Date: 20070706

Docket: IMM-5258-06

Citation: 2007 FC 726

BETWEEN:

JOAO CARLOS RIBEIRO LARANJO

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

LUTFY C.J.

[1] The applicant, Joao Carlos Ribeiro Laranjo, is a citizen of Portugal. He was born in 1959. He immigrated to Canada with his parents in 1961. Although he had the status of a permanent resident, he has never acquired Canadian citizenship.

[2] In 1981, the applicant was convicted of first degree murder for the sexual assault and killing of a female hitchhiker. He was sentenced to a term of life imprisonment without eligibility of parole for 25 years. He had been previously convicted for alcohol-related offences, fraud, theft and common assault. While incarcerated, he apparently acknowledged responsibility for two previous sexual assaults. He was not convicted for these two other incidents.

[3] In 1983, the applicant was issued a deportation order based on his criminal record. During the same year, he filed an appeal from his deportation order with the former Immigration Appeal Board. Shortly thereafter, he withdrew his appeal. Under the immigration legislation in force at that time, the former Immigration Appeal Board had a discretionary jurisdiction to allow his appeal or to stay his removal based on all the circumstances of his case*: Immigration Act, 1976*, S.C. 1976-77, c.52, at section 72.

[4] As the result of the deportation order and the withdrawal of the appeal from that order, the applicant lost his permanent resident status in Canada.

[5] In late 1991, while he was still incarcerated and subject to a deportation order, the applicant married a Canadian citizen. His wife was a corrections officer when they met. According to the tribunal record, she has been supportive of the applicant throughout their relationship.

[6] In 2006, the applicant was released under parole.

[7] The applicant's parents, siblings, wife and other relations live in Canada. He previously worked in his parents' orchard. He has been employed as a labourer. While incarcerated, he worked as a welder and fabricator. He has been a volunteer in a thrift store and is proficient in stained glass work.

[8] In January 2006, the applicant received a negative pre-removal risk assessment. The record discloses no attempt to seek judicial review of this decision.

[9] On January 26, 2006, the applicant filed a humanitarian and compassionate application pursuant to section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA). This application was denied on September 12, 2006. This proceeding is the application for judicial review of that negative decision.

Analysis

[10] The applicant raises four issues.

[11] During the hearing in this proceeding, counsel for the applicant abandoned, properly in my view, a fifth issue to the effect that the decision under review is “a disguised danger opinion”.

[12] Also, the applicant agreed with the respondent that the appropriate standard of review of the decision to refuse his section 25 application is reasonableness. The issues concerning the *Canadian Charter of Rights and Freedom* raised in this proceeding are questions of law.

[13] The applicant’s first argument is that his deportation violates his section 7 *Charter* rights because he would be deprived of the National Parole Board programs for the duration of his sentence to life imprisonment.

[14] The factual basis for the applicant's first argument is straightforward. He is now on parole but still subject to a term of life imprisonment. Accordingly, he claims that he has a right to the programs of the National Parole Board and that the deprivation of his access to these programs would breach his section 7 *Charter* rights.

[15] Paragraph 50(b) of the IRPA provides that a removal order is stayed until a foreign national's sentence to a term of imprisonment is completed. However, for the purposes of paragraph 50(b) of the IRPA, the sentence of an offender on parole is deemed to be completed according to subsection 128(3) of the *Corrections and Conditional Release Act,* S.C. 1992, c.20 :

128.	**128.**
…	[…]
(3) … for the purposes of paragraph 50(*b*) of the *Immigration and Refugee Protection Act* …, the sentence of an offender who has been released on parole, … is deemed to be completed ….	(3) Pour l'application de l'alinéa 50*b*) de la *Loi sur l'immigration et la protection des réfugiés* […], la peine d'emprisonnement du délinquant qui bénéficie d'une libération conditionnelle d'office […] est, […] réputée être purgée […].

For the purposes of this legislation, parole includes day parole.

[16] It is also my view that the applicant's reliance on section 7 of the *Charter* is misplaced.

[17] Even if the applicant established that his deportation engages section 7, a question I need not decide, there is no breach of fundamental justice in giving practical effect to the determination of his right to remain in Canada: *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] S.C.J. No. 27 at paragraph 27:

> … One of the conditions Parliament has imposed on a permanent resident's right to remain in Canada is that he or she not be convicted of an offence for which a term of imprisonment of five years or more may be imposed. … [Such persons] have all deliberately violated an essential condition under which they were permitted to remain in Canada. In such a situation, there is no breach of fundamental justice in giving practical effect to the termination of their right to remain in Canada. In the case of a permanent resident, deportation is the only way in which to accomplish this. … It is not necessary, in order to comply with fundamental justice, to look beyond this fact to other aggravating or mitigating circumstances.

[18] Similarly, the deprivation of access to rehabilitation programs, in the circumstances of the applicant, does not breach "a legal principle about which there is significant societal consensus that is fundamental to the way in which the legal system ought fairly to operate": *R. v. Malmo-Levine*, 2003 SCC 74 at paragraph 113.

[19] Finally, it would be surprising, to say the least, if the applicant, sentenced to a term of life imprisonment, would have greater rights under section 7 of the *Charter* than a person in circumstances similar to his who had completed serving a shorter, finite term of five, ten or twenty years or, as in *Chiarelli*, a sentence of imprisonment for 6 months.

[20] Parliament's enactment of subsection 128(3) is a complete answer, in my view, to the absurd consequences that would result if the applicant, because of his life sentence, could be said to have greater constitutional rights than a person in similar circumstances who had fully served a sentence of twenty years. The applicant acknowledges that the constitutionality of subsection 128(3) is not in issue in this proceeding.

[21] As his second issue, the applicant argues that, as an immigrant who has spent virtually all of his life in Canada, he should be afforded protection from deportation by interpreting the IRPA in accordance with Canada's international obligations and other international human rights instruments.

[22] Here, the applicant relies on article 3 of the *European Convention on Human Rights* ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment.") and article 7 of the *International Covenant on Civil and Political Rights* ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").

[23] The applicant acknowledges that, for all intents and purposes, section 12 of the *Charter* ("Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.") is a restatement of the provisions from the two international instruments upon which he relies.

[24] The Supreme Court of Canada has affirmed that deportation is not a punishment: *Chiarelli*, above, at paragraph 29. Also, the deportation of a person in the circumstances of the applicant cannot be said to outrage the standards of decency: *Chiarelli* at paragraph 31.

[25] In my view, the applicant has neither distinguished *Chiarelli* from the circumstances of this case nor shown that his deprivation of rehabilitation services is a punishment, let alone one that comes within the scope of section 12.

[26] Furthermore, the jurisprudence from the European Court of Human Rights relied upon by the applicant can be distinguished for the reasons set out in the respondent's further memorandum of argument at paragraphs 75 through 79.

[27] As his third issue, the applicant challenges the immigration officer's failure to assess the impact of his deportation on Portugal, the receiving state.

[28] The applicant relies on a guideline from the National Parole Board Policy Manual. The guideline provides that when reviewing cases for deportation "… Board members must take into consideration the criteria of undue risk to society (not only Canadian society) and the facilitating of the offender's reintegration into the community."

[29] To repeat, for the purposes of deportation, the applicant's sentence is terminated in law. In any event, the applicant has not demonstrated any legislative or regulatory provision imposing on

the immigration officer, whose decision is under review in this proceeding, any duty similar to the one suggested by the guideline for the National Parole Board.

[30] Again, it would be surprising if an immigration officer would be required to consider the impact on the society in the country of citizenship as a factor in assessing the application of a recidivist drug trafficker, for example, applying for permanent residence from within Canada. In reaching this view, I have considered the *IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* guideline (Guideline), including its section 11.3.

[31] Finally, the applicant has raised no new issues in his written or oral submissions to support his fourth argument that the immigration officer's determination not to grant the application for humanitarian and compassionate consideration was unreasonable. Upon my review of the tribunal record, the Guideline and the decision of the immigration officer, I am satisfied that no reviewable error has been established.

[32] In conclusion, as counsel stated in her reply submissions, the crux of her argument is that the deportation would infringe the applicant's *Charter* rights by depriving him of rehabilitation services. For the reasons set out above, I disagree. The issue of returning to their country of citizenship persons who have lived virtually all their lives in Canada is a matter of policy enacted by Parliament. The constitutionality of the relevant provisions of the IRPA which enact this policy was not challenged in this proceeding.

[33] In view of the outcome of this proceeding, it is not necessary to consider the respondent's submission that the Court did not have the jurisdiction to adjudicate the applicant's *Charter* arguments and that the applicant has not served the notice of constitutional question required by section 57 of the *Federal Courts Act*, R.S.C. 1985, c F-7. In any event, it was not readily apparent that either argument was well-founded in the circumstances of this case.

[34] This application for judicial review will be dismissed. As indicated during the hearing, counsel for the applicant will have seven days from the date of these reasons to suggest the certification of a serious question. The respondent will have three days from the date of service of the applicant's submissions to file a reply.

"Allan Lutfy"

Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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