

IMM-3962-96

MONTRÉAL, QUEBEC, THE 3rd DAY OF MARCH, 1997

PRESENT: RICHARD MORNEAU, PROTHONOTARY

BETWEEN:

HAROLD ERIC LEE

Applicant

AND

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER

The application for leave to file a supplementary affidavit is dismissed.

Richard Morneau

Prothonotary

Certified true translation

Christiane Delon, LL.L.

BETWEEN:

HAROLD ERIC LEE

Applicant

AND

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

RICHARD MORNEAU,
PROTHONOTARY:

This is a motion by the applicant for leave to file a supplementary affidavit, with evidence, in support of his request for leave to file an application for judicial review.

The application for leave is directed against two opinions of the respondent, rendered on August 20, 1996, attesting that under subparagraph 46.01(1)(e)(iv) and subsection 70(5) of the *Immigration Act*, R.S.C. 1985, c. I-2, the applicant constitutes a danger to the public in Canada.

The applicant's motion was submitted to the Court under Rule 324 of the *Federal Court Rules*, which allows a decision to be taken on a motion without personal appearance of a party or a solicitor on his or her behalf, and upon consideration of written submissions.

Analysis

The applicant is seeking through his motion to perfect his record through filing a report by the Correctional Service of Canada dated February 3, 1997. According to the affidavit to which this report is attached, the report demonstrates that

the applicant now presents no danger to the Canadian public.

The issue in this case is whether it should be allowed production at this stage of the proceedings, given that it could not be produced on January 8, 1997, when the applicant filed his record under Rule 10, and that this report itself indicates that it should be read parallel with another report dated March 5, 1996 which itself was produced by the applicant on January 8, 1997.

Are these special circumstances which, in the interests of justice, require that the production of the report and affidavit be allowed at the stage of production of the reply memorandum by the applicant, under the philosophy followed by this Court in *Nguyen v. Minister of Employment and Immigration* (1993), 66 F.T.R. 75?

For the reasons that follow, I do not think so.

No useful purpose would be served if this affidavit and report were added to the Court record, since these documents were simply not in front of the respondent's delegate when, on August 20, 1996, he expressed the opinions, that is, made the decisions contemplated by the applicant's motion for leave.

These decisions are reviewable by this Court in the context of judicial review and not under an appeal *de novo* in which the Court could be presented with new and additional information not existing at the time when the ministerial decisions were adopted.

It appears that the Court may intervene during the examination of the applicant's motion on the merits only if it is of the opinion that the decision-maker committed a reviewable error in the exercise of his discretion. That, to my way of thinking, is a limited possibility of intervention which will be assessed on the basis of the information that the decision-maker then had at his disposal.

This motion by the applicant will be dismissed. In concluding this analysis, I note that this motion, to be successful, should also have sought an extension of time under Rule 13, since it was filed on the very last day under the limitation period imposed by this Rule.

Richard Morneau

Prothonotary

Montréal, Quebec
March 3, 1997

Certified true translation

Christiane Delon, LL.L.

Federal Court of Canada

Court file no. IMM-3962-96

BETWEEN

HAROLD ERIC LEE

Applicant

AND

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REASONS FOR ORDER

FEDERAL COURT OF CANADA
NAMES OF COUNSEL AND SOLICITORS OF RECORD

FILE NO.:IMM-3962-96

STYLE:HAROLD ERIC LEE

Applicant

AND

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

WRITTEN MOTION EXAMINED IN MONTRÉAL WITHOUT APPEARANCE BY PARTIES

REASONS FOR ORDER BY:Richard Morneau, Prothonotary

DATE OF REASONS FOR ORDER:March 3, 1997

WRITTEN SUBMISSIONS BY:

Paul Fréchettefor the applicant

Sylviane Roy

for the respondent

SOLICITORS OF RECORD:

Paul Fréchette
Montréal, Quebecfor the applicant

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Montréal, Quebecfor the respondent