Federal Court of Appeal | Cour d'appel fédérale

Date: 20160209

Docket: A-242-15

Citation: 2016 FCA 48

CORAM: **NOËL C.J.**
SCOTT J.A.
DE MONTIGNY J.A.

BETWEEN:

MICHELE TORRE

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Heard at Montréal, Quebec on February 9, 2016.

Judgment delivered at Montréal, Quebec, on February 9, 2016.

REASONS FOR JUDGMENT OF THE COURT BY: DE MONTIGNY J.A.

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REASONS FOR JUDGMENT OF THE COURT BY
(Judgment delivered at Montréal, Quebec, on February 9, 2016.)

DE MONTIGNY J.A.

[1] This is an appeal from the decision rendered by Madam Justice Tremblay-Lamer of the Federal Court (2015 FC 591) dismissing Michele Torre's application for judicial review of a finding of inadmissibility for serious criminality and organized criminality determined by the Immigration Division of the Immigration and Refugee Board of Canada.

[2] In her decision, the judge certified the following question:

> Does the Immigration Division of the Immigration and Refugee Board of Canada have jurisdiction to grant a stay of proceedings under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* (the Charter) for an investigation following the referral of a report prepared under subsection 44(1) of the *Immigration and Refugee Protection Act* (IRPA)?

[3] Under subsection 74(d) of IRPA, only a serious question of general importance may be certified and thus open the possibility of an appeal from a judgment following an application for judicial review. This requirement has been interpreted by the Court several times, and the law is now well settled: to be certified, a question must be dispositive of the appeal and transcend the interests of the immediate parties to the litigation due to its broad significance: *Canada (Minister of Citizenship and Immigration) v. Liyanagamage* [1994], FCJ No. 1637 at paragraph 4, 176 N.R. 4; *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2013 FCA 168 at paragraph 9, [2013] FCJ No. 764. In other words, a certified question is not to be a reference of a question to this Court, and a certified question must have been raised and decided by the court below and have an impact on the result of the litigation: *Zazai v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89 at paragraphs 11–12, [2004] FCJ No. 368; *Lai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FCA 21 at paragraph 4, [2015] FCJ No. 125.

[4] In this case, the certified question does not meet those requirements. On the one hand, the appellant did not even attempt to demonstrate how his right to life, liberty and security of the person was violated by the investigation before the Immigration Division. A finding of inadmissibility alone does not suffice to infringe upon the rights granted by section 7. Only when a deportation order is implemented is it appropriate to determine whether an individual’s right to

liberty, security or even life will be put at risk by deporting him to his country of origin. When there is no infringement of any of the rights guaranteed by the Charter, the question whether relief may be granted under subsection 24(1) of this Charter is premature.

[5] On the other hand, the appellant cannot invoke any prejudice resulting from the delay between his convictions and the referral of the investigation reports. As the Supreme Court stated in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at paragraph 133, [2000] 2 SCR 307, delay in itself is not an abuse of process or a violation of the duty to act fairly. The appellant had to do more than make vague allegations that the delay endangered his physical and psychological integrity and drained his ability to submit a full and complete defence, without providing any evidence to support them. In fact, the appellant never tried to show how he was prejudiced by the passage of time before either the Immigration Division or the Federal Court. What is more, he did not raise the issue of delay in his interview before the preparation of the reports described in section 44 of IRPA, nor did he seek judicial review of the decision to refer him to the Immigration Division for an investigation. Under these circumstances, the appellant cannot show that he suffered prejudice or that the fairness of procedures was compromised.

[6] Because the certified question should not have been certified, and since the existence of a certified question is a prerequisite for the right to appeal, the appeal is dismissed.

"Yves de Montigny"

J.A.

Certified true translation
François Brunet, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

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