IMM-1133-96

BETWEEN:

NAJINDER SINGH PARMAR,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

GIBSON, J.:

These reasons arise out of an application for judicial review of a decision reached on behalf of the Respondent, pursuant to subsection 70 (5) of the ***Immigration Act***,[1] that the Respondent is of the opinion that the Applicant constitutes a danger to the public in Canada. The decision is dated the 11th of March, 1996 and was communicated to the Applicant on the 21st of March, 1996.

The application for leave and for judicial review in this matter indicates that the Applicant also seeks judicial review of the removal order made against him. The removal order is not identified with any particularity on the face of the application for leave and for judicial review. In any event, material filed on behalf of the Applicant and argument advanced on behalf of the Applicant before me did not address judicial review of the removal order. Further, and perhaps more importantly, the Order of this Court granting leave in this matter related only to the danger opinion.

---

1 R.S.C. 1985 c. I-2

- 2 -

The factual background may be briefly summarized as follows. The Applicant is a citizen of India. He was born in the Punjab on the 30th of May, 1967. He immigrated to Canada as a dependant of his mother on the 22nd of December, 1982. His mother, two sisters and two brothers reside in Canada. He has one sister living in India. The Applicant is married with two children. Since coming to Canada, the Applicant has returned to India only once. The Applicant's criminal record is limited. He has one minor property offence conviction and a conviction for failure to appear. His most recent, and only other, offence resulted in a conviction under section 272 of the ***Criminal Code***[2]. The relevant portions of section 272 read as follows:

> 272 (1) Every person commits an offence who, in committing a sexual assault,
>
> ...
>
> (d) is a party to the offence with any other person.
>
> (2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable
>
> ...
>
> (b) . . . to imprisonment for a term not exceeding 14 years.

The Applicant was sentenced to imprisonment for three years.

The Applicant was ordered deported following his most recent conviction. He appealed the deportation order made against him to the Immigration Appeal Division. In his affidavit filed on this judicial review, the Applicant attests:

> On September 26, 1995, at 9:31 a.m., my hearing before the Immigration Appeal Division commenced in Drumheller. Part way through the morning of the hearing, I was served with a letter from the Canada Immigration Centre in Calgary that my case was being reviewed for the possible issuance of a "danger certificate" pursuant to s. 70 (5) of the ***Immigration Act...***At the time the correspondence arrived, my counsel and counsel for the Minister of Citizenship and Immigration agreed that the letter had no effect, both because it was a notice of *possible* issuance and because the substantive portion of the hearing had commenced.

On the basis of the above understanding between counsel for the Applicant and

---

2 R.S.C. 1985, c. C-46

the Respondent's representative, no submissions were made by or on behalf of the Applicant in response to the notice that the Respondent was considering forming the opinion that the Applicant constitutes a danger to the public in Canada.

The Applicant's hearing before the Immigration Appeal Division continued on September 26 and 27, 1995. At the conclusion of the hearing, the Immigration Appeal Division requested written submissions. Written submissions were completed on or about January 25, 1996.

On the 21st of March, 1996, before a decision was issued by the Immigration Appeal Division, the Applicant was notified that the Respondent was of the opinion that he constitutes a danger to the public in Canada.

On the material that was before the Court in this matter, counsel for the Applicant raised a wide range of issues. It was acknowledged before me that many of the issues raised were answered by ***Minister of Citizenship and Immigration*** v. ***Williams***[3] and others by ***Tsang*** v. ***The Minister of Citizenship and Immigration***[4] in a manner binding on me. In the result, only one issue was argued before me, that being whether, on the basis of the doctrine of "legitimate expectation" or "estoppel by representation" the Respondent erred in a reviewable manner, by breaching the duty of fairness owed to the Applicant, in forming the opinion that the Applicant constitutes a danger to the public in Canada.

Counsel for the Applicant urged that, by virtue of the agreement between counsel and the Respondent's representative before the Immigration Appeal Division concerning the effect, or lack of effect, of notice of possible issuance of a danger to the public opinion, and by virtue of the Applicant's reliance on that agreement to his detriment, the doctrines of legitimate expectation and estoppel by representation apply to preclude the Respondent from issuing the danger opinion.

---

3 A-855-96 (IMM-3320-95), April 11, 1997 (F.C.A.), (unreported)

4 A-179-96 (IMM-2585-95), February 11, 1997 (F.C.A.), (unreported)

In ***Gonsalves*** v. ***Canada (Minister of Citizenship and Immigration)***[5] Mr. Justice Muldoon wrote:

> The Supreme Court of Canada in *Old St. Boniface Residents Association Inc.* v. *Winnipeg (City)*, [1990] 3 S.C.R. 1170 at p. 1204, stated that the doctrine of legitimate expectation created only procedural, not substantive rights. This was affirmed by Supreme Court in *Ref. Re Canada Assistance Plan* [1991] 2 S.C.R. 252 and was applied by the Federal Court of Appeal in *Lidder* v. *Canada* (M.E.I.), [1992] 2 F.C. 621 (F.C.A.). This usually creates a right to make representations or be consulted. It does not give a substantive right which would in effect compel the appeal division to take jurisdiction.
>
> Here, the right to a determination is substantive. The facts here also show that if there were any procedural rights to be had, they would have been in the nature of providing the opportunity for a hearing or to make submissions. The Applicant was asked by the Minister to make submissions and did so; therefore, any procedural requirements were satisfied. The determination was a finding that Parliament, by enacting subsection 70 (5), had terminated the IAD's jurisdiction to deal with Ms. Gonsalves' appeal.
>
> Estoppel, while not raised by the applicant, usually mirrors legitimate expectation and is also not available to Ms. Gonsalves in this case. According to the Federal Court of Appeal in *Lidder*, supra, there must be a representation of fact made which a reasonable person would have assumed was intended to be acted upon; that person must have acted on it and, as a consequence of such reliance, the person must have suffered a detriment. In this case, the February 2, 1996 telephone call on behalf of the registrar to the applicant's counsel which stated that the [sic] determination would be made in the matter is not enough to create an estoppel.

While the facts of this matter are somewhat different, I am satisfied that the reasoning of Mr. Justice Muldoon is determinative. The doctrine of legitimate expectation cannot create substantive rights. Counsel for the Applicant urges that the conduct of the Respondent's representative before the Immigration Appeal Division on September 26, 1995 gave rise to a substantive right in favor of the Applicant that being to preclude the issuance of a danger opinion against the Applicant. On the facts of this matter, the question at issue was not a procedural right, such as, to make representations against the issuance of a danger opinion. The Applicant and his counsel relied on the position of the Respondent's representative before the Immigration Appeal Division in determining not to make representations. That was their choice, but in making that choice they simply could not rely on the position of the Respondent's representative to protect them from the results of that choice through the creation of a substantive right, that is, a right not to have a danger opinion issue.

---

5 IMM-1992-96, May 9, 1997, (F.C.T.D.), (unreported)

Here, estoppel was raised by the Applicant. As stated by Justice Muldoon, it "...usually mirrors legitimate expectation...". Once again as in ***Gonsalves***, I conclude that on the facts before me, estoppel is not available to the Applicant. At least two of the factors required to give rise to estoppel by representation, as enunciated in ***Lidder***, are, I conclude, missing. On the evidence before me, the representative of the Respondent before the Immigration Appeal Division made no representation of fact and, even if he or she did, it was not a representation of fact that a reasonable person would assume was intended to be acted upon. The conclusion that the letter from the Respondent to the Applicant, received at the hearing before the Immigration Appeal Division on September 26, 1995 to the effect that the Respondent was considering the issuance of a danger opinion against the Applicant "...had no effect, both because it was a notice of *possible* issuance and because the hearing [before the Immigration Appeal Division] had commenced" was not a representation of fact, but rather a conclusion of law. That the Applicant would act on it to his detriment, when he had his own counsel, and when he and his counsel could have protected their position in any event by making submissions to the Respondent, was not something that, in my opinion, a reasonable person would assume the Applicant would do.

In the result then, neither the doctrine of legitimate expectation nor that of estoppel by representation applies in a manner that leads me to conclude that the Respondent breached the duty of fairness owed by her to the Applicant. Thus, this application for judicial review will be dismissed.

At the end of the hearing of this matter, I reserved my decision and undertook to distribute draft reasons and to allow time for counsel to provide written submissions on certification of a question or question.

Counsel for the Applicant submitted three questions for certification in the following terms:

> 1.Does a representation by an officer of the Ministry, prior to an appeal to the Immigration Appeal Division being concluded, that a Notice of Possible Issuance of a Danger Certificate is of no effect, create a procedural right and legitimate expectation that a danger certificate proceeding will not continue without reasonable prior notice to the person concerned?
>
> 2.Is the representation by an officer of the Ministry, that a Notice of Possible

Issuance served under the *Immigration Act* is of no effect, a representation which could give rise to estoppel?

3. In the context of estoppel, should the Court have regard for the subsequent conduct of the promiser in assessing the reasonableness of the promisee's reliance?

No argument to support certification was provided. No submissions were received from counsel for the Respondent.

To warrant certification, subsection 83(1) of the *Immigration Act* provides that the question or questions must be both serious and of general importance. Further, they must be determinative on an appeal[6]. I am satisfied that the questions posed are serious and would be determinative on an appeal in this matter. I am not satisfied that they are of general importance. While written in very general terms, the answers to the proposed questions would, on the facts of this matter, be governed by the particular facts relating to the source, nature and circumstances of the representations on which the Applicant relied and the reasonableness of the reliance. The law relating to the doctrines of legitimate expectation and estoppel by representation is, I am satisfied, well settled. It is only the application of that law to the particular facts of this case that is here at issue. The result in this matter turns on its unique facts and any guidance derived from an appeal of may decision would be limited to matters with very similar facts. For the foregoing reasons, no question will be certified.

"Frederick E. Gibson"

Judge

Toronto, Ontario
June 26, 1997

[6] See: *Liyanagamage v. Canada (Secretary of State)* (1994), 176 N.R. 4 (F.C.A.)

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO:	IMM-1133-96
STYLE OF CAUSE:	NAJINDER SINGH PARMAR - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
DATE OF HEARING:	JUNE 10, 1997
PLACE OF HEARING:	CALGARY, ALBERTA
REASONS FOR ORDER BY:	GIBSON J.
DATED:	JUNE 26, 1997

APPEARANCES:

Mr. Peter W. Wong
Mr. Tony Clark

For the Applicant

Mr. Bill Blain

For the Respondent

SOLICITORS OF RECORD:

Major Caron
400-3 Avenue, S.W.
16th Floor, Canterra Tower
Calgary, Alberta
T2P 4H2

For the Applicant

300 Bank of Montreal Bldg.
10199-101 Street N.W.
Edmonton, Alberta
T5J 3Y4

George Thomson
Deputy Attorney General
of Canada

For the Respondent

FEDERAL COURT OF CANADA

Court No.: IMM-1133-96

Between:

NAJINDER SINGH PARMAR

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER