Federal Court  Cour fédérale

Date: 20120710

Docket: T-1589-11

Citation: 2012 FC 874

Ottawa, Ontario, July 10, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

HONG TAO CHEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Hong Tao Chen, contests the refusal of a Citizenship Judge to approve her application for citizenship because she did not have an adequate knowledge of one of the official languages of Canada as required under subsection 5(1)(d) of the *Citizenship Act*, RSC 1985, c C-29 (the Act).

[2] At the outset, the Court agreed with the Respondent that Rule 57 of the *Federal Courts Rules*, SOR/98-106 should be applied to convert this application into a proper citizenship appeal brought under subsection 14(5) of the Act as in *Shaikh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1254, [2010] FCJ no 1564 at para 28. I proceeded on that basis throughout the remainder of the hearing.

[3] For the following reasons, the appeal is dismissed.

I. Background

[4] A citizen of China, the Applicant became a permanent resident of Canada on October 27, 2005. She submitted her application for Canadian citizenship on February 19, 2009.

[5] She appeared before a Citizenship Officer for a citizenship test on March 23, 2011 where it was indicated that she would be referred to a Citizenship Judge for an interview to assess her language skills. The interview took place on July 7, 2011.

[6] In a letter dated August 4, 2011, the Citizenship Judge determined that the Applicant did not have an adequate knowledge of English consistent with subsection 5(1)(d). More specifically, the Applicant was unable to:

- Use short sentences to answer simple questions on familiar topics such as "Can you tell me about Guang Zhou, China?"
- Speak in the past tense about something that happened in the past such as "Can you tell me about your first day in Canada."

- Express satisfaction or dissatisfaction by answering such questions as "What do you like about your work."

[7] Similarly, the Citizenship Judge's notes from the interview state "Many questions rephrased and all were asked slowly. Had some answers that were lists of phrases not always matching the question."

[8] The Citizenship Judge also declined to recommend a favourable exercise of discretion on the basis of compassionate grounds (subsection 5(3)) or as a case of special or unusual hardship or to reward services of exceptional value to Canada (subsection 5(4)). She noted that the Applicant "did not present sufficient evidence to me of special circumstances that would justify me in making such a recommendation."

II. Issue

[9] The main issue before this Court is whether the Citizenship Judge committed a reviewable error in reaching the negative decision.

III. Standard of Review

[10] The applicable standard of review for a decision of a Citizenship Judge, including discretionary determinations under subsections 5(3) and 5(4), is now reasonableness (see *Amoah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 775, [2009] FCJ no 947 at para 14).

[11] Based on this standard, the Court will only intervene absent justification, transparency and intelligibility or an unacceptable outcome in light of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

IV. Analysis

[12] The Applicant insists that the Citizenship Judge's decision should be set aside since her performance on the day of the hearing did not reflect her normal English proficiency due to nervousness and inexperience. She points to evidence of having taken English classes and her volunteer work with the Buddhist Compassion Relief Tzu Chi Foundation of Canada.

[13] As a preliminary matter, to the extent that the Applicant is presenting new evidence with her appeal I am unable to consider it. Citizenship appeals are not trials *de novo* and proceed based solely on the record before the Citizenship Judge (see for example *Lama v Canada (Minister of Citizenship and Immigration)*, 2005 FC 461, [2005] FCJ no 577 at para 21; *Hassan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 755, [2002] FCJ no 1049 at para 10).

[14] Moreover, I am not persuaded that the Citizenship Judge erred in reaching her determination. Subsection 5(1)(d) of the Act requires that the Applicant have adequate knowledge of one of Canada's official language, in this case English. The Citizenship Officer raised concerns about the Applicant's language capabilities and referred her to an interview where the Citizenship Judge identified similar issues.

[15] According to section 14 of the *Citizenship Regulations*, SOR/93-246 (the Regulations), adequate knowledge of an official language is to be assessed based on whether (a) a person comprehends basic spoken statements and questions, and (b) can convey orally or in writing basic information or answers to questions. In this case, the Citizenship Judge provided clear reasons for questioning the Applicant's English knowledge that reflects these criteria. The Citizenship Judge recognized the Applicant's inability to use short sentences to answer questions on familiar topics, speak in the past tense about something that happened in the past and express satisfaction or dissatisfaction. Her notes also suggest questions had to be asked slowly and rephrased. The answers provided were mere lists of phrases.

[16] Given the issues identified and criteria for assessing language skills, it seems the Citizenship Judge demonstrated sufficient justification, transparency and intelligibility when concluding that the Applicant did not have the requisite knowledge of English. As Justice Eleanor Dawson acknowledged in *Liu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 836, [2008] FCJ no 1045 at para 14, the "citizenship judge must be satisfied tha[t] an applicant can understand basic spoken statements and questions in English."

[17] While the Applicant may disagree with the Citizenship Judge's factual findings, the role of this Court is not to intervene for the purposes of reweighing the evidence. The Applicant simply has not met the burden of establishing that the Citizenship Judge committed a material error (see *Liu*, above at para 20). To the extent it was before the Citizenship Judge, the evidence of her attendance at English as a second language classes is not determinative. Adequate knowledge must be assessed in light of the criteria in section 14 of Regulations as was done in this case and is

reflected in the reasons given by the Citizenship Judge (see for example similar reasoning in *Re Lai*, [1998] FCJ no 503 at para 4).

[18] In addition, I see no basis for concluding that the Citizenship Judge committed a reviewable error in refusing to recommend the exercise of discretion based on subsections 5(3) or 5(4) of the Act. The Citizenship Judge simply found there was insufficient evidence of special circumstances to do so.

[19] As part of this appeal, the Applicant appears to put forward her volunteer contributions as evidence of services of "exceptional value to Canada" under subsection 5(4). Even if this information was clearly before the Citizenship Judge, it does not follow that this would justify an exercise of discretion as the threshold is high for that type of recommendation. It will only be made in exceptional cases of services to Canada and not to a particular company (see for example *Re MH* (1996), 120 FTR 72, [1996] FCJ no 823 at paras 6-8; *Fan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 746, [2002] FCJ no 1014 at para 13).

[20] The Applicant requests that she be granted a second chance or retest of her English language knowledge. Unfortunately, I cannot assist the Applicant in this regard. Her only option for taking another test is to reapply for citizenship and commence the process once again. I would, however, encourage her to continue to improve her language skills and to re-apply as clearly she is a kind and caring person and a credit to her community.

V. Conclusion

[21] Since the Citizenship Judge's decision was reasonable in the circumstances, the appeal is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this appeal is dismissed.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**T-1589-11**
STYLE OF CAUSE:	**HONG TAO CHEN v MCI**
PLACE OF HEARING:	**VANCOUVER**
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REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
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APPEARANCES:

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