

Date: 20070626

Docket: IMM-2605-06

Citation: 2007 FC 671

Ottawa, Ontario, June 26, 2007

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**THAN SOE
(a.k.a. YE YINT and THIT LWIN)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

OVERVIEW

[1] The Applicant has been described as having engaged in a terrorist activity, specifically, the hijacking of an aircraft from Myanmar (Burma) to Thailand, as part of a protest against the regime in Myanmar. Consequently, the Applicant is not eligible for a refugee determination pursuant to section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA); nevertheless, the IRPA, in section 97 offers a Pre-Removal Risk Assessment (PRRA).

The Court has found on numerous occasions that the *Canadian Charter of Rights and Freedoms*, Schedule B, Part I to the *Canada Act 1982 (U.K.) 1982, c. 11 (Charter)* section 7 rights are not engaged at the eligibility determination stage of the immigration and refugee process. Reference is made to *Jekula v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. 266 (F.C.T.D.), paragraphs 31-33, aff'd [2001] F.C.J. No. 1956 (C.A.) (QL), justice John Maxwell Evans.

The Court takes note of *Mursal v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 995, [2003] F.C.J. No. 1261 (QL). In addition, the Court of Appeal has distinguished the circumstances of ineligibility for refugee determination from those involved in *Singh v. M.E.I. Berrahma v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 180 (QL) paragraphs 11-12 and *Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177.

JUDICIAL PROCEDURE

[2] This is an application pursuant to subsection 72 (1) of the IRPA of a decision of the Immigration Division of the Immigration and Refugee Board (Board), dated January 16, 2004, in which the Board found the Applicant to be inadmissible pursuant to paragraph 34(1)(c) of the IRPA and wherein the Board issued the Applicant a deportation order.

BACKGROUND

[3] In October 1989, the Applicant, Mr. Than Soe and a friend hijacked a plane carrying 80 passengers, diverting it from Burma to Thailand. The Applicant and his friend were pro-democracy

activists. They decided on their own to divert the plane for the purpose of drawing the attention of the international community to the suffering of the Burmese people under military dictatorship.

[4] Upon landing in Thailand, the Applicant and his friend spoke to Thai officials. They made several demands of Burmese officials via the Thai Deputy Prime Minister. The demands included the release of all detained prisoners and the ordering of soldiers back to barracks. The Applicant and his friend eventually surrendered to Thai officials.

[5] Mr. Soe was convicted in Thailand in March 1990 for his offence and sentenced to six years imprisonment; however, he served only two and a half years of that time. In August 1992, he was granted a Thai Royal Pardon and Parole and released from custody. The Applicant has indicated that he is not arguing that this pardon is equivalent to a pardon under Canadian law as they are quite different in nature.

[6] Mr. Soe resided in Thailand until 1995, when he was recognized as a “person of concern” by the United Nations High Commissioner for Refugees (UNHCR). In the UNHCR advisory opinion, it is stated that the risk of persecution that Mr. Soe faces is significant. UNHCR Thailand based on its first hand knowledge of Burma, concluded that Mr. Soe had a well-founded fear of persecution and that those conditions had not changed. It further stated:

...Mr. Soe has reason to fear being tortured and imprisoned indefinitely in Burma for his role in the 1989 hijacking and for his pro-democracy activism. While the Burmese government would have a legitimate interest in prosecuting Mr. Soe for the 1989 hijacking, it is likely that he would be subject to excessive punishment for his offence including torture during interrogation and life threatening prison conditions...

[7] In 1996, he applied for a scholarship to study in the United States (U.S.). The Applicant was one of six Burmese students to win a scholarship to the Indiana State University in Bloomington.

[8] Mr. Soe entered the U.S. prior to his being accepted to the program at Indiana State University. In August 2000, he graduated with a bachelor's degree in economics. Shortly thereafter he began a second degree program in computer technology at Indiana University.

[9] During the course of his studies, the Applicant applied for asylum in the U.S., but was denied because of his involvement in the 1989 hijacking. The judge presiding over the Applicant's U.S. asylum hearing determined that he was not a threat to the national security of the U.S. for his hijacking activities; however, due to the nature of this incident, the judge declined to grant the Mr. Soe asylum in the U.S. The law in the U.S. also mandated that the Applicant not be removed because of the likelihood of persecution and torture by the Myanmar (Burmese) government.

[10] While in the U.S., Mr. Soe was detained and released twice, the first in 1997 for a month, the second time in 2002 for eight months. On both occasions, the reasons for the Applicant's arrest were his former political activities in Burma. On the second occasion, in July 2003, he was released on a \$20 000 cash bond and reporting conditions. In a settlement agreement with the Department of Homeland Security, the Applicant agreed to cooperate with the U.S. to reach an agreement with a country other than Burma to be removed to that country. The U.S. agreed to give Mr. Soe, fourteen days, notice if they were going to remove him to Thailand.

[11] After his release in 2002, Mr. Soe applied to a Canadian Consulate for permanent residence, but was informed he had to re-submit his forms at another Consulate. Nonetheless, the Applicant fled the U.S. and entered Canada illegally in November 2003. In early December, Mr. Soe presented himself at an Immigration Centre and made a refugee claim. He was detained for being a flight-risk; however, he was released and placed on a monthly reporting schedule.

[12] On January 16, 2004, Mr. Soe was found to be inadmissible pursuant to paragraph 34(1)(c) of the IRPA. The Applicant sought an adjournment pending an exemption application pursuant to subsection 34(2) of the IRPA. His admissibility hearing was adjourned pending the relief application. The Applicant's relief application was denied. Mr. Soe remains in Canada without status.

ISSUES

- [13] (1) Are the Applicant's rights under section 7 of the Charter engaged?
- (2) Did the Board err in using the *Criminal Code*, R.S. 1985, c. C-46 (Criminal Code) definition of terrorism in making a finding under paragraph 34(1)(c) of the IRPA? Is that definition overly broad such that it violates section 7 of the Charter?
- (3) Was the Board's decision reasonable?

LEGISLATIVE FRAMEWORK

[14] Paragraph 34(1)(c) of the IRPA provides:

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|---|--|
| <p>34. (1) A permanent resident or a foreign national is</p> | <p>34. (1) Empoortent interdiction de territoire pour</p> |
|---|--|

inadmissible on security grounds for

raison de sécurité les faits suivants :

(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

(b) engaging in or instigating the subversion by force of any government;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

(c) engaging in terrorism;

c) se livrer au terrorisme;

Section 83.01(1) of the Criminal Code provides:

"terrorist activity" means

«activité terroriste »

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

a) Soit un acte — action ou omission, commise au Canada ou à l'étranger — qui, au Canada, constitue une des infractions suivantes :

(i) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on December 16, 1970,

(i) les infractions visées au paragraphe 7(2) et mettant en oeuvre la Convention pour la répression de la capture illicite d'aéronefs, signée à La Haye le 16 décembre 1970,

(ii) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on

(ii) les infractions visées au paragraphe 7(2) et mettant en oeuvre la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile,

September 23, 1971,

signée à Montréal le 23
septembre 1971,

(iii) the offences referred to in subsection 7(3) that implement the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, adopted by the General Assembly of the United Nations on December 14, 1973,

(iii) les infractions visées au paragraphe 7(3) et mettant en oeuvre la Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, adoptée par l'Assemblée générale des Nations Unies le 14 décembre 1973,

(iv) the offences referred to in subsection 7(3.1) that implement the *International Convention against the Taking of Hostages*, adopted by the General Assembly of the United Nations on December 17, 1979,

(iv) les infractions visées au paragraphe 7(3.1) et mettant en oeuvre la Convention internationale contre la prise d'otages, adoptée par l'Assemblée générale des Nations Unies le 17 décembre 1979,

(v) the offences referred to in subsection 7(3.4) or (3.6) that implement the *Convention on the Physical Protection of Nuclear Material*, done at Vienna and New York on March 3, 1980,

(v) les infractions visées aux paragraphes 7(3.4) ou (3.6) et mettant en oeuvre la Convention sur la protection physique des matières nucléaires, conclue à New York et Vienne le 3 mars 1980,

(vi) the offences referred to in subsection 7(2) that implement the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil*

(vi) les infractions visées au paragraphe 7(2) et mettant en oeuvre le Protocole pour la répression des actes illicites de violence dans les aéroports servant à

Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988,

l'aviation civile internationale, complémentaire à la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, signé à Montréal le 24 février 1988,

(vii) the offences referred to in subsection 7(2.1) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, done at Rome on March 10, 1988,

(vii) les infractions visées au paragraphe 7(2.1) et mettant en oeuvre la Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, conclue à Rome le 10 mars 1988,

(viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done at Rome on March 10, 1988,

(viii) les infractions visées aux paragraphes 7(2.1) ou (2.2) et mettant en oeuvre le Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, conclu à Rome le 10 mars 1988,

(ix) the offences referred to in subsection 7(3.72) that implement the *International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on December 15, 1997, and

(ix) les infractions visées au paragraphe 7(3.72) et mettant en oeuvre la Convention internationale pour la répression des attentats terroristes à l'explosif, adoptée par l'Assemblée générale des Nations Unies le 15 décembre 1997,

(x) the offences referred to

(x) les infractions visées

in subsection 7(3.73) that implement the *International Convention for the Suppression of the Financing of Terrorism*, adopted by the General Assembly of the United Nations on December 9, 1999, or

au paragraphe 7(3.73) et mettant en oeuvre la Convention internationale pour la répression du financement du terrorisme, adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1999;

(b) an act or omission, in or outside Canada,

b) soit un acte — action ou omission, commise au Canada ou à l'étranger :

(i) that is committed

(i) d'une part, commis à la fois :

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(A) au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique,

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(B) en vue — exclusivement ou non — d'intimider tout ou partie de la population quant à sa sécurité, entre autres sur le plan économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir, que la personne, la population, le gouvernement ou l'organisation soit ou

	non au Canada,
(ii) that intentionally	(ii) d'autre part, qui intentionnellement, selon le cas :
(A) causes death or serious bodily harm to a person by the use of violence,	(A) cause des blessures graves à une personne ou la mort de celle-ci, par l'usage de la violence,
(B) endangers a person's life,	(B) met en danger la vie d'une personne,
(C) causes a serious risk to the health or safety of the public or any segment of the public,	(C) compromet gravement la santé ou la sécurité de tout ou partie de la population,
(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or	(D) cause des dommages matériels considérables, que les biens visés soient publics ou privés, dans des circonstances telles qu'il est probable que l'une des situations mentionnées aux divisions (A) à (C) en résultera,
(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result	(E) perturbe gravement ou paralyse des services, installations ou systèmes essentiels, publics ou privés, sauf dans le cadre de revendications, de protestations ou de manifestations d'un désaccord ou d'un arrêt de travail qui n'ont pas

in the conduct or harm referred to in any of clauses (A) to (C),

pour but de provoquer l'une des situations mentionnées aux divisions (A) à (C).

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

Sont visés par la présente définition, relativement à un tel acte, le complot, la tentative, la menace, la complicité après le fait et l'encouragement à la perpétration; il est entendu que sont exclus de la présente définition l'acte — action ou omission — commis au cours d'un conflit armé et conforme, au moment et au lieu de la perpétration, au droit international coutumier ou au droit international conventionnel applicable au conflit ainsi que les activités menées par les forces armées d'un État dans l'exercice de leurs fonctions officielles, dans la mesure où ces activités sont régies par d'autres règles de droit international.

ANALYSIS

(1) **Preliminary issue: Are the Applicant's rights under section 7 of the Charter engaged?**

[15] Mr. Soe argues that section 7 of the Charter is engaged because he has been described as having “engaged in terrorism”. Consequently, the Applicant is not eligible for a refugee determination pursuant to section 96 of the IRPA; however, the Applicant does acknowledge that he will still have access to protection pursuant to section 97 of the IRPA via a PRRA.

[16] This Court has found on numerous occasions that the rights pursuant to section 7 of the Charter are not generally engaged at the eligibility determination stage of the immigration process. As such, it is not inconsistent with section 7 of the IRPA to limit access to the Refugee Protection Division of the Board. In *Jekula v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1503 (QL), stated:

[31] ...while it is true that a finding of ineligibility deprives the claimant of access to an important right, namely the right to have a claim determined by the Refugee Division, this right is not included in "the right to life, liberty and security of the person"...

[32] ...it may well be a breach of the rights protected by section 7 for the Government to return a non-citizen to a country where she fears that she is likely to be subjected to physical violence or imprisoned. However, a determination that a refugee claimant is not eligible to have access to the Refugee Division is merely one step in the administrative process that may lead eventually to removal from Canada...

(Reference is also made to: *Mursal*, above; *Nguyen v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] 1 F.C. 696, [1993] F.C.J. No. 47 (QL).)

[17] Moreover, the Court of Appeal has distinguished the circumstances of ineligibility for refugee determination from those involved in the case of *Singh*, above, which the Applicant relies upon, where section 7 of the Charter rights were engaged. The Court held in *Berrahma*, above:

[11] I absolutely cannot see how it can be said that, by denying refuge to a foreign national, Parliament is infringing that person's life or security. Section 7 of the Charter is not to be interpreted in the abstract; it lays down limits for the action of governmental authority, but does not compel the latter to act; for it to be applicable, there must be a specific act, legislation, not merely a failure to act. It does not of itself impose a duty on the government to provide protection to everyone whose life or liberty may be at risk, still less to provide a refuge for all inhabitants of the globe who may fear for their lives or security, and this is so whatever the cause of the apprehended danger.

[12] As I understand it, the reason the Supreme Court concluded as it did in *Singh* is that, to give effect to international obligations assumed earlier, Parliament had recognized and granted foreign nationals the right to claim refugee status, but failed at the same time to create along with the exercise of this right - a right connected with the protection of life and security - a procedure consistent with the requirements of fundamental justice. That, I think, is the difference between *Singh* and the case of an ineligible claimant: *Singh* was denied a status which the law gave him the right to claim without having any opportunity of showing that he met the conditions for obtaining it, whereas the ineligible claimant is not denied a status he is entitled to claim.

Accordingly, in the case at hand, it appears that the Applicant's rights under section 7 of the Charter are not engaged; however, we will proceed with the analysis of the issues as raised by the Applicant.

(2) **Did the Board err in using the Criminal Code's definition of terrorism in making a finding under section 34(1)(c) of the IRPA? Is that definition overly broad such that it violates section 7 of the Charter?**

[18] Mr. Soe argues that the Board erred in using the Criminal Code definition of terrorism in coming to its conclusion that he has engaged in terrorism pursuant to paragraph 34(1)(c) of the IRPA. The Applicant alleges that, as his Charter section 7 rights are engaged, the definition of terrorism found in the Criminal Code does not comply with the principles of fundamental justice since it is overly broad. Moreover, Mr. Soe argues that paragraph 83.01(1)(a) of the Criminal Code lacks an intent component. The Applicant further contends that the preferable definition is the one laid out by the Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3.

(i) *Suresh* decision encompasses the Criminal Code definition

[19] The Criminal Code definition of terrorism falls into two parts. The first part referred to as the functional portion, defines terrorism by listing ten different international Conventions, which if

violated would result in committing a terrorist act. The second part referred to as the stipulative portion, defines terrorism by its various, basic elements.

[20] The Supreme Court of Canada based its definition of terrorism on the *International Convention for the Suppression of the Financing of Terrorism*, which also uses both functional and stipulative definitions of terrorism. The Supreme Court of Canada favours a stipulative definition when it states that:

[98] ...following the International Convention for the Suppression of the Financing of Terrorism, that "terrorism" in s. 19 of the Act includes any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act".

(*Suresh*, above.)

[21] In that case, the Court uses the word "includes" in their definition of terrorism, thereby indicating that the list provided is not exhaustive of the definition. Also, it is worth noting that the Court provides the definition of terrorism directly after responding to a request that the definition be functional rather than stipulative:

[97] ...While we are not unaware of the danger that the term "terrorism" may be manipulated, we are not persuaded that it is necessary or advisable to altogether eschew a stipulative definition of the term in favour of a list that may change over time and that may in the end necessitate distinguishing some (proscribed) acts...

(*Suresh*, above.)

[22] Thus, the Court is clearly not excluding a functional definition of terrorism. The definition it provided was non-exhaustive. Furthermore, the Court stated that it was not necessary to "eschew" a

stipulative definition in favour of a functional one. If a functional definition is included and adopted, then the finding that the Applicant violated one of the ten international Conventions listed in the *International Convention for the Suppression of the Financing of Terrorism*, the *Convention for the Suppression of Unlawful Seizure of Aircraft*, is not problematic. Accordingly, the definition of terrorism in the Criminal Code mirrors that in *Suresh*, above. (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1053, [2005] F.C.J. No. 1303 (QL).)

[23] Moreover, in *Suresh*, above, the Court stated that:

[98] ...Parliament is not prevented from adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the *Immigration Act* is sufficiently certain to be workable, fair and constitutional. We believe that it is.

[24] Furthermore, recent amendments to the Criminal Code further define terrorism. Since the hearing of *Suresh*, above, was heard prior to the aforementioned amendments, it is difficult to ascertain what effect, if any, these amendments had on the decision itself; however, it must be noted that the Court did not make any negative findings with respect to them.

(ii) The Criminal Code definition is not overly broad

[25] In *R v. Khawaja*, [2006] O.J. No. 4245, Justice Douglas Rutherford of the Ontario Superior Court considered the Criminal Code definition of terrorism in the context of a criminal law matter:

[6] ...the provisions under attack are neither void for vagueness nor overbroad in their reach as they can be read, construed and applied in conformity with the principles of fundamental justice.

[26] Albeit the Court found that clause 83.01(1)(b)(i)(A) of the Criminal Code violated section 2 of the Charter, the Court found that the remainder of the legislation was not overly broad and did not violate section 7 of the Charter.

(iii) Certain criminal acts go beyond mere criminality

[27] The Applicant argues that section 34(1)(c) of the IRPA must deal with matters beyond the Criminal Code, as section 36 of the IRPA already deals with criminal inadmissibility. It is important to note that sections 34, 35, 36 and 37 of the IRPA all have Criminal Code components. Section 37 of the IRPA, for example, targets members of organized crime. There are also specific provisions in the Criminal Code which deal with organized crime. Accordingly, simply because a section of the IRPA deals with a subject matter also found in the Criminal Code does not make it redundant to section 36 of the IRPA.

[28] On this note, Parliament chose to single out certain criminal acts that are of a greater magnitude by enacting sections 34, 35, and 37 of the IRPA. These sections carry with them greater penalties than section 36 of the IRPA. For example, a finding of inadmissibility pursuant to section 36 of the IRPA allows for appeal rights to the Immigration Appeal Division, whereas a finding of inadmissibility pursuant to sections 34, 35, and 37 does not allow for appeal rights. Also, findings for those sections lead to ineligibility for refugee determination, whereas findings under section 36 do not necessarily do so. It is clear that Parliament enacted those sections in order to give greater repercussions to those who have committed a certain spectrum of crimes.

(3) Was the Board's decision reasonable?

(i) Finding of the Board was based on two separate sections of the IRPA

[29] Firstly, the Board found that the Applicant fell under subparagraph 83.01(1)(a)(i) of the Criminal Code's definition of terrorism. Secondly, the Board found that the Applicant fell under clause 83.01(1)(b)(i)(A) and (B) and clause 83.01(1)(b)(ii)(B) and (C) of the Criminal Code. The Board noted that paragraphs (a) and (b) are disjunctive and, thus, a finding under either one is sufficient to find that the Applicant meets the definition of terrorism, and therefore described pursuant to paragraph 34(1)(c) of the IRPA.

[30] It is important to note that the standard of proof in a finding made by the Board under section 34 of the IRPA is that of "reasonable grounds to believe". This standard has been found to create a relatively low threshold of more than a mere suspicion, but less than a balance of probabilities. (*Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 349, [2004] F.C.J. No. 395 (QL).)

[31] From the Applicant's submissions, it appears that Mr. Soe takes issue solely with the constitutionality of paragraph 83.01(1)(a) of the Criminal Code definition of terrorism. The Court duly notes that even if it were to find that this definition violates section 7 of the Charter (which is not the case), the Board's finding still stands pursuant to paragraph 83.01(1)(b) of the Criminal Code.

(ii) The Applicant has requisite intent

[32] The Board found that the Applicant fell under clause 83.01(1)(b)(i)(A) and (B) and 83.01(1)(b)(ii)(B) and (C) of the Criminal Code.

[33] The Applicant argues that he could not be found described under a definition such as paragraph 83.01(1)(b) of the Criminal Code because that section requires the element of intent, which the Applicant argues he did not possess.

[34] The Board found that the Applicant did possess the required intent. Specifically, it determined that the use of the threat of a bomb and death, even if there was no way of ever carrying out that threat, had the effect of intimidating the public, especially the airplane passengers. Furthermore, the Applicant's threats could have resulted in pilot error or injuries caused by rescue efforts.

[35] Consequently, it was not unreasonable for the Board to find that Mr. Soe had requisite intent based on the evidence before it.

CONCLUSION

[36] For all of the above reasons, the application for judicial review is dismissed.

[37] The Court would like to express its appreciation to counsel for their thorough and insightful arguments.

JUDGMENT

THIS COURT ORDERS

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

Obiter:

Any decision is, of course, not only a dialogue with, and between, the parties themselves; but, it is also a silent dialogue between the three branches of government, (each within its limits, exercising restraint): recognizing, that the executive branch decides the direction of government and implements legislation by initiating, managing and executing policies inherent to, and flowing from, legislation; the legislative branch approves and enacts or passes legislation; the judiciary interprets and applies legislation.

For this dialogical process, the constitution, in its supremacy, serves as a guide for the three branches of government. The legislative branch is not to enact legislation that would subject anyone to cruel and unusual treatment or punishment; neither is the executive branch to deprive anyone of their right to life, liberty and security of the person, except in accordance with the principles of fundamental justice.

In the case at bar, the gamut does not end with this decision. It is left to the executive branch to act and effect the next step, which is, now, its alone to take, within its jurisdiction.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2605-06

STYLE OF CAUSE: THAN SOE (a.k.a. YE YINT and THIT LWIN)
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 20, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: June 26, 2007

APPEARANCES:

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FOR THE RESPONDENT

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