Date: 20070727

Docket: IMM-4316-06

Citation: 2007 FC 785

Ottawa, Ontario, July 27, 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

MINH TRUNG TIN LE

Applicant(s)

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent(s)

REASONS FOR ORDER AND ORDER

1. Introduction

[1] This is an application for judicial review of the July 6, 2006 decision of the Minister's delegate (the Delegate) wherein it was determined that the Applicant constitutes a danger to the public in Canada within the meaning of paragraph 115(2)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

2. Facts

[2] The Applicant is a 34 year old Vietnamese citizen. He left Vietnam in 1990 and subsequently spent three years in a refugee camp in Indonesia. On July 16, 1993, he obtained from the Canadian High Commission in Singapore a permanent resident visa in the Convention Refugee category. He arrived in Canada on August 4, 1993.

[3] In 2002, the Applicant was convicted of possession of cocaine for the purpose of trafficking, possession of cocaine, and conspiracy to traffic cocaine. He received one 3 year and two concurrent 5 year sentences resulting in a total prison term of 8 years. He was incarcerated from August 21, 2002 until December 31, 2003 when he became eligible for day parole.

[4] On June 11, 2003, the Applicant became the subject of an inadmissibility report on grounds of serious criminality under paragraph 36(1)(a) of the Act. On September 23, 2003, the applicant was notified that the Minister intended to request a danger opinion under paragraph 115(2)(*a*) of the Act. The Minister's danger opinion dated July 6, 2006, is the decision presently under review.

3. Relevant Legislation

[5] The legislation relevant to this application for judicial review is the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and, in particular, paragraph 115(2)(*a*) which reads:

Protection	**Principe**
115. (1) A protected person or a person who is recognized as a	**115.** (1) Ne peut être renvoyée dans un pays où elle risque la

Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.
Exceptions	**Exclusion**
(2) Subsection (1) does not apply in the case of a person (a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or …	(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire: a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada; […]

4. Issues

A. Did the Delegate breach the rules of procedural fairness?

B. Did the Delegate err in concluding that the Applicant is a danger to the public in Canada?

C. Did the Delegate err in failing to consider the interests of the Applicant's children?

5. Standard of Review

[6] In *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, the Supreme Court of Canada held that considerable deference is owed in respect of the Minister's determination of whether a person constitutes a danger to the security of Canada. At page 27 of its reasons, the Court wrote:

> […] The court's task, if called upon to review the Minister's decision, is to determine whether the Minister has exercised her decision-making power within the constraints imposed by Parliament's legislation and the Constitution. If the Minister has considered the appropriate factors in conformity with these constraints, the court must uphold his decision. It cannot set it aside even if it would have weighed the factors differently and arrived at a different conclusion.

[7] The decision of whether Mr. Le constitutes a danger to the public in Canada is also essentially a fact driven inquiry. As such, the Court must adopt a deferential approach to these questions and intervene only if the delegate's decision is patently unreasonable. A patently unreasonable decision is one that is made arbitrarily, or in bad faith, or without regard to the appropriate factors, or the decision cannot be supported on the evidence. The Court is not to re-weigh the factors considered or interfere simply because the Court would have reached a different conclusion. See *Suresh* at paragraphs 29 and 39.

[8] I therefore find that the standard of review applicable to the Delegate's decision that the Applicant is a danger to the public in Canada is one of patent unreasonableness.

[9] It is well established that questions of procedural fairness or natural justice are subject to the correctness standard. See *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, [2001] 1 S.C.R. 221 at paragraph 65. If a breach of the duty of fairness is found, the decision must be set aside. See *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650 at 665.

6. Analysis

A. *Did the Delegate breach the rules of procedural fairness?*

[10] The Applicant states that he was never advised that, owing to his status as a permanent resident in Canada, he would be subject to removal if he committed a criminal offence. The Applicant argues that the government had a positive duty to advise him of the terms and conditions of his stay in Canada and that its failure to do so constitutes a breach of procedural fairness.

[11] The Applicant's argument on this issue is without merit. The law concerning inadmissibility on grounds of serious criminality is not veiled in secrecy. Even if the Applicant's criminal defence counsel did not inform him of the consequences of a criminal conviction on his immigration status, there is no positive duty on the state to advise foreign nationals and permanent residents that engaging in criminal activity may render them inadmissible and subject to removal. Further, in the circumstances here, the Applicant did not raise this issue before the Delegate. I find that no breach of procedural fairness arises on these facts.

B. *Did the Delegate err in concluding that the Applicant is a danger to the public in Canada?*

[12] The Applicant argues that the Delegate erred by misinterpreting or ignoring evidence and reaching conclusions unsupported by the evidence before him. The crux of the Applicant's argument is that, given that he was assessed by parole authorities as posing a low risk of re-offending, it was patently unreasonable for the Delegate to conclude that the Applicant is a danger to the public in Canada.

[13] I am satisfied on review of the comprehensive reasons for decision that the Delegate did not misapprehend or ignore the evidence and that the decision was made with regard to the material before him. The Delegate identified the relevant facts and reviewed the applicable law pertaining to the Applicant's risk upon removal and danger to the public in Canada.

[14] At the outset, the Delegate noted that a criminal conviction, on its own, is an insufficient foundation for a danger opinion. The Delegate indicated that he had to consider two factors, first the consequences of future criminal activity for the Canadian public and, second the probability of future criminal activity. The Delegate indicated in considering the danger opinion, he was required to turn his mind to the relative significance of each of these two factors, and their combined effect, in order to assess the danger posed to the public.

[15] With respect to the consequences of future criminal activity, the Delegate noted that the Applicant's criminal convictions were, as stated by the sentencing judge, for serious offences

which caused direct and indirect damage to Canadian society. The Delegate cited at paragraph 13 of his opinion the reasons of Justice Park at the Applicant's trial on August 21, 2002:

> […] Cocaine causes damages and damage to our society. Cocaine, because of its physical addiction propensities, is an extremely dangerous drug. Crack cocaine is an extremely addictive substance. The usage of both drugs can lead an individual to commit other crimes in order to finance its extremely addictive use. Here Le, as I am given to understand, was not an addict but an individual who was in it for profit, and involved in this insidious scheme for greed and profit and without regard for the misery and suffering of addicts and of the general public who will suffer indirectly.

[16] The Delegate inferred from Justice Park's comments, reasonably in my view, that the Applicant's cocaine trafficking operation caused significant damage to society and thus constituted a danger to the public. In reaching this conclusion, the Delegate noted the comments of Justice Blais in *Arinze v. Canada (Solicitor General)*, 2005 FC 1547 at paragraph 22:

> …The wording of section 115 does not include limitations to only particular types of offences. It leaves the consideration of whether an individual constitutes a danger to the public to the discretion of the Minister's delegate. The Minister's delegate considered that violence was not used in the commission of the applicant's offences, but also acknowledged … the serious effect such crimes can and do have on the Canadian public. …

[17] With respect to the probability of the Applicant's future criminal activity, the Delegate noted the institutional reports indicating that the Applicant's motivation level and reintegration potential were both high and that he was "at a low risk to re-offend". The low risk assessment, however, was condition upon the applicant adequately addressing "…his criminogenic factors

through the appropriate institutional/counseling with follow up application in the community". The Delegate noted that the evidence indicated that the applicant did not complete institutional counseling because his level of language skill was inadequate, although he did begin an addictions program while at a half-way house. The Delegate identified several factors relevant to his assessment of the Applicant's motivation to re-offend: the effectiveness of his family support, his prospects for legitimate employment, financial factors, the effectiveness of deterrence, and his pattern of criminal associations.

[18] The Delegate considered that Mr. Le was involved in a large scale cocaine trafficking criminal enterprise. The Applicant was not an addict, but was in it for the profit motivated by gambling addiction. In the Delegate's view, the financial factor was important since the Applicant had limited employment prospects due to his low language skills and education and poor English ability. The Applicant, under pressure to provide for his family, turned to gambling. As the Applicant accrued gambling debts, he was introduced to the drug trafficking and used this trade as a means of financing his debts. The gambling continued, however, and so too did the Applicant's cocaine trafficking operation. The Delegate noted that there was no evidence that the Applicant successfully retired his gambling debts, which on the Applicant's account reached $7,000, but which according to police information were as high as $70,000. The Delegate stated at pages 5 and 6 of his opinion:

> …If at any point he did retire his gambling debts, I have been unable to identify any specific evidence that he took that opportunity to cease participating in a sophisticated cocaine trafficking criminal enterprise as a result. Either he retired his

> gambling debts prior to incarceration, and remained nonetheless in the cocaine business, or he carried them over post-incarceration, and is still indebted to the people who allegedly lured him into the trafficking business. Even if gambling can be credibly linked as contributing to his incentive for narcotics trafficking and conspiracy for "greed and profit", successful completion of a brief two month addiction program, while a potentially positive indicator, will not provide adequate or satisfactory assurance that he will avoid further gambling indebtedness in the absence of long term professional or organizational support for his gambling addiction. [My emphasis]

[19] After thoroughly reviewing the evidence before him, the Delegate concluded at page 8 that the Applicant retained the capability to re-offend should he decide to do so:

> On balance I believe Mr. Le has strong financial incentive to return to lucrative trafficking as soon as he believes he can do so safely and undetected. Mr. Le has been described as having been motivated by "profit and greed". I do not believe that his subsequent self-serving statements of intent to rehabilitate can be accepted at face value in the overall context of the evidence. I am not satisfied that "…the structure in place while on parole is enough", as claimed in submissions on his behalf. Disturbing indicators of probable complicity or active involvement in trafficking on the part of his spouse, and her own gambling (she lost $1,000 in one night), mitigate her own support for him. Whether or not he is formally a member of an established, traditional criminal syndicate, Mr. Le participated in an organized criminal endeavour over a lengthy period of time. His long term pattern of criminal association further increases the probability of continued serious criminality and a return to the lucrative criminal enterprise of narcotics trafficking, even if incarceration and susceptibility to deportation while this decision has been pending may have motivated a temporary lull in those activities and associations.
> [My emphasis]

[20] In my view, it was open to the Delegate to conclude based on the evidence before him that the Applicant's continued presence in Canada poses a danger to the public. The Delegate's decision is not patently unreasonable.

C. *Did the Delegate err in failing to consider the interests of the Applicant's children?*

[21] The Applicant argues that the Delegate failed to take into account the best interests of the applicant's children. In my view, the Applicant's argument on this issue is without merit. At paragraph 51 of his opinion, in a section entitled "Humanitarian and compassionate considerations", the Delegate considers the potential hardship faced by the Applicant in reintegrating into his country of origin. At paragraph 53, the Delegate turns his mind to the impact of the Applicant's potential deportation on the best interests of his children:

> Of more concern to me as the Minister's Delegate is the potential his deportation would have for an adverse impact on his family members in Canada i.e. his Canadian citizen spouse and children, with specific reference to IRPA s. 25(1).
>
> … In a normal family situation I would in principle consider separation of a father from his children as highly undesirable, and significantly detrimental to the best interests of the children. But this is not a normal family situation. This is a situation in which cocaine was cached under a child's bed, and packages of crack cocaine were casually left in kitchen drawers. The family home was basically used as a base for running a cocaine trafficking operation. I have already determined that Mr. Le constitutes a danger to the public, and that there is an unacceptably high probability that he will re-engage in criminal activities.
>
> No information has been presented from social work or mental health professionals on the developmental impact and emotional risks attendant on being raised in a criminalized drug trafficking household. In the absence of submission from qualified

> professionals, common sense dictates that this cannot be an ideal environment in which to bring up a child.
>
> Even if it could be conclusively demonstrated, however, that the best interests of the children who will be impacted by this decision would be more clearly served by Mr. Le's continued presence in Canada, I must still evaluate the balance between their interest and that of his common law spouse, and that of other members of the Canadian public.

[22] In my view, it cannot be said that the Delegate failed to consider the interests of the Applicant's children. His conclusion on this issue is not patently unreasonable.

[23] Although, not raised as an issue in this application, I also, find that the Delegate's determination with respect to the Applicant's risk of return to be well founded. The Delegate's reasons with respect to risks reflect a correct understanding of the law and consideration of the proper factors. The finding was made with regard to the evidence and in my view, was reasonably open to the Delegate.

[24] The Delegate summarizes his decision at paragraphs 61 and 63 of his reasons:

> 61. After fully considering all facets of this case, I find that Mr. Le constitutes both a current and future danger to the public in Canada. I have also assessed the risks if Mr. Le is returned to Vietnam. Based on my review of the evidence before me, I find that there is no indication that Mr. Le participated in any activities that would support a finding that he faces a reasonable chance of persecution or that it is more likely than not that he faces any of the risks enumerated under s. 97 of IRPA upon return. I have carefully considered humanitarian aspects of his case, including examination of the best interests of children in the family unit. I have determined that removal from Canada will result in separation from his spouse and children, or relocation of the family unit to Vietnam to avoid that consequence. Both of these results would

> have an emotional and financial impact on the family unit, including the children. Humanitarian concerns are mitigated to some extent by the consequences for the family unit of narcotics trafficking which has used both the family home and family business for the distribution and trafficking of cocaine in the past and concern that this pattern of activity will be repeated in future. I am nonetheless of the opinion that any adverse consequences for Mr. Le's spouse and children of his removal from Canada do not outweigh the interests of Canadian society and the need to protect Canadian society.
>
> 63. I have therefore signed the attached certificate that Mr. Le constitutes a danger to the public in Canada.

[25] I find no reviewable error in the Delegate's decision that would warrant the Court's intervention.

7. Conclusion

[26] For the above reasons, this application for judicial review will be dismissed.

[27] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(*d*) of the Act, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review of the decision of the Minister's delegate is dismissed.

2. No serious question of general importance is certified.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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