

CANADA / JUDGMENT

Canada (Minister of Citizenship and Immigration) v. Pathmanathan

2003 FC 1252

COURT

Federal Court

DECIDED

28 October 2003

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Canada (Minister of Citizenship and Immigration) v. Pathmanathan Court (s) Database Federal Court Decisions Date 2003-10-28 Neutral citation 2003 FC 1252 File numbers IMM-6232-02 Decision Content Date: 20031028 Docket: IMM-6232-02 Citation: 2003 FC 1252 OTTAWA, ONTARIO, THE 28TH DAY OF OCTOBER 2003 Present: THE HONOURABLE MR. JUSTICE LEMIEUX BETWEEN: THE MINISTER OF CITIZENSHIP AND IMMIGRATION Appellant and KODEESWARAN PATHMANATHAN Respondent REASONS FOR ORDER AND ORDER

- [1] The Minister of Citizenship and Immigration (the "Minister") is the applicant in this judicial review proceeding.
- [2] He challenges a November 19, 2002 decision made by the Immigration Appeal Division of the Immigration and Refugee Board (the "tribunal") who decided, pursuant to paragraph 70(3)(b) of the former Immigration Act (the "Act"), that the legal deportation order made against Mr. Pathmanathan (the "respondent"), a Convention refugee and a permanent resident in Canada, should be conditionally stayed for a five-year period.
- [3] The Minister submits that although aware of the respondent's numerous criminal convictions totalling six (6) between 1996 and 2001, including theft, assault, possession of an unregistered restricted weapon and threats, the tribunal failed to consider those crimes except the last one which vitiated the tribunal's consideration of the mandatory factors of public safety, danger to the public and rehabilitation when deciding whether to grant a stay or not.
- [4] Counsel for the Minister points to the tribunal's reasons and says those reasons contain no reference, mention or analysis of those other convictions except the last one on May 23, 2001, where the respondent was found guilty for uttering counterfeit money and assault with intent to resist arrest.
- [5] Counsel for the Minister raised a second point. He argues the tribunal's analysis of the degree of the establishment in Canada factor was perverse in that the tribunal reasoned his criminal behaviour justified or excused his lack of establishment.

- [6] Counsel for the respondent did not dispute the Minister's position the tribunal had to consider public safety and chance of rehabilitation as relevant factors and in doing so had to have in mind his entire criminal record. He argues the tribunal's reasons show the tribunal did exactly that. On the second point, he states the tribunal did not hold the respondent's criminality was the excuse for his lack of establishment.
- [7] It is trite law the reasons of a tribunal must not be read microscopically, a proposition expressed by Justice Laskin before he became Chief Justice in *Boulis v. Minister of Manpower and Immigration*, [1974] S.C.R. 875, where he wrote at page 885: Its reasons are not to be read microscopically; it is enough if they show a grasp of the issues that are raised by s. 15(1)(b) and of the evidence addressed to them, without detailed reference. The record is available as a check on the Board's conclusions.
- [8] I agree with counsel for the respondent, when the tribunal's reasons are read as a whole, it is apparent the tribunal had in mind and considered Mr. Pathmanathan's entire criminal record in reaching its decision his deportation should be stayed for five years.
- [9] The tribunal's reasons contain numerous references to the words "crimes", his "past behaviour", his holding himself responsible for his "actions", to the influence of his peers for his "criminal acts", to his remorse for his "criminal actions" and to his need to know that "any further criminal convictions and transgressions of the terms and conditions of his stay may lead to his removal from Canada".
- [10] I am also satisfied the tribunal considered public safety and rehabilitation as relevant factors. Rehabilitation and the low risk of re-offending is specifically mentioned in paragraphs 19 and 21 of the Board's reasons. In addition, the tribunal found the respondent had "a credible resolve to change his life".
- [11] On the second point, the statement which offends the Minister is contained in paragraph 18. That paragraph reads in part:
- [18] The appellant [respondent here] has lived in Canada since he was 18 years old. Due to his age and his past behaviour, the appellant has little indicia of establishment in so far as employment, education and assets are concerned. Nevertheless, it is clear that he has roots in this society... .
- [12] In making reference to "his past behaviour" in paragraph 18 of its reasons, the tribunal was making, in my view, a statement of fact and not a justification for his lack of establishment. ORDER THIS COURT ORDERS that this judicial review application is dismissed. No certified questions were proposed. "François Lemieux " J U D G E FEDERAL COURT NAMES OF COUNSEL AND SOLICITORS OF RECORD DOCKET: IMM-6232-02 STYLE OF CAUSE: MCI v. KODEESWARAN PATHMANATHAN PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: October 22, 2003 REASONS FOR ORDER: Lemieux J. DATED: October 28, 2003 APPEARANCES: Mr. Lorne McClenaghan FOR THE APPLICANT Mr. Michael Korman FOR THE RESPONDENT SOLICITORS OF RECORD: Department of Justice Toronto, Ontario FOR

THE APPLICANT Otis & Korman Toronto, Ontario FOR THE RESPONDENT

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Prepared on 28 October 2026 · Esheria