

BETWEEN:

**HAO VI LAM
(a.k.a. VI HAO LAM)**

Applicant

- AND -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

McKEOWN J.

The applicant, a citizen of Vietnam, seeks judicial review of a decision of the Minister of Citizenship and Immigration dated October 27, 1995 wherein the Minister was of the opinion that the applicant is a danger to the public in Canada. Although the applicant appeared in person the applicant's solicitor had filed a memorandum of argument and counsel for the respondent assisted the applicant by reviewing this argument.

The issues raised in this application relate to whether subsection 70(5) is unconstitutional for vagueness and whether the Minister made the decision by relying on irrelevant evidence. The vagueness argument was dealt with in *Minister of Citizenship and Immigration v. Williams*, April 11, 1997, Court File A-855-96 (F.C.A.) reversing [1996] F.C.J. No. 1317 (F.C.T.D.) where the Court held that the issuance of a "danger to the public" opinion under subsection 70(5) does not engage rights under section 7 of the *Charter* and that the concept of "danger to the public" is not unconstitutionally vague.

The second issue is the more difficult issue and that is whether there was a rational basis for the Minister's decision that the applicant constituted a danger to the public. The applicant cited a number of factors to demonstrate that the Minister erred, namely, he had only one conviction, the positive effect of his incarceration, his community's support, a Parole Board decision where he was released within a minimum amount of time permitted under the legislation, his continuous employment since the date of release and his family's support. However, these points of consideration as well as the decision of the criminal courts, of the Parole Board and of other decision-makers including the immigration officer were all before the Minister for her consideration. In this case, the immigration officer who prepared the report for the Minister recommended that "no danger to the public" opinion be issued. However, the manager overruled the officer's recommendation stating:

This is a serious case given the seriousness of the offence. Fortunately no one was hurt, but the effect on the victims should not be dismissed.

As Strayer J.A. stated in *Williams, supra* at 24:

It is not the opinion of the judge which is required as to whether the non-citizen presents a danger to the public.

Although there are many points in favour of the applicant I am unable to say that there was no rational basis for the Minister's decision. Accordingly, the application for judicial review is dismissed.

OTTAWA, ONTARIO
July 30, 1997

Judge