

Federal Court



Cour fédérale

Date: 20171109

Docket: IMM-1931-17

Citation: 2017 FC 1029

Vancouver, British Columbia, November 9, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

AN YUCHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The Applicant has applied for judicial review of a decision dated August 2, 2016 [the Decision] of an immigration officer [the Officer] wherein the Officer deemed that the Applicant's application for a permanent resident card application had been abandoned. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA]. For the following reasons, this application will be dismissed.

I. BACKGROUND & DECISION

[2] The Applicant, and his spouse, have been permanent residents in Canada since 2005. The Applicant's first PR card was valid until the end of 2010. In January 2011, the Applicant was issued his second card, which expired on January 26, 2016. In October 2015, the Applicant applied to renew it, and the Respondent's Case Processing Centre-Sydney [CPC-S] received the application on October 13, 2015. It included the stamped pages of his passport.

[3] Two days later, on October 15, 2017, CPC-S sent a request by email [the Email Request] to the Applicant, asking for additional documents including the blank pages from his passport and other material. CPC-S sent it to the email listed on the Applicant's application. That email belongs to the Applicant's daughter. The Email Request stated that if the Applicant failed to submit the requested material in 180 days, his application would be deemed abandoned.

[4] In February 2017, the Applicant asked about the status of his application.

[5] In an email dated February 28, 2017, the Officer advised that the Applicant's application had been deemed abandoned for non-compliance with the Email Request.

II. STANDARD OF REVIEW

[6] There is no issue that the question of whether a visa officer provided an applicant with a meaningful opportunity to respond is one of procedural fairness, and that the correctness standard applies.

III. THE ISSUES

Did the Officer breach his or her duty of procedural fairness in the processing of the Applicant's application?

IV. DISCUSSION AND CONCLUSION

[7] The Applicant concedes that through the Affidavit of Johanne Beaudoin-Currie, affirmed on July 17, 2017, the Respondent has established on a balance of probabilities that the Email Request was sent and did not bounce back. The Respondent says that the application for judicial review therefore fails.

[8] However, in my view, the proper approach is to also consider whether the presumption of receipt of the Email Request has been rebutted by evidence from the Applicant.

[9] In this case, the Applicant states that the fact that he asked about the status of his application in February 2017, shows that he did not receive the Email Request in October 2015.

[10] This submission might have been persuasive but for the fact that the GCMS notes show that the Applicant asked for urgent consideration of his application based on his need for "urgent travel on November 30, 2015". The Applicant's affidavit was incomplete. He did not disclose or explain this request for urgent processing.

[11] However, the request for urgency suggests to me that the Applicant would have been monitoring his daughter's email carefully at the time of the Email Request and the evidence is that his daughter's email functioned at all relevant times.

[12] In these circumstances, I have concluded that the presumption of receipt has not been rebutted.

[13] Note: I endorse and commend to the Respondent's attention Mr. Justice Boswell's comments in paragraph 41 of his decision In *Patel v Canada*, 2015 FC 900, where he suggests that the Respondent should require email recipients to acknowledge receipt of its emails.

V. CERTIFICATION

[14] No question was posed for certification for appeal.

ORDER

THIS COURT ORDERS that the Application for Judicial Review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1931-17

STYLE OF CAUSE: AN YUCHEN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: NOVEMBER 8, 2017

ORDER AND REASONS: SIMPSON J.

DATED: NOVEMBER 9, 2017

APPEARANCES:

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