Date: 20081125

Docket: T-601-08

Citation: 2008 FC 1314

Toronto, Ontario, November 25, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

FENG LI HUANG

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Minister appeals the decision of Citizenship Judge Allaire, dated February 18, 2008, approving the respondent's application for Canadian citizenship. I indicated at the hearing that this appeal would be allowed; these are my reasons for that result.

[2] First, Citizenship Judge Allaire erred in law in providing no reasons for his decision to approve the application for citizenship. This is an error of law. Section 14(2) of the *Citizenship Act*, R.S.C. 1985, c. C-29, requires that a citizenship judge provide reasons for his determination approving or refusing to approve an application for citizenship. It provides as follows:

(2) Forthwith after making a determination under subsection (1) in respect of an application referred to therein but subject to section 15, the citizenship judge shall approve or not approve the application in accordance with his determination, notify the Minister accordingly and provide the Minister with the reasons therefor.	(2) Aussitôt après avoir statué sur la demande visée au paragraphe (1), le juge de la citoyenneté, sous réserve de l'article 15, approuve ou rejette la demande selon qu'il conclut ou non à la conformité de celle-ci et transmet sa décision motivée au ministre.

[3] In this case, the Citizenship Judge merely signed a standard form entitled "Notice to the Minister of the Decision of the Citizenship Judge" on which he checked the box indicating that the application was approved. In my view a form that provides notice of the decision reached, without more, cannot be said to "provide the Minister with the reasons" for the decision, especially in the facts of this case as are set out below.

[4] The form indicates that the respondent had a physical presence in Canada for 1,104 days. It is impossible on the record to arrive at that calculation and I therefore find it to be an erroneous finding of fact made by the Citizenship Judge in a perverse or capricious manner or without regard for the material before him as described in section 18.1(4) of the *Federal Courts Act*.

[5] The record before the Citizenship Judge showed the following information regarding the respondent's absences from Canada.

(a) In his application dated October 1, 2005, the respondent attested that he was absent for 354 days. This would mean that he was physically present in Canada for 1,106 days.

(b) Subsequently, on July 24, 2006, the respondent declared an additional 39 days of absence. This would mean that he was absent for 393 days and physically present in Canada for only 1067 days, less than the 1095 day minimum required by the Act.

(c) The respondent submitted a Residence Questionnaire on November 7, 2006, which lists only 308 absences from Canada – less than any of the previous declarations. Further, the dates of some of the absences differ from those previously provided.

(d) Lastly, the respondent submitted his passport which indicated further lengthy absences from Canada that had not been previously disclosed.

[6] It is impossible to ascertain what evidence was accepted by the Citizenship Judge, what was rejected, or even if he examined the evidence placed before him as to absences from Canada.

[7] The Minister calculates that the respondent has been absent from Canada for a total of 928 days in the requisite four-year period. In my view, that is a reasonable calculation of his absences based on the materials filed by the respondent. Because the Citizenship Judge provided no reasons for his determination to approve the application for citizenship, it is impossible to ascertain which of the three tests he used in determining that the respondent met the residency requirements of the Act.

Failure to specify the test used is an error of law: See *Lam v. Canada (Minister of Citizenship and Immigration)* (1999), 164 F.T.R. 177 (T.D.).

[8] Furthermore, given the respondent's very lengthy absences from Canada, it is not at all certain that he ever established residency in Canada as is required under the Act: See *Re Papadogiorgakis*, [1978] 2 F.C. 208 (T.D.). Again, there is no evidence that the Citizenship Judge turned his mind to this question.

[9] For all of these reasons this appeal is allowed and the decision of Citizenship Allaire is set aside.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal is allowed and the decision of Citizenship Judge Allaire dated February 18, 2008, approving the respondent's application for Canadian citizenship is set aside.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-601-08
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. FENG LI HUANG
PLACE OF HEARING:	Toronto, Ontario
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APPEARANCES:

Bradley Gotkin	FOR THE APPLICANT
No Appearance	FOR THE RESPONDENT

SOLICITORS OF RECORD:

JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT
N.A.	SELF REPRESENTED RESPONDENT