

Date: 20030630

Docket: IMM-1275-03

Citation: 2003 FCT 817

BETWEEN:

CHEN SHUIT YEE and JOSEPH TSUI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

HARGRAVE P.

[1] The Applicants in this matter, husband and wife, who wish review of a rejection of an application for permanent residence for Mr Joseph Tsui, seek what their counsel refers to as an adjournment of the proceeding either so that Mr Tsui may, as an alternative to litigation, perfect his application for designation as a rehabilitated criminal, or so that he may apply for permanent residence on humanitarian and compassionate grounds.

CONSIDERATION

[2] As I understand the situation, from examining the Application for Leave and for Judicial Review, Joseph Tsui was convicted of driving an motor vehicle with an alcohol concentration above the prescribed limit on 20 May 1997. This is said to be his only brush with the law. Apparently he had no other criminal record. Pursuant to the *Rehabilitation*

of Offenders Ordinance of Hong Kong, the conviction is said to have become spent, a state comparable to a pardon as contemplated by section 36(3)(b) of the *Immigration and Refugee Protection Act* of 2002.

[3] Chen Shuit Yee seeks to sponsor her husband, the Applicant Joseph Tsui as a permanent resident. Here I note that Ms Chen Shuit Yee and their children are citizens of Canada. Joseph Tsui's application for permanent residency was rejected by reason of the 1997 conviction. Among the grounds for this judicial review of that rejection is that the immigration officer failed to consider the effect of the Hong Kong rehabilitation legislation, in tandem with the exception granted by the current Canadian legislation, to a person who has been rehabilitated.

[4] The Applicants presently wish to adjourn their Federal Court proceeding because Mr Joseph Tsui has now applied to Citizenship and Immigration Canada for criminal rehabilitation, an application which is presently pending. Mr Joseph Tsui also intends as an alternative to applying for permanent residence on humanitarian and compassionate grounds.

[5] While the Applicants seek an adjournment of the present proceedings, that is not an appropriate remedy, for adjournment is usually in the sense of putting a hearing off to a future time. Indeed, that is the thrust of Federal Court Rule 36, which allows the adjournment of a hearing. Moreover, to put in place something called an adjournment,

would still leave the time for steps under the Rules running and, by the end of summer, invite status review, with special management as a likely outcome.

[6] The more appropriate remedy would be a stay or some type of a less formal abeyance. The criteria for a stay, here presumably a stay in the interest of justice, are set at a high standard. Yet there is a very real possibility of a less expensive extra judicial remedy or remedies and thus the saving of resources, particularly the limited resources of the Court. It would also be senseless to force the Applicants to proceed with what may become a moot or meaningless application.

[7] From time to time, in analogous situations, involving a case under special management, an informal abeyance is put in place, not of an indefinite length, for that could amount to warehousing a proceeding which is against the policy of the Court, but rather an abeyance to give parties some breathing room.

[8] This matter shall proceed as a specially managed proceeding. The proceeding is held in abeyance until the first case management conference, which will be by telephone, at 9:30 a.m. on Wednesday, 15 October 2003.

**(Sgd.) “John A. Hargrave”
Prothonotary**

Vancouver, British Columbia
30 June 2003

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES

DOCKET: IMM-1275-03

STYLE OF CAUSE: Chen Shuit Yee and Joseph Tsui v. MCI

REASONS FOR ORDER: Hargrave P.

DATED: 30 June 2003

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