

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150202

Docket: A-504-14

Citation: 2015 FCA 31

**CORAM: NADON J.A.
GAUTHIER J.A.
BOIVIN J.A.**

BETWEEN:

WAI HUNG CHUNG

Appellant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Motion dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on February 2, 2015.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**NADON J.A.
BOIVIN J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150202

Docket: A-504-14

Citation: 2015 FCA 31

CORAM: NADON J.A.
GAUTHIER J.A.
BOIVIN J.A.

BETWEEN:

WAI HUNG CHUNG

Appellant

and

MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] I note that the appellant, a citizen of the People's Republic of China, arrived in Canada in 1989 and became a permanent resident in July 1991. In 1997, he pleaded guilty to a charge of conspiracy to traffic heroine in the Unites States and served 10 years in prison there. Upon his return to Canada in November 2006, two inadmissibility reports were issued against him under paragraphs 36(1)(b) (serious criminality) and 37(1)(a) (organized criminality) of the *Immigration and Refugee Protection Act*, S.C. 2011, c. 27 (the Act).

[2] Following a first decision by the Immigration Division (the panel) ruling the appellant inadmissible on grounds of serious criminality and organized criminality, upon consent of the parties, the panel's conclusion under paragraph 37(1)(a) of the Act was referred back to the Federal Court for redetermination.

[3] On October 21, 2013, a new decision was issued, concluding again that the appellant was inadmissible on grounds of organized criminality. It should be noted that, before the panel, the appellant raised all the arguments based on the *Canadian Charter of Rights and Freedoms* (the Charter) and that the panel, after reviewing them, rejected them. It is this decision that was the subject of an application for judicial review that Beaudry J. of the Federal Court (the judge) dismissed while refusing to certify the questions proposed by the appellant.

[4] The appellant submits that this Court has jurisdiction to hear the appeal under section 27 of the *Federal Courts Act*, SOR/98-106, even in the absence of a certified question, since, as alleged in his notice of appeal, the judge made [TRANSLATION] "jurisdictional errors". More specifically, the judge exceeded his jurisdiction in the following manner: (i) by being "manifestly wrong" on the Charter issues, namely, the violation of section 7 (among other things, the right to full disclosure of the evidence) and his right to a remedy for this violation (such as the evidence being destroyed upon completion of the police investigation held in the 1990s) under section 24 of the Charter; and (ii) by refusing to certify the proposed questions regarding section 7 of the Charter, and in doing so, failing to acknowledge or ignoring a pending case before the Supreme Court of Canada on similar issues.

[5] The test applicable to such motions to strike is well known. The respondent must show that the appeal cannot succeed because it is plain and obvious that this Court lacks the jurisdiction to hear this appeal.

[6] It is plain and obvious, in my opinion, that the judge did not make a jurisdictional error and that this appeal is not part of the specific, limited cases where this Court has jurisdiction to hear an appeal despite 74(d) of the Act. It is clear that the appellant disagrees with the panel's and the judge's analysis of and conclusion on the Charter issues and believes that the judge should have agreed to certify his questions. However, since it is my opinion that the judge was not "manifestly wrong" on the questions before him, nothing distinguishes this matter from all the cases where the Federal Court makes decisions subject to paragraph 74(d) of the Act in the context of applications for judicial review of decisions of the panel involving inadmissibility. Such Charter questions are regularly raised before the Federal Court in the exercise of its jurisdiction under the Act.

[7] For these reasons, I would allow the motion and, consequently, strike the notice of appeal.

"Johanne Gauthier"

J.A.

"I agree
M. Nadon, J.A."

"I agree
Richard Boivin, J.A."

Certified true translation
François Brunet, Revisor.

FEDERAL COURT OF THE APPEAL

SOLICITORS OF RECORD

DOCKET: A-504-14

STYLE OF CAUSE: WAI HUNG CHUNG v. MINISTER
OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: NADON J.A.
BOIVIN J.A.

DATED: FEBRUARY 2, 2015

WRITTEN SUBMISSIONS:

Johanne Doyon FOR THE APPELLANT

Michel Pépin FOR THE RESPONDENT
Émilie Tremblay

SOLICITORS OF RECORD:

DOYON ET ASSOCIÉS INC. FOR THE APPELLANT
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada