

Federal Court



Cour fédérale

Date: 20240726

Docket: IMM-6076-23

Citation: 2024 FC 1189

Toronto, Ontario, July 26, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

LINGHUA YU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Linghua Yu [the Applicant], brings this application for judicial review to set aside a decision of the Refugee Protection Division [RPD] dated December 8, 2021, allowing the Minister's application to cease the Applicant's refugee protection [the Decision].

[2] The Applicant swears in her affidavit that she did not receive the notice to appear for the RPD hearing [Notice to Appear] and requests that the Decision be set aside and an order be made directing a new hearing with notice to her lawyer. However, the Respondent has shown that the Notice to Appear was sent to the same address at which the Applicant has acknowledged receipt of other documents before and after the Notice to Appear, and the Applicant has made no claim that her address changed.

[3] I appreciate that the consequences of this order are harsh, however, the Applicant has failed to discharge the presumption of her receipt of the Notice to Appear which means that this application must be dismissed.

II. Facts

[4] On January 27, 2000, the Applicant was determined to be a Convention refugee or a person in need of protection. She subsequently became a Permanent Resident in November 2000.

[5] On May 31, 2021, the Minister of Immigration, Refugees and Citizenship made an application to cease her refugee protection on the basis that she had travelled to China eight times for a total of almost 300 days on a Chinese passport she applied for. The application was served upon the Applicant at her home address.

[6] On June 2, 2021, the Immigration and Refugee Board [IRB] mailed correspondence [the IRB correspondence] to the Applicant using the Applicant's home address advising of its receipt

of the Minister's application to cease the Applicant's refugee protection [the Minister's Application]. The Applicant confirmed receipt of the IRB's correspondence and the Minister's Application and responded to it by requesting a Mandarin interpreter.

[7] On November 10, 2021, the IRB sent a Notice to Appear to the Applicant and to the Minister's Counsel. The Notice to Appear was addressed to the Applicant and sent to the same home address as the IRB correspondence and the Minister's Application. The Notice to Appear advised that the hearing before the RPD was scheduled to proceed virtually on December 8, 2021.

[8] The Applicant did not appear at the hearing. The RPD member recessed for 30 minutes to allow her additional time to appear. When the Applicant failed to do so, the member rendered a decision in her absence. The RPD granted the cessation application, concluding the test for cessation had been met. The Applicant received a copy of the RPD's decision.

[9] The Applicant states in her affidavit that she did not receive the Notice to Appear.

III. Issues and Standard of Review

[10] The sole issue raised by the Applicant on this application is whether there was a breach of procedural fairness based on a failure to give notice to the Applicant resulting in the loss of her opportunity to respond to the case against her.

[11] Questions of procedural fairness are reviewed on a standard akin to the correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

IV. Analysis

[12] The Applicant makes very brief written submissions relying on the principle that the rules of natural justice require that the Applicant receive adequate notice, which she did not receive and as such, she did not have the opportunity to be heard and to present her case. The Applicant has cited no judicial authority to support her position. She relies solely on her sworn statement that she did not receive the Notice to Appear.

[13] The Respondent highlights that at the bottom of the Notice to Appear, there is a reference to the document having been transmitted by regular mail to the Applicant, at an address that is not disputed is the correct address for the Applicant. Such confirmation has been found by this Court to constitute sufficient proof that a document was sent (*Serrahina v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 477 at para 6). Given that the Notice to Appear was sent to the Applicant's most updated address on file where the Applicant has confirmed receipt of other documentation both before and after the date of the Notice to Appear, I am satisfied that a presumption of delivery arises and the risk of non-delivery rests with the Applicant whose statement that she did not receive it is insufficient to rebut the presumption of delivery (*Ghaloghylan v Canada (Citizenship and Immigration)*, 2011 FC 1252 at para 8). Accordingly, this application must be dismissed.

[14] While I am sympathetic to the Applicant who at the time was an unrepresented litigant and whose current counsel states in the Notice of Application that she did not understand the significance of the documents she received, this does not excuse her failure to take steps to respond to the Minister's Application. In keeping with the Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons*, (September 2006) as endorsed by the Supreme Court of Canada (*Pintea v Johns*, 2017 SCC 23 at para 4), the Court's discretion to assist self-represented litigants does not extend to rectifying substantive legal deficiencies.

V. Conclusion

[15] For the reasons outlined, this application is dismissed. No question for certification was proposed and none arises.

JUDGMENT in IMM-6076-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6076-23

STYLE OF CAUSE: LINGHUA YU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: JULY 25, 2024

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: JULY 26, 2024

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