T-1834-96

**IN THE MATTER OF the *Citizenship Act*,
R.S.C., 1985, c. C-29**

**AND IN THE MATTER OF an appeal from the
decision of a Citizenship Judge**

**AND IN THE MATTER OF**

**CHI TAI WONG,**

Appellant

**- AND -**

T-1835--96

**IN THE MATTER OF the *Citizenship Act*,
R.S.C., 1985, c. C-29**

**AND IN THE MATTER OF an appeal from the
decision of a Citizenship Judge**

**AND IN THE MATTER OF**

**CHI YUEN WONG**

Appellant.

**REASONS FOR JUDGMENT**

**GIBSON, J.:**

These appeals were heard before me in Toronto, Ontario on September 3, 1997. The appellants, brothers, appeal decisions of a Citizenship judge, both dated May 29, 1996, refusing their applications for citizenship on the basis that they did not meet the requirement of residence for Canadian citizenship under paragraph 5(1)(c) of

the *Citizenship Act*.[1] The appellants received separate decision letters. The letters are dated before the date of the appellants' hearings before the Citizenship judge which took place on June 10, 1996, thus giving rise to a concern that the decisions may have been made before the appellants had an opportunity to present their cases before the Citizenship judge. Both appellants testified before me that the outcome of their applications appeared, from the moment the hearings commenced, to be mere formalities only.

The content of the two decision letters received by the appellants was virtually identical. Before me, counsel for the appellants acknowledged that the factual situations underlying the appeals of his two clients are essentially identical. That being said, as indicated earlier, both appellants testified before me.

According to the evidence that was before the learned Citizenship judge and before me, the appellants, both citizens of the United Kingdom, arrived in Canada and were landed on February 9, 1992, together with their parents and their sister. Each returned to the United Kingdom on February 25, to continue his education: in the case of Chi Yuen Wong, in dentistry at the London Hospital Medical College; and in the case of Chi Tai Wong, in economics and business at the University of Birmingham. During the brief time that they were in Canada, they attended at a number of Ontario universities to enquire as to the possibility of continuing their studies here in Canada. Both determined that they would incur a substantial penalty in terms of a number of years devoted to requalification, if they wished to pursue their studies here in Canada. In the result, although their expressed preference was to continue their studies in Canada, they felt compelled to return to the United Kingdom.

The appellants' parents purchased a home in Waterloo, Ontario in which each of the appellants established and maintained his own room. Each testified that he maintained all of his personal effects in his room and otherwise at his parents' home, with the exception only of basic clothing requirements for the periods while studying in England. Each lived in student accommodation in England. On the weekends they

[1] R.S.C. 1985, c. C-29 (as amended)

stayed with an uncle. Each returned to the family home in Waterloo for brief Christmas holidays. At other times their educational programs precluded return although Chi Tai Wong testified that he did return to Canada during one summer. That return to Canada was not documented. Both appellants returned with the aid of returning resident permits.

Both appellants testified with great sincerity as to their desire and intention to make Canada their permanent home. At the time of the hearing before me, Chi Tai Wong had completed his studies and was living here in Canada. He was diligently searching for employment but had not yet been successful in his search. Chi Yuen Wong expected to complete his dental studies in London in 1998 when he intended to return to Canada, despite the fact that he apparently would not be permitted to practice general dentistry here. He testified that, if necessary, he would attend a canadian dental school to upgrade his training and establish a specialty that he would be able to practice in Canada.

I referred briefly to the sincerity with which the appellants testified as to their commitment to make Canada their permanent home. Further, it was evident through their testimony that they were deeply committed to cultivating friendships in Canada, expanding their exposure to Canadian culture, interests, practices and customs, and, in short, to thoroughly "canadianizing" themselves. That being said, their opportunities to achieve these ends had, at the date of their applications for Canadian citizenship, been very limited. In the four years preceding the dates of their applications, their documented periods of residency in Canada amounted, in each case, to some 55 days, far short of that required by paragraph 5(1)(c) of the *Citizenship Act* as a condition to a grant of Canadian citizenship.

In *Re Lee*[2], Madame Justice Reed wrote:

> I have no doubt that the appellant would make an excellent citizen of Canada. She has been studying in England since she was sixteen and is presently completing medical studies at the University of Cambridge. She came to Canada on May 24, 1991, along with her parents and siblings. The whole family became landed immigrants on that date. The appellant left two days later to return to the United Kingdom, to continue her studies there.

[2][1996] F.C.J. No. 33 (F.C.T.D.)(QL)

> She applied for citizenship on July 4, 1994. Within the preceding four year period she had resided in Canada for one hundred and sixty-five days. She was short 930 of 1,095 days of residence required by the Citizenship Act . By no stretch of the imagination can it be said that she has satisfied the residency requirements of the Act.
>
> It is argued that her centralized mode of existence is in Canada because her family is here and because the quality of her residence in the United Kingdom has been as a student. I cannot so conclude. She is not a minor. Her chosen profession is one with respect to which it is well-known there are substantial barriers to entry in Canada for persons not trained in Canada. She has been a student in the United Kingdom, now for many years. Perhaps one day she will come to Canada and fulfil the residency requirements. In that case she will be entitled to citizenship. I sincerely hope she does so because, as I have indicated, I am of the view that she would be an excellent addition to our citizenry.

The facts that were before Madame Justice Reed in *Re Lee* were strikingly similar to the facts on these appeals. While it cannot be said in respect of Chi Tai Wong that there are "substantial barriers to entry in Canada for persons not trained in Canada" in his field of study, economics and business, I am satisfied that it can be said that gaining employment on the basis of such studies, without work experience, is not easy here in Canada at the present time. Madame Justice Reed's comments regarding substantial barriers for those who have trained in medical studies outside Canada can certainly be said to apply with respect to Chi Yuen Wong who is in the course of completing his studies in dentistry. I reiterate Madame Justice Reed's opinion with respect to Ms. Lee in respect of the two appellants before me. I am of the view that they would be excellent additions to our citizenry in Canada.

Counsel for the appellants was not familiar with the decision in *Re Lee*. I expressed a preliminary view at the hearing of these appeals that the disposition of them should be the same as in *Re Lee*, that is to say, that the appeals should be dismissed. That being said, I invited counsel to give consideration to Madame Justice Reed's reasons and I provided time to counsel, as well as to the *amicus curiae*, to make written submissions on the question of whether *Re Lee* could be distinguished.

Counsel for the appellants provided written submissions and urged that *Re Lee* be distinguished and that I should adopt the reasoning of MacKay J. in *Re Grace Kar Yan Cheung*[3] where MacKay J. relied in part upon the following passage from *In re*

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[3](10 January 1990), Court File T-691-89 (F.C.T.D.)(unreported)

*Secretary of State of Canada and Abi Zeid*:[4]

> The fundamental principles which emerge from decisions in this area are that it is not necessary to be physically and continuously present in Canada throughout the required period. However, a person who is physically absent must first, before his absence, have established residence in Canada, and then in some way continue his residence in Canada while he is absent abroad.

I cannot conclude that the foregoing statement of principles is of aid to these appellants. I cannot conclude that they established residence here in Canada when they first arrived and spent a mere fifteen days here. To reach a conclusion that the appellants has established residence in such a short period, when taken together with all of the other factors arising on these applications, would not be to give a liberal interpretation to paragraph 5(1)(c) of the *Citizenship Act*, when read in the context of the whole Act. Rather, such a conclusion would, in my view, render that provision essentially meaningless. I am not prepared to go that far. If Parliament intended such an interpretation, it is for it to say so in plainer language than that which it has adopted.

Counsel also referred me to a very recent decision of Madame Justice McGillis in *Re Suet Ki Amy Lee*[5] where a citizenship appeal was granted and *Re Grace Kar Yan Cheung* was relied on. It is not clear whether Madame Justice Reed's decision in *Re Lee* was cited before Madame Justice McGillis.

I remain convinced that the passage from *Re Lee* quoted above is fully applicable to the facts of these appeals. In the result, these appeals are dismissed.

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Judge

Ottawa, Ontario

[4](1983), 4 D.L.R. (4th) 664 (F.C.T.D.)

[5](16 September 1997), Court File T-1682-96 (F.C.T.D.) (unreported).

September 29 , 1997