

Federal Court



Cour fédérale

Date: 20130125

Docket: T-1298-12

Citation: 2013 FC 75

Ottawa, Ontario, January 25, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

BIN ZHAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal of a decision of a Citizenship Judge [Judge] denying citizenship and concluding that there was neither sufficient hardship nor exceptional services to make a recommendation to the Minister.

[2] The relevant period for determination of residency was March 30, 2006 to March 30, 2010. The Applicant claimed that he was present in Canada for 1,331 days of the 1,460 days in the relevant period.

[3] The Applicant was interviewed and subsequently it was requested that he submit additional documents to support his claim. These documents included Notices of Tax Assessments, payment summaries from BC and Ontario health authorities, bank and credit card statements, lease or ownership documents and car insurance and ownership documents.

The Applicant submitted some but not all of the requested documents.

[4] The Judge commented on the deficiencies in the documents submitted including the absence of key medical records, discrepancies regarding absences as between the citizenship application and the residency question as well as the failure to report a day trip to the United States.

The Judge's conclusion was that the Applicant had failed to demonstrate that he met the requirements of the Act.

[5] The issues in this appeal are (a) whether there was a breach of procedural fairness, and (b) whether the decision was reasonable.

The standard of review is well-established in decisions such as *Navidi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 372, 2012 CarswellNat 1037 (procedural fairness is a correctness standard) and *Mizani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 698, 2007 CarswellNat 1909 (residency is reviewed on a reasonableness standard).

[6] There was no breach of procedural fairness as claimed. The Judge did not leave the impression after the interview that the application had been granted. It is difficult to see how anyone

could have that impression when the Judge asked for considerable documentation to be submitted after the hearing, all of which is directed at proving the residency requirements.

[7] The Judge's decision taken as a whole was reasonable. The documentation requested was relevant to the issues before the Judge. The Applicant could hardly expect a favourable decision in light of his failure to comply with the instruction to file relevant documents.

[8] It would have been unreasonable, generally, to require specific and relevant documents and, in the face of a failure to provide them, the Judge would nevertheless issue a positive decision. In the present circumstances, it did not require an extensive credibility analysis to conclude that in the absence of required documents, the Applicant had not met the burden of proof.

[9] This appeal is dismissed.

JUDGMENT

THIS COURT’S JUDGMENT is that the appeal is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1298-12

STYLE OF CAUSE: BIN ZHAO

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 29, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** PHELAN J.

DATED: January 25, 2013

APPEARANCES:

Max Chaudhary FOR THE APPLICANT

Brad Gotkin FOR THE RESPONDENT

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