

Date: 20080916

Docket: IMM-5309-07

Citation: 2008 FC 1038

Toronto, Ontario, September 16, 2008

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

JAESOOON YOON

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant seeks judicial review of an exclusion order issued against him on December 6, 2007.

[2] Circumstances leading up to the exclusion order can be summarized as follows:

[3] The applicant, a foreign national (a citizen of South Korea), arrived in Canada on March 22, 2007, and was given permission to remain as a visitor until September 21, 2007. This latter date was inscribed on his passport.

[4] In August of 2007, the applicant applied to extend his visitor status until March 2008, and to change the conditions of his stay. His original reason for his stay was to visit a friend. The change was that he was waiting to obtain an L.M.O. letter (Labour Market Opinion) so that he could apply for a work permit as a truck driver.

[5] By letter dated November 26, 2007, the request for an extension was refused, and his temporary visitor's permit which had been automatically extended by the filing of the extension application was now lapsed as of November 26, 2007, applicant received notice of refusal on December 4, 2007.

[6] The result of the refusal on November 26, 2007, was that the applicant (and his family), was now without status in Canada.

[7] On December 6, 2007, the applicant travelled to Fort Erie (a point of entry), to advise Immigration Canada that he wanted to restore his visitor status. Obviously the applicant was aware that he had lost his status and was now without status in Canada.

[8] The refusal letter of November 26, 2007 clearly indicated that he must leave Canada immediately.

[9] After interviewing him, the officer at the border issued a section 44 report, and the same day on December 6, an exclusion order was issued by the Minister's Delegate. The applicant now seeks judicial review of that order.

[10] An application for restoration of a lost status must be in writing, and accompanied by the required processing fee. There was no written application, and no fee was paid.

[11] In his argument the applicant states that the officer issuing the exclusion order erred in holding that the applicant had been instructed on multiple occasions to leave Canada. The only time in fact was the letter of November 26, 2007. Applicant concludes that the officer was motivated to issue the exclusion order under the belief that there had been multiple warnings, and that since this was not true the exclusion order should be set aside.

[12] I do not agree. Neither the law, the regulations or the rules require that a warning be issued before an exclusion order is issued. There is no question that the applicant was without status on December 6, 2007, when the order was issued, and the applicant knew that he was without status and therefore had to leave. He clearly failed to abide by the provisions of the law, by overstaying his visit. While the applicant told the Border officer that he wanted to restore his lost status, as I have stated he did not make the required application although he had 90 days to do so. He was obliged to

leave Canada at the time he travelled to Fort Erie, and accordingly the application for judicial review will be dismissed. There are no questions to be certified.

ORDER

THIS COURT ORDERS that for the reasons given, the application for judicial review is dismissed.

“Louis S. Tannenbaum”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5309-07

STYLE OF CAUSE: JAESOOON YOON v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 15, 2008

REASONS FOR ORDER AND ORDER BY: TANNENBAUM D.J.

DATED: SEPTEMBER 16, 2008

APPEARANCES:

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