

Federal Court



Cour fédérale

Date: 20091030

Docket: IMM-1006-09

Citation: 2009 FC 1117

Ottawa, Ontario, October 30, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

LI FENG MEI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

FURTHER REASONS FOR ORDER AND ORDER

[1] On October 14, 2009, I issued reasons in this matter and dismissed the application for judicial review. At the end of the hearing, counsel for the applicant proposed a certified question to the Court. Counsel for the respondent asked permission to make representations with respect to that proposed question after having had an opportunity to see the reasons for the decision, which permission I granted.

[2] On October 21, 2009, counsel for the applicant requested that I certify the following three questions:

- i. Is the duty of fairness breached where an applicant for permanent residence receives a “fairness” letter from the visa office with an opportunity to respond within a specified time, the applicant responds within the specified time but does nothing to attempt to verify if the visa office received the response and the visa office, after the specified time, refuses the application without having received the response?
- ii. Is it incumbent on an applicant for permanent resident, having received a “fairness” letter with a time period to respond, to make sure that his or her response was received by the visa officer within the time period set?
- iii. Is the burden on an applicant for permanent residence to make sure that a document sent to a visa office has been effectively received?

[3] On October 28, 2009, counsel for the respondent made submissions opposing the certification of these questions.

[4] Pursuant to paragraph 74(d) of the *Immigration and Refugee Protection Act*, I can only certify a question if it is a “serious” one “of general importance”. It is well established that in order for a question to be certified, it must be one which “transcends the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application”. In addition, in order to be certified, the question must also be one that is determinative of the appeal. The certification process is not “to be equated with the reference process established by section 18.3 of the *Federal Courts Act*”. Nor is it to be used as a tool to obtain “declaratory judgments on fine questions which need not be decided in order to dispose of a particular case”: *Canada (Minister of*

Citizenship and Immigration) v. *Liyanagamage* (1994), 176 N.R. 4 (F.C.A.), at para. 4; *Chu v. Canada (Minister of Citizenship and Immigration)* (1996), 116 F.T.R. 68 (F.C.), at para. 2.

[5] The three questions submitted by counsel for the applicant effectively amount to one single issue: is it fair to impose on an applicant for permanent residence the obligation to make sure that the visa officer has received his or her response to a “fairness” letter within the specified time frame?

[6] I agree with the respondent that this question does not meet the requirements for certification. The principles of fairness upon which the decision rests are well established in the jurisprudence and need no further refinement. Moreover, the issue raised by counsel for the applicant merely calls into question the application of the principles developed in the case law to the particular facts of this case. As such, that issue does not give rise to a question of general importance that transcends the interests of the parties.

ORDER

THIS COURT ORDERS that no question of general importance be certified.

"Yves de Montigny"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1006-09

STYLE OF CAUSE: LI FENG MEI

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: October 13, 2009

**FURTHER REASONS FOR
ORDER AND ORDER:** de Montigny J.

DATED: October 30, 2009

APPEARANCES:

Mr. David Matas FOR THE APPLICANT

Ms. Nalini Reddy FOR THE RESPONDENT

SOLICITORS OF RECORD:

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