

Federal Court



Cour fédérale

Date: 20150408

Docket: IMM-634-15

Citation: 2015 FC 433

Toronto, Ontario, April 8, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

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

Applicant

and

RICHARD OKWEROM

Respondent

JUDGMENT AND REASONS

(Reasons delivered orally by teleconference from Ottawa on April 7, 2015)

[1] This is an application for judicial review brought by the Minister to review a decision of the Immigration Division releasing Mr. Okwerom from detention. Mr. Okwerom did not appear for the hearing of the application, although I am satisfied from the record before me that he has been provided with notice of this hearing.

[2] Having now heard from counsel for the Minister, and having carefully reviewed the record in this matter, I am satisfied that the decision to release Mr. Okwerom from detention was indeed unreasonable in the face of the overwhelming evidence that:

- he is not rehabilitated;
- he has shown no remorse for the very serious assault on his wife, an assault that very nearly cost her life;
- he has no understanding of the gravity of his conduct which he evidently views as appropriate in the circumstances;
- he has repeatedly indicated that he sees nothing wrong with his conduct as he believes that his wife is his property, and that he owns her; and
- he has repeatedly expressed his desire to be reunited with his wife and children after his release from detention.

[3] To the extent that Member King adopted the reasoning of Member Tessler rendered in connection with the December 2014 detention review, no explanation was given by Member Tessler for suddenly believing Mr. Okwerom's claim that he would not try to seek out his family should he be released from detention, notwithstanding his repeatedly expressed desire to reunite with them. This finding was unreasonable as it is not within the range of possible acceptable outcomes which are defensible in light of the facts and the law. The finding that there was "no evidence" that he would try to seek out his family was moreover perverse, in light of the record that was before the member.

[4] I would also note that one cannot reconcile the Member's finding that Mr. Okwerom does indeed pose a risk to his family with the apparent acceptance of his claim that he would not seek them out if released.

[5] The Member also did not provide an explanation as to how Mr. Okwerom could be expected to comply with conditions of release in light of previous findings by Members of the Immigration Division, including Member King, were that he is incapable of doing so. The finding that he would comply with conditions imposed by the Immigration Division thus lacks the transparency, intelligibility and justification required of a reasonable decision.

[6] I also accept the Minister's submission that the requirement that Mr. Okwerom report to the Canada Border Services Agency on a twice-weekly basis would not prevent him from leaving the province and seeking out his wife and children if he were intent on doing so.

[7] Finally, I agree with the Minister that Member King appears to have treated the length of Mr. Okwerom's detention and the uncertainty surrounding his future removal as being of paramount consideration in this case.

[8] Even if I accept that there is no immediate prospect of Mr. Okwerom's removal from Canada, as this Court noted in the *BI47* cases cited by the Minister [*Canada (Minister of Citizenship and Immigration) v. BI47*, 2012 FC 655], the indeterminate nature of an individual's detention is *but one factor* to be considered in a Detention Review. It has to be weighed against other considerations to decide if release is appropriate, and it is an error of law to treat the indeterminate nature of a detention as the determinative factor: [*BI47*, above at paras. 53-56].

[9] As a consequence, the application for judicial review will be granted. The February 6th, 2015 decision of Member King releasing Mr. Okwerom from detention will be set aside, and the matter will be remitted to a different member of the Immigration Division for re-determination.

[10] I agree with the Minister that this case is entirely fact-specific and does not raise the question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is granted, the decision of Member King dated February 6, 2015 is quashed, and the matter is remitted to a different member of the Immigration Division for re-determination in accordance with these reasons.

“Anne L. Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-634-15

STYLE OF CAUSE: MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS v RICHARD OKWEROM

**HEARING HELD VIA TELECONFERENCE ON APRIL 7, 2015 FROM OTTAWA,
ONTARIO AND WINNIPEG, MANITOBA**

JUDGMENT AND REASONS: MACTAVISH J.

DATED: APRIL 8, 2015

APPEARANCES:

Alexander Menticoglou

FOR THE APPLICANT

No one appearing

FOR THE RESPONDENT
(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

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FOR THE APPLICANT