

Federal Court



Cour fédérale

**Date: 20161017**

**Docket: IMM-1534-16**

**Citation: 2016 FC 1155**

**Vancouver, British Columbia, October 17, 2016**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**SHU-CHING CHUNG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
& IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] This application for judicial review was scheduled to be heard on October 17, 2016. It did not proceed, however, as a result of concerns with respect to the conduct of the individual who was purporting to act on the applicant's behalf.

I. Background

[2] On March 18, 2016, the applicant commenced an application for judicial review with respect to a report issued by an immigration officer under subsection 44(1) of the *Immigration*

*and Refugee Protection Act*. It appeared from the applicant's application for judicial review that she was representing herself.

[3] By Order dated July 21, 2016, leave was granted in this matter, and the date for the hearing of the applicant's application was fixed for October 17, 2016.

[4] On September 26, 2016, the applicant brought a motion seeking leave of the Court to be represented by an unidentified "non-lawyer representative/interpreter". According to the affidavit of Benjamin Min-Yih Chiang, which was filed in support of the applicant's motion, this unidentified individual "is not a lawyer but is able to communicate fluently in English and offer, *inter alia*, interpretation assistance".

[5] By Order dated October 7, 2016, Prothonotary Lafrenière dismissed the applicant's motion. Prothonotary Lafrenière understood from the applicant's motion materials that she was seeking permission to be represented by Mr. Chiang. He noted, however, that no information had been provided regarding Mr. Chiang's relationship to the applicant, nor was any information provided with respect to his experience or qualifications to act on behalf of another party. Prothonotary Lafrenière was also concerned that the applicant had waited until the last minute to seek a representative. The motion was dismissed without prejudice to the applicant's right to seek permission from the hearing judge to be assisted by an interpreter.

[6] On October 13, 2016, a document entitled "Notice of Appointment of Solicitor" was served on counsel for the respondent, and the document was filed with the Court the following day. The document states that "The Applicant, Ms. Shu-Ching Chung, formerly acting in person, has appointed Vivian Chiang as solicitor of record". This document was signed by Ms. Chiang.

[7] On October 14, 2016, counsel for the respondent wrote to the Court, taking issue with the form of the document. Of greater concern, however, was counsel's statement that "there is no V. Chiang registered as a practicing lawyer with the Law Society of British Columbia".

[8] Later in the day on October 14, 2016, Ms. Chiang wrote to the Court stating that "The Law Society of BC's website contains a section called 'Lawyer Lookup'. If Mr. Nash performed some simple checking, it would be easily verifiable that I am listed as a 'lawyer' in the Law Society's directory". Ms. Chiang also made reference to correspondence that she had received from the Canadian Bar Association as proof of the fact that she was a lawyer.

[9] Although she was not gowned, Ms. Chiang appeared at the hearing on October 17, 2016, prepared to act as counsel for the applicant. However, counsel for the respondent provided the Court with a hard copy of the results of a 'Lawyer Lookup' search of the Law Society of British Columbia's lawyer database. This search revealed that Ms. Chiang's status with the Law Society of British Columbia is that of "Former member".

[10] In response to questions from the Court regarding her status, Ms. Chiang made reference to ongoing Law Society disciplinary proceedings in which she was involved. She also stated that she had looked at the Law Society's website in order to check her status, and had seen her name listed in the database. From this, I understand her to be suggesting that she thought that she was still a member of the British Columbia Bar.

[11] Ms. Chiang acknowledges that she did not, however, click on the link to her name in the Law Society database. Had she done this, it would have shown that her status was that of a "Former member". More importantly, Ms. Chiang advised the Court that she had not paid her

fees to renew her Law Society membership when it came due in January of 2016, and that she is not a member of any other Canadian Law Society.

[12] Ms. Chiang explained that although she was not identified by name in the motion materials, the purpose of the applicant's September 26, 2016 motion was to allow her to act as a non-lawyer representative for the applicant. As noted earlier, the motion materials state that the applicant was seeking leave to be represented by an unidentified "*non-lawyer* representative/interpreter" [my emphasis]. This suggests that Ms. Chiang was aware of the fact that she is not currently a lawyer in good standing.

[13] When the applicant's motion was dismissed, Ms. Chiang then served and filed her "Notice of Appointment of Solicitor".

[14] At the hearing, I expressed concern about the fact that Ms. Chiang had served and filed a document in which she was purporting to act as counsel for the applicant, and had appeared in this Court prepared to act as counsel for the applicant, when she is not currently a member in good standing of a Canadian Bar. Ms. Chiang's response was that she was just trying to help the applicant.

[15] Rule 119 of the *Federal Courts Rules*, S.O.R./98-1 provides that individuals may act in person, or be represented by a solicitor. Ms. Chiang is not currently a practicing lawyer, and is thus not entitled to represent anyone in this Court.

[16] That said, as Prothonotary Lafrenière noted in his October 7, 2016 ruling, the Court does have the inherent discretion to allow a person other than a lawyer to represent a litigant.

However, such discretion is to be exercised "cautiously and sparingly".

[17] I am not prepared to exercise my discretion to allow Ms. Chiang to represent the applicant in this case, as I am not persuaded that she is a suitable representative for the applicant, based on her conduct in this matter. Ms. Chiang has admitted that she filed a document with this Court in which she identified herself as a solicitor of record, and that she appeared in the Federal Court as counsel for the applicant when she knew that she had not paid her Law Society fees for 2016.

[18] What is particularly troubling is that when asked about this, Ms. Chiang did not appear to understand the gravity of this situation.

## II. Conclusion

[19] As a result, the hearing of the applicant's application for judicial review will be adjourned to a date to be set by the Office of the Judicial Administrator. The date will be peremptory to the applicant.

[20] The applicant can appear at her hearing in person, with or without the aid of an interpreter. The applicant should, however, be aware that it is up to her to obtain the services of a suitable interpreter for the hearing. The applicant may also be represented in this matter by a solicitor, provided that the solicitor is currently a member in good standing of a Canadian Law Society. The applicant may not, however, be represented by a non-lawyer in this matter.

**ORDER**

**THIS COURT ORDERS THAT:**

1. This application for judicial review is adjourned to a date to be set by the Office of the Judicial Administrator, which date will be peremptory to the applicant; and
2. The applicant may represent herself in this proceeding or may be represented by a solicitor, provided that the solicitor is a member in good standing of a Canadian Law Society. The applicant may not, however, be represented by a non-lawyer.

“Anne L. Mactavish”

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Judge

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

**DOCKET:** IMM-1534-16

**STYLE OF CAUSE:** SHU-CHING CHUNG v THE MINISTER OF  
CITIZENSHIP & IMMIGRATION

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

**DATE OF HEARING:** OCTOBER 17, 2016

**ORDER AND REASONS:** MACTAVISH J.

**DATED:** OCTOBER 17, 2016

**APPEARANCES:**

Vivian Chiang

FOR THE APPLICANT

Brett Nash

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney  
Deputy Attorney General of Canada  
Vancouver, British Columbia

FOR THE RESPONDENT