

Federal Court



Cour fédérale

Date: 20110622

Docket: IMM-4025-11

Citation: 2011 FC 748

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 22, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

OMGBA FRANÇOIS EMMANUEL

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

I. Preamble

[1] The reward of the truth, once understood, is an openness to the interpretation of immigration laws that provide access to the improvements regarding the precarious human condition intended by Parliament; on the other hand, lies bar access to undeserved settlement opportunities to preserve the integrity of the immigration system.

[2] Under subsection 48(2) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) a removal order must be executed as soon as circumstances allow. This applies to the present situation.

[3] The applicant's removal is not simply a question of administrative convenience, it is about the integrity and fairness of the Canadian immigration control system and the public's faith in that system.

[4] For these reasons, the balance of convenience favours public interest and the continuation of the immigration process provided under the IRPA.

II. Introduction

[5] The applicant, a citizen of Cameroon, filed a motion for a stay of the removal order issued against him. This motion is related to an application for leave and judicial review (ALJR) against the Direction to Report.

III. Facts

[6] The applicant, François Emmanuel Omgba, is a citizen of Cameroon.

[7] On March 26, 2005, Mr. Omgba married Crescence Marguerite Ntolo Essama in Paris.

[8] Without getting divorced, Mr. Omgba married Andeng Embolo, a Canadian citizen, on January 6, 2007.

[9] On December 19, 2005, Mr. Omgba submitted an application for a permanent residence visa in the family class.

[10] After this application was accepted, Mr. Omgba came to Canada on September 24, 2007, and was admitted as permanent resident.

[11] On July 11, 2008, Crescence Marguerite Ntolo Essama went to the Canadian embassy in Paris to inform the Canadian authorities of Mr. Omgba's marital status.

[12] On September 16, 2008, an inadmissibility report for misrepresentation pursuant to paragraph 40(1)(a) IRPA was issued against the applicant.

[13] On April 20, 2009, the Immigration Division of the Immigration and Refugee Board (IRB) issued an exclusion order against Mr. Omgba.

[14] Mr. Omgba did not claim refugee protection.

[15] On February 18, 2010, the Superior Court of Québec annulled the marriage between Mr. Omgba and Andeng Embolo, considering that during this marriage, he was already married to a third party.

[16] Mr. Omgba admitted these facts and did not challenge the motion to annul the marriage.

[17] On February 26, 2010, the Immigration Appeal Division (IAD) of the IRB dismissed Mr. Omgba's appeal from the removal order and also found that he had not demonstrated sufficient humanitarian and compassionate considerations to warrant special relief in accordance with paragraph 67(1)(c) of the IRPA.

[18] Mr. Omgba submitted an application for a Pre-Removal Risk Assessment (PRRA) on May 26, 2010.

[19] On February 11, 2011, a negative decision was rendered in that application.

[20] Mr. Omgba did not challenge that decision.

[21] On June 13, 2011, Mr. Omgba met with an IRPA enforcement officer who issued a notice to appear on June 27, 2011, at 11:15 a.m. at the Jean-Lesage Airport for his removal from Canada.

[22] Mr. Omgba did not submit an application to stay his removal to the IRPA enforcement officer.

[23] On June 17, 2011, Mr. Omgba served and filed a motion to stay the removal order in this case.

[24] On June 20, 2011, because of the high cost of the plane ticket for June 27, 2011, the departure date was changed to June 30, 2011.

[25] On June 21, 2011, the IRPA enforcement officer contacted Mr. Omgba by phone to inform him of the new removal date and ask him to go to the offices of the Canada Border Services Agency (CBSA) to get his copy of the notice to appear.

III. Issue

[26] Does the motion have merit based on all the criteria in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302, 11 A.C.W.. (3d) 440 (FCA)?

IV Analysis

[27] According to the facts in evidence, Mr. Omgba did not meet any of the criteria in *Toth, supra*. Namely, there is no serious issue, no irreparable prejudice nor even a balance of convenience that favours him.

V. Conclusion

[28] For all these reasons, Mr. Omgba does not meet any of the criteria established by the case law with respect to obtaining a judicial stay.

[29] The motion for a stay of the removal order is therefore dismissed.

ORDER

THE COURT ORDERS the dismissal of the motion for a stay of the removal order.

“Michel M.J. Shore”

Judge

Certified true translation
Elizabeth Tan, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4025-11

STYLE OF CAUSE: OMGBA FRANÇOIS EMMANUEL v.
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

**MOTION CONSIDERED BY CONFERENCE CALL ON JUNE 22, 2011, BETWEEN
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC.**

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: June 22, 2011

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