

Federal Court



Cour fédérale

**Date: 20100729**

**Docket: IMM-196-10**

**Citation: 2010 FC 788**

**Vancouver, British Columbia, July 29, 2010**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**TING-HSIANG TAI, TSAI-HUEI CHANG,  
WEI-HSUAN TAI, and LIN TAI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This application for judicial review came on for hearing before me in Vancouver. At the outset of the hearing an issue arose with respect to the fact that counsel for the applicants was appearing on his own affidavit. After hearing from counsel, I ordered that the matter be adjourned to allow the applicants to retain new counsel. I took the question of costs under reserve.

[2] The affidavit provided by Lawrence Wong does not merely provide an evidentiary foundation for uncontested facts or for the admission of documents that were before the Immigration Appeal Division when it made its decision. Rather, Mr. Wong has put his litigation strategy before the IAD into issue in support of his clients' procedural fairness arguments. It was clearly not appropriate in these circumstances for counsel to appear on his own affidavit.

[3] I am of the view that there are "special reasons" for an award of costs in this case within the meaning of Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22. I am moreover satisfied that these costs should be paid personally by the solicitor for the applicants.

[4] Mr. Wong was put on notice by letter dated May 27, 2010, that counsel for the respondent objected to his appearing on his own affidavit. No steps were taken by Mr. Wong at that time to either seek leave of the Court under Rule 82 of the *Federal Courts Rules*, SOR/98-106 to appear on his own affidavit, or to withdraw from the file so that his clients could obtain new legal representation.

[5] Counsel for the respondent renewed her objection to Mr. Wong appearing in this matter in a second letter, this one dated July 23, 2010. Once again, Mr. Wong took no steps to resolve this issue in advance of the date set for the hearing of the application.

[6] Mr. Wong was advised that the Court was considering making an award of costs payable by him personally, and was given the opportunity to be heard. He did not provide a satisfactory

explanation for his conduct in this matter. His explanation that he originally had an associate working on the file when he put in his own affidavit in support of his clients' application does not assist him, in light of his statement that his associate left his office in April of 2010.

[7] Moreover, the fact that the Court does in some cases grant leave to counsel to appear in his or her own affidavit also does not assist Mr. Wong. Not only was leave not sought in a timely manner, it is also clear from the jurisprudence of this Court that leave will not be granted where, as here, the affidavit in issue deals with substantive matters: see, for example, *Sawridge Band v. Canada*, 2002 FCT 254, 112 A.C.W.S. (3d) 623.

[8] Finally, the Court does not accept Mr. Wong's claim that the respondent left him "no way out" by refusing to allow him to withdraw his affidavit. The respondent's refusal was based upon the fact that it was Mr. Wong's affidavit that had been the basis for the Court's grant of leave in this matter. As Mr. Wong himself conceded, there was indeed a "way out" for him, which was for him to withdraw from the file and for his clients to retain new counsel.

[9] The need for this adjournment is entirely attributable to Mr. Wong's conduct. The applicants cannot be expected to be aware of the rules governing the propriety of counsel appearing on his own affidavit, and should not be liable for the costs of the adjournment. Consequently, the Court orders that the costs of this adjournment should be paid personally by Lawrence Wong. These costs are fixed in the amount of \$200.

[10] In accordance with the provisions of Rule 404(3) of the *Federal Courts Rules*, the Court orders that Mr. Wong deliver a copy of this Order personally to the applicants.

**ORDER**

**THIS COURT ORDERS that:**

1. This matter is adjourned to a date to be fixed by the Judicial Administrator;
2. Costs of the adjournment are fixed at \$200, which are to be paid personally by  
Lawrence Wong;
3. A copy of this Order is to be served personally on the applicants by Mr. Wong.

“Anne Mactavish”

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Judge

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

**DOCKET:** IMM-196-10

**STYLE OF CAUSE:** TING-HSIANG TAI et al. v. MCI

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** July 27, 2010

**REASONS FOR ORDER  
AND ORDER:** MACTAVISH J.

**DATED:** July 29, 2010

**APPEARANCES:**

Lawrence Wong FOR THE APPLICANTS

Caroline Christiaens FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lawrence Wong & Associates FOR THE APPLICANTS  
Barristers and Solicitors  
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