

Federal Court



Cour fédérale

Date: 20160726

Docket: IMM-4974-15

Citation: 2016 FC 875

Toronto, Ontario, July 26, 2016

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**BINGHONG QIU
GIULAN ZHU
ZHIHENG QIU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS AS TO A CERTIFIED QUESTION

[1] On June 30, 2016, I gave Judgment in this matter, with Reasons, wherein I set aside that part of the decision under review which determined that the Applicants' claim had no credible basis and returned the matter to the Refugee Protection Division with a direction that an amended decision be issued wherein the finding of credible basis was to be removed. I invited the parties to make submissions as to a certified question.

[2] I have received written submissions as to a certified question from Counsel for each of the parties. In brief the Respondent Minister seeks a certified question, the Applicants do not.

[3] The recent amendments to the *Immigration and Refugee Protection Act* and *Regulations* providing for an appeal to the Refugee Appeal Division from a decision of the Refugee Protection Division have created some procedural difficulties including, as is the case here, where a finding of “no credible basis” for a refugee claim is made. I discussed this in my reasons of June 30, 2016.

[4] I proposed a solution in my Judgment of June 30, 2016. Justice Phelan of this Court proposed a different procedure in his decisions in *Mahdi v Canada (MCI)*, 2016 FC 218. In my opinion it is appropriate to seek the guidance of the Federal Court of Appeal in this matter. I will therefor certify the question proposed by the Respondent.

ORDER

THIS COURT ORDERS that the following question is certified.

Does the Federal Court have jurisdiction under paragraph 18.1(3)(b) of the Federal Courts Act to issue a direction requiring the Refugee Protection Division to remove from its decision a finding that there is no credible basis for a claim, thereby granting a right of appeal to the Refugee Appeal Division, which would otherwise be precluded by paragraph 110(2)(c) of the Immigration and Refugee Protection Act?

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4974-15
STYLE OF CAUSE: BINGHONG QIU, GIULAN ZHU, ZHIHENG QIU v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION
ORDER AND REASONS: HUGHES J.
DATED: JULY 26, 2016

WRITTEN SUBMISSIONS WITHOUT PERSONAL APPEARANCES

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FOR THE RESPONDENT