

Date: 20090928

Docket: A-63-09

Citation: 2009 FCA 278

**CORAM: SEXTON J.A.
SHARLOW J.A.
RYER J.A.**

BETWEEN:

CUIPING SONG

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on September 28, 2009.

Judgment delivered from the Bench at Vancouver, British Columbia, on September 28, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on September 28, 2009)

RYER J.A.

[1] This is an appeal from a decision of Paris J. of the Tax Court of Canada (2008-733(IT)I) in which he determined that Ms. Cuiping Song was not entitled to receive the Canada Child Tax Benefit during a period from July 2006 to June 2007. The Tax Court Judge found that the appellant was not an eligible individual, as defined in section 122.6 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “ITA”), on the basis that she was not resident in Canada at the times required by that definition.

[2] The question of whether the appellant was resident in Canada throughout the period from July 2006 to June 2007 is one of mixed fact and law.

[3] The decision of the Tax Court Judge was based on a number of factual findings that are fully described in his reasons. In our view, these factual findings constitute a sufficient basis upon which his conclusion that the appellant was not resident in Canada during the period from July 2006 to June 2007 can solidly rest. Based upon the evidence that was before him, it was open to the Tax Court Judge to make these factual findings and in doing so, we are all of the view that he committed no palpable and overriding error.

[4] For the foregoing reasons, the appeal will be dismissed with costs, including disbursements, fixed at \$1,000.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-63-09

(APPEAL FROM A JUDGMENT OF JUSTICE PARIS OF THE TAX COURT OF CANADA DATED JANUARY 14, 2009, DOCKET NO. 2008-733(IT)I)

STYLE OF CAUSE: Cuiping Song v. Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 28, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (SEXTON, SHARLOW, RYER JJ.A.)

DELIVERED FROM THE BENCH BY: RYER J. A.

APPEARANCES:

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Susan Wong
Whitney Dunn FOR THE RESPONDENT

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