IMM-2527-96

BETWEEN:

ADELINO FRANCES

Applicant

AND:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

JOYAL, J.:

At the conclusion of the hearing of this application for judicial review, I informed counsel for the parties that in my respectful opinion, the applicant was entitled to have his status as a permanent resident of Canada determined again.

The issue facing the applicant was a determination by the Minister's delegate, under s.s. 70(6) of the *Immigration Act* (the "Act"), that the applicant had breached the terms and conditions imposed by the Immigration Appeal Division and that he constituted a danger to the public in Canada. The result of this was to make the applicant deportable forthwith from Canada to the country of his birth, Portugal.

The power of the Minister or his delegate to deport a person on grounds of "danger to the public" is a very draconian one. Jurisprudence has already ruled that this is a purely administrative decision, imposing only a minimum of "fairness" rules in the process. More recently, it has been said that reasons for the decision are not a requisite. In effect, therefore, the discretion is one exercised with little if any third party scrutiny. And yet, the consequences of the exercise of that discretion may be said to be extremely traumatic on the individual affected. In the case before me, it is noted that the applicant came to Canada from the Azores at the age of five, that he has lived in Canada all of his life, that he is married to a Canadian citizen, has a Canadian-born child, and knows very few words in the Portuguese language. Furthermore, his parents and his siblings are here with him in Canada, and family members are mutually supportive.

All of the foregoing is part and parcel of the decision of the Immigration Appeal Board, dated February 17, 1994, when the Deportation Order against the applicant, dated February 10, 1993, was stayed for a period of four years. In other words, whatever negative conclusions might have been reached on the subject of the applicant's criminal behaviour, the order to stay the deportation order shows a much more positive approach.

This brings me to the crux of my decision on the case. The conditions imposed by the Immigration Appeal Board were mostly perfunctory or administrative ones, i.e. report every six months, report any

change of address, employment or marital status. These are not restraining orders. There are, of course, more mandatory ones, i.e. "reasonable efforts to seek and maintain employment" and "respect all parole conditions and Court orders".

It is quite clear that during the several months following the stay of deportation, there were many instances where the applicant did not appear to respect the conditions of his parole. On December 1, 1994, the applicant's parole was routinely revoked because of a dangerous driving charge. However, the applicant's parole was reinstated on May 5, 1995, when he was acquitted of the charge. Again on October 4, 1995, parole was suspended; this suspension was reviewed and a month later, it was cancelled. A reading of the National Parole Board Post-Release Decision Sheet dated November 3, 1995, is evidence that there were some quite positive things that could be said about the applicant.

The applicant's history, unfortunately, does not stop there. In a briefing submitted by Immigration to the Minister's delegate, at a time when the applicant had secured good employment in Guelph, but was also going through an acrimonious marital period, it is alleged that he had misled the Immigration people by misstating his address in September 1995, thereby committing a breach of the conditions attached to the stay order from the Immigration Appeal Board. Immigration stated that he was incarcerated at Millhaven Penitentiary at the time, and that his parole had

been revoked on August 15, 1995. A review of the case indicates that both statements were wrong, but they were not corrected.

There is more. The brief states that the applicant "... has shown that he cannot be trusted to abide by the terms and conditions imposed. He has violated conditions of parole as a well as conditions imposed by the Immigration Appeal Board". No mention is made, however, that October 1995 charges were later withdrawn, and that November 1995 charges resulted in the applicant's acquittal in February 1996.

I am not suggesting that these shortcomings are determinative of the issue before me. Nevertheless, they must be considered seriously because the reviewing officers' brief is the only source material on which the Minister's delegate can make a decision. And, as I have stated before, it is a decision which has extremely serious and prejudicial consequences. All the more should greater care be taken that the reviewing officers have their facts right. In this respect, the concluding paragraph of the brief speaks in very broad, negative and unqualified terms of the applicant being "a danger to the public", while not even an oblique reference is made to the effect that the applicant had suffered no criminal conviction since his conviction several years earlier. In my respectful view, observations in such briefing documents are like blips on a radar screen. If they are false blips, then the conclusions drawn cannot stand.

I have said before that the field of ministerial discretion is very wide indeed, and pretty well protected from judicial review. Nevertheless, it is fundamental to the proper exercise of ministerial discretion that the conclusions, opinions or inferences expressed be made on the basis of true and substantial facts. This is what the applicant is entitled to, no more, no less. Otherwise, in my respectful view, the decision is sufficiently tainted to merit a second look.

The application for judicial review is accordingly allowed. The decision of the Minister's delegate is quashed. The applicant is entitled to a redetermination of his case pursuant to sub-section 70(6) of the Act. It is expected that the briefing notes to the Minister's delegate will be more accurate and that the applicant will again be given an opportunity to make representations.

L-Marcel Joyal

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J U D G E

O T T A W A, Ontario

July 4, 1997.