Federal Court  Cour fédérale

Date: 20171206

Docket: IMM-1761-17

Citation: 2017 FC 1079

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 6, 2017

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

SHANGO MAME BIOMO

Applicant

and

THE MINISTER OF PUBLIC SAFETY

Respondent

REASONS FOR JUDGMENT

(Judgment delivered orally from the Bench at Montréal, Quebec, on November 7, 2017)

BELL J.

1. Background

[1] This is an application for judicial review by the applicant, Shango Mame Biomo [Ms. Biomo], regarding an exclusion order issued on April 4, 2017, by a delegate of the Minister [Delegate]. In the decision regarding the exclusion order [Decision], the Delegate determined that Ms. Biomo was a foreign national referred to in section 41 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], that is, a foreign national who is inadmissible for contravening the requirement in subsection 29(2) of the IRPA. Consequently, the Delegate issued an exclusion order against her.

[2] I note that Ms. Biomo is a citizen of the United States and of the Republic of the Congo. I also note that Ms. Biomo crossed the Canada-U.S. border nine times between December 29, 2011, and November 15, 2015. On November 11, 2015, Ms. Biomo was denied entry into the country at a first border crossing. She therefore entered the country at another border crossing on November 15, 2015.

2. Applicable law

[3] Section 41 of the IRPA reads as follows:

41 A person is inadmissible for failing to comply with this Act	**41** S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte

ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and

(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.

[4] Subsection 29(2) stipulates the following:

29(2) A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.

29(2) Le résident temporaire est assujetti aux conditions imposées par les règlements et doit se conformer à la présente loi et avoir quitté le pays à la fin de la période de séjour autorisée. Il ne peut y rentrer que si l'autorisation le prévoit.

3. Analysis

[5] Ms. Biomo submits that the Delegate should have considered the best interests of her children before making his Decision. She also submits that she did not know certain facts or certain aspects of the law—specifically, that she had to leave the country after six months. Lastly, she argues that the border official who was in charge of her case when she crossed the

Canada-U.S. border on April 3, 2017, [Official] allegedly breached procedural fairness when he interviewed her by failing to inform her of all of the relevant information regarding an interview with the Delegate the following day, on April 4, 2017.

[6] I find that the Delegate considered all of the relevant factors in making his Decision. The Official and the Delegate considered all of the personal factors that Ms. Biomo had presented to them. I note that the Delegate had no information regarding the particular circumstances of her children when making his Decision. Regardless, I find that an in-depth analysis of the best interests of the children was not required in this case (*Canada (Minister of Citizenship and Immigration) v. Varga*, 2006 FCA 394, [2006] F.C.J. No. 1828 at paragraph 13; *De Guzman v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436, [2005] F.C.J. No. 2119 at paragraph 105; see also, in general, *Mworosha v. Canada (Citizenship and Immigration)*, 2017 FC 983, [2017] F.C.J. No. 1086).

[7] With respect to Ms. Biomo's submission that she did not know that she had to leave the country after six months, I have no difficulty concluding that Ms. Biomo knew or should have known that she had to leave the country at the end of her six-month authorized stay, given that she had already been admitted to Canada at least nine times in the past. In any event, the decision-makers in this case were not required to consider that factor.

[8] As for Ms. Biomo's argument that there was a breach of the principles of procedural fairness because the Official allegedly did not sufficiently inform her of the facts that led him to send a report on inadmissibility to the Delegate, the record clearly shows that Ms. Biomo had

been informed of all the facts that triggered the inadmissibility process at the appropriate time. In addition, she was given the opportunity to submit evidence and make submissions. Moreover, I note that she also had the opportunity to seek counsel and that counsel was present during her interview with the Delegate on April 4. In light of the foregoing, I cannot identify any element in the facts indicating that there was a breach of the principles of procedural fairness in the management of Ms. Biomo's case.

[9] For all these reasons, I am satisfied that the Delegate's Decision is reasonable. In addition, there is no question of a breach of the principles of procedural fairness that may warrant the Decision being dismissed. The application for judicial review should be dismissed.

[10] At the start of the hearing, both parties challenged the admissibility of certain documents, to which neither the Official nor the Delegate had access during the decision-making process. In this case, I do not consider it necessary for me to address this issue. Regardless of whether or not those documents were admitted, my decision would remain the same.

[11] In his factum, the respondent requests that the style of cause be amended to indicate the respondent as being the "Minister of Public Safety" instead of the "Minister of Citizenship and Immigration". The applicant does not dispute this request. It is therefore allowed.

[12] Lastly, neither party applied to have a question certified for consideration by the Federal Court of Appeal. Thus, there is no serious question of general importance to be certified.

JUDGMENT in IMM-1761-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs;

2. No question is certified;

3. The style of cause is amended to indicate the respondent as being the "Minister of Public Safety" instead of the "Minister of Citizenship and Immigration".

"B. Richard Bell"
Judge

Certified true translation
This 12th day of August 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1761-17
STYLE OF CAUSE:	SHANGO MAME BIOMO v. MINISTER OF PUBLIC SAFETY
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 7, 2017
REASONS FOR JUDGMENT BY:	BELL J.
DATED:	DECEMBER 6, 2017

APPEARANCES:

Juliana Rodriguez	FOR THE APPLICANT
Thi My Dung Tran	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gagnon, Rodriguez, Barristers & Solicitors Sherbrooke, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT