

Date: 20070920

Docket: T-1243-07

Citation: 2007 FC 925

BETWEEN:

YU YUAN LIANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

REASONS FOR ORDER

Pinard J.

[1] This is a motion on behalf of the respondent for an Order setting aside the July 27, 2007 Order of Prothonotary Aalto and for an Order quashing the Notice of Application for a review of the decision to refuse the applicant's Canadian citizenship application.

[2] As the question raised herein is vital to the "final issue" in the case, I must conduct a *de novo* review of the merits of the impugned decision and exercise my own discretion.

[3] The letter notifying the applicant of the refusal of her application for Canadian citizenship was mailed on March 16, 2007. The letter was accepted at the post office for delivery to the applicant that same day.

[4] The package containing the refusal letter was delivered to the applicant's address on March 20, 2007, at 5:11 p.m., when an acknowledgement of receipt of the package was electronically signed. The Notice of Application for a review of the decision to refuse the applicant's citizenship application was served on the Minister and filed with the Federal Court on July 6, 2007.

[5] Pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29, and to the Federal Court of Appeal's decision in *Liu v. Minister of Citizenship and Immigration*, 2007 FCA 94, the Minister moved before Prothonotary Aalto for an Order dismissing the latter application on the ground that it was filed outside of the 60-day limit provided for by subsection 14(5) of the *Citizenship Act*. The Minister argued that the time for appealing the decision not to grant the applicant Canadian citizenship had expired, and that in view of the Court of Appeal's decision in *Liu, supra*, the Court lacked the jurisdiction to extend the time.

[6] In an Order dated July 27, 2007, Prothonotary Aalto dismissed the Minister's motion. The Prothonotary held that the sample signature supplied by the applicant differs from the electronic signature provided by the respondent to demonstrate receipt of the letter on March 20, 2007.

[7] The applicant is challenging the decision to refuse her application for Canadian citizenship. Under subsection 14(5) of the *Citizenship Act*, the applicant had 60 days from the date the letter informing her of the refusal was mailed. In *Liu, supra*, the Federal Court of Appeal held that this limitation period is mandatory and that the Federal Court does not have the jurisdiction to extend the time for appealing a citizenship decision.

[8] The evidence before the Prothonotary demonstrates that the letter notifying the applicant of the refusal of her application is dated March 16, 2007. Exhibit “A” (appended to the affidavit of Geeta Ragoonath) shows that the letter was accepted at the post office for delivery to the applicant that same day. Exhibit “A” further shows that the refusal letter was “successfully delivered to the receiver” on March 20, 2007, at 5:11 p.m. Exhibit “B” (appended to the same affidavit) is a copy of the electronic acknowledging receipt of the package.

[9] The applicant’s Notice of Application for a review of the refusal was served on the respondent on July 6, 2007.

[10] Subsection 14(5) of the *Citizenship Act* reads as follows:

(5) The Minister or the applicant may appeal to the Court from the decision of the citizenship judge under subsection (2) by filing a notice of appeal in the Registry of the Court within sixty days after the day on which

- (a) the citizenship judge approved the application under subsection (2); or
- (b) notice was mailed or otherwise given under subsection (3) with respect to the application.

(5) Le ministre et le demandeur peuvent interjeter appel de la décision du juge de la citoyenneté en déposant un avis d’appel au greffe de la Cour dans les soixante jours suivant la date, selon le cas :

- a) de l’approbation de la demande;
- b) de la communication, par courrier ou tout autre moyen, de la décision de rejet.

[11] Here, I must determine whether the applicant's appeal was filed within the 60-day period from the date the refusal letter was mailed. As already pointed out, that letter was mailed on March 16, 2007. Thus, the applicant had until May 15, 2007 to file her appeal. As the Notice of Application containing this appeal was filed on July 6, 2007, about ten weeks after the expiration of the statutory deadline, I am of the view, in light of the Court of Appeal's decision in *Liu, supra*, that this Court does not have the jurisdiction to hear the appeal.

[12] Indeed, in *Liu, supra*, Dé Cary J.A. stated:

[4] The case law is clear: Subsection 14(5) is mandatory and does not give the Federal Court the jurisdiction to extend the 60-day limitation period. See *Re Conroy* (1979), 99 D.L.R. (3d) 642 (F.C.T.D., Cattnach J., at 649); *Re Dunnet* (1979), 102 D.L.R. (3d) 400 (F.C.T.D., Dubé J., at 402); *Re Kelly* (1979), 96 D.L.R. (3d) 470 (F.C.T.D., Cattnach J., at 474); *Re Araujo* (1993), 63 F.T.R. 159 (Joyal J. at 160); *Ovenstone v. Canada (M.C.I.)* (2000), 188 F.T.R. 157 (McKeown J. at 158); *Suzer v. Canada (M.C.I.)*, [2002] F.C.J. No. 525, 2002 FCT 418 (Blanchard J. at paragraph 5).

[5] These decisions are well-founded. The language of the time limitation is clear and unambiguous (see, by analogy, *Adam v. Canada (M.C.I.)*, [2001] 1 F.C. 375 (C.A.), at paragraph 19, and *Wilbur-Ellis Co. of Canada v. Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.)*, [1995] F.C.J. No. 1435, A-431-94). The Federal Court, to use the words of Blanchard J. in *Suzer*, "cannot create any right or arrogate any jurisdiction it does not properly have."

[13] Furthermore, I am of the view that the evidence before the Prothonotary, Exhibits "A" and "B" appended to the affidavit of Geeta Ragoonath, *prima facie* demonstrated that the refusal letter was delivered to the applicant on March 20, 2007. The only evidence to the contrary was simply that contained in the affidavit of Scott Dellaire who stated the following:

1. I am assisting the applicant in the application numbered above. As such, I have personal knowledge of the facts herein deposed.
2. On July 19, 2007 I asked the applicant by fax to verify the signature of the applicant, providing a copy of exhibit "B" of the affidavit of GEETA RAGOONATH.
3. The applicant responded on July 20, 2007 stating that it was not the applicant's signature and forwarded a copy of the signature for the above-name applicant. Attached as Exhibit "A" to this my affidavit is the signature for Yu Yang Liang.
4. I make this affidavit for no improper purpose.

[14] This evidence merely states that the electronic signature acknowledging receipt of the package including the refusal letter was not that of the applicant. This evidence is included in an affidavit made on belief. This affidavit does not explain the failure of the applicant to provide her own evidence as a person having personal knowledge. There is no further admissible evidence stating or indicating that the applicant did not receive the refusal letter on March 20, 2007. The applicant herself does not even deny it.

[15] I therefore, in accordance with Rule 81(2) of the *Federal Courts Rules*, SOR/98-106, draw an adverse inference from the failure of the applicant to provide evidence of the relevant material facts as a person having personal knowledge of them. In that context, I conclude, in light of Exhibits "A" and "B" appended to the affidavit of Geeta Ragoonath filed before the Prothonotary, that the applicant received the refusal letter on March 20, 2007.

[16] Consequently, as the applicant's Notice of Application was filed on July 6, 2007, about ten weeks after the expiration of the statutory deadline, this Court does not have jurisdiction to hear the appeal contained therein, which is statute-barred.

[17] For all the above reasons, the respondent's motion is granted, the Order of Prothonotary Aalto, dated July 27, 2007, is set aside and the Notice of Application for a review of the decision to refuse the applicant's Canadian citizenship application is quashed.

“Yvon Pinard”

Judge

Ottawa, Ontario
September 20, 2007

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1243-07

STYLE OF CAUSE: YU YUAN LIANG v. THE MINISTER OF
CITIZENSHIP & IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 10, 2007

REASONS FOR ORDER: Pinard J.

DATED: September 20, 2007

APPEARANCES:

Max Chaudhary FOR THE APPLICANT

Bernard Assan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Max Chaudhary FOR THE APPLICANT
Barrister & Solicitor
North York, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada