1960

*Nov. 1
Nov. 28

LOUIE YUET SUN (*Applicant*) .....APPELLANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Aliens—Deportation—Chinese mother—Non-immigrant—Child born in Canada during visit—Right to deport mother—The Immigration Act, R.S.C. 1952, c. 325—The Canadian Citizens Act, R.S.C. 1952, c. 33—The Canadian Bill of Rights, 1960 (Can.), c. 44.

The applicant, a citizen of China, came to Canada on a non-immigrant visa issued to her in Hong Kong. Her husband and two other children remained in Hong Kong. During her stay in Canada, a son, issue of her marriage, was born to her. A deportation order was made against her by a special enquiry officer under the *Immigration Act*. This order was quashed by the trial judge, but restored by the Court of Appeal.

Held: The appeal should be dismissed.

The applicant fell within the terms of s. 5(*t*) of the Act and of ss. 18 and 20 of the Regulations, and has not been deprived of her liberty except by due process of law. The fact that she was the mother of a legitimate child born in Canada had no bearing on the matter.

APPEAL from a judgment of the Court of Appeal for Ontario[1], reversing a judgment of King J. Appeal dismissed.

G. A. MacKay, for the applicant, appellant.

D. S. Maxwell and *N. Chalmer,* for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an appeal by Mrs. Louie Yuet Sun from a judgment of the Court of Appeal for Ontario[1] reversing a decision of King J. which had quashed a deportation order made against the appellant under the *Immigration Act,* R.S.C. 1952, c. 325. As set out in the factum of the appellant, it appears that she is a citizen of China who came to Canada as a visitor in December 1957 by way of Hong Kong. She was in possession of a passport in which was entered a Canadian non-immigrant visa issued to her in Hong Kong. She had been allowed entry into Canada for a period of six months and later her permit was extended another six months to December 1958. She had come to Canada to visit her father and brother, who live

*PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

[1] [1960] O.W.N. 476.

in Ottawa. Her husband, a farmer, and her two children, remained in Hong Kong. She, who is now twenty-nine years of age, and her husband, who is thirty-one years of age, were married in China in 1948. On August 18, 1958, while she was in Ottawa, the appellant gave birth to a son, a child of that marriage.

Since the permission she had received to enter Canada had expired, the appellant reported to an immigration officer as required by the Act. She was examined by the officer who made a report under s. 23 of the Act that it would be contrary to the provisions of the Act to grant admission to or otherwise let the appellant come into Canada by reason of her coming under the prohibited classes of s. 5, para. (*t*) thereof, in that she could not or did not fulfil or comply with the conditions or requirements of ss. 18 and 20 of the Regulations promulgated under the Act. Subsequently an enquiry was held by a special enquiry officer, who decided that the appellant might not come into or remain in Canada as of right and that (1) she was not a Canadian citizen; (2) she was not a person having Canadian domicile; (3) she was a member of a prohibited class described in s. 5(*t*) of the Act in that she could not and did not fulfil or comply with the conditions or requirements of the Act or the Regulations because: (*a*) she did not have an immigrant visa as required under subs. 3 of s. 18 of the Regulations; (*b*) she did not come within the provisions of subs. (*d*) of s. 20 of the Regulations. He accordingly ordered her to be detained and to be deported.

King J. held that the appellant was not a person within the meaning and intent of s. 5(*t*) of the Act because she had recently given birth to a child in Canada; the child being a natural born Canadian citizen had a right to live in Canada and was entitled to the love, care and attention of its mother. The mother desired to remain in Canada because she thought it would be better for the child. No reasons were given by the Court of Appeal but upon consideration I can see no basis for the judgment of the judge of first instance. If the appellant chooses to take the child with her, the material indicates that the Hong Kong authorities are willing to receive her and the child. If, on the other hand, she chooses to leave the child here, he is entitled to remain in Canada. It is not denied that the

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applicant falls within the terms of the relevant sections of the Act and Regulations, and, unless the fact that she is the mother of a legitimate child born in Canada affects the matter, she has not been deprived of her liberty except by due process of law. In my view that fact has no bearing on the matter.

Any other points raised in the Courts below were abandoned before us. The appeal should be dismissed without costs.

Appeal dismissed without costs.

Solicitors for the appellant: McMichael, Wentzell & MacKay, Ottawa.

Solicitor for the respondent: D. S. Maxwell, Ottawa.