

BETWEEN:

KWOK WAI IP,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

REED J.

The applicant seeks to have a decision of the Minister that was made pursuant to subsection 70(5) of the *Immigration Act* set aside. That decision expressed the opinion that the applicant was a danger to the public in Canada.

The applicant contests the validity of the decision on three grounds: (1) the procedure followed was similar to that which was criticized in the decision in *Williams v. Canada*, [1997] 1 F.C. 431, and while that decision was overturned on appeal, the appeal did not deal with a person who had been determined to be a convention refugee; (2) the 15 day time period within which a person is expected to respond is entirely unreasonable when the individual is incarcerated and, in any event in this case, the failure to respond to counsel for the claimant's request for an extension of time was a breach of procedural fairness; (3) the wrong test was applied by the decision-maker in that attention was focused on the circumstances and nature of the offence of which the applicant had been convicted and not on whether he was a present or future danger to the public.

With respect to the first argument, I already had occasion to address this in *Chu v. The Minister of Citizenship and Immigration* (Imm-1180-96, August

1, 1997). I have trouble with the proposition that a permanent resident is not entitled to reasons for the decision that is made while a person who holds permanent resident status as a result of being a convention refugee is entitled to reasons.

I find convincing, however, counsel's argument that the failure to respond to his request for an extension of the 15 day period constituted a breach of the rules of procedural fairness. There is no doubt that the 15 day period is a very short time within which to expect someone to respond. Why such a short period for response should be imposed when the respondent has had virtually unlimited time within which to prepare his case is not immediately obvious. It does create an unfair imbalance with respect to the individual's ability to put material before the Minister's delegate before that delegate makes a decision that has enormous consequences for the individual.

Many situations arise in which applicants complain about the 15 day limitation period. The response to these complaints is invariably that no request for an extension of time was made at the relevant time and the applicant therefore cannot later complain about the shortness of the 15 day period, since he or she did not object or seek an extension at an earlier time. Judges routinely accept that position as correct. In this case, however, counsel for the applicant did complain; he sought an extension of the time period and he received no answer to his request. The Minister cannot have it both ways. If complaints about the brief time period can be rebuffed because a request for an extension of time was not requested, then, surely when a request has been made, and it is ignored, the conclusion has to be that a breach of procedural fairness occurred.

Counsel for the respondent argues that despite the failure to respond to counsel for the applicant's request for an extension of time, the applicant and his counsel were able to file extensive submissions before the expiration of the 15 day period and, therefore, there was no prejudice to the applicant from the procedural defect. I am not prepared to conclude that there was no prejudice. The applicant's counsel, Mr. Golden, wrote in the letter that he sent with the submissions on behalf of the applicant:

I note that in an earlier correspondence dated November 1, 1995 to Mr. R.B. Johnston at the Canadian Immigration Centre in Vancouver, I requested an extension of time to make these submissions as they deal with a fundamental issue of great import to Mr. Ip and further that I requested the full disclosure of Mr. Ip's immigration file on which some of the conclusions in the

Ministerial Opinion Report appeared to have been based. My request received no response from Mr. Johnston and consequently I make the following submissions without the benefit of full disclosure and the requested extension.

There was a breach of procedural fairness. I am not persuaded that no prejudice resulted for the applicant. In the circumstances the decision under review will be set aside.

OTTAWA, Ontario.
September 26, 1997.

Judge