Federal Court



Cour fédérale

Date: 20160726

Docket: IMM-4974-15

Citation: 2016 FC 875

Toronto, Ontario, July 26, 2016

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

BINGHONG QIU GIULAN ZHU ZHIHENG QIU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS AS TO A CERTIFIED QUESTION

[1] On June 30, 2016, I gave Judgment in this matter, with Reasons, wherein I set aside that part of the decision under review which determined that the Applicants' claim had no credible basis and returned the matter to the Refugee Protection Division with a direction that an amended decision be issued wherein the finding of credible basis was to be removed. I invited the parties to make submissions as to a certified question.

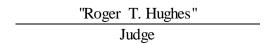
- [2] I have received written submissions as to a certified question from Counsel for each of the parties. In brief the Respondent Minister seeks a certified question, the Applicants do not.
- The recent amendments to the *Immigration and Refugee Protection Act* and *Regulations* providing for an appeal to the Refugee Appeal Division from a decision of the Refugee Protection Division have created some procedural difficulties including, as is the case here, where a finding of "no credible basis" for a refugee claim is made. I discussed this in my reasons of June 30, 2016.
- [4] I proposed a solution in my Judgment of June 30, 2016. Justice Phelan of this Court proposed a different procedure in his decisions in *Mahdi v Canada (MCI)*, 2016 FC 218. In my opinion it is appropriate to seek the guidance of the Federal Court of Appeal in this matter. I will therefor certify the question proposed by the Respondent.

Page: 3

ORDER

THIS COURT ORDERS that the following question is certified.

Does the Federal Court have jurisdiction under paragraph 18.1(3)(b) of the Federal Courts Act to issue a direction requiring the Refugee Protection Division to remove from its decision a finding that there is no credible basis for a claim, thereby granting a right of appeal to the Refugee Appeal Division, which would otherwise be precluded by paragraph 110(2)(c) of the Immigration and Refugee Protection Act?



FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4974-15

STYLE OF CAUSE: BINGHONG QIU, GIULAN ZHU, ZHIHENG QIU v

THE MINISTER OF CITIZENSHIP AND

IMMIGRATION

ORDER AND REASONS: HUGHES J.

DATED: JULY 26, 2016

WRITTEN SUBMISSIONS WITHOUT PERSONAL APPEARANCES

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANTS

Barristers and Solicitors

Toronto, Ontario

William F. Pentney FOR THE RESPONDENT

Deputy Attorney General of

Canada