Federal Court Cour fédérale

Date: 20131025

Docket: IMM-7067-12

Citation: 2013 FC 1090

Ottawa, Ontario, October 25, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

FUHUA LIU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a decision by an Immigration Officer [Officer] denying the Applicant's H&C relief under s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA].

II. BACKGROUND

[2] The Applicant is a 57 year old Chinese citizen who has a daughter in Canada whom she gave up for adoption to her late husband's brother and wife (Mr. Wang and Ms. Jiang). The Applicant's biological daughter, Ms. Wang, became a Canadian citizen in 2004. Since then, she has visited her biological mother four times and has sent money on several occasions.

[3] The Applicant worked in accounting at a Chinese company until retirement in 2005. She then began part-time work until she quit work in 2009 to come to Canada. She has since been residing with Ms. Wang under an extension of her visitor's visa.

[4] The Applicant alleges ill health and claims that she will suffer hardship if she must return to China because she is unemployable and has no emotional or financial support in China. Her hardship would be compounded by her separation from her biological daughter and cessation of her volunteer work.

[5] The Officer addressed each of these grounds of hardship and concluded:

- the Applicant remains employable in China;
- there is psychological support in China through relatives and Ms. Wang is likely to continue financial support;
- the termination of ESL training is not a weighty matter and ending community volunteer work is not unusual or disproportionate hardship; and

- despite the attachment to and support of Ms. Wang and her parents, requiring the Applicant to return to China was not catastrophic to their relationship because they had established and maintained their relationship despite separation in the past.

[6] The Officer concluded that the relationship was not, in and of itself, sufficient to warrant an H&C exemption.

III. ANALYSIS

[7] The only issue is the reasonableness of the Officer's decision (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360).

[8] Despite the Applicant's argument to the contrary, the Officer did consider whether the Applicant and Ms. Wang were "*de facto*" family. While the term *de facto* family was not used, the Officer considered the *de facto* family factors as identified in the OP4 Manual. However, being *de factor* family is not sufficient alone to justify an H&C exemption.

[9] Officers are required, in accordance with the decisions in *Hou v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1326, 166 ACWS (3d) 351, and in *Okbai v Canada (Minister of Citizenship and Immigration)*, 2012 FC 229, 405 FTR 315, to consider the factors but not necessarily to reach a specific conclusion.

[10] In this case the Officer recognized the serious and genuine relationship between the Applicant and Ms. Wang but held that it was not sufficient to justify an exemption. Factors such as

the long separation between the Applicant and Ms. Wang and the relatively short period they have spent living together weigh against a finding of a *de facto* family relationship. Moreover, such a finding does not determine the outcome of an H&C application.

[11] The Respondent argued that family reunification is not an applicable objective in the circumstances of the severing of the legal relationship by adoption. The Respondent errs in equating the term "family" in paragraph 3(1)*(d)* of IRPA with the more restricted criteria used for family class permanent residence.

[12] Given the modern acceptance of relationships between adopted children and the biological parents who gave them up for adoption and the easing of restrictions regarding adoption information, the analysis of "family" for immigration purposes is more complex and may require rethinking. However, to do so also raises questions about citizenship granted on the basis of adoption and a number of related policy issues.

[13] For purposes of this case, it is sufficient that the Officer considered the purpose of paragraph 3(1)*(d)*. The Officer addressed the nature of the bond between the Applicant and Ms. Wang, the support of the adoptive parents and the nature and manner of the development and retention of the familial relationship.

[14] It is important to note that family reunification is only one of many factors to be considered in an H&C application. The Officer considered all the relevant factors applicable to this case and

reached a conclusion which is supportable on the evidence. The decision was reasonable and does not justify judicial intervention.

IV. CONCLUSION

[15] The judicial review will be dismissed. There are no questions for certification.

JUDGMENT

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

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7067-12
STYLE OF CAUSE:	FUHUA LIU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 22, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	PHELAN J.
DATED:	OCTOBER 25, 2013

APPEARANCES:

Cecil L. Rotenberg, Q.C.	FOR THE APPLICANT
Sharon Stewart-Guthrie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cecil L. Rotenberg, Q.C. Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT