

Federal Court



Cour fédérale

Date: 20121130

Docket: T-283-12

Citation: 2012 FC 1403

Ottawa, Ontario, November 30, 2012

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

JING LIU

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This appeal is brought by the Minister of Citizenship and Immigration [Minister] from a decision of a Citizenship Judge [Judge] to approve the citizenship application of Ms. Jing Liu.

II. BACKGROUND

[2] The Respondent is a citizen of New Zealand who became a permanent resident of Canada on April 17, 2005. She applied for citizenship on November 15, 2009. The parties agree that the

relevant period for calculation of the Respondent's residency in Canada is November 15, 2005 to November 15, 2009.

[3] The most significant factual detail of this case is the discrepancy between the absences recorded in the request to renew permanent residency – 564; and 351 days' absence recorded on her Residence Questionnaire – a difference of 213 days.

[4] This discrepancy was observed by the Judge as established by a handwritten note in the Judge's file – “can't balance difference between PRC declaration & Cit. App”.

[5] The Judge requested further documentation from the Respondent – ICES Traveller History, Ministry of Health Claims and Record of Movement from China. Only the latter document was not supplied.

[6] In the Judge's Notice to the Minister – The Decision of the Citizenship Judge, the Judge simply states that the documentation “satisfied me on the balance of probabilities the Applicant has satisfied the residency, and all of the other requirements of the Act”.

III. ANALYSIS

[7] The prior jurisprudence emanating from the principle of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, is that the residency requirement in a citizenship application is a matter of mixed law and fact for which the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Jeizan*, 2010 FC 323 at para 12, 386 FTR 1).

[8] The Applicant contends that the Judge failed to state which of the residency tests he adopted. While there is no explicit statement, it is evident from the decision that the Judge adopted the quantitative test.

[9] With respect to the adequacy of reasons, while *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses*], has held that adequacy of reasons is not a stand alone grounds for review, inadequate reasons go to the root of “reasonableness” of a decision. The Court is, according to *Newfoundland Nurses*, required to find support for a decision in the record where it can. However, that does not mean the Court must guess as to the reasons or substitute its reasons for those of the decision-maker.

[10] The problem with the decision under review is that the 200+ days gap is not explained away – the Judge does not explain how he reconciled the very problem he identified.

[11] The Respondent did an excellent job of explaining how the Judge could have reconciled the gap but Respondent’s counsel is not the decision-maker. There are real questions remaining about the 200+ days gap which render the decision unreasonable.

[12] In overturning this decision, it would be unfair to expose the Respondent to the vagaries of our residency test “lottery”. It is fairer to return this matter to the same Judge for a redetermination of this case based upon the residency test originally adopted by the Citizenship Judge.

IV. CONCLUSION

[13] Therefore, this appeal is granted upon the terms in the Order.

JUDGMENT

THIS COURT’S JUDGMENT is that the appeal is allowed and the matter is remitted to the same Citizenship Judge for reconsideration in accordance with the Reasons for Judgment, without costs.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-283-12

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

and

JING LIU

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 20, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** PHELAN J.

DATED: November 30, 2012

APPEARANCES:

Mr. Christopher Crighton FOR THE APPLICANT
Ms. Ada Mok

Ms. Shelley Levine FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. WILLIAM F. PENTNEY FOR THE APPLICANT
Deputy Attorney General of Canada
Toronto, Ontario

LEVINE ASSOCIATES FOR THE RESPONDENT
Barristers & Solicitors
Toronto, Ontario