefore no longer live issues between the parties.

[26] Second, the respondent did not argue mootness as the basis for the motion for judgment. The notice of motion did not mention mootness and the respondent's submissions were based on the concessions concerning the substantive unreasonableness of the Decision. The respondent requested an order granting the application for judicial review and setting aside the Decision; if

the respondent had raised mootness as a ground for judgment, the respondent would have requested an order dismissing the application for judicial review. And of course, a substantive basis to grant a motion that is not mentioned in the notice of motion or argued in the moving party's submissions cannot be raised by the moving party for the first time in reply: *Federal Courts Rules*, Rule 359(c); *Deegan v. Canada (Attorney General)*, 2019 FC 960, at para 121; *Hughes v. Canada (Human Rights Commission)*, 2020 FC 986, at paras 45-46; *Khodayarinezhad v. Canada (Citizenship and Immigration)*, 2024 FC 818; *Johnson v. Canadian Tennis Association*, 2023 FC 1605, at para 38; *Ge v. Canada (National Revenue)*, 2025 FC 1205, at paras 25-27. The respondent's reply submissions on this motion can only seek to answer the applicant's position on mootness, not advance a new substantive basis for granting the application for judicial review.

[27] Accordingly, there is no need to consider whether the application for judicial review is moot or whether to exercise the Court's discretion to hear the matter on its merits under the *Borowski* criteria of the existence of a continuing adversarial relationship between the parties, the concern for judicial economy, and the need for the court not to intrude into the legislative sphere: *Borowski*, at pp. 358-363.

[28] It is true that the respondent initially submitted that it was in the interests of justice and judicial economy to grant the present motion and that there will be no prejudice to the applicant if the motion is granted because he originally sought a deferral until his H&C application has been determined, which has occurred so the applicant has obtained the deferral he requested. When addressing whether the matter should be redetermined, the respondent characterized the

applicant's original deferral request as "moot". However, the respondent did not base the motion for judgment on the mootness of that request. In my view, those positions are legally distinct.

[29] The applicant's submissions argued that this motion is analogous to the motion for judgment by the respondent to set aside a negative deferral decision in *Aina v Canada (Citizenship and Immigration)*, Court File No. IMM-4231. The applicant referred to an order in *Aina* dated June 11, 2024, that dismissed the respondent's motion for judgment made in writing under Rule 369. A recital in that *Aina* order stated that it was in the "interests of decision-making economy to deny the motion [for judgment] in order to prevent the unresolved issues from being raised in future deferral requests, stay motions, and applications for judicial review". As the applicant properly noted, the Court later dismissed the application for judicial review on the grounds of mootness and addressed the issue of decision-making economy raised in the earlier recital: *Aina v Canada (Citizenship and Immigration)*, 2025 FC 1188 [*Aina 2025*].

[30] Neither party's submissions addressed whether an interlocutory "speaking order" (an order with recitals, without formal reasons) is a decision that has precedential value, in that it attracts principles of horizontal *stare decisis*: see *Bent v. Canada (Citizenship and Immigration)*, 2024 FC 2084, at paras 6-7; *R v Sullivan*, 2022 SCC 19, [2022] 1 SCR 460, at paras 73-79.

[31] In my view, the order dated June 11, 2024, in *Aina* does not assist the applicant on this motion. The speaking order's recitals stated that the respondent "concede[d] the unreasonableness of only one of multiple issues raised", which was the failure of the deferral officer to consider the short-term best interests of the children. There were unresolved issues,

that were not conceded by the respondent on the motion, concerning the safety of the applicant and her children and the officer's evidentiary findings regarding risk in Nigeria. Those issues had earlier formed the basis of a stay of removal: see *Aina v. Canada (Public Safety and Emergency Preparedness)*, 2024 CanLII 20701 (FC). In the present case, two of the three issues identified on the stay motion are the same as the respondent conceded on this motion. They concern the failure of the officer to address the risk and were fundamental to the negative deferral decision. Unlike in *Aina*, the applicant in this case has raised those risks for consideration in his H&C application.

[32] Importantly for the present motion, after the interlocutory motion for judgment was dismissed in *Aina*, the Court heard the application for judicial review and rendered its Judgment and Reasons: *Aina 2025*. On that application, the respondent maintained the concession on the children's short-term best interests but, unlike the present case, raised an objection that the application for judicial review was moot: *Aina 2025*, at para 6. As both parties recognized in this case, the Court in *Aina* concluded that the application was moot because that the event for which the deferral was requested (the end of the school year) had passed: *Aina 2025*, at paras 13-17. It is worth noting that the Court's description of the issues raised by the applicants on judicial review did not mention their safety and the evidentiary findings regarding risk in Nigeria; the applicants sought declarations on two unresolved issues that related to documents found to be not authentic and allegedly speculative findings: *Aina 2025*, at paras 7, 10.

[33] Having found the matter to be moot, the Court in *Aina 2025* also declined to exercise the Court's discretion to determine the matter on its merits. As noted above, the Court was not

persuaded that a decision on the merits would result in any judicial economy. The Court reasoned that no matter the outcome, the applicants could seek a deferral of any future removal date. The Court found that the unresolved issues (as framed at that time) were "largely fact-driven and case specific" and were "unlikely to result in any kind of overarching guidance for future cases". The Court also found that for downstream effects on future decision-makers' assessments, the applicants (i) could explain that the application for judicial review had been dismissed on a preliminary objection and (ii) the applicants had other options to obtain the outcome they sought, namely, an existing H&C application and the opportunity to request another deferral: *Aina*, at paras 17, 23-25.

[34] The Court in *Aina 2025* dismissed the application for judicial review as moot. See similarly: *Ozoh v. Canada (Public Safety and Emergency Preparedness)*, 2026 FC 216; *Goitom*, at paras 3, 42-54; *Mackey v. Canada (Public Safety and Emergency Preparedness)*, 2026 FC 51.

[35] For these reasons, the mootness issues raised by the applicant in this case do not require any analysis, there are no live issues remaining to decide on the application for judicial review, and the Court's decision in *Aina 2025* supersedes its earlier interlocutory order dated June 11, 2024.

D. *Remedy*

[36] On a successful application for judicial review, the usual remedy for an unreasonable decision is to set it aside. It is appropriate in this case.

[37] As noted above, the parties' positions on the passage of time and the existence of the H&C decision affect the balance of the remedy on this motion – specifically, whether to remit the applicant's request for a deferral to another officer for redetermination.

[38] In April 2025, the applicant requested an administrative deferral of his removal, which was denied. The applicant sought and obtained a stay of removal until the final determination of application for judicial review of the negative deferral decision. The applicant then applied for permanent residence with an exemption on H&C grounds, in which he raised hardships and risks to him if he is removed to Nigeria. Because the Court stayed his removal and that stay has continued until after H&C decision was made, the applicant has obtained a decision on the issues he raised. The H&C decision was negative and, at the time this motion was argued in writing, the applicant had not received the reasons. While we do not know how the H&C decision considered or treated the applicant's position on hardship or threats to him in Nigeria, the applicant has already filed an application for judicial review of that decision and those issues can be addressed in that proceeding.

[39] In the circumstances, it would serve no useful purpose to send back the applicant's April 2025 deferral request to be determined again: *Vavilov*, at para 142; *Mirrajaby v. Canada (Citizenship and Immigration)*, 2025 FC 1395, at para 8. If CBSA attempts to remove him to Nigeria, he can make a new request a deferral based on current circumstances. If the deferral request is not successful, the applicant can seek a stay of removal in a proceeding that challenges the negative deferral decision or in the existing proceedings challenging the H&C decision. On that possible motion for a stay, the Court will be able to assess (among other things) evidence of

the applicant's current circumstances as well as the content of the H&C decision, if relevant to the stay motion.

E. *Conclusion*

[40] For these reasons, I conclude that the respondent's motion for judgment succeeds. The Decision was unreasonable, applying the principles in *Mason* and *Vavilov*. The appropriate remedy is to set aside the Decision but not to remit the applicant's deferral request for redetermination by another officer.

[41] The respondent did not seek costs of this motion or the application for judicial review, so no costs will be ordered.

[42] No question was proposed to certify for appeal and none will be stated.

JUDGMENT in IMM-8844-25

1. The respondent's motion for judgment is granted.
2. The application for judicial review is granted. The decision dated April 28, 2025, is set aside.
3. The applicant's request for deferral of his removal from Canada is not remitted for redetermination.
4. There is no costs order on the motion or on the application for judicial review.
5. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8844-25
STYLE OF CAUSE:	ABDUL BASIT DUROJAVE v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	APRIL 17, 2026

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