

Federal Court



Cour fédérale

Date: 20141016

**Dockets: IMM-5220-14
IMM-6880-14**

Citation: 2014 FC 993

BETWEEN:

ROBERT MOSCICKI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

HUGHES J.

[1] These Reasons pertain to two applications for judicial review, IMM-5220-14 and IMM-6880-14, each brought by the same Applicant, Robert Moscicki against the same Respondent, the Minister of Citizenship and Immigration. Both applications seek judicial review of Detention Review conducted by a Member of the Immigration and Refugee Board in respect of the continuing detention of the Applicant pending his removal from Canada. Application IMM-

5220-14 deals with a decision of Member Young made July 4, 2014. Application IMM-6880-14 deals with a decision of Member Beecham made September 23, 2014.

[2] In both cases it was determined that the Applicant's detention would continue at least until the next review. I have determined that I will not set aside either decision.

[3] The background facts may be briefly summarized. The Applicant is a citizen of Poland who has residing in Canada for at least a part of the period commencing on October 18, 1989 when he arrived in Canada at age seventeen with his father. His father sponsored the Applicant for permanent residence in Canada as a dependant son. An application for permanent residence was filed and approved in principle in late 1989 or early 1990. There is no evidence that the application ever received final approval. That is the subject of another application to this Court. In January 1993 the Applicant was convicted of attempted residential burglary by a Court in Cook County, Illinois, United States of America. Sometime thereafter the Applicant returned to Canada and has worked in Canada, without a permit, for some two decades.

[4] In February, 2010 the Applicant applied for Canadian citizenship. In June 2013, the Applicant was advised that his application was rejected with a statement to the effect that he had failed to show that he was lawfully admitted to Canada as a permanent resident. In January 2014, a task force investigation conducted by the Canadian Border Services Agency drew attention to

the Applicant. On February 4, 2014, a notice of arrest respecting the Applicant was issued under section 55 of the *Immigration and Refugee Protection Act* on the basis of the Applicant's conviction in the United States. The question of the Applicant's admissibility is the subject of another judicial review application in this Court.

[5] The two outstanding judicial review applications are presently scheduled to be heard by this Court on December 3, 2014. In the meantime the Applicant remains in detention. He has had eight detention reviews. A further review is scheduled for October 21, 2014. Applicant's Counsel argues that the detention review of July 4, 2014 was flawed for a number of reasons. Included in those reasons is the fact that the Member took into consideration, among other factors, the fact that the person proposed as a bondsperson, a Mr. Scora, would be providing funds out of a disability pension that he was receiving from the government. Respondent's Counsel conceded, and I agree, that the fact that the source of the funds provided by Mr. Scora may be from his disability pension, is irrelevant and should not have been considered by the Member. That being said, application IMM-5220-14 is otherwise moot as it has been succeeded by further reviews. I will therefore dismiss that application.

[6] Turning to application IMM-6880-14 the decision there has not yet been succeeded by a further review, thus is not moot. The Member making this decision did refer to the source of Mr. Scora's funds and that was a wrong thing to do. However, the Member found a number of other reasons why Mr. Scora would not be a satisfactory bondsperson. The Member weighed the

proposals made on behalf of the Applicant to secure his release from detention against the flight risk that the Applicant might not appear for removal. While the Applicant has been in detention for some eight months the only reason why he has not yet been removed is his refusal to cooperate with the Polish authorities. He is the author of his own continued detention.

[7] I find that the decision of September 23, 2014 was within the bounds of reasonableness set out by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, and ought not to be set aside.

[8] Both applications will be dismissed. There is no question for certification. No Order as to costs.

“Roger T. Hughes”

Judge

Toronto, Ontario
October 16, 2014

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-5220-14 and IMM-6880-14

STYLE OF CAUSE: ROBERT MOSCICKI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 16, 2014

REASONS FOR JUDGMENT: HUGHES J.

DATED: OCTOBER 16, 2014

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