

**Date: 20080104**

**Docket: T-1462-07**

**Citation: 2008 FC 5**

**Ottawa, Ontario, January 4, 2008**

**PRESENT:                   The Honourable Mr. Justice Barnes**

**BETWEEN:**

Wenmin **ZHU**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**TRANSCRIPT OF REASONS FOR JUDGMENT AND JUDGMENT**

Let the attached edited version of the transcript of my Reasons for Judgment delivered orally from the bench at Vancouver, British Columbia, on December 18, 2007, be filed to comply with section 51 of the *Federal Courts Act*.



**JUDGMENT**

**THIS COURT ADJUDGES that** this appeal is dismissed.

“ R. L. Barnes ”

---

Judge

FEDERAL COURT OF CANADA

TRIAL DIVISION

VANCOUVER, B.C.

December 18, 2007

T-1462-07

BETWEEN:

WENMIN ZHU,

APPLICANT;

AND:

MINISTER OF CITIZENSHIP AND IMMIGRATION,

RESPONDENT.

MR. W. ZHU,

Appearing on his Own Behalf;

MS. H. AHARON,

Appearing for the Respondent.

**REASONS FOR JUDGMENT**

**BARNES, J.:(Orally)**

These are my reasons for judgment delivered orally at Vancouver on December 18<sup>th</sup>, 2007 in the matter of Wenmin Zhu versus the Minister of Citizenship and Immigration. This is an appeal by Wenmin Zhu from a decision of the Citizenship Court brought under subsection 14(5) of the *Citizenship Act*, Revised Statutes of Canada 1985 c.29.

The issue before the court is one of mixed fact and law. I must determine whether the Citizenship Court understood the legal test for establishing residency and appropriately weighed the evidence against that test.

It is clear from the authorities that some deference is owed to the Citizenship Court in reviewing this type of issue. The Citizenship Judge had the benefit of questioning Mr. Zhu about his residency and also about the documents that he was relying upon to establish residency. That was an advantage that the Citizenship Court enjoys over my ability to assess credibility in a proceeding such as this one.

I would therefore adopt the standard of

review analysis of my colleague Justice Tremblay-Lamer in the case of *Canada v. Fu*, or *Fu*, *F-U*, 2004 FCJ number 88, at paragraph 7, where she said:

"In the case at bar, where the court must verify that the Citizenship Judge has applied one of the accepted residency tests to the facts, it raises, in my view, a question of mixed fact and law. Taking into account that some degree of deference is owed to the specialized knowledge and experience of the Citizenship Judge, I would conclude that the applicable standard of review was that of reasonableness simpliciter."

I am satisfied that the Citizenship Judge understood the legal test for determining residency. He first looked at whether Mr. Zhu had established a physical presence in Canada for the minimum required period of 1,095 days. He then looked at the evidence which might have proven that Mr. Zhu had centralized his life in Canada whether or not he had been physically present here for the 1,095 days. I do not agree that it was an error for the Citizenship Judge

to approach the legal tests in this way. He did not confuse the two tests. He kept them separate from one another.

For both of the tests applied, the Citizenship Judge found Mr. Zhu's evidence to be lacking. With respect to these matters, to these issues, the Citizenship Court's decision stated:

"Applicant has claimed that with the exception of two trips to China he lived in Burnaby for the duration of his relevant residency period. He claims that he did not work, nor pursued any business in Canada. He owns no flat, house, apartment or even a car. He claims that he was working 'on his own computer software program' yet there are no results for this five years old assignment. All his family lives in China with the exception of his sister who lives in the United States.

He has not been able to produce a single document of active residency to support his claims of residency in Canada. This computer engineer who



claims to have lived in Burnaby all these years did not know anything about Burnaby's Simon Fraser University. This university may not be known worldwide but it is certainly recognizable in Canada. Of course any university-educated resident of Burnaby for five years would be able to recognize it.

One cannot accept applicant's claims of residency of 1,200 at face value unless supported by some form of documentary evidence of active residency. During the interview, applicant was given another chance to submit such documents as employment, school records, drop-in clinic, physician's record, copies of pages of old passport (which covers the relevant residency period), et cetera. Applicant submitted some very selective pieces of documents showing passive residency such as bank account records, Revenue Canada records and some 'rental receipts'.

There is no doubt in my mind that applicant has made numerous misleading

and contradictory statements. He has not been able to establish his claims of residency in Canada with proof of active residency. He is certainly not anywhere close to meeting the requirements of 1,095 days of physical presence in Canada."

I have looked at the evidence that Mr. Zhu relied upon to establish his Canadian residency before the Citizenship Court. It is unquestionably deficient. It should not be difficult for a person living in Canada for a number of years to produce evidence that conclusively establishes a physical presence here. Mr. Zhu could have obtained affidavits from friends and neighbours, his landlords, receipts for purchases of goods and services, telephone records of calls made from Canada, complete rental records for the entire period in question, including leases if there were any, utility bills, photographs, records of contacts with government agencies, correspondence sent by family, friends, government, other businesses, employers, et cetera, to his Canadian addresses, perhaps supported by affidavits.

He was given the opportunity to obtain this type of information and his effort in that regard was fairly described by the Citizenship Court as selective. It was also reasonable for the Citizenship Court to describe most of these documents as establishing only a passive residency. It is easy to maintain nominal residence here but to be frequently absent from Canada. The obvious concern here is that Mr. Zhu may have been in the United States and not in Canada for much of the relevant time. Certainly his bank records show frequent deposits of U.S. currency along with an indication in the record of an earlier history of U.S. employment.

I do not accept Mr. Zhu's argument that the travel documents that he relied upon are indisputable evidence of Canadian residency. It is not unheard of that permanent residents may hold more than one set of travel documents. Other evidence may be required beyond travel documents, particularly in a case like this one where Mr. Zhu had previously been found to have altered his passport.

I also reject Mr. Zhu's argument that the

request for documents to establish his physical presence is a breach of his privacy. That argument shows a clear misunderstanding of the burden that he carried. It was his responsibility to establish the fact of his residency and it is not a breach of privacy to expect him to produce this type of evidence. If he did not want to produce the information he took the risk that his application for citizenship would be refused, just as it was.

This argument is also inconsistent with what Mr. Zhu has attempted to produce on this appeal. He has submitted residency statements, banking statements and passport pages that he failed to give to the Citizenship Court. If he believed that information was helpful to making his case before me he should have appreciated that it would also be helpful to the Citizenship Court.

I do not accept Mr. Zhu's explanation that he was not asked for this type of evidence and did not think to produce it before the Citizenship Court. He was clearly asked to produce tenancy and banking records and the U.S. visa page from his prior passport. He did

produce some banking records, some residency evidence, and some of the pages of his earlier passport. He has now included in the court record the missing U.S. visa page.

He has added to the record before me but he clearly knew that this type of information was relevant and important. His effort to produce the complete record before the Citizenship Court was obviously inadequate. I would add that Mr. Zhu's explanation for now producing missing pages from his passport is unconvincing. Why he chose to withhold that information I still do not understand.

Mr. Zhu has made some generalized allegations of unfairness and prejudice but I can identify no material evidence to support those assertions. I agree with counsel for the respondent that the reasons here are clear and articulate. Mr. Zhu was treated fairly and given ample opportunity to make his case in a convincing way but he failed to do so. While he may disagree with the inference drawn by the Citizenship Court about the extent of his local knowledge, that was an inference open to be drawn. It is unusual that a person who has

lived in this area for several years would not be aware of the existence of Simon Fraser University.

While I accept Mr. Zhu's point that there was some evidence of active residency produced by him before the Citizenship Court, it was certainly very slight, and I do not believe that the failure of the Citizenship Court to recognize that evidence was material to the outcome. In other words, the result would, to my thinking, have been exactly the same.

There is nothing in the decision to indicate that Mr. Zhu's earlier failed citizenship application had any bearing on the outcome of his second application but, in any event, it is not an error for the Citizenship Court to examine an applicant's credibility in light of earlier attempts to mislead the court.

In conclusion, I find that the decision of the Citizenship Court was reasonable in all respects and should not be set aside on this appeal.

Mr. Zhu, you are free to submit another application for citizenship, but when you do you would be well advised to submit more evidence

than you did on either of the earlier occasions when you have applied. Indeed, I would recommend that you consult an immigration lawyer to identify the kind of evidence that would be helpful to prove that you have been present in Canada for the required amount of time.

You may very well have been present here for that amount of time but the evidence that I have seen does not go very far to establish that fact. This is a matter of obvious concern to you, it is of some considerable importance to you. I can tell that by the way you have presented your case here today. You were articulate, you made some strenuous points in your favour. Unfortunately I have not been able to accept them, but given the importance of Canadian citizenship to you, personally, you need to take this very seriously. Get some good legal advice, spend some money, do this right. If you are residing here on a continuous basis it will not be difficult to prove it with a thorough presentation of evidence, and then you will be granted Canadian Citizenship, something that I think we all hope you can achieve.

So those are my reasons for the dismissal

of this application. I want to thank both of you, Mr. Zhu and counsel for the Crown, for the excellent way in which you have presented your arguments to me, both in writing and orally. It was very helpful.

Mr. Zhu you have done quite a remarkable job in articulating a position for someone who has no legal experience or much experience in courtrooms. You did a good job of presenting your case and I think if you - I am sorry, I think if you put the same amount of effort into another application for citizenship you will probably be successful.

MR. ZHU: No way. I'm ashamed of this country. Just deny the facts.

(PROCEEDINGS CONCLUDED AT 12:55 P.M.)

I HEREBY CERTIFY THAT THE FOREGOING  
is a true and accurate transcript of  
the proceedings herein to the best of  
my skill and ability.

---

B. Moss,

Court Reporter



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

**DOCKET:** T-1462-07

**STYLE OF CAUSE:** Zhu  
v.  
MCI

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** December 18, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** Mr. Justice Barnes

**DATED:** January 4, 2007

**APPEARANCES:**

Mr. Wenmin Zhu  
Self-represented)  
(250)561-7899

FOR THE APPLICANT

Ms. Hilla Aharon  
(Dept of Justice)  
(604) 775-6022

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mr. Wenmin Zhu

FOR THE APPLICANT

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

FOR THE RESPONDENT