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*June 2
June 26

SMARO (SMAROULA) MOSHOS and minor children, SULTANA and PANAGIOTIS ..... APPELLANTS;

AND

THE MINISTER OF MANPOWER AND IMMIGRATION ..... RESPONDENT.

ON APPEAL FROM THE IMMIGRATION APPEAL BOARD

Immigration—Non-immigrant taking employment without permission—Deportation order—Wife and children included in deportation order—Wife not given opportunity to establish that she and her children should not have been so included—Order not validly made with respect to wife and children—Immigration Act, R.S.C. 1952, c. 325, ss. 23, 37(1)—Immigration Regulations, s. 34(3)(e)—Immigration Inquiries Regulations, s. 11.

The appellant's husband entered Canada as a non-immigrant, and, while his application for permanent admission was pending, took employment without permission, contrary to the *Immigration Regulations* and in spite of the following endorsement on his passport: "not

*PRESENT: Martland, Judson, Ritchie, Hall and Spence JJ.

permitted to take employment in Canada". The appellant and her two children entered Canada as non-immigrants some four months after the husband had entered. She applied for permanent residence but never received any advice as to the disposition of her application. At an inquiry held by a special inquiry officer following a report made by an immigration officer concerning her husband, the appellant was called as a witness. Before her evidence was given, the special inquiry officer read the provisions of s. 37(1) of the *Immigration Act* to her and told her that should a deportation order be issued against her husband, she and her two children could be included in that order. A deportation order was subsequently made against the husband, the appellant and the two children. The Immigration Appeal Board affirmed the deportation order. The appellant was granted leave to appeal to this Court.

Held: The appeal should be allowed and the deportation order, in so far as it relates to the wife and children, should be set aside.

The deportation order, as against the appellant and the two children, was not valid because of the failure of the special inquiry officer to comply with s. 11 of the *Immigration Inquiries Regulations* which provides that no person shall be included in a deportation order unless the person has first been given an opportunity of establishing to an immigration officer that she should not be so included. What took place between the special inquiry officer and the appellant when she appeared as a witness at the inquiry was not sufficient compliance with that section. At no point was she told that she had the right to an opportunity to establish that she should not be included in the order.

Immigration—Non-immigrant acceptant sans permission un emploi—Ordonnance d'expulsion—Épouse et enfants inclus dans l'ordonnance—Aucune occasion fournie à l'épouse de prouver qu'elle et ses enfants ne doivent pas être inclus—Invalidité de l'ordonnance quant à l'épouse et les enfants—Loi sur l'immigration, S.R.C. 1952, c. 325, art. 23, 37(1)—Règlements sur l'immigration, art. 34(3)(e)—Règlements sur les enquêtes de l'immigration, art. 11.

Le mari de l'appelante est entré au Canada à titre de non-immigrant, et, alors que sa demande pour y résider en permanence était en suspens, il a accepté sans permission un emploi, contrairement aux *Règlements sur l'immigration* et malgré que son passeport spécifiait qu'il ne lui était pas permis d'accepter de l'emploi au Canada. Quelque quatre mois après l'entrée du mari, l'appelante et ses deux enfants sont entrés au Canada à titre de non-immigrants. L'appelante a présenté une demande pour y résider en permanence mais n'a jamais été avisée du résultat de cette demande. Au cours d'une enquête tenue par un enquêteur spécial à la suite d'un rapport fait au sujet de son mari par un fonctionnaire à l'immigration, l'appelante a été appelée comme témoin. Avant d'entendre son témoignage, l'enquêteur spécial lui a lu les dispositions de l'art. 37(1) de la *Loi sur l'immigration* et lui a dit que si une ordonnance d'expulsion était rendue contre son mari, elle et ses deux enfants pourraient être inclus dans cette ordonnance. Subséquemment une ordonnance d'expulsion a été rendue contre le mari, l'appelante et les deux enfants. La Commission d'appel de l'immigration a confirmé l'ordonnance. L'appelante a obtenu la permission d'appeler à cette Cour.

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Arrêt: L'appel doit être accueilli et l'ordonnance d'expulsion, dans la mesure où elle vise l'épouse et les enfants, doit être mise de côté.

L'ordonnance d'expulsion contre l'appelante et les deux enfants est invalide à cause du défaut de l'enquêteur spécial de se conformer à l'art. 11 des *Règlements sur les enquêtes de l'immigration* qui stipule que nulle personne ne sera incluse dans une ordonnance d'expulsion sans avoir eu d'abord l'occasion de prouver à un fonctionnaire de l'immigration qu'elle ne doit pas y être incluse. Ce qui s'est passé à l'enquête entre l'enquêteur spécial et l'appelante lorsque celle-ci a témoigné ne peut pas être considéré comme étant suffisamment en conformité avec les dispositions de cet article. On ne lui a jamais dit qu'elle avait droit qu'on lui fournisse l'occasion de prouver qu'elle ne devait pas être incluse dans l'ordonnance.

APPEL d'une décision de la Commission d'appel de l'immigration confirmant une ordonnance d'expulsion. Appel accueilli.

APPEAL from a decision of the Immigration Appeal Board affirming a deportation order. Appeal allowed.

N. A. Endicott, for the appellants.

A. Garneau, for the respondent.

The judgment of the Court was delivered by

MARTLAND J.:—This is an appeal, with leave of this Court, from a decision of the Immigration Appeal Board, which dismissed the appeal of the appellant, and of her two children, from a deportation order made by a Special Inquiry Officer, on December 6, 1968, which included them in the order made against the appellant's husband, John Moshos.

John Moshos, who was born in Greece on December 1, 1936, is a naturalized citizen of Australia, to which country he had emigrated when he was eighteen years old. He married the appellant in Australia in 1959. She was also born in Greece and is an Australian citizen. Their two infant children were born in Australia.

Early in 1966 he returned to Greece, his wife having preceded him, as her mother was not well. While in Greece he decided to travel to Canada. He completed an application for permanent admission to Canada, while he was in Greece, but says he did not receive a letter of refusal. He says that he was advised by an immigration officer, in

Athens, that, as a British subject and an Australian citizen, he could go to Canada as a tourist, and apply, in Canada, for permanent admission.

He entered Canada on November 22, 1967, as a non-immigrant. He had about $1,500. He applied for permanent admission on January 2, 1968. His passport was endorsed "not permitted to take employment in Canada".

The appellant and the two children entered Canada on March 9, 1968, as non-immigrants. She applied on March 19 for permanent residence and was interviewed by the immigration authorities on April 19. She has never received any advice as to the disposition of this application. Her trade is that of a carpet weaver, at which she had worked for five or six years in Australia, except for the times she could not work because of her pregnancies.

The husband's finances were not sufficient to enable him to support his wife and children without earning an income. He says that he applied to the immigration authorities for permission to work on three occasions, but received no reply to his request. Finally, he had to take employment, without permission.

On August 13, 1968, an immigration officer made a report concerning the husband, pursuant to s. 23 of the *Immigration Act*, R.S.C. 1952, c. 325, and on December 6, 1968, an inquiry was held by a Special Inquiry Officer, as required by the Act as a result of that report.

The appellant was called as a witness by the Special Inquiry Officer. She was not present while her husband was testifying. After being sworn, and before her evidence was given, the following occurred:

BY: Special Inquiry Officer to Witness:

Q. Mrs. Moshos, do you speak English as well as your husband, or do you have difficulty?

A. I speak a little.

I would like to remind you that if you do not understand any of the questions that I ask you, we have an interpreter here, Mrs. Daskalakis, and will have her translate the questions into Greek before you answer them if you are not absolutely sure.

Q. What is your correct name, in full?

A. Roula Moshos.

Q. What was your maiden name?

A. Chrisostomou.

Q. Are you the wife of John Moshos concerning whom this Inquiry is being held?

A. Yes.

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Mrs. Moshos, subsection (1) of section 37 of the Immigration Act reads as follows:

"Where a deportation order is made against the head of the family, all dependent members of the family may be included in such order and deported under it".

BY: Counsel (who was Mr. Amourgis):

At this particular point I would like to make a submission to you sir that it not be interpreted by you or anyone else that I am appearing on behalf of this witness and I have come here only for the purpose of defending the rights of Mr. John Moshos so as an amicus curiae I would like to make the following submission that this particular lady might want to retain a lawyer to protect her rights in the event some of the facts used in this inquiry be used at a much later date against her. On her behalf I take the liberty of asking the protection of the Canada Evidence Act for all answers she might give in this inquiry that will tend to incriminate her or be used against her at any later proceedings. If this witness is brought on behalf of the Immigration Department, I, as counsel, to John Moshos reserve my right to cross examine her on the evidence she might give pertaining to my client's inquiry. Thank you.

BY: Special Inquiry Officer to Witness:

In view of this section of the Regulations, in the event a deportation order is issued against your husband it may be necessary on the basis of the evidence that we wish you to give now to include you and the children in such deportation order.

Q. Do you understand that?

A. Yes, of course.

Q. As your husband's counsel has pointed out, he is not prepared to act for you and you do have the right to be represented by counsel yourself. Do you wish to secure counsel?

A. Yes, Mr. Amourgis.

Q. Mr. Amourgis is not prepared to accept you as a client at this time?

A. Why, I have to get a lawyer.

Q. Do you wish to secure other counsel before giving evidence?

A. No, I do not want a lawyer.

Q. In the event Mr. Amourgis is not prepared to act as counsel, do you wish to proceed with the giving of evidence without counsel?

A. Yes.

Following the inquiry, a deportation order was made against the husband, the appellant and the two children. The basic ground for the deportation order against the husband was that he had taken employment, without the written approval of an officer of the Department, contrary to s. 34(3)(*e*) of the Immigration Regulations.

Section 34(3) of the Regulations reads as follows:

34. (3) Notwithstanding section 28, an applicant in Canada who

(*a*) if outside Canada would be an independent applicant; and

(*b*) is not in possession of an immigrant visa or letter of pre-examination but, in the opinion of an immigraton officer, would on application be issued a visa or letter of pre-examination if outside Canada;

may be admitted to Canada for permanent residence if

(*c*) he complies with the requirements of the Act and these Regulations;

(*d*) he makes application in the form prescribed by the Minister before the expiration of the period of temporary stay in Canada authorized for him by an immigration officer;

(*e*) he has not taken employment in Canada without the written approval of an officer of the Department; and

(*f*) in the opinion of an immigration officer, he would have been admitted to Canada for permanent residence if he had been examined outside Canada as an independent applicant and assessed in accordance with the norms set out in Schedule A, except with respect to arranged employment.

With respect to the appellant and the children the deportation order was based upon s. 37(1) of the Act which provides:

37. (1) Where a deportation order is made against the head of a family, all dependent members of the family may be included in such order and deported under it.

Both the husband and the appellant appealed, without success, to the Immigration Appeal Board. The appellant appeals to this Court from the Board's decision.

An appeal to this Court is limited, by s. 23 of the *Immigration Appeal Board Act*, 1966-67 (Can.), c. 90, to a question of law, including a question of jurisdiction. In my opinion the deportation order, as against the appellant and the two children, was not valid because of the failure of the Special Inquiry Officer to comply with s. 11 of the Immigration Inquiries Regulations. That section provides as follows:

11. No person shall, pursuant to subsection (1) of section 37 of the Act, be included in a deportation order unless the person has first been given an opportunity of establishing to an immigration officer that he should not be so included.

I have already quoted that which took place between the Special Inquiry Officer and the appellant when she appeared as a witness at the inquiry. In my opinion there was not a sufficient compliance with this section. The appellant's status at that inquiry was as a witness in an inquiry concerning John Moshos. She was not there throughout the inquiry.

It is true that the Special Inquiry Officer read the provisions of s. 37(1) to her and told her that "in view of this

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section of the Regulations (sic), in the event a deportation order is issued against your husband it may be necessary on the basis of the evidence that we wish you to give now to include you and the children in such deportation order". He also asked her if she wished to secure counsel "before giving evidence". He then proceeded to question her.

However, at no point was she told that she had the right to an opportunity to establish that she should not be included in the order. I do not regard the mere reading of s. 37(1) to her, when she was on the stand as a witness, followed by questioning by the Special Inquiry Officer, as constituting the giving of such an opportunity.

In my opinion the deportation order was made against the appellant and the children without complying with s. 11 of the Immigration Inquiries Regulations. In view of this conclusion, it is unnecessary to consider the other grounds of appeal submitted on behalf of the appellants.

The appeal should, therefore, be allowed and the deportation order, in so far as it relates to the appellant and the children, should be set aside.

Appeal allowed.

Solicitors for the appellant: Endicott & Rothman, Toronto.

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