Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

IMM-2382-96

B E T W E E N:

PHONG TRAN,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

HEALD, D.J.

This is an application for judicial review of a decision of a delegate of the Minister of Citizenship and Immigration (the "Delegate") dated March 8, 1996. By that decision the Delegate formed the opinion that the applicant herein was a danger to the public in Canada pursuant to the provisions of subsection 70(5) of the *Immigration Act*[1].

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[1] Subsection 70(5) reads: "(5) No appeal may be made to the Appeal Division by a person described in subsection (1) or paragraph (2)(*a*) or (*b*) against whom a deportation order or conditional deportation order is made where the Minister is of the opinion that the person constitutes a danger to the public in Canada and the person has been determined by an adjudicator to be

(*a*) a member of an inadmissible class described in paragraph 19(1)(*c*), (*c*.1), (*c*.2) or (*d*);
(*b*) a person described in paragraph 27(1)(*a*.1); or
(*c*) a person described in paragraph 27(1)(*d*) who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed.

FACTS

The applicant is a stateless person who was born in Vietnam. He came to Canada on January 23, 1991 from a refugee camp in Malaysia. On April 14, 1993, he pleaded guilty to the offence of conspiring to traffic in heroin. He was sentenced to five years in jail. He was released on parole in September of 1994. Because of this conviction, the applicant was found by an Adjudicator to be a person described in subparagraph 27(1)(d) of the *Immigration Act* and was ordered to be deported. The date of the deportation order was January 27, 1995.

By letter dated January 31, 1995, the applicant was advised by Citizenship and Immigration Canada ("CIC") that the Minister was considering whether to issue an opinion that the applicant was a danger to the public in Canada pursuant to subsection 70(5) and subparagraph 46.01(1)(*e*)(iv) of the *Immigration Act*. In that letter he was advised of the materials that would be considered by the Minister in forming his opinion and was given an opportunity to respond.

Counsel for the applicant made submissions to CIC in response to the January 31 notice. Counsel pointed out that the applicant was a partner in a common law relationship, that his partner was expecting their first child in April of 1996. Counsel submitted that the applicant had taken a number of steps to rehabilitate himself and to become a responsible member of society. Attached to these submissions were a number of letters from various responsible members of society. Notwithstanding these references, the Minister's Delegate issued the opinion that the applicant was a danger to the public in Canada.

ISSUES

In this Application, three issues are raised:

(1) Did the Delegate ignore or misapply the guidelines promulgated to assist in the making of such decisions?

(2) Is the Delegate's opinion patently unreasonable? and

(3) Did the Delegate deny the applicant natural justice by failing to provide reasons for the decision?

ANALYSIS

(1) Ignoring or Misapplying Guidelines

Applicant's counsel submits that the decision *a quo* ignores factors listed in the guidelines such as: the nature and circumstances of the offence, the sentence imposed, recidivism, and humanitarian and compassionate considerations. I do not agree. To the contrary, the record clearly establishes the opposite. Attached as exhibit B to the affidavit of Annika Rose sworn on January 13, 1997 is a copy of all the material considered by the reviewing immigration officer. That report reads as follows:

> According to his PIF he left Vietnam in January 1989 and resided in a refugee camp in Malaysia prior to coming to Canada on January 23, 1991.
>
> In the PIF, the subject said that his father was an officer in the South Vietnamese Army and a devout Catholic. He was strongly anti-communist and died in a communist prison in North Vietnam.
>
> The claimant's whole family had strong anti-communist views and fled Vietnam to avoid persecution at the hands of the communists.
>
> The claimant's mother was perpetually harassed by Vietnamese agents and fled Vietnam by boat to a refugee camp in Malaysia, rather than risk waiting in Vietnam for sponsorship.
>
> The claimant's sister fled by boat from Vietnam and was found dead at sea in 1985.
>
> The claimant has no other family in Vietnam and if he were to return would be subject to imprisonment and possibly death.
>
> According to the narrative 27 report his parents reside in Vietnam.
>
> On the basis of the information provided on the PIF, there appears to be no reason for the subject to be at risk upon return to Vietnam. Although he says that he would be subject to imprisonment and possibly death, he does not provide any reasons. He has provided no information that would indicate he would face persecution because of his personal circumstances Also the discrepancy in the

> information concerning his parents casts doubt on his credibility (according to the 27(1) narrative report, his parents reside in Vietnam, in the PIF his mother resides in Malaysia and his father is deceased).
>
> According to the Country Report on Human Rights Practices for 1994, the Government continued the market-oriented economic reforms begun [sic] in 1986 to try to modernize and develop the predominately [sic] agricultural economy. The reforms have had the greatest impact in urban areas, where private businesses are increasing and in fertile agricultural regions where farmers have incentives to grow and market their produce. Although Vietnam remains very poor, particularly in marginal rural areas, the reforms have helped raise most people's standard of living. Also, private sector growth has made it more difficult for the Party and the Government to dominate people's lives, particularly in urban areas, to the extent they did in the past.
>
> Based on the serious drug conviction and the dire effects of drugs on the Canadian society, the subject is a danger to the public. He should also be found to be ineligible to make a claim to refugee status.
>
> According to the information provided by the subject, any risk upon return appears to be minimal.
>
> The risk to Canadian society outweighs any risk the subject may face upon return.

This assessment was concurred in by Manager M. Harvey on March 6, 1996 who observed:

> - short term resident convicted of very serious crime
> - no evidence of risk on return

Based on this evidence, it seems clear that the officers of CIC had due regard for all humanitarian and compassionate factors. It is also clear that due consideration was given to the seriousness of the crime for which the applicant was convicted by the Delegate since all of the relevant documentation was before him. In the case of *Williams* v. *M.C.I.*[2] the Federal Court of Appeal decided that, absent evidence to the contrary, it is to be assumed that the decision-maker acted in good faith, having regard to the material before that decision-maker. Applying that view of the matter to the circumstances in this case, I likewise conclude that the Delegate herein acted in good faith and properly applied the guidelines before him.

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2 Federal Court of Appeal, A-855-96, March 20, 1997.

2. Patently Unreasonable

The applicant further submits that it was patently unreasonable for the Delegate to conclude that the applicant is a danger to the public given that he has only one conviction and that there is no evidence of prior criminal activity or lifestyle. The test set out by Strayer, J. in the *Williams* case *supra* at page 20 thereof characterizes reviewable error as occurring in a case "where a discretionary tribunal decision is either, on its face, perverse or where there is evidence of facts being before the tribunal which manifestly required a different result. ..."

In my view, the evidence in this case does not "manifestly require a different result". In the applicant's favour is the circumstance that he has only been convicted of one offence, was released on parole and the parole has not been revoked. He also claims to fear persecution if he were to be returned to Vietnam.

However, on the other side of the spectrum are the following circumstances: (a) There is evidence on the record to the effect that the applicant would only face minimal risk in Vietnam; (b) The offence to which the applicant pleaded guilty and the surrounding circumstances are serious indeed: there had been an undercover police investigation which established that the applicant and others sold heroin to undercover officers on numerous occasions. One of the sales was for a substantial amount, namely 300 grams[3]. In sentencing the applicant, Mr. Justice Lyon of the Ontario Court (General Division) observed that:

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[3] See p. 38 of Tribunal Record.

> Much of the crime with which our country is overrun is directly attributable to illegal directions involving teenagers and other who get hooked on drugs, and in order to support their ever increasing expensive habits, they resort to theft, robbery, and even to murder. These criminal offshoots and their disastrous consequences affect many respectable homes and society in general caused by the drug pushers and you are one and the only motive is money.[4]

Justice Lyon further observed that while the applicant was not in the top echelon of the conspiracy, he was not merely a "mule" used in transportation of the drugs. He concluded that the applicant had "a significantly closer connection than that as was indicated by the facts".[5]

Accordingly, the totality of the evidence herein persuades me that the Delegate did not commit reviewable error.

3. Failure to Provide Reasons

The definitive answer to this submission is to be found in the reasons of Strayer J.A. in the *Williams* case, *supra.* In that case Strayer J.A. speaking for the Federal Court of Appeal held that while it is usually, if not always, preferable for courts and tribunals to issue reasons for their decisions, absent a statutory requirement to do so, the failure to provide reasons does not, *per se*, violate section 7 of the Charter nor the common law duty of fairness.[6]

CONCLUSION

For the foregoing reasons, the within application for judicial review is dismissed.

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4 See p. 73 and 74 of the Tribunal Record.

5 See p. 75 of the Tribunal Record.

6 See *Williams* v. *M.C.I. supra*, p. 25.

CERTIFICATION

Neither counsel suggested certification of a serious question of general importance pursuant to the provisions of Section 83 of the *Immigration Act*. I agree with that view. Accordingly no such question will be certified.

Darrel V. Heald
Deputy Judge

Ottawa, Ontario
June 26, 1997

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

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