

Federal Court



Cour fédérale

Date: 20110316

Docket: IMM-4829-10

Citation: 2011 FC 316

Toronto, Ontario, March 16, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

AIQIN LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a citizen of China who has asked for the following relief from Canada's immigration system:

- An application for refugee protection dated September 17, 1995 that was ultimately dismissed by this Court on August 12, 1997;
- An application for permanent residence on humanitarian and compassionate (H&C) grounds dated December 15, 2003 in which risk issues were advanced;
- A withdrawal of the risk issues from the H&C application by letter dated May 29, 2009;

A decision of August 4, 2010 on the amended H&C application is the decision presently under review.

[2] A critically important H&C issue is the Applicant's establishment in Canada. It is not contested that a period of seven years between the application and the decision is unusual in the present context of immigration decision-making. The evidence before the H&C Officer goes to prove that, in this intervening period, the Applicant became firmly established in Canada. It is important to note that at no time following the Applicant's arrival in Canada was a move made to remove her from Canada. As a result, I find that it was incumbent on the H&C Officer to make a realistic and empathetic decision with respect to the Applicant's establishment. In my opinion, the decision rendered does not meet this reasonable expectation.

[3] In the decision the H&C Officer said this about establishment:

I have considered that the applicant's establishment in Canada has not been attained due to a prolonged inability to depart Canada or due to circumstances beyond her control. Rather, the applicant acknowledges on her application that she was asked to leave Canada in MAY 1997 when her claim for Convention refugee status was refused. Despite the knowledge that she did not have the legal status to remain, and that she is the subject of an enffective[sic] removal order, the applicant has chosen to remain in Canada at her own risk. I am not satisfied that the applicant's personal circumstances are such that they were not anticipated by the legislation.

[Emphasis added]

(Applicant's Application Record, p. 10)

In my opinion the question of the Applicant's status in Canada is the result of a shared responsibility between the Applicant and the Respondent. The Applicant has an obligation to regularize her status

if she wishes to remain in Canada, and the Respondent has an obligation to reasonably respond to her attempts to do so. In the present case the Applicant met her responsibility by making an H&C application, which she is entitled to do. However, in my opinion, the Respondent's failure to render a decision within seven years is unreasonable. Of course the Applicant continued to put down roots in Canada during this hiatus period; it is not a matter of accepting risk to do so, it is a matter of getting on with life while waiting, and waiting. In reaching a fair and reasonable decision, this fact was required to be acknowledged and carefully analysed, with some respect. Since it was not, I find the decision rendered is unreasonable because it is not defensible on the facts.

ORDER

Accordingly, the decision under review is set aside and the matter is referred back for redetermination to a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4829-10

STYLE OF CAUSE: AIQIN LIN v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 15, 2011

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: MARCH 16, 2011

APPEARANCES:

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