IMM-2496-96

BETWEEN:

GEORGE SEIVEWRIGHT

Applicant

- AND -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

McKEOWN J.

The applicant seeks judicial review of the decision dated June 25, 1996 and signed on July 8, 1996 of the Appeal Division of the Immigration and Refugee Board (the Board) wherein the Board allowed the Minister's motion to dismiss the appeal for lack of jurisdiction pursuant to paragraph 70(5)(c) of the *Immigration Act* (the Act).

The issues are whether the Board erred in dismissing the appeal for lack of jurisdiction pursuant to paragraph 70(5)(c) of the Act and whether the Minister's opinion that the applicant is a "danger to the public" is reviewable when it is the Board's lack of jurisdiction that is the subject of review.

On March 29, 1996, the applicant commenced a leave application challenging the Minister's subsection 70(5) decision. This leave application was dismissed by McGillis J. on August 16, 1996 as the applicant did not file an application record. On June 25, 1996, the Board dismissed the applicant's appeal from his deportation order on the basis that the Board did not have jurisdiction over the applicant's appeal pursuant to paragraph 70(5)(c) of the Act. On July 23, 1996, the applicant commenced the

leave application challenging the Board's decision. This is the decision sought to be reviewed in the present application. The applicant brought an application staying the execution of a deportation order dated August 20, 1996. The application was dismissed by MacKay J. on August 23, 1996.

The present application challenges the decision of the Board that it did not have jurisdiction to hear the applicant's appeal. Pursuant to subsection 70(5), the Board was doing what it was statutorily mandated to do. The Board's only jurisdiction is that granted by Parliament through statute.

The removal of a statutory appeal does not engage the applicant's *Charter* rights under section 7 or his equality rights under section 15. The Supreme Court of Canada has stated in a number of decisions there is no constitutional obligation on Parliament to provide a right of appeal. In *Minister of Citizenship and Immigration v. Williams*, April 11, 1997, Court File A-855-96 (C.A.) the legislative scheme under subsection 70(5) was found to be constitutional.

Although a finding on this issue is sufficient to dispose of this appeal, I will deal briefly with the issue of whether I should consider whether the Minister erred in making her decision that the applicant was a danger to the public. In my view the Minister's decision cannot be challenged in this application for judicial review. After issuance of the danger opinion on March 8, 1996, the applicant had the statutory right to commence a leave application to this Court challenging the deportation order. He did not avail himself of this right. It was also open to the applicant to seek judicial review of the Minister's opinion under subsection 70(5). The applicant in not filing an application record did not avail himself of that right and, therefore, the application was dismissed. Furthermore, in my view, the Minister had evidence before her of the applicant's mental condition and exercised her discretion in light of all the evidence before her. This finding was open to the Minister.

The application for judicial review is dismissed.

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Judge

OTTAWA (ONTARIO)
July 28, 1997