

Date: 20071025

Docket: IMM-805-07

Citation: 2007 FC 1105

Montréal, Quebec, October 25, 2007

Present: The Honourable Mr. Justice Blais

BETWEEN:

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

**JAMIN DARRYL SHELTON BELL
(a.k.a. OLUSEGUN BOLARINWA AIKULOLA)**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of the decision of member Yves Dumoulin (the member) of the Immigration and Refugee Board (IRB), Immigration Division, dated February 13, 2007, which ordered the release of the respondent subject to certain terms and conditions.

RELEVANT FACTS

[2] The respondent arrived in Canada on June 18, 2003, seeking admission as a visitor at the St-Bernard-de-Lacolle port of entry.

[3] On April 5, 2006, he was arrested and charged with shoplifting and obstruction. The latter charge was laid after he identified himself to police with debit cards and a health insurance card in the name of Martin Savaria; whereas, after searching him, the police found an American driver's licence in the name of Jamin Darryl Shelton Bell, born October 7, 1982.

[4] A fingerprint check with American authorities revealed that the respondent was known in the United States as Olusegun Bolarinwa Aikulola, born in Nigeria on March 7, 1972, and that he had 15 other assumed names.

[5] On August 29, 2006, a conditional release order was issued by the same member whose decision is being challenged today. The conditions included the following:

You will also have to keep the peace. Meaning if ever you're convicted of any other infraction you'll find yourself back into detention. You will also not be within twenty kilometers of the Canadian/U.S. border.

You will have to continue to help the department in clarifying the identity.

[6] On January 31, 2007, the respondent was arrested by Montréal police. This arrest was based on two outstanding warrants. He told police that his name was Jamin Darryl Shelton Bell, which resulted in a charge of obstruction of justice.

[7] On February 5, 2007, he pleaded guilty to the obstruction charge. It should be noted that the two other charges involved events prior to the August 29, 2006, conditional release order.

IMPUGNED DECISION

[8] At the detention review on February 13, 2007, the member concluded that the Minister's efforts to identify the respondent were not reasonable and that the respondent had not breached the conditions because when the order was made on August 29, 2006, the conditions to keep the peace and to not be convicted of any other offence did not mean that he could not use the name that appeared on his release order. Therefore, the member continued the conditional release order.

ISSUES

1. Does the applicant have standing?
2. Did the member make an error in his decision of February 13, 2007, that warrants the intervention of this Court?

STANDARD OF REVIEW

[9] The issue here is whether the member erred in interpreting the conditions in his order of August 29, 2006, releasing the respondent. Accordingly, this is a question of mixed fact and law, focused more on the facts, since the member had to determine whether the respondent had breached one of the conditions in the release order. Accordingly, the appropriate standard of review is patent unreasonableness (*Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, 2003 FC 1225, at paragraphs 57 and 58).

ANALYSIS

1. Does the applicant have standing?

[10] The burden is on the Minister of Citizenship and Immigration to establish that she has standing to institute the proceedings since the issue of standing was raised in response to her

application for judicial review (*Sierra Club of Canada v. Canada (Minister of Finance)*, [1999] 2 FC 211, at paragraph 24).

[11] Subsection 5 (2) of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 (the Rules) states as follows:

5 (2) Unless he or she is the applicant, the Minister responsible for the administration of the <i>Immigration and Refugee Protection Act</i> in respect of the matter for which leave is sought shall be the respondent in an application for leave.	5 (2) Sauf dans le cas où il est lui-même le demandeur, le ministre chargé de l'application de la <i>Loi sur l'immigration et la protection des réfugiés</i> est, à l'égard de la mesure visée par l'autorisation recherchée, le défendeur dans toute demande d'autorisation.
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[12] It is clear from this subsection that the Minister has standing to challenge the Immigration Division's decision. In fact, the Minister was a party to the first release decision dated August 29, 2006, which was interpreted in the decision at issue in this case. Therefore, in my opinion, she is the Minister responsible for the Act.

2. Did the member make an error in his decision of February 13, 2007, that warrants the intervention of this Court?

[13] A reading of the impugned decision confirms that the only charge arising from events prior to the conditional release of August 29, 2006, concerns the fact that the respondent identified himself to police as Jamin Daryl Shelton Bell.

[14] However, a reading of the police report shows that when he was arrested, the respondent told the officers that he had changed his name and that he had documents at home to prove it. When the officers tried to obtain the documents, the respondent replied that they were in a safety deposit

box then said that they were at his lawyer's office. This information was clearly wrong. He also provided a false address to the police.

[15] Because the documents were never provided and the police were unable to properly identify the respondent, they recommended that an obstruction charge be laid against the respondent.

[16] It should be noted that the conditional release order of August 29, 2006, was issued under the name of D.S. Bell. The respondent also used this name on his application for refugee status and when he married.

[17] The identity of the respondent had not been established at the time the order of August 2006 was made. The member determined that he could not continue to detain the respondent based on this factor because the Minister's efforts to clarify this point had not been reasonable. In fact, the Minister had waited until the day before the hearing to verify the respondent's identity.

[18] The applicant emphasizes the following paragraph from the impugned decision:

The condition was imposed in view of avoiding involvement in the criminal activities of the type that had been mentioned in that decision on the 29th of August. We were talking at the time of the fact that in Quebec, you had been convicted of fraud, of threats and uttering forged documents. And after reading again my decision, it was the opinion then and it is still my opinion now that in my opinion it was clear that when I imposed the condition keep the peace and do not get convicted of any offences, that was in regards with do not get into any other criminal activities of the nature for which you would already have been convicted in Quebec.

[19] This paragraph is ambiguous at the very least: in fact, the member explains and goes on to specify, if not distort, one of the conditions in his decision of August 29, 2006.

[20] On August 29, 2006, the following conditions were imposed:

- (1) Present himself or herself at the time and place that an Officer or the Immigration Division requires him/her to appear to comply with any obligation imposed on him/her under the Act.
- (2) Provide the Department with his/her address and advise the Department before any change in that address.
- (3) Report to an Officer at the Canadian Immigration Centre nearest to his/her residence the first working day following his/her release and then once a week thereafter.
(If the person concerned becomes a protected person, an Officer may, in writing, cancel this condition, change the reporting location or reduce the reporting frequency.)
- (4) Keep the peace (do not get convicted of any offenses).
- (5) Not to be found within 20 km of US-Canada border.
- (6) Collaborate with CIC\CBSA to clarify identity.
- (7) If decide to leave, has to inform CIC/CBSA of arrangement.

[21] On reading the fourth condition, “do not get convicted of any offenses”, it is difficult to conclude, as the member did, that the offences referred to only involve criminal activities of the same nature as those that the respondent had already been convicted of.

[22] Interpreted in this way, the condition could lead to absurd results. For example, if the respondent committed a crime similar to those he had already committed, such as fraud, forgery, or using a false identity, he would have been returned to detention. On the other hand, if he committed a violent crime for which imprisonment is often the norm in the criminal courts, he would have been released. This interpretation cannot logically be sustained.

[23] It is unfortunate that the member's decision of August 29, 2006, did not specify the type of offence referred to in the conditions. It appears he did not change these conditions in his decision of February 13, 2007, which released the respondent.

[24] It seems clear to me that the member's decision releasing the respondent is patently unreasonable and must be set aside. Accordingly, the matter will be remitted to a different member for reconsideration in light of these reasons.

[25] The parties did not submit a question for certification.

JUDGMENT

THE COURT ORDERS:

- The application for judicial review is allowed.
- The decision of the Board member dated February 13, 2007, is set aside.
- The matter is remitted to the Board so that a new hearing before a different member can be held as soon as possible in light of these reasons.

“Pierre Blais”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-805-07

STYLE OF CAUSE: MINISTER OF CITIZENSHIP AND
IMMIGRATION
v.
JAMIN DARRYL SHELTON BELL
(a.k.a. Olusegun Bolarinwa AIKULOLA)

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: OCTOBER 17, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** THE HONOURABLE MR. JUSTICE BLAIS

DATED: October 25, 2007

APPEARANCES:

Michel Pépin

FOR THE APPLICANT

Jared Will

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE APPLICANT

Jared Will
Montréal, Quebec

FOR THE RESPONDENT