

Date: 20080704

Docket: T-1438-07

Citation: 2008 FC 836

Ottawa, Ontario, July 4, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

GUI FANG LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms Gui Fang Liu's application for citizenship was refused because a citizenship judge found that she did not have an adequate knowledge of either English or French as required by paragraph 5(1)(d) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (Act). This appeal from that decision is dismissed because Ms Liu has not established that the citizenship judge erred.

Legislative Provisions

[2] Subsection 5(1) of the *Act* reads as follows:

5(1) The Minister shall grant
citizenship to any person who

5(1) Le ministre attribue la
citoyenneté à toute personne

qui, à la fois :

- (a) makes application for citizenship;
- (b) is eighteen years of age or over;
- (c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:
 - (i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and
 - (ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;
- (d) has an adequate knowledge of one of the official languages of Canada;
- (e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and
- (f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to
 - a) en fait la demande;
 - b) est âgée d'au moins dix-huit ans;
 - c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :
 - (i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
 - (ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;
 - d) a une connaissance suffisante de l'une des langues officielles du Canada;
 - e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;
 - f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20. [Non

section 20. [emphasis added] souligné dans l'original.]

[3] Also relevant to this appeal are subsection 11(7) and sections 14 and 15 of the *Citizenship Regulations, 1993*, SOR/93-246 (Regulations). The procedure to be followed when an application for citizenship is received is set out in section 11 of the Regulations. Subsection 11(7) of the Regulations deals with requiring the personal attendance of an applicant before a citizenship judge. Section 14 of the Regulations sets out the criteria for determining what constitutes adequate knowledge of one of Canada's official languages. Section 15 of the Regulations sets out the criteria for determining what constitutes adequate knowledge of Canada. These provisions are as follows:

11(7) Where it appears to a citizenship judge that the approval of an application referred to the citizenship judge under subsection (5) may not be possible on the basis of the information available, that citizenship judge shall ask the Minister to send a notice in writing by ordinary mail to the applicant, at the applicant's latest known address, giving the applicant an opportunity to appear in person before that citizenship judge at the date, time and place specified in the notice.

[...]

14. The criteria for determining whether a person has an adequate knowledge of one of the official languages of Canada are, based on questions prepared by the Minister,
(a) that the person

11(7) Lorsque le juge de la citoyenneté saisi de la demande conformément au paragraphe (5) estime qu'il lui est impossible d'approuver celle-ci sans de plus amples renseignements, il demande au ministre d'envoyer un avis écrit au demandeur à sa dernière adresse connue, par courrier ordinaire, l'informant qu'il a la possibilité de comparaître devant ce juge aux date, heure et lieu qui y sont précisés.

[...]

14. Une personne possède une connaissance suffisante de l'une des langues officielles au Canada si, à l'aide de questions rédigées par le ministre, il est établi à la fois :
a) qu'elle comprend, dans cette

comprehends, in that language, basic spoken statements and questions; and

(b) that the person can convey orally or in writing, in that language, basic information or answers to questions.

15. The criteria for determining whether a person has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship are that, based on questions prepared by the Minister, the person has a general understanding of

(a) the right to vote in federal, provincial and municipal elections and the right to run for elected office;

(b) enumerating and voting procedures related to elections; and

(c) one of the following topics, to be included at random in the questions prepared by the Minister, namely,

(i) the chief characteristics of Canadian social and cultural history,

(ii) the chief characteristics of Canadian political history,

(iii) the chief characteristics of Canadian physical and political geography, or

(iv) the responsibilities and privileges of citizenship, other than those referred to in paragraphs (a) and (b).

langue, des déclarations et des questions élémentaires;

b) que son expression orale ou écrite dans cette langue lui permet de communiquer des renseignements élémentaires ou de répondre à des questions.

15. Une personne possède une connaissance suffisante du Canada et des responsabilités et privilèges attachés à la citoyenneté si, à l'aide de questions rédigées par le ministre, elle comprend de façon générale, à la fois :

a) le droit de vote aux élections fédérales, provinciales et municipales et le droit de se porter candidat à une charge électorale;

b) les formalités liées au recensement électoral et au vote;

c) l'un des sujets suivants, choisi au hasard parmi des questions rédigées par le ministre :

(i) les principales caractéristiques de l'histoire sociale et culturelle du Canada,

(ii) les principales caractéristiques de l'histoire politique du Canada,

(iii) les principales caractéristiques de la géographie physique et politique du Canada,

(iv) les responsabilités et privilèges attachés à la citoyenneté autres que ceux visés aux alinéas a) et b).

Facts

[4] On July 13, 2006, Ms Liu made an application for Canadian citizenship. In due course, she was given a notice to appear on December 18, 2006, for the written test of her knowledge of Canada and of the rights and responsibilities of citizenship.

[5] On December 18, 2006, Ms Liu attended for her written test. At that time, a citizenship officer noted Ms Liu's poor English and indicated that an oral hearing before a citizenship judge might be appropriate.

[6] Ms Liu successfully completed the written test. However, on June 21, 2007, Ms Liu was given a notice to appear on July 18, 2007, for an oral hearing. On July 18, 2007, Ms Liu appeared before a citizenship judge and was asked a number of questions in English.

[7] On July 20, 2007, the citizenship judge advised Ms Liu that her application for citizenship was not approved. The judge concluded that Ms Liu did not have adequate knowledge of English and that no special circumstances existed in her case which would justify a recommendation to the Minister that the language requirement be waived.

The Asserted Errors

[8] Ms Liu argues that the decision of the citizenship judge should be set aside on any one of the following four grounds:

1. The citizenship judge was without jurisdiction to conduct an oral hearing to test her comprehension of English. Having passed the written test of her knowledge of Canada, it was not open to the citizenship judge to “re-test” her knowledge of English. Ms Liu contends that nothing in the Act or the Regulations contemplates a citizenship judge conducting another language test. According to Ms Liu, the relevant edition of the Citizenship Manual issued by Citizenship and Immigration Canada “clearly states” that the written test is used to assess both an applicant’s ability to communicate and their knowledge of Canada. That Citizenship Manual “further states” an oral hearing is only for persons failing the written test. Ms Liu notes that she passed the written test. As to the provision found in the current edition of the Citizenship Manual, which permits a citizenship judge to determine an applicant’s language comprehension even if the written test is passed, Ms Liu claims that this change was introduced in March, 2007, after she had passed the written test in December, 2006.
2. In the alternative, if the citizenship judge was entitled to conduct an oral hearing, there was no evidence that the questions put to Ms Liu were "prepared by the Minister" as required by section 14 of the Regulations.
3. Subsection 11(7) of the Regulations requires the citizenship judge to determine when a hearing is required. There is no evidence in this case to show that the decision to require Ms Liu to attend before the citizenship judge was made by the judge.
4. Finally, the reasons of the citizenship judge were inadequate.

[9] In oral argument, Ms Liu did not pursue her argument that the citizenship judge erred by failing to consider whether to exercise the discretion found in section 15 of the Act and confirmed that the threat to invoke section 15 of the Charter, which was made at the conclusion of her memorandum of argument, was an empty one.

Standard of Review

[10] The first three asserted errors put in issue whether the requirements of the Act and Regulations were complied with. In my view, those are questions of law that are reviewable on the standard of correctness. This reflects the importance that the administrative system and procedural safeguards established by Parliament in the Act, and by the Governor-in-Council in the Regulations, be uniformly and consistently applied. It also reflects that these questions of law fall outside of the expertise of a citizenship judge or those who administer the system. See: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraphs 50 and 60.

[11] The last issue inquires whether the requirements of procedural fairness were met. That too is reviewable on the standard of correctness in the sense that no deference is owed to the decision-maker. It is for the Court to determine whether the requirements of procedural fairness were met. See: *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539 at paragraph 100, and *Dunsmuir* at paragraphs 129 and 151.

Consideration of the asserted grounds of error

(1) Could the citizenship judge conduct an oral hearing after Ms Liu passed the written test of her knowledge of Canada?

[12] In my view, the citizenship judge had jurisdiction to conduct an oral hearing after Ms Liu had successfully completed the written test of her “knowledge of Canada and of the responsibilities and privileges of citizenship.” Subsection 5(1) of the Act sets out knowledge of an official language of Canada and knowledge of Canada as separate requirements, which permits, in my view, an independent assessment of each by the citizenship judge.

[13] This conclusion is also supported by the fact that the Regulations also contemplate separate analyses, setting out the criteria for assessing an applicant’s knowledge of French or English in section 14 and prescribing the relevant factors for determining an applicant’s knowledge of Canada in section 15. While both provisions are grounded in questions prepared by the Minister, the manner in which those questions are used is different.

[14] Further, the plain meaning of section 14 of the Regulations is that a person has an adequate knowledge of English where he or she: (a) understands basic spoken statements and questions; and (b) can convey orally or in writing basic information or answers to questions. Subsection 14(a) of the Regulations clearly includes an oral component. A citizenship judge must be satisfied that an applicant can understand basic spoken statements and questions in English.

[15] As for Ms Liu's reliance, at least in her written submissions, upon the Citizenship Manual, contrary to those submissions, the Citizenship Manual in place at the time of Ms Liu's written test provided as follows in section 5.6 of Chapter 4:

Language

Applicants for a grant of Canadian citizenship must have an adequate knowledge of either English or French. This means being able to communicate in everyday situations, such as shopping, using public transport, understanding simple questions, and conveying information reliably.

[...]

Knowledge

Applicants for a grant of citizenship must show that they have an adequate knowledge of Canada and the rights and responsibilities of citizenship. The citizenship test asks questions about voting, Canada's history, geography, and government; and about the rights and responsibilities of Canadian citizenship. All questions are based on the study guide *A Look at Canada*.

[16] On the specific procedure for assessing the language requirement, section 5.9 of Chapter 4 provided in part as follows:

Policy

CIC [Citizenship and Immigration Canada] officials confirm some of the basic information on the application for citizenship with the client at the time of testing. **Where there is an indication that the applicant does not comprehend basic spoken statements and/or questions, this information is to be passed on to the citizenship judge. The judge may then take this information into consideration when determining whether the applicant meets the language requirement pursuant to paragraph 5(1)(d) of the *Citizenship Act*.**

Principles

- *Responsibility* - Judges must approve each adult application before it can be granted. The role of the test administrator is to gather information and evidence regarding a citizenship applicant before a file is referred to a citizenship judge for decision. **CIC officials do not assess language. The test administrator is, however, responsible for identifying to the judge, any person who appears to have no knowledge of one of Canada's official languages, or appears not to comprehend oral statements.**

[...]

What?

At the time of testing, test administrators will verify information pertaining to the citizenship application by asking the client to respond to statements and/or questions related to the basic personal information indicated on the application form.

[...]

How?

Where there is an indication that the applicant does not have a basic command of the language, this information is to be identified on the [Citizenship Application Review Form]. **A notation "L" should be placed on the [Citizenship Application Review Form] to indicate to the judge that the client has been identified as one who may have difficulty communicating in one of Canada's official languages. It is then up to the citizenship judge to indicate whether he or she wishes to conduct an oral interview with the client.** Where a client clearly understood the questions, there is no need to place a note on the file regarding language capability.

Note: Even if the client has passed the written test, it is up to the judge to determine whether a hearing is necessary to assess the applicant's oral comprehension and ability to respond to oral statements. [emphasis added]

[17] Thus, the relevant Citizenship Manual does not support Ms Liu's contention that the citizenship judge lacked jurisdiction to conduct an oral hearing. It contemplated the very process that occurred.

(2) Were the questions put to Ms Liu during the oral hearing prepared by the Minister as required by section 14 of the Regulations?

[18] Five pages of the 318 page certified tribunal record were redacted. The certifying officer wrote:

Please note that pursuant to Rule 318(2), the information on pages 24, 25, 26, 283 and 286 is not included. These pages contain Gui Fang Liu's citizenship language oral assessment and the knowledge test answer sheets of both applicants on file. We object to the release of this information on the grounds that its disclosure would jeopardize the integrity of the language oral assessment and citizenship knowledge tests.

[19] Ms Liu therefore argues that there is no evidence as to what questions were put to her during the oral hearing. She also states that it is "procedurally unfair" for the respondent not to disclose the recorded results of the oral English test.

[20] In my view, these submissions fail to take into account that the burden is upon Ms Liu to establish any error on the part of the citizenship judge. If Ms Liu was of the view that the redactions to the tribunal record were improper, her remedy was to proceed under Rule 318(3) of the *Federal Courts Rules*, SOR/98-106. She cannot fail to challenge the tribunal's objection to disclose information and then rely on the omissions from the tribunal record to argue that there is no evidence to support the conclusion of the citizenship judge. See: *Baltruweit v. Canada (Attorney*

General), [2003] F.C.J. No. 1279 (C.A.) at paragraph 8. (Rule 318 of the *Federal Courts Rules* is set out in the appendix to these reasons.)

[21] Further, the notes of the citizenship judge record:

Does not meet 5(1)(d): unable to provide appropriate response to following questions because she did not understand them. #s 26, 37, 42, 56, 64 and when she did understand a question gave one-two word or short phrased answers.

[22] A reasonable inference to be drawn from that note, pages 24, 25 and 26 of the tribunal record, and the tribunal's objection to disclosure is that the questions put to Ms Liu were standard questions prepared by the Minister.

(3) Was subsection 11(7) of the Regulations complied with?

[23] When Ms Liu attended to complete her written test, an officer noted on the File Requirements Checklist her "poor English (son was translating behind her). I had to tell him to be seated."

[24] Ms Liu argues that there is no evidence to establish that the decision to require her to attend an oral hearing was made by a citizenship judge as required by subsection 11(7) of the Regulations. She places particular reliance upon the fact that the citizenship judge did not sign the Citizenship Application Review Form (CARF).

[25] Relevant extracts from Chapter 4 of the Citizenship Manual are set out above at paragraph 16. Also relevant are sections 1.15, 1.16, 3.4, 3.11, and 3.12 of Chapter 2 of the Citizenship Manual. They are as follows:

1.15. "Whoever hears the parties makes the decision."

It is up to whoever examines the evidence and documents submitted to make the decision.

1.16. Exception

There is one exception that is frequent in government: one person reads, hears and evaluates all the pertinent information and then submits a report to another official who makes the decision. This exception is allowed as long as the decision-maker takes all the information into account. An example of this is found in the citizenship process. Officers gather information, administer citizenship tests and then provide the material evidence to a citizenship judge.

[...]

3.4. Information judge should receive

Only refer an application to a judge when all the needed documents and information are available.

The applicant's file should include, at least:

- the application form;
- the decision form (for a 5(1) grant, the complete Citizenship Application Review Form (CARF));
- the results of the written citizenship test, if relevant;
- any relevant residence documents and information;
- any other documents and/or information that might help the citizenship judge make a decision.

[...]

3.11. Judge says what documents needed

A judge may want a personal interview with an applicant. The judge should say what documents he or she wants the applicant to provide.

3.12. Applicant invited to interview by mail

When a judge requests an interview with an applicant, citizenship officials send a written notice by ordinary mail to the applicant's last-known address:

- giving the applicant a date, time and place for an interview before the judge;
- telling the applicant what documents the applicant should bring to the interview;
- telling the applicant to ignore any notice of a time and place for swearing the oath of citizenship he or she may have received.

[26] Ms Liu has not pointed to any evidence in the tribunal record that is inconsistent with the procedure set out in the Citizenship Manual. At the time of testing, there was an indication that Ms Liu did not understand English. This information was recorded for the citizenship judge. There is no evidence that anyone other than a citizenship judge required Ms Liu to attend a hearing. The fact that the judge did not sign the CARF does not by itself establish that the decision to require Ms Liu to attend an interview was not made by the judge. Section 3.14 of Chapter 2 of the Citizenship Manual only requires that a citizenship judge check the appropriate box and sign the CARF when an application for citizenship is approved.

(4) Were the reasons of the citizenship judge adequate?

[27] Ms Liu complains that: the reasons do not take into account that she passed the written test; the decision letter does not say what oral questions she answered correctly; and, the decision letter cites only four questions that Ms Liu is said not to have been able to answer, but the judge's notes list five questions that she did not answer.

[28] There is no discrepancy between the decision letter and the citizenship judge's notes. The four questions listed in the decision letter were expressly stated to be illustrative – not exhaustive. The balance of Ms Liu's complaints do not detract from the fact that the reasons allowed her to know why her application for citizenship was refused and to consider whether to pursue an appeal. The reasons fulfill the functions for which they are required. The reasons are, therefore, adequate. See: *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (C.A.) at paragraphs 21 and 22.

Conclusion

[29] For these reasons, the appeal is dismissed. No costs are awarded because costs are generally not awarded on citizenship appeals. See: *Canada (Minister of Citizenship and Immigration) v. Kovarsky*, [2000] F.C.J. No. 1544 (QL) at paragraph 12.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The appeal is dismissed.

“Eleanor R. Dawson”

Judge

APPENDIX

Rule 318 of the *Federal Courts Rules* reads as follows:

318(1) Within 20 days after service of a request under rule 317, the tribunal shall transmit (a) a certified copy of the requested material to the Registry and to the party making the request; or (b) where the material cannot be reproduced, the original material to the Registry.

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested.

318(1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

- a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;
- b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.

(4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

FEDERAL COURT
SOLICITORS OF RECORD

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