Date: 20060407

Docket: T-1423-05

Citation: 2006 FC 448

OTTAWA, Ontario, April 7th, 2006

PRESENT: THE HONOURABLE MR. JUSTICE TEITELBAUM

BETWEEN:

WANG SI HUAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for leave and judicial review under s. 14(5) of the *Citizenship Act*, R.S.C. 1985 c. C-29 (the "Act"), of the decision of a Citizenship Judge, in which the Citizenship Judge refused the applicant's application for Canadian citizenship, under sections 5(1) and 5(4) of the Act. The Citizenship Judge found that the applicant had not provided sufficient evidence of the residential requirement in s. 5(1) of the Act, as her medical record showed large gaps of non-use for periods which the applicant claimed to be in Canada.

[2] The applicant, Wang Si Huan, was born in China on April 16, 1976, and was landed as a permanent resident of Canada in April 2000.

[3] The applicant applied for citizenship on February 20, 2004.

[4] In her application, the applicant stated that she had been absent from Canada for 234 days in the four years preceding the application, and was therefore present for 1167 days. The requirement under s. 5(1) of the *Citizenship Act* is 1095 days.

[5] The Citizenship Judge reviewed the applicant's file, and found that not enough evidence was provided to prove her physical presence in Canada.

[6] The Citizenship Judge cited periods of inaction in the applicant's health record in Ontario as evidence that she was not physically present for the entire time she alleges. The Citizenship Judge iterated that the applicant's, "payment summary shows[s] that [in] the nine months prior to your pregnancy, you only went to the doctor once, and you have other large gaps on non-use from the Minister of Health and Long Term Care".

[7] In addition, the Citizenship Judge found that no material was filed with respect to a favourable recommendation under s. 5(3) or 5(4) of the Act, and, accordingly, the Judge decided that no such recommendation was warranted.

[8] The only issue raised in the present application is whether the Citizenship Judge misinterpreted the facts, and therefore misapplied the legal test for citizenship.

[9] I am of the opinion that the Citizenship Judge's decision was reasonable, and should not be disturbed by this Court. The applicant relies upon the test in *Re Pourghasemi*, [1993] F.C.J. No. 232 (T.D.). In *Pourghasemi*, Justice Frank Muldoon discussed the purpose of an analysis under s. 5(1)(c) of the Act, as follows:

> It is clear that the purpose of para. 5(1)(c) is to ensure that everyone who is granted precious Canadian citizenship has become, or at least has been compulsorily presented with the everyday opportunity to become "Canadianized". This happens by "rubbing elbows" with Canadians in shopping malls, corner stores, libraries, concert halls, auto repair shops, pubs, cabarets, elevators, churches, synagogues, mosques, and temples.

[10] The applicant states that she was only absent from Canada for 250 days in the four year period leading up to her application. However, the jurisprudence, including *Pourghasemi*, above, and *Re Koo* [1993] F.C.J. No. 1107 (T.D.) set out the need for *substantial* physical presence in Canada – the need for some "Canadianization", in the words of Justice Muldoon.

[11] I am satisfied that the Citizenship Judge took the *substantial* physical presence of the applicant into account, along with the objective facts (her medical records), and came to a

reasonable decision. The Citizenship Judge's conclusion that there was insufficient evidence to establish the applicant's presence in Canada was reasonable – the applicant had failed to establish a substantial physical presence. The substance of the presence was referred to as the two part test for citizenship by my colleague Carolyn Layden-Stevenson in *Goudimenko v. Canada* [2002] F.C.J. No. 581, at para. 13:

> At the first stage, the threshold determination is made as to whether or not, and when, residence in Canada has been established. If residence has not been established, the matter ends there. If the threshold has been met, the second stage of the inquiry requires a determination of whether or not the particular applicant's residency satisfied the required total days of residence.

[12] Given the test, set out in *Pourghasemi*, *Goudimenko*, and *Koo*, above, the applicant must establish substantive physical presence in Canada, including the minimum number of days. In concluding that the applicant had not established the physical presence, the Citizenship Judge took into account the applicant's medical history, which was extensive, and included numerous visits to medical offices for ongoing medical reasons. The Citizenship Judge's consideration of the large gaps in the applicant's medical records in Canada was a reasonable consideration, for the purposes of determining physical presence. The applicant, a person with ongoing medical concerns, should not have substantial gaps in her medical record in Canada, and, accordingly, the Citizenship Judge's decision is reasonable, in that it questions whether the claimant's representation of her physical

presence in Canada is accurate. The Citizenship Judge did not misinterpret the fact, or misapply the test in *Pourghasemi*, and, therefore, the Citizenship Judge's findings are reasonable.

[13] In a citizenship appeal under s. 14(5) of the *Citizenship* Act, a reasonable conclusion will not be disturbed by this Court (see for example *Canada (Minster of Citizenship and Immigration) v. Fu*, 2004 FC 60, at para. 7). Accordingly, the applicant's application for judicial review must be dismissed.

JUDGMENT

This application for judicial review is dismissed.

"Max Teitelbaum"

JUDGE

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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