

Minister of Justice (respondent) v. Maria Villanueva-Vera (a.k.a. Maria Mayerova, a.k.a. Maria Mayer) (applicant)
(C52733; 2012 ONCA 657)

Indexed As: Canada (Attorney General) v. Vera

Ontario Court of Appeal
Goudge, Watt and Hoy, J.J.A.
October 2, 2012.

Summary:

The Minister of Justice ordered that Vera, a Convention refugee from the Czech Republic who had obtained Canadian (dual) citizenship, be surrendered for extradition. Vera applied for judicial review.

The Ontario Court of Appeal dismissed the application.

Civil Rights - Topic 525

Mobility rights - Right to remain in Canada - Extradition - The Minister of Justice ordered that Vera, a Convention refugee from the Czech Republic who had obtained Canadian (dual) citizenship, be surrendered for extradition - Vera applied for judicial review, arguing that the denial of protection to a former refugee, now a Canadian citizen, was not a reasonable limit on her s. 6(1) Charter right to remain in Canada - The Ontario Court of Appeal rejected that argument - The court noted that in *U.S.A. v. Cotroni* (SCC 1989), it was held that extradition constituted a reasonable limit (s. 1) on the s. 6(1) rights of individuals sought for surrender - See paragraph 26.

Civil Rights - Topic 5679.17

Equality and protection of the law - Particular cases - Extradition - The Minister of Justice ordered that Vera, a Convention refugee from the Czech Republic who had obtained Canadian (dual) citizenship, be surrendered for extradition - Vera applied for judicial review, arguing that the equality rights of citizens sought for extradition were violated because they had to meet a greater burden of proof than those with refugee status - The Ontario Court of Appeal stated that there was no merit to that suggestion - That different treatment could hardly be said to perpetuate any historical disadvantage suffered by, or stereotypical treatment of, Canadian citizens as a group - The court stated that in this context, the rights accompanying citizenship were the antithesis of disadvantage - See paragraph 26.

Civil Rights - Topic 8348

Canadian Charter of Rights and Freedoms - Application - Exceptions - Reasonable limits prescribed by law (Charter, s. 1) - [See **Civil Rights - Topic 525**].

Extradition - Topic 3366

Surrender to demanding country - Considerations - Refugee status - The Minister of Justice ordered that Vera, a Convention refugee from the Czech Republic who had

obtained Canadian (dual) citizenship, be surrendered for extradition - Vera applied for judicial review, arguing that according to *Németh v. Canada* (SCC 2010), having once been found to have refugee status she could only be extradited if the Minister concluded on a balance of probabilities that the circumstances facing her had changed so that she no longer required the protection of refugee status - The Ontario Court of Appeal dismissed the appeal - The court held that the legal principles in *Németh* did not apply in this case because once Vera acquired Canadian citizenship, she lost her refugee status - See paragraphs 1 to 24.

Extradition - Topic 3366

Surrender to demanding country - Considerations - [See **Civil Rights - Topic 525, Civil Rights - Topic 5679.17 and Extradition - Topic 3367**].

Extradition - Topic 3367

Surrender to demanding country - Considerations - Health and medical care - The Minister of Justice ordered that Vera, a Convention refugee from the Czech Republic who had obtained Canadian (dual) citizenship, be surrendered for extradition - Vera applied for judicial review, arguing that that the Minister's decision to surrender her was unreasonable in light of her health and her need for medical care - The Ontario Court of Appeal disagreed - The Minister's decision had to be accorded significant deference - Here, the Minister took into account Vera's health, the basis for its treatment and the availability of adequate health care in the Czech Republic - The surrender decision in those circumstances could not be said to be unreasonable - See paragraph 27.

Extradition - Topic 3387

Surrender to demanding country - Procedure - Onus and burden of proof - [See first **Extradition - Topic 3366**].

Cases Noticed:

Hurley v. United States of Mexico et al. (1997), 101 O.A.C. 121; 35 O.R.(3d) 481 (C.A.), reld to. [para. 8].

Németh v. Canada (Minister of Justice), [2010] 3 S.C.R. 281; 408 N.R. 198; 2010 SCC 56, dist. [para. 9].

Pataki v. Canada (Attorney General), [2012] O.A.C. TBEEd. OC.005, reld to. [para. 12].

Canada (Attorney General) v. *Ward*, [1993] 2 S.C.R. 689; 153 N.R. 321, reld to. [para. 19].

D.L. (D.R.C.) v. Entry Clearance Officer Pretoria; Zn. (Afghanistan) v. The Entry Clearance Officer Karachi, [2008] E.W.C.A. Civ. 1420 (Eng. C.A.), reld to. [para. 20].

United States of America v. Cotroni; United States of America v. El Zein, [1989] 1 S.C.R. 1469; 96 N.R. 321; 23 Q.A.C. 182; 48 C.C.C.(3d) 193, reld to. [para. 25].

Lake v. Canada (Minister of Justice), [2008] 1 S.C.R. 761; 373 N.R. 339; 236 O.A.C. 371; 2008 SCC 23, reld to. [para. 27].

Statutes Noticed:

Extradition Act, S.C. 1999, c. 18, sect. 44(1) [para. 7].

Immigration and Refugee Protection Act, S.C. 2001, c. 27, sect. 108(1) [para. 18].

Counsel:

Paul Slansky, for the applicant;
Moiz Rahman and Monika Rahman, for the respondent.

This application was heard on June 19, 2012, before Goudge, Watt and Hoy, JJ.A., of the Ontario Court of Appeal. The following decision was released by the court on October 2, 2012.

Application dismissed.

Editor: Elizabeth M.A. Turgeon

Civil Rights - Topic 8348

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