Federal Court  Cour fédérale

**Date: 20180529**

**Docket: IMM-4552-17**

**Citation: 2018 FC 554**

**Ottawa, Ontario, May 29, 2018**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**YINTAO WU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The Applicant, Ms. Yintao Wu, is a citizen of the People's Republic of China. In May 2015, she submitted an application for permanent residence in Canada as a member of the self-employed person's class. The Applicant was assisted by a licensed immigration consultant [Consultant] based in Quebec, Canada.

[2] On July 25, 2017, an Immigration Officer at the Consulate General of Canada in Hong Kong [Officer] sent a letter requesting that the Applicant and her spouse attend an interview on August 21, 2017. The letter was sent to the e-mail address provided by the Applicant in her "Use of a Representative" form and her application for permanent residence.

[3] On August 29, 2017, the Officer rejected the application for permanent residence. The Officer indicated that as the Applicant had failed to attend the scheduled interview, her application was assessed on the basis of the material available on file. The Officer determined that the Applicant did not qualify for a permanent resident visa in the self-employed person's class. The Officer's decision was communicated to the Applicant's Consultant using the same e-mail address as the one used to request the interview.

[4] On September 4, 2017, the Applicant's Consultant sent an e-mail to the visa office in Hong Kong advising that the letter requesting an interview was never received. He also requested that the Applicant's file be reopened so that she could be granted another opportunity to attend an interview. Two (2) days later, the visa office in Hong Kong acknowledged receipt of the Applicant's request for reconsideration and indicated that if the delegated official decided to reopen the file, the Applicant and her Consultant would be contacted with information on the next steps. The Applicant and her Consultant have not received any further communication from the visa office.

[5] The Applicant now seeks judicial review of the decision dated August 29, 2017 refusing her application for permanent residence as a member of the self-employed person's class. The

Applicant contends that it was procedurally unfair to reject her application as she never received the July 25, 2017 e-mail requesting her to attend the interview.

[6] The determinative issue in this case is whether the Applicant or the Respondent must bear the consequence of the purportedly failed communication.

[7] The jurisprudence concerning failed communications requires that the Respondent first establish on a balance of probabilities that the communication (e-mail or otherwise) was correctly sent to the Applicant. Once that is established, there is a presumption that the communication was received by the Applicant. However, the Applicant may rebut this presumption by demonstrating with credible evidence that the communication was not received (*Fakeh v Canada (Citizenship and Immigration)*, 2017 FC 547 at para 10; *Chandrakantbhai Patel v Canada (Citizenship and Immigration)*, 2015 FC 900 at paras 33, 40, 42 [*Chandrakantbhai Patel*]; *Patel v Canada (Citizenship and Immigration)*, 2014 FC 856 at para 16; *Ghaloghlyan v Canada (Citizenship and Immigration)*, 2011 FC 1252 at para 8 [*Ghaloghlyan*]; *Zare v Canada (Citizenship and Immigration)*, 2010 FC 1024 at para 37; *Zhang v Canada (Citizenship and Immigration)*, 2010 FC 75 at para 14; *Kaur v Canada (Citizenship and Immigration)*, 2009 FC 935 at para 12; *Yang v Canada (Citizenship and Immigration)*, 2008 FC 124 at para 14).

[8] Upon review of the file, I am satisfied that the Respondent has established on a balance of probabilities that the e-mail requesting an interview was properly sent to the Applicant.

[9] A copy of the e-mail communication is contained in the Certified Tribunal Record [CTR] at page 16, and the request for an interview is included in the e-mail itself. The e-mail clearly demonstrates that it was sent on July 25, 2017 to the Consultant's e-mail address, which had been provided by the Applicant in her application for permanent residence and on her "Use of a Representative" form. The latter form explicitly authorizes Citizenship and Immigration Canada to transmit information to the e-mail address provided.

[10] Moreover, the Global Case Management System [GCMS] notes pertaining to the Applicant's file indicate that the interview convocation letter was sent to the Applicant on July 25, 2017. They also contain an entry from an officer who reviewed the file on August 25, 2017, confirming that the e-mail address in the GCMS was the same as the address declared on the "Use of a Representative" form. Lastly, there is yet another GCMS entry, made by the Officer reviewing the Applicant's reconsideration request on September 14, 2017, who writes that:

> Our email systems show that an email was sent on 25July2017(sic) at 1:05 pm, local time to [Consultant's e-mail] advising of the interview. There was no bounce-back or undeliverable message. This is the same email address from which we have rec'd the current request for reconsideration and there is in the address etc. Based on my review, there is no error in fact or law. The applicant was notified of interview at the valid contact information on file and failed to appear.
> No reply required as standard no recon reply already sent.

[11] While it would have been useful for the Respondent to file an affidavit from the Officer who sent the e-mail communication on July 25, 2017, and to include a printout of his computer's sent box as suggested by Justice Douglas R. Campbell in *Ghaloghlyan*, the failure to do so is not determinative. In the same decision, Justice Campbell recognized that other types of evidence might suffice in proving that a communication was sent (*Ghaloghlyan* at para 10).

[12] In the present case, the Respondent filed an affidavit from a paralegal in the Department of Justice attaching a copy of the GCMS notes pertaining to the Applicant. The GCMS notes are also contained in the CTR. In addition to the initial entry indicating that the e-mail was sent, two (2) other officers confirm that the e-mail communication was properly sent and that there was no bounce back or message indicating that it was undeliverable. The accuracy of these notations in the GCMS notes has not been challenged and a copy of the e-mail communication is in the CTR. On the basis of the record before me and in the circumstances of this case, I am satisfied that the Respondent has met its burden of establishing, on a balance of probabilities, that the e-mail communication was correctly sent.

[13] The Applicant, on the other hand, has failed to rebut the presumption that the e-mail communication was received. I have considered the Applicant's statement that she did not receive the e-mail requesting her attendance. However, it is insufficient to merely state that the e-mail in question was not received (*Chandrakantbhai Patel* at para 33). The Applicant did not adduce any evidence, including from her Consultant, that the e-mail address was unreliable, inactive or malfunctioning. In other words, there is nothing on the record that would leave me to believe that the e-mail communication was not received by her Consultant.

[14] In my view, the facts of this case are distinguishable from those in *Chandrakantbhai Patel* where the Respondent had failed to provide, and the CTR did not include, a copy of the alleged e-mail or a copy of the request letter bearing the same date (*Chandrakantbhai Patel* at paras 15, 42). That is not the case here.

[15] They are also different from those found in *Abboud v Canada (Citizenship and Immigration)*, 2010 FC 876 [*Abboud*] and in *Asoyan v Canada (Citizenship and Immigration)*, 2015 FC 206 [*Asoyan*], upon which the Applicant relies in her written memorandum. In *Abboud*, the Court found that the automated replies received "after the e-mail had been sent should have raised doubts in the officer's mind that the communication had failed" (*Abboud* at para 15). Similarly in *Asoyan*, the Court found that the applicant's inquiry for an acknowledgment that her application had been received by the Sydney Centralized Intake Office on March 4, 2013 should have been an indication to the visa officer that she had not received the earlier e-mail requesting that she provide updated forms within a specified period of time (*Asoyan* at para 18). There is no such indication in the case at hand.

[16] Accordingly, as the Respondent has demonstrated on a balance of probabilities that the e-mail communication was sent to the correct e-mail address provided by the Applicant and the presumption of receipt has not been rebutted, the Applicant must bear the burden of the failed communication.

[17] For all of these reasons, the application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

**JUDGMENT in IMM-4552-17**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-4552-17 |
| **STYLE OF CAUSE:** | YINTAO WU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MAY 23, 2018 |
| **JUDGMENT AND REASONS:** | ROUSSEL J. |
| **DATED:** | MAY 29, 2018 |

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| Alex C. Kam | FOR THE RESPONDENT |

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