

Federal Court



Cour fédérale

Date: 20220111

Docket: IMM-1140-21

Citation: 2022 FC 26

Ottawa, Ontario, January 11, 2022

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

XUE XIU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant claims that she was denied procedural fairness when her application for permanent resident status under the Quebec Investor Class [QIC] was returned to her because of a payment issue.

II. Background

[2] The Applicant, a citizen of China, applied, along with her husband, for permanent residence under the then QIC program. In addition to filing the application form, she used a fee payment form indicating her agreement to pay \$1,600 on her credit card and a representative form providing two e-mail addresses where she could be contacted.

[3] In July 2017, her representative received acknowledgement from Immigration, Refugees and Citizenship Canada [IRCC] of receipt of her application.

[4] In September 2017, an IRCC officer made a note in the GCMS notes that a message had been e-mailed to the Applicant indicating her payment method was no longer acceptable and that her cheque [*sic*] would be returned to her once a new payment was received.

[5] Things went awry at this point. The Applicant says she never received the IRCC e-mail and there is no evidence that undermines her denial. Likewise she denies having received her returned application despite the GCMS notes indicating that it was sent back in November 2017.

[6] Fatal to the Respondent's efforts to hold the Applicant responsible for the miscommunication is that in December 2018, in response to the Applicant's status inquiry, the Respondent said that the application was with the Centralized Intake Office in Sydney, Nova Scotia. This was at a time when the Respondent's GCMS notes conflictingly indicated that the

application had been returned to the Applicant more than one year earlier. The Respondent's email did not explain that the application was returned.

[7] In response to a further status inquiry in September 2020, the Respondent informed the Applicant that the application had been returned but there was no tracking or reference number.

[8] After the Applicant tried to have her application reconsidered and had paid the fees for a new application without any success due to her *Certificat de selection du Québec* having expired in November 2019, she applied for judicial review.

III. Analysis

[9] The central issue is whether the Applicant received proper notice of the required online payment and was thus denied procedural fairness.

[10] The parties agree that the applicable standard of review is correctness; however, they arrive at that conclusion from different sources.

[11] I adopt Justice de Montigny's reasons in *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, in support of the correctness standard. I also share his observation that it is unclear why courts assess procedural fairness within the framework of judicial review where the question is not the substance of the decision but the manner in which it is made. What matters is whether or not procedural fairness has been met.

[12] In this case, the breach of procedural fairness was the failure to inform the Applicant that her payment method was incorrect. She either was informed or she was not.

[13] The Respondent relies on the GCMS notes but has nothing more. The accuracy of those notes is subject to some scepticism given the misleading information that the application was in Sydney at the same time the notes said it was with the Applicant.

[14] The Respondent has provided no direct evidence to rebut the Applicant's contention that she did not receive notice. Moreover, the Applicant's conduct was entirely consistent with that of a person who had not received notice. Had she received an accurate response to her status inquiry rather than the "it is in Sydney" response, she could have responded and potentially dealt with the problem of payment method.

IV. Conclusion

[15] Therefore, there was a breach of procedural fairness. The refusal decision will be quashed, the matter returned to the Respondent to be reconsidered and a new *Certificat de selection du Québec* sought from the Ministère de l'Immigration, de la Francisation et de l'Intégration.

[16] There is no question for certification.

JUDGMENT in IMM-1140-21

THIS COURT'S JUDGMENT is that the application for judicial review is granted.

The refusal decision is quashed, the matter is returned to the Respondent to be reconsidered and a new *Certificat de selection du Québec* is sought from the Ministère de l'Immigration, de la Francisation et de l'Intégration. There is no question for certification.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1140-21

STYLE OF CAUSE: XUE XIU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 9, 2021

JUDGMENT AND REASONS: PHELAN J.

DATED: JANUARY 11, 2022

APPEARANCES:

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