Federal Court  Cour fédérale

Date: 20191107

Docket: IMM-2251-19

Citation: 2019 FC 1397

St. John's, Newfoundland and Labrador, November 7, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JUN YUAN PAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Jun Yuan Pao (the "Applicant") seeks judicial review of a decision of Mr. Alvin Fell, a Program Support Officer (the "Officer") employed with Immigration, Refugees and Citizenship Canada ("IRCC"), refusing her application for the issuance of a Permanent Resident Card.

[2] The Applicant was born in Shanghai, China on August 28, 1940. She obtained permanent resident status in Canada on May 28, 1973. She owns a condo in downtown Vancouver, British Columbia.

[3] In March 2016, the Applicant, while travelling on her Hong Kong passport, was told that she required an Electronic Travel Authorization ("eTA") to fly to Canada.

[4] On March 16, 2016, the Applicant applied for an eTA. By letter dated March 17, 2016, she was informed by IRCC that her application for an eTA was approved and valid until August 8, 2017.

[5] Between February and April 2017, while in Hong Kong, the Applicant submitted six more eTA applications. Except for the March 2017 application, which was withdrawn by the Applicant's travel agent, IRCC sent letters notifying her of the status of each of her application. The letters read in part:

> … A review of your file shows that you may still be or once were a Canadian permanent resident (PR). Please note that Canadian PRs are not eligible to apply for an eTA. Before we can process your eTA application, your permanent resident status will need to be clarified.
>
> …
>
> By law, Canadian permanent residents, including those who are also citizens of a visa-exempt country, cannot apply for an eTA. As a result, your application for an eTA has been withdrawn.
>
> Your application is now closed. You do not hold a valid eTA. …
>
> [Emphasis in Original.]

[6] On May 11, 2017, the Applicant submitted an application to renounce her permanent residence status. By email dated May 11, 2017, she was advised that her application had been accepted and that she was no longer a permanent resident of Canada.

[7] By a letter dated December 12, 2018, the Applicant requested the issuance of a Permanent Resident Card.

[8] According to the notes maintained in the Certified Tribunal Record (the "CTR"), the Officer formed the opinion that the Applicant should receive the Permanent Resident Card. However, he sought advice from the Case Management Branch, on March 26, 2019, about the Applicant's request.

[9] The Case Management Branch replied by email on March 28, 2019 and said the following:

> Case Management Branch has reviewed this case, and there are no current procedures for reversing a decision on an application for renunciation of permanent residence. CMB has recommended that the decision be reversed in few exceptional cases where there have been clear indications of fraud (for example, a third party forging a signature on the forms). In this case, the applicant voluntarily signed the application and submitted the required documents.
>
> The legislation does not require that officers assess the applicant's reasoning when accepting renunciation. It is expected that they have read and understood the application guide and form, and sought additional clarification, if needed.
>
> To note with this specific case, the applicant was provided with a PR option letter on several occasions and had the opportunity to seek legal advice to overcome any language barriers.
>
> The final decision rests with the officer; however, CMB would not recommend intervening in this case.

[10] In a letter dated March 28, 2019, the Applicant was advised that her application for a Permanent Resident Card was refused on the grounds that an application for renunciation of Permanent Resident status was approved on May 11, 2017.

[11] The Officer advised that, as a result of that approval, the Applicant had lost her Permanent Resident status pursuant to paragraph 46(1)(e) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27(the "Act") and was no longer entitled to a Permanent Resident Card, pursuant to paragraph 59(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"). The Officer's notes read, in part, as follows:

> Client became a PR 1973/05/28.
> Client completed an Application To Voluntarily Renounce Permanent Resident Status (client signed application on 2017/04/19).
> Client submitted a Renunciation of PR Status (Q000263904) received on-line on 2017/05/11 by the OSC-Operations Support Centre.
> OSC approved the renunciation application on 2017/05/11.
> Client is a person described under A46(1)(e): "A person loses permanent resident status on approval by an officer of their application to renounce their permanent resident status."
> Client is no longer a PR.
> Client is not eligible for the issuance of a permanent resident card.
> Request refused.
> Note: immigration legislation is silent on an applicant's reasoning when accepting renunciation; I also see no evidence of fraud when the client renounced her permanent residence.

[12] The Applicant now argues that the Officer erred by failing to make his own decision, contrary to the principle that "he who hears must decide." She pleads that by adopting the opinion of the Case Management Branch, the Officer improperly fettered his discretion. She says that the Officer rejected her request on the same day that he received an email from the Case Management Branch and that he used the same language as did the Case Management Branch.

[13] The Applicant characterizes the issue as one of procedural fairness, arguing that the Officer offended the duty of procedural fairness by not making an independent decision, after reviewing her request.

[14] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision of the Officer is reviewable on the standard of reasonableness. He argues that the decision meets that standard and there is no basis for judicial intervention.

[15] An issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[16] A decision to exercise discretion against the issuance of a Permanent Resident card is reviewable on the standard of reasonableness; see the decision in *Solopova v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 690 at paragraph 32.

[17] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[18] However, the real issue in this application for judicial review is less the manner in which the Officer exercised his discretion but whether he made an independent decision or merely

adopted the opinion of another, that is the Case Management Branch. In my opinion, the decision meets neither the standard of procedural fairness nor the standard of reasonableness.

[19] As noted by this Court in *Calandrini v. Canada (Attorney General)*, 2018 FC 52, the choice of the standard of review is not determinative.

[20] The decision is procedurally unfair because it is not apparent that the Officer made his "own" decision. The decision is unreasonable because is seems that the Officer ignored the evidence of the Applicant's establishment in Canada.

[21] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for determination.

[22] There is no question for certification arising.

JUDGMENT in IMM-2251-19

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for determination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2251-19
STYLE OF CAUSE:	JUN YUAN PAO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	OCTOBER 21, 2019
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	NOVEMBER 7, 2019

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