



T-1451-96

IN THE MATTER OF THE *CITIZENSHIP ACT*,
R.S.C. 1985, c. C-29

AND IN THE MATTER OF an appeal from the
decision of a Citizenship Judge

AND IN THE MATTER OF

HUI, Hung Kim

Appellant

- AND -

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IN THE MATTER OF THE *CITIZENSHIP ACT*,
R.S.C. 1985, c. C-29

AND IN THE MATTER OF an appeal from the
decision of a Citizenship Judge

AND IN THE MATTER OF

KUNG, Han-Yung Kristina

Appellant

REASONS FOR JUDGMENT

McKEOWN J.

This matter was heard before me in Toronto on March 11, 1997. The appellants, husband and wife, appeal the decision of a citizenship judge dated May 20, 1996, refusing their application for citizenship on the basis that they did not meet the requirement of residence for Canadian citizens under paragraph 5(1)(c) of the *Citizenship Act*. The issue is whether or not the appellants satisfied the residence requirements enunciated in paragraph 5(1)(c). The appellants were sent separate refusal letters; however, the content of the letters is practically identical and the situation with respect to the two appellants is the same. Only the husband testified before me.

The appellant, Han-Yung Kristina Kung, was born in Hong Kong on December 24, 1949. The appellant, Hung Kim Hui was born in Hong Kong on February 6, 1946. The appellants have two children, 17 and 18 years old. Both appellants entered Canada as landed immigrants on February 8, 1991. Their absences from Canada total 1115 days, and accordingly, they are 740 days short of the minimum requirement of 1095 days.

The citizenship judge set out the facts presented at the hearing and concluded that the appellant did not demonstrate a centralized mode of living in Canada. However, certain evidence was presented before me which indicated that the intention of the appellants to centralize their mode of living in Canada was a true intention.

The appellants sold their business assets in Hong Kong prior to coming to Canada as landed immigrants. However, the terms of the sale required that the appellants work for the new owners for a period of three years. The above mentioned three-year period was subsequently extended by two years because the company moved from Hong Kong to China. The contract with their former company terminated in December of 1995. Since that time the appellants have continued to engage in worldwide business but there is no concentration in any one place such as before. The appellant husband has established a contract with a Quebec based company with over 140 retail stores across Canada which requires him and his wife to spend a certain amount of time within Canada. The appellant husband also has established contracts with retail operations in Germany, in particular.

When the appellant husband first visited Canada ten years ago, he established a company in Canada, Caroco Enterprises Limited, to which he transferred all his worldwide property and personal assets when he became a landed immigrant in Canada in 1991. It is an investment company and he has been developing business within the company. I have already referred to the businesses he has established with a Quebec company and in Germany. He has substantial investment in this company.

The appellants bought a house in North York in 1992 which is still their only residential property in the world. They have no other residential properties. The appellants have Ontario health cards, credit cards, bank cards, social insurance numbers and life insurance. The appellants' son is a boarding student at Upper Canada College and has been there since 1993. The appellants' daughter was a boarding student at The Bishop Strachan School and now lives at home but has been attending The Bishop Strachan School since 1993.

The appellant husband is an avid reader of the Globe and Mail and MacLeans and was well acquainted with current issues in Canada such as the mega city and Eaton's reorganization. The appellant husband is a member of the PTA at the two schools and is a rotarian who attends the Willowdale branch of the Rotary Club on Thursdays if he is in town. The husband's parents and brother are in Canada, his wife's relatives are in Canada and neither has any family in Hong Kong. The appellant husband indicated he disliked travelling but that since he was a business person, it was necessary for him to travel in order to earn a living.

I am satisfied that the appellants have met the requirements of paragraph 5(1)(c) of the *Citizenship Act* and have a residence in Canada as required thereunder.

In light of the establishment of residence, it is not necessary for me to deal with whether the appellants had reasonable expectations of receiving citizenship under subsection 14(1) of the Act, since the decision was rendered outside of the 60 days statutory time period specified therein.

The appeal is allowed.

OTTAWA, ONTARIO
March 20, 1997



Judge

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-1451-96

STYLE OF CAUSE: CITIZENSHIP ACT v. HUNG KIM HUI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: 11 MARCH 1997

REASONS FOR JUDGMENT OF McKEOWN, J.

DATED: 20 MARCH 1997

APPEARANCES:

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