

Date: 20070828

Docket: IMM-4346-06

Citation: 2007 FC 860

Ottawa, Ontario, August 28, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

HEE HAN LEE

Applicant(s)

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent(s)

SUPPLEMENTAL REASONS FOR JUDGMENT AND JUDGMENT

[1] In my decision on the merits, I allowed the Respondent to propose a certified question for consideration. The Respondent has proposed the following question:

Can an adoption that is legal in a given jurisdiction be sufficient to exclude an applicant from the prescribed circumstances outlined in section 23(b)(iii) of the Regulations even though that adoption is not genuine or is made for the purpose of gaining a benefit or privilege from the Act?

[2] The Applicant opposes this request for certification on the grounds that the stated question fails to identify an issue of general importance and would not be dispositive of the case.

[3] I agree with the Applicant and I decline to certify a question in this proceeding. The point that the Respondent takes issue with from the decision is purely *obiter* because, even if the Court of Appeal were to agree with the Respondent's argument, the decision would not be affected. That is so because the decision to allow this application was based on the failure by the Visa Officer to appropriately address all of the statutory requirements for admissibility or, as was stated in the decision:

[18] Given the failure by the Visa Officer to clearly articulate the statutory and regulatory provisions which he was bound to apply to this application and considering the paucity of factual support for his conclusion, I have concluded that this decision is unreasonable and cannot stand.

[4] When this matter is reconsidered again on the merits, the Visa Officer will presumably address all of the factual matters that are required of a decision made under section 23 of the *Immigration and Refugee Protection Regulations, SOR/2002-227*. It remains to be seen whether the issue that the Respondent seeks to challenge here will be raised within the context of a reconsideration of the Applicant's admissibility but, if it does arise, the Respondent will have the opportunity to challenge the decision by way of its own application for judicial review.

[5] In the result, I decline to certify a question in this proceeding.

JUDGMENT

THIS COURT ADJUDGES that no question will be certified in this proceeding.

“ R. L. Barnes ”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4346-06

STYLE OF CAUSE: HEE HAN LEE
v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: May 10, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** BARNES, J.

DATED: August 28, 2007

APPEARANCES:

Mr. Roderick Rogers FOR THE APPLICANT

Ms. Melissa Cameron FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart McKelvey FOR THE APPLICANT
Halifax, Nova Scotia

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada