Date: 20080229

Docket: T-2132-06

Citation: 2008 FC 275

Vancouver, British Columbia, February 29, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

Xiao Kui LI

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On October 5, 2006, a Citizenship Judge approved Xiao Kui Li's (the Respondent) application for citizenship (the Decision). The Minister of Citizenship and Immigration (the Applicant) has appealed the Decision under subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29, (the Act) on two grounds: First, that the Judge failed to provide the Minister with reasons for the Decision; and second, that the Judge failed to identify and apply any test for residency in his decision. The Applicant seeks an Order to set aside the Decision of the Citizenship Judge.

[2] The Respondent failed to appear at the hearing of this application. The record establishes that the Respondent was personally served with the Notice of Application and did not file an appearance. Notwithstanding the Respondent's failure to file an appearance, notice of the hearing was given to the Respondent in accordance with the *Federal Courts Rules*. I was therefore satisfied that the hearing could proceed in the absence of the Respondent.

[3] The Applicant contends that the Respondent had not provided sufficient documentary evidence to show that she had been in Canada for the requisite 1095 days prescribed under the Act during the relevant three-year period, namely September 2, 1999 to September 3, 2003. The Respondent was absent from Canada during the relevant period for 355 days. She spent this time essentially working in the United States. The Applicant argues that the Respondent's own evidence indicates that she had applied for and received landing in the United States during the relevant period. Her stated reason for leaving Canada on September 1, 2003, was to permanently reside in the United States. The record further establishes that the Respondent became a permanent resident of the United States on October 24, 2002. The Applicant contends that the Respondent failed to provide sufficient documentation evidencing her continued residence in Canada.

[4] On July 15, 2005, the Respondent was interviewed by a Citizenship Officer. Following the interview, the Officer was not convinced the Respondent's evidence showed an on-going presence in Canada and concluded that her ties to the United States are stronger. The Officer further concluded that the Respondent had not accurately declared all of her absences from Canada in the

relevant period. The Officer referred the Respondent for a hearing with the Citizenship Judge to determine if she had satisfied the residency requirements of the Act.

[5] The Citizenship Judge approved the Respondent's application without providing any reasons for the Decision. The requirement to provide reasons to the Minister is found in subsection 14(2) of the Act, which states:

14. (2) Forthwith after making a determination under subsection (1) in respect of an application referred to therein but subject to section 15, the citizenship judge shall approve or not approve the application in accordance with his determination, notify the Minister accordingly and provide the Minister with the reasons therefor.	14. (2) Aussitôt après avoir statué sur la demande visée au paragraphe (1), le juge de la citoyenneté, sous réserve de l'article 15, approuve ou rejette la demande selon qu'il conclut ou non à la conformité de celle-ci et transmet sa décision motivée au ministre.

[6] The Act imposes a statutory obligation on citizenship judges to provide reasons for their decisions. The reasons must be sufficient to enable the appeal court to discharge its appellate function. The jurisprudence has established that a citizenship judge commits a reviewable error by failing to provide sufficient reasons for a decision. See: *Seiffert v. Canada (M.C.I.)*, [2005] F.C. J. No. 1326, at para. 9 and *Ahmed v. Canada (M.C.I.)*, [2002] F.C.J. No. 1415, at para. 12.

[7] In the instant case, the Notice of the Decision to the Minister, under the heading "Reasons", is left entirely blank. Since there are no other statements or endorsements which explain the

Citizenship Judge's thought process, I am left to conclude that the Judge failed to discharge his duty under subsection 14(2) of the Act. In my view, the Citizenship Judge committed a reviewable error by not providing reasons for having approved the Respondent's application to the Minister. In the circumstances of this case, and given the concerns raised by the Citizenship Officer who conducted the interview of the Respondent, reasons should have been provided describing the documents submitted by the Respondent and their impact on the Decision. The reasons should have also indicated the residency test the Judge used and explained why he determined that the residency requirements in section 5 of the Act had been met.

[8] For the above reasons, the appeal will be allowed. The Decision will be set aside and the matter referred back for reconsideration before a different citizenship judge to be decided in accordance with these reasons.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that, for the above stated reasons, the appeal is allowed. The Decision is set aside and the matter is referred back for reconsideration before a different citizenship judge to be decided in accordance with these reasons.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2132-06
STYLE OF CAUSE:	MCI v. Xiao Kui LI
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	February 27, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	BLANCHARD J.
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APPEARANCES:

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