

Federal Court



Cour fédérale

Date: 20180208

Docket: IMM-2273-17

Citation: 2018 FC 150

Calgary, Alberta, February 8, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**CLEMENCE KAZADI MBUYI BOKULI
MELYA BOKULI
LORENZIA BOKULI
LUIGI BOKULI**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Clémence Kazadi Mbuyi Bokuli (the “Principal Applicant”) and her children Melya Bokuli, Lorenzia Bokuli and Luigi Bokuli (collectively the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”), dismissing their application for recognition as convention refugees or persons in need of

protection within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of the Democratic Republic of the Congo. The basis for their claim is the fear of the Principal Applicant of persecution by the Congolese government on the basis of imputed political opinions arising from her status as an employee of Mr. Moise Katumbi Chapwa, himself alleged to be targeted by the government of the Congo for his political opinions and activities against that government.

[3] Although the Board accepted the evidence of the Principal Applicant about her employment situation to be largely credible, it made negative credibility findings about other issues, including the Board dismissed, as fraudulent, all the documents submitted by the Principal Applicant in support of her claim that she was persecuted and targeted by government forces and would be at risk for her life if returned to her country of citizenship.

[4] The Board’s decision involves assessment of the evidence in light of the statutory requirements. The main issue, then, is a question of mixed fact and law, reviewable on the standard of reasonableness; see the decision in *Constain v. Canada (Minister of Immigration, Refugees and Citizenship)*, 2016 FC 1248.

[5] The standard of reasonability requires that a decision be transparent, justifiable, intelligible and fall within a range of possible and acceptable outcomes; see the decision in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[6] The Principal Applicant raises several issues in her written submissions. It is not necessary for me to address all those issues since I am satisfied the Board erred in at least two respects.

[7] First, the Board's finding that the Principal Applicant gave credible evidence about her employment is inconsistent with its subsequent finding that she was not employed by Mr. Chapwa. The Board did not explain this inconsistency.

[8] Second, the Board dismissed out of hand all documents submitted by the Principal Applicant as "fraudulent" without providing notice to the Applicant that the authenticity of those documents was an issue, prior to delivery of its decision. According to the decision in *Habiboglu v. Canada (Citizenship and Immigration)*, 2005 FC 1664, reliance on an issue that has not been raised with an applicant is a reviewable error.

[9] In the result, the decision of the Board is set aside and the matter is remitted to a differently constituted panel of the Board for re-determination. There is no question for certification arising.

JUDGMENT for IMM-2273-17

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is remitted to a differently constituted panel of the Immigration and Refugee Board for re-determination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2273-17

STYLE OF CAUSE: CLEMENCE KAZADI MBUYI BOKULI ET AL v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 22, 2018

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 8, 2018

APPEARANCES:

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