

Federal Court



Cour fédérale

**Date: 20100825**

**Docket: T-262-10**

**Citation: 2010 FC 841**

**Ottawa, Ontario, August 25, 2010**

**PRESENT: The Honourable Mr. Justice Mandamin**

**BETWEEN:**

**TING TING WANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant, Ms. Ting Ting Wang, applies for a Writ of Mandamus compelling the Minister of Citizenship and Immigration to assess and process her citizenship application.

**Background**

[2] Ms. Wang is a citizen of China who has resided in Canada since June 2000, initially as a student and later as a permanent resident, when she acquired permanent resident status in Canada in September 2005. Ms. Wang applied for citizenship in July 2008 and her citizenship test was

scheduled for March 9, 2009. In her application, Ms. Wang indicated her home address was in Surrey, B.C. V4A 9V4. She also listed a Richmond, B.C. address as a previous residence.

[3] On April 7, 2009, a third party purporting to write in support of Ms. Wang and another applicant for citizenship sent a letter to Citizenship officials, in which she wrote in part:

I am not a consultant. I am the friend of [another applicant] and Ting Ting Wang....The dates of their absences were all true and correct.

Recently, your officer noticed that some applicants' home address [sic] were the same in Surrey but their mailing address were all sent to 7271 Ash Street in Richmond. The reason why people would like to take the test in Surrey because they think they will have an easier oral test and the officer will not check their passport stamps.

...

Ms. [the other applicant] is a University graduate in China and Ms. Ting Ting Wang is a University graduate in New Brunswick... Your office mixed up their files. Please check with your head office in Nova Scotia. They provided all true residency information in Canada especially [the other applicant] honestly declared that she did not live in Canada enough time to apply for the citizenship.

[4] On April 11, 2009, Ms. Wang answered the Residence Questionnaire. She listed her various addresses in Canada from June 2000 to April 2009 as well as her absences from Canada before and after applying for citizenship. By a further letter dated December 11, 2009 Ms. Wang advised she moved to Victoria, B.C.

[5] On January 14, 2010, the Citizenship Officer reviewed Ms. Wang's file and recommended the file be sent to the RCMP for an investigation under paragraph 29 of the *Citizenship Act*, as it appeared to the Officer that Ms. Wang had misrepresented herself with regards to her home address.

[6] On February 5, 2010 Ms. Wang's representative requested an update on the status of Ms. Wang's application for citizenship and expedited processing. The Citizenship Officer responded on February 22, 2010, writing:

This refers to Ms. Wang's application for citizenship. At this stage we are still reviewing her file as it pertains to her residence. Unfortunately at this stage I cannot give a specific time, as to when our review will be completed. However, once we have completed our review, her file will be sent back to the local office for the conclusion of her application.

[7] On May 12, 2010, 20 months after applying for citizenship, Ms. Wang applied for an order of mandamus requiring the Minister to proceed with processing her application for citizenship.

### **Decision Under Review**

[8] The Citizenship Officer reviewing the Applicant's application for citizenship on January 14, 2010 identified the issue concerning another applicant and Ms. Wang as:

Surrey Suspicious addresses. Believe that ... Ms. Wang did not reside at the home address listed on their citizenship application.

[9] The Officer referred to the third party letter and stated:

Would seem that with the information on file that ... Ms. Wang, did not reside at the home addresses listed on their citizenship application. The absences listed on their application may not be all of their declared absences.

[10] The Officer recommended:

File to be sent to the RCMP for a possible Section 29 investigation. Ms Wang ... would seem to have misrepresented themselves with regards to their home address.

### Legislation

[11] The *Citizenship Act*, R.S.C. 1985, C-29 as amended provides:

5(1) The Minister shall grant citizenship to any person who

(a) makes application for citizenship;

...

(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner;

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

a) en fait la demande;

...

c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

....

14. (1) Dans les soixante jours de sa

...

14(1) An application for

(a) a grant of citizenship under subsection 5(1) or (5),

...

shall be considered by a citizenship judge who shall, within sixty days of the day the application was referred to the judge, determine whether or not the person who made the application meets the requirements of this Act and the regulations with respect to the application.

...

17. Where a person has made an application under this Act and the Minister is of the opinion that there is insufficient information to ascertain whether that person meets the requirements of this Act and the regulations with respect to the application, the Minister may suspend the processing of the application for the period, not to exceed six months immediately following the day on which the processing is suspended, required by the Minister to obtain the necessary information.

...

29(2) A person who

(a) for any of the purposes of this Act makes any false representation, commits fraud or knowingly conceals any material circumstances,

...

is guilty of an offence and liable on summary conviction to a fine not

saisine, le juge de la citoyenneté statue sur la conformité — avec les dispositions applicables en l'espèce de la présente loi et de ses règlements — des demandes déposées en vue de:

a) l'attribution de la citoyenneté, au titre des paragraphes 5(1) ou (5);

...

17. S'il estime ne pas avoir tous les renseignements nécessaires pour lui permettre d'établir si le demandeur remplit les conditions prévues par la présente loi et ses règlements, le ministre peut suspendre la procédure d'examen de la demande pendant la période nécessaire — qui ne peut dépasser six mois suivant la date de la suspension — pour obtenir les renseignements qui manquent.

...

29(2) Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de mille dollars et un emprisonnement maximal d'un an, ou l'une de ces peines, quiconque :

a) dans le cadre de la présente loi, fait une fausse déclaration, commet une fraude ou dissimule intentionnellement des faits essentiels;

exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both.

(emphasis added)

[12] The *Citizenship Regulations*, SOR/93-246 as amended provide:

11(1) On receipt of an application made in accordance with subsection 3(1), 3.1(1), 7(1) or 8(1), the Registrar shall cause to be commenced the inquiries necessary to determine whether the person in respect of whom the application is made meets the requirements of the Act and these Regulations with respect to the application.

...

11(5) After completion of the inquiries commenced under subsection (1), the Registrar shall (a) in the case of an application and materials filed in accordance with subsection 3(1), request the citizenship officer to whom the application and materials have been forwarded to refer the application and materials to a citizenship judge for consideration; and

...

11(7) If it appears to a citizenship judge that the approval of an application referred to the citizenship judge under subsection (5) may not be possible on the basis of the information available, that citizenship judge shall ask the Minister to send a notice in writing by mail to the applicant, at the applicant's latest

11. (1) Sur réception d'une demande visée aux paragraphes 3(1), 3.1(1), 7(1) ou 8(1), le greffier fait entreprendre les enquêtes nécessaires pour déterminer si la personne faisant l'objet de la demande remplit les exigences applicables de la Loi et du présent règlement.

...

(5) Une fois que les enquêtes entreprises en vertu du paragraphe (1) sont terminées, le greffier :

a) dans le cas d'une demande et des documents déposés conformément au paragraphe 3(1), demande à l'agent de la citoyenneté à qui ils ont été transmis d'en saisir le juge de la citoyenneté;

...

(7) Lorsque le juge de la citoyenneté saisi de la demande conformément au paragraphe (5) estime qu'il lui est impossible d'approuver celle-ci sans de plus amples renseignements, il demande au ministre d'envoyer un avis écrit au demandeur à sa dernière adresse connue, par courrier, l'informant qu'il a la possibilité de comparaître devant ce juge aux date, heure et lieu qui y sont précisés.

known address, giving the applicant an opportunity to appear in person before that citizenship judge at the date, time and place specified in the notice.

...

(emphasis added)

### **Analysis**

[13] In *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1040, Justice

Dawson wrote:

4 The following criteria must be satisfied before the Court will issue a writ of mandamus:

(a) there must be a public legal duty to act under the circumstances;

(b) the duty must be owed to the applicant;

(c) there must be a clear right to performance of that duty, and in particular the applicant must have satisfied all conditions precedent giving rise to the duty;

(d) no other adequate remedy is available to the applicant;

(e) the order sought must have some practical effect;

(f) in the exercise of its discretion, the Court must find no equitable bar to the relief sought; and,

(g) on a balance of convenience, an order of mandamus should issue.

[14] The Applicant filed her application on April 11, 2008. Her citizenship test was held March 19, 2010. Insofar as the Applicant understands, she has completed all requirements for the

processing of her citizenship application. Her application is *prima facie* complete. The Applicant was not informed of the investigation into her Canadian residence and was left without any idea of how much processing time she could expect to her application to take.

[15] The Applicant submits the Citizenship Officer referred the Applicant's citizenship application to the RCMP without just cause and in doing so has delayed her application for citizenship. The Applicant says the Minister has breached a duty to grant the Applicant citizenship without delay. The Applicant refers to *Conille v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 F.C. 33 (*Conille*) where Justice Tremblay-Lamer stated that when a citizenship judge finds the application meets the requirements for citizenship, the Minister has a public duty to the applicant to grant citizenship. However, in the instant case, the Applicant's documentation has yet to come before a citizenship judge, and therefore the duty to grant citizenship mentioned in *Conille* would not arise in this particular circumstance.

[16] The Applicant submits that the Citizenship Officer has no basis to refer the application to the RCMP for investigation. She submits the Officer breached procedural fairness by relying on a third party letter as grounds for suspecting that the Applicant may not have resided in Surrey as she declared. The Applicant submits that the locations of the Applicant's residences within Canada are not relevant to her citizenship application.

[17] I must observe that the Citizenship Officer's concern is directed at the question of whether the Applicant has attained the required period of residence in Canada rather than residing at



different locations within Canada. This is apparent by his notation: “The absences listed on their application may not be all of their declared absences.” The Applicant’s submissions on the location of residence within Canada do not address the substantive question the Officer identified for investigation.

[18] Since subsection 11 (1) of the *Regulations* provides that the Registrar shall cause inquiries necessary to determine whether an applicant meets the requirements of the *Act*, I should think that this includes a citizenship officer’s request for an RCMP investigation into a question of residence in Canada.

[19] The Applicant also submits that should the Minister wish to investigate, he may only suspend processing of the application for a period of six months pursuant to section 17 of the *Act*, but not beyond six months. The Applicant submits these legislated processes are transparent and governed by the limitations set out in the legislation, unlike the process to which the Applicant is being subjected. The Respondent counters that the Minister has not “suspended” the process.

[20] The language of the provision does not specify the stage in the citizenship application process to which section 17 applies, whether before or after a citizenship judge considers a citizenship application.

[21] In *Platonov v. Canada (Minister of Citizenship & Immigration)*, 2005 FC 569, the applicant brought an application for mandamus because his citizenship application, although complete, was

still in the hands of the Registrar and had not yet been brought before the citizenship judge, even though three years had passed, due to an ongoing security investigation. Justice Harrington recognized the Minister owed a general duty to act with reasonable diligence but held that section 17 is not a mandatory time limit. Justice Harrington wrote:

31 Be it that the scheme of the Act and Regulations is defective in that there is no prescribed delay to complete a security check (*Conille, supra*), or be it that the Minister is asking for an investigation under section 19 of the Act ... I cannot accept that the effect of section 17 of the Act is that the Minister may only suspend the processing of the application for six months. As the Minister pointed out, section 17 comes into play once the application is before a Citizenship Judge. There could, for instance, be some confusion with respect to time actually spent in Canada which might justify a unilateral suspension. The Minister has a duty to check out applicants. A security investigation, which will, by necessity, require inquiries of foreign governments, may well take more than six months. It would be intolerable that persons come to enjoy the wonders of Canadian citizenship simply because time ran out on their security check.

(emphasis added)

[22] Justice Harrington's wording suggests that section 17 comes into play after a citizenship judge has decided and the Minister is obligated to confer citizenship. Here, the Applicant's citizenship application has not yet come before a citizenship judge. Nevertheless, the inclusion of a six month time period in section 17 has to have some purpose. It seems to me that while the overall purpose for a section 17 suspension is to allow the Minister flexibility to investigate when he is not satisfied with information provided, it also imposes a constraint. In my view, once that six month period is exceeded, it would be incumbent on the Minister to explain the delay in processing the citizenship application. Such an explanation provides applicants with an opportunity to assist their

cause by providing additional information, or cooperation with the investigation, or initiating a process for a remedy. More importantly, such a requirement would provide transparency in the citizenship application process.

[23] In any event, section 17 is not of assistance to the Applicant because the inquiry is still in the hands of the Registrar.

[24] In *Conille*, Justice Tremblay-Lamer articulated the issue with respect to over long delay.

She stated:

18 Certainly, some types of investigations may delay processing of citizenship applications.

19 Can they, however, justify an application being indefinitely suspended? In my view, when an applicant *prima facie* meets the requirements listed in subsection 5(1) of the Act, and there is a demand for performance, the authorities involved have a duty to act.

...

20 It is too easy to argue, as does the respondent, that the Registrar has no legal obligation to act as long as the inquiries have not been completed. By that reckoning, an investigation could go on indefinitely and the Registrar would never have a duty to act. The difficulty lies essentially in the fact that there is no time limit provided in the Regulations for completing these inquiries. In fact, the source of the problem is a defective statutory framework. For one thing, the powers of the registrar to direct that an investigation be conducted in order to ascertain that the requirements of the Act have been met are not subject to any temporal or pragmatic parameters, apart from the obligation to await completion of the inquiries provided for in section 11 of the Regulations, and for another, no time limits are placed on the powers of the investigators, in this instance CSIS. Given these circumstances, the processing time may extend well beyond the time required for conducting the investigation. At what point can that time be regarded as unreasonable?

[25] I see no reason why the Registrar ought not to observe a similar requirement for transparency I believe the Minister bears under section 17 where the Registrar has commenced an inquiry delaying a citizenship application from going before a citizenship judge beyond the usual processing time. While there is no time limit set for processing, an indefinite period of time for processing a citizenship application would clearly be excessive.

[26] The constraint set out in section 17 provides a useful guide to address additional delay resulting from the Registrar's inquiries as well. Although the Citizenship Officer is not precluded from requesting an RCMP investigation for more information, it is important that the resulting delay not be unreasonably extended. The provision of an explanation or justification of the delay would mitigate uncertainty and may provide applicants with information which may assist them advance their applications. In the case at hand, the Applicant was not provided with an acceptable explanation for the delay.

[27] If a delay is to be considered unreasonable, then three requirements, as set out in paragraph 23 of *Conille*, must first be met:

1. the delay in question has been longer than the nature of the process required;
2. the applicant is not responsible for the delay; and
3. the authority responsible for the delay has not provided satisfactory justification.

[28] I must first determine whether the delay in question has been longer than the nature of the process required. The Regulatory Impact Analysis Statement that accompanied the *Citizenship*

*Regulations* amendments, in force as of April 17, 2009, states that the current average processing time for proof of citizenship applications is ten months. The processing of the Applicant's citizenship application has now taken sixteen months, significantly longer than the average ten months required for processing of citizenship applications. The Citizenship Officer referred the matter to the RCMP for investigation on January 14, 2010. The additional delay which is relevant to this application arising from investigating the *bona fides* of the Applicant's reported residency is now seven months.

[29] One must also look at the length of the delay, as it would not be appropriate to grant mandamus for a delay that is not excessively longer than the nature of the process required. Is the delay now so long as to be unreasonable? For the sake of comparison, the delays in comparable cases are:

- a fifteen month delay in *Voropaev v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 994, a permanent residence application;
- a three year delay in processing a citizenship application in *Conille* due to a CSIS investigation;
- a five year delay in *Victoria v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 857, another citizenship application.

[30] Each case depends on its own facts. In *Voropaev*, the fifteen month additional delay was not so long as to warrant mandamus while in *Conille*, the three year overall delay was.

Nevertheless, given these comparisons which were all considerably longer, I cannot conclude that a seven month delay in processing the Applicant's application is an unreasonable delay such that it warrants Court intervention by way of mandamus.

[31] Because this situation does not meet the first requirement, I do not have to address the other two. I will note, however, that the Court has been informed that an RCMP inquiry usually requires at least six months from the date of request. That time has now passed and one would expect the processing of the Applicant's citizenship to resume. It is useful to recall Justice Tremblay-Lamer's words in *Conille*:

25 When, as it is in this case, an investigation drags on beyond the normal time for this kind of investigation, it is my opinion that the registrar may inform the investigator that he will consider the investigation to be concluded, unless he is informed, as soon as he considers appropriate, that there are serious reasons to justify continuing it.

[32] Since acquiring citizenship is an important step for the Applicant, I would observe that, without serious reason to justify continuing the investigation, the clock on unreasonable delay has started to run.

### **Conclusion**

[33] The application for mandamus is dismissed without prejudice to a future application for mandamus by the Applicant.

[34] I make no order as to costs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for mandamus is dismissed without prejudice to a future application for mandamus by the Applicant.
2. I make no order as to costs.

“Leonard S. Mandamin”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-262-10

**STYLE OF CAUSE:** TING TING WANG and THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** AUGUST 3, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MANDAMIN, J.

**DATED:** AUGUST 25, 2010

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