Federal Court  Cour fédérale

Date: 20100818

Docket: T-1852-09

Citation: 2010 FC 822

Ottawa, Ontario, August 18, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

MEI ZHEN ZHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Mei Zhen Zhan, was denied Citizenship on the ground that, at the time of the decision by the Citizenship Judge, there were outstanding charges against her in respect of indictable offences contemplated by paragraph 22(1)(b) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the "Act"). At that time, the Citizenship Judge was aware that those charges had been stayed and that the one-year period within which those charges could be reinstated had not expired.

[2] Ms. Zhan seeks to have the decision set aside and remitted to another Citizenship Judge for re-determination on the grounds that the Citizenship Judge erred by:

> (i) finding that she was, at the time of the hearing, charged with such offences;
>
> (ii) erroneously stating in his decision that the rejection of her application was based on the fact that she had been convicted of an indictable offence contemplated by subsection 22(2) of the Act; and
>
> (iii) failing to make his decision in accordance with the principles of natural justice and procedural fairness, by failing, among other things, to disclose to her advice that he had received from his supervisor stating that a stay of proceedings is considered to be a suspension of proceedings that remains valid for one year.

[3] For the reasons that follow, this appeal is dismissed.

I. Background

[4] Ms. Zhan is a citizen of China. She became a permanent resident in Canada on May 29, 1996. On March 20, 2008, she submitted an application for Canadian citizenship.

[5] On May 27, 2008, she was charged with a number of offences, including possession of heroin and another controlled substance for the purpose of trafficking; possession of cocaine, cannabis and other controlled substances; and possession of the proceeds of crime.

[6] In July 2008, she received a letter, presumably from Citizenship and Immigration Canada (CIC), requesting a copy of her fingerprints within 30 days. In an affidavit submitted to this Court, she explained that she refrained from responding to that letter because, at that time, she was facing a number of criminal charges.

[7] On May 12, 2009, the charges against her were stayed.

[8] Sometime in 2009, she received a notice requesting her to attend a citizenship interview on July 15, 2009.

[9] In a letter to CIC dated July 12, 2009, her former counsel noted, among other things, that Ms. Zhan had not responded to the request for a copy of her fingerprints. She then asked to be advised if Ms. Zhan should respond to that request prior to the interview scheduled for July 15, 2009. However, that letter did not disclose the fact that Ms. Zhan had been charged with any offences or that those charges had been stayed.

[10] According to Ms. Zhan's affidavit, she was asked during the subsequent interview with CIC whether she had a criminal record. She responded that she had previously been charged with "some offences, but all the charges have been stayed by the crown prosecutor. Therefore I do not have any criminal record."

[11] In response, she was requested during the interview to submit a copy of her fingerprint records, a copy of the court record of her charges and the disposition of those charges, and a completed Residence Questionnaire. On July 21, 2009, Ms. Zhan mailed that information to CIC.

Among other things, that information indicated that the stay of proceedings was issued on May 12, 2009.

II. The Decision Under Review

[12] In a short letter, dated September 14, 2009, Ms. Zhan was informed that her application for Canadian citizenship had not been approved. Among other things, the letter noted that Ms. Zhan was "presently charged" with several listed offences. The letter then stated that this was:

> … not an appropriate case for the exercise of discretion under subsections 5(3) and 5(4) of the Citizenship Act because Section 22(2) specifically provides that whenever it applies, 'notwithstanding anything in this Act, a person shall not be granted citizenship under section 5 or subsection 11(1) or take the oath of citizenship if,
>
> (a) during the three year period immediately preceding the date of the person's application, or
>
> (b) during the period between the date of the person's application and the date that the person would otherwise be granted citizenship or take the oath of citizenship,
>
> the person has been convicted of an offence under subsection 29(2) or (3) or of an indictable offence under any Act of Parliament.

[13] The letter concluded: "Pursuant to subsection 14(3) of the Citizenship Act, you are therefore, advised that, for the above reasons, your application for citizenship is not approved". Ms. Zhan was then advised of her options.

[14] Accompanying the letter was a form identifying the reasons for the refusal as follows: "Section 22. Stay of proceedings valid to 11 May 2010. I cannot approve the application for C.C.".

[15] The specific provision in section 22 that applied to Ms. Zhan at the time of the Citizenship Judge's decision was paragraph 22(1)(b), rather than subsection 22(2). Paragraph 22(1)(b) states:

Citizenship Act, R.S.C. 1985, c. C-29	*Loi sur la citoyenneté*, L.R.C. 1985, c. C-29
Prohibition	Interdiction
22. (1) Despite anything in this Act, a person shall not be granted citizenship under subsection 5(1), (2) or (4) or 11(1) or take the oath of citizenship	**22. (1)** Malgré les autres dispositions de la présente loi, nul ne peut recevoir la citoyenneté au titre des paragraphes 5(1), (2) ou (4) ou 11(1) ni prêter le serment de citoyenneté :
…	…
(b) while the person is charged with, on trial for or subject to or a party to an appeal relating to an offence under subsection 29(2) or (3) or an indictable offence under any Act of Parliament, other than an offence that is designated as a contravention under the Contraventions Act;	b) tant qu'il est inculpé pour une infraction prévue aux paragraphes 29(2) ou (3) ou pour un acte criminel prévu par une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions, et ce, jusqu'à la date d'épuisement des voies de recours;
…	…

[16] The Citizenship Judge's reference to the stay of proceedings being "valid to 11 May 2010" was based on section 579 of the *Criminal Code*, R.S.C. 1985, c. C-46, which states as follows:

579. (1) The Attorney General or counsel instructed by him for that purpose may, at any time after any proceedings in relation to an accused or a defendant are commenced and before judgment, direct the clerk or other proper officer of the court to make an entry on the record that the proceedings are stayed by his direction, and such entry shall be made forthwith thereafter, whereupon the proceedings shall be stayed accordingly and any recognizance relating to the proceedings is	**579. (1)** Le procureur général ou le procureur mandaté par lui à cette fin peut, à tout moment après le début des procédures à l'égard d'un prévenu ou d'un défendeur et avant jugement, ordonner au greffier ou à tout autre fonctionnaire compétent du tribunal de mentionner au dossier que les procédures sont arrêtées sur son ordre et cette mention doit être faite séance tenante; dès lors, les procédures sont suspendues en conséquence et tout engagement y relatif est annulé.

vacated.

Recommencement of proceedings	Reprise des procédures
(2) Proceedings stayed in accordance with subsection (1) may be recommenced, without laying a new information or preferring a new indictment, as the case may be, by the Attorney General or counsel instructed by him for that purpose giving notice of the recommencement to the clerk of the court in which the stay of the proceedings was entered, but where no such notice is given within one year after the entry of the stay of proceedings, or before the expiration of the time within which the proceedings could have been commenced, whichever is the earlier, the proceedings shall be deemed never to have been commenced.	**(2)** Les procédures arrêtées conformément au paragraphe (1) peuvent être reprises sans nouvelle dénonciation ou sans nouvel acte d'accusation, selon le cas, par le procureur général ou le procureur mandaté par lui à cette fin en donnant avis de la reprise au greffier du tribunal où les procédures ont été arrêtées; cependant lorsqu'un tel avis n'est pas donné dans l'année qui suit l'arrêt des procédures ou avant l'expiration du délai dans lequel les procédures auraient pu être engagées, si ce délai expire le premier, les procédures sont réputées n'avoir jamais été engagées.

III. The Standard of Review

[17] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 54, the Supreme Court observed that Courts should exercise deference "where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity." It also observed that "[w]here the question is one of fact, discretion or policy, deference will usually apply automatically" (para. 53). However, it then noted that "[a] question of law that is of 'central importance to the legal system … and outside the … specialized area of expertise' of the administrative decision maker will always attract a correctness standard" (para. 55).

[18] In my view, the issue that has been raised by the Applicant with respect to the proper interpretation of paragraph 22(1)(b) of the Act is not a question of law that is of central importance to the legal system. It is a question that is narrowly confined to one section of the

Act. Accordingly, the standard of review applicable to this Court's review of that issue is reasonableness. (See also *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 44.)

[19] In my view, the decision of my colleague Justice Mandamin in *Yan v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1153, at para. 15, is distinguishable on the ground that he followed jurisprudence on this point rendered before the Supreme Court's decisions in *Dunsmuir*, above, and *Khosa*, above. As I read his decision, Justice Mandamin's reference to *Dunsmuir* was with respect to the standard of review applicable to questions of mixed fact and law, while he relied on *Mizani v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 698, at para. 7, with respect to the standard applicable to pure questions of law, such as the appropriate interpretation of section 14 of the Act. However, nothing turns on this as I have found that the Citizenship Judge's interpretation of paragraph 22(1)(b) of the Act is also correct.

[20] The issue that has been raised with respect to the Citizenship Judge's reference to subsection 22(2) of the Act, rather than subsection 22(1), in essence a question regarding the justification, transparency and intelligibility of the decision. This issue is reviewable on a standard of reasonableness (*Dunsmuir*, above, at para. 47).

[21] The issue that has been raised with respect to procedural fairness is reviewable on a standard of correctness (*Dunsmuir*, above, at paras. 55 and 79; *Khosa*, at para. 43).

IV. Analysis

A. *Did the Citizenship Judge err in finding that Ms. Zhan was, at the time of the hearing, charged with an indictable offence?*

[22] Ms. Zhan submits that the Citizenship Judge erred in concluding that she was "presently charged" with various offences. She asserts that the effect of the stay of proceedings issued on May 12, 2009 in respect of all of the charges that were laid against her was to place her in the same position as a person who has never been charged with such offences. Accordingly, she submits that it was an error to consider a stay of proceedings to be a suspension of proceedings, and to deny her citizenship application based on the fact that the Crown might recommence one or more of the charges that were laid against her.

[23] To support her position, she submits that the ambiguity in paragraph 22(1)(b) of the Act with respect to this issue should be resolved by having regard to the approach taken to stays of proceedings in the criminal law jurisprudence. In this regard, she notes that in *Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 672, my colleague Justice Mactavish considered and ultimately followed recent criminal law jurisprudence after determining that this Court's jurisprudence in the citizenship and immigration context was of limited assistance in resolving a different issue involving the interpretation of paragraph 22(1)(b) of the Act.

[24] In *Ahmed*, the central issue was whether a hybrid offence remains an indictable offence for the purposes of paragraph 22(1)(b) after the Crown elects to proceed summarily. In resolving this issue, it was necessary to have regard to the jurisprudence that had developed under paragraph 34(1)(a) of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides:

Indictable and summary conviction offences	Mise en accusation ou procédure sommaire
34. (1) Where an enactment creates an offence,	**34. (1)** Les règles suivantes s'appliquent à l'interprétation d'un texte créant une infraction:
(a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment;	a) l'infraction est réputée un acte criminel si le texte prévoit que le contrevenant peut être poursuivi par mise en accusation;
…	…

[25] After considering the recent jurisprudence regarding this provision of the *Interpretation Act* in the criminal law context, Justice Mactavish concluded that "the character of a hybrid offence changes from indictable to summary conviction, upon the crown electing to proceed summarily." She further concluded that the prohibition set forth in paragraph 22(1)(b) did not apply to the Applicant in the case before her, because the Crown had elected to proceed summarily in respect of the offences with which he had been charged.

[26] *Ahmed* is distinguishable from the case at bar because it involved the interpretation of different words in paragraph 22(1)(b) than are at issue in the present case, and because the criminal law jurisprudence that Justice Mactavish followed concerned the interpretation of another federal statute, namely, the *Interpretation Act*. It is also important to note that the criminal jurisprudence in question was not binding on Justice Mactavish, but was rather voluntarily reviewed and followed by her after she determined that this Court's jurisprudence on the issue was of limited assistance.

[27] The specific criminal law jurisprudence that Ms. Zhan submits should be followed in the case at bar consists of a trilogy of cases.

[28] In *R. v. Larosa*, [2000] O.J. No. 976, aff'd [2002] O.J. No. 3219 (C.A.), the accused applied to set aside a stay of proceedings and to restore a direct indictment filed against them. They had returned home to Canada after the State of Texas alleged that they had engaged in a conspiracy to traffic cocaine, without charging them. On the same facts, the Canadian Crown preferred an indictment against the accused alleging that they had participated in a conspiracy to import and traffic cocaine. Texas authorities then laid similar charges and initiated extradition proceedings. The accused argued that the stay of proceedings issued in Canada was an abuse of process. Their application was dismissed after it was determined that there was no abuse of process or constitutional infringement. In the course of his decision, Justice Watt observed, at para. 60: "Neither the trial judge nor the person(s) whose prosecution is or are affected by the stay have a say in its entry. Once the stay is entered, that contest between the persons charged and the state has ended."

[29] In the course of affirming Justice Watt's decision, the Ontario Court of Appeal quoted with approval, at para. 41 of its decision, the following observation by Hollinrake J.A. in *R. v. Smith* (1992) 79 C.C.C. (3d) 70, at 80 (B.C.C.A), leave to appeal dismissed for delay, [1993] S.C.C.A. No. 7 (QL): "When the stay has been entered there is no contest between the individual and the state. The prosecution has come to an end. The position of the accused as against the state is the same as if he had never been charged."

[30] In *Smith*, above, which is the second of the three criminal law cases put forth by Ms. Zhan, the respondent asserted that, having been charged and having entered a plea on the charge, he was entitled to continue with his trial in the hope of obtaining an acquittal. Such an acquittal would have

been of potential assistance to him in the event that extradition proceedings were initiated against him in connection with the same offence in the United States. In a unanimous judgment on behalf of the Court, Hollinrake J.A. concluded, at para. 20, that " … once the Crown exercises its s. 579 right to direct a stay be entered, the judge hearing the prosecution is *functus* and without jurisdiction to proceed further."

[31] The third criminal law case relied upon by Ms. Zhan is *R. v. Pawluk*, [2002] S.J. No. 186 (Sask. Q.B.). In that case, the accused submitted that it was an abuse of process for the Crown to proceed on two indictments arising from the same events. In response, the Crown directed a stay of proceedings on the first indictment and advised that it intended to proceed only on the second indictment. Justice Foley found that, as a result of the stay issued by the Crown in respect of the first indictment, there was no longer a proceeding before the Court and that, consequently, there was no issue between the Crown and the defendant which was capable of constituting an abuse of process. In short, it was concluded that the second indictment could not proceed because it was part of the proceedings that had been stayed.

[32] In the course of reaching his conclusion, Justice Foley quoted with approval, at para. 25 of his decision, a passage from Salhany, *Canadian Criminal Procedure*, 6th ed., (Toronto: Canada Law Book, 2001), at p. 6-73, which included the following comments in respect of section 579 of the *Criminal Code*:

> Under this section, any proceedings stayed may be recommenced without laying a new charge or preferring a new indictment by the Crown giving notice to the clerk of the court in which the stay of proceedings was entered. However, notice must be given within one year after the entry of the stay, otherwise the proceedings shall be deemed never to have been commenced. […]

[33] I disagree with Ms. Zhan's position regarding the relevance of the aforementioned criminal law jurisprudence to the case at bar and with her interpretation of paragraph 22(1)(b) of the Act.

[34] In *Re: Holvenstot*, [1982] 2 F.C. 279, this Court was presented with a situation that was similar to the one at hand. In short, the applicant was denied citizenship on the basis that, at the time of the Citizenship Judge's decision, she was charged with the indictable offence of cultivating marijuana. That charge had been laid on August 18, 1990 and stayed on March 18, 1981. The decision of the Citizenship Judge was rendered on March 31, 1981.

[35] Justice Verchere agreed with the Citizenship Judge that, in and of itself, the stay of proceedings did not alter the fact that the applicant remained a person charged with an indictable offence and therefore was subject to the prohibition set forth in what was then paragraph 20(1)(b) of the Act (now paragraph 22(1)(b)). He based his agreement on this point on the fact that, pursuant to what is now s. 579 of the *Criminal Code*, there is no constraint on the Crown's future action on the charge, by virtue of the stay alone. In this regard, he observed, at para. 4, that during the one year period mentioned in that provision, "the Crown is expressly permitted to continue proceedings on the stayed charge. Furthermore, it has been held that apart entirely from subsection 508(2) [now 579(2)] proceedings on a stayed charge may be continued without any need to proceed by way of fresh prosecution for the same offence."

[36] However, in view of the fact that the applicant was able to obtain a letter from the Crown advising her that the Crown did not intend to take any further proceedings against her on the charge in question, Justice Verchere concluded that (i) the Crown's letter effectively estopped it from

reinitiating proceedings on the stayed charge, and (ii) this rendered the charge "a nullity for practical purposes and thus put it outside the scope and purview of paragraph 20(1)(b)" of the Act.

[37] In reaching this conclusion, Justice Verchere observed that "it can be fairly assumed that [the applicant's solicitor who requested the Crown's letter] was seeking some action or some statement that would take the charge outside the operation of the prohibition", and that "there was no suggestion that the Crown officers responsible for the stay and for the letter … had not considered and intended that such a result would ensue."

[38] In the case of bar, the applicant, who was represented by counsel, does not appear to have sought and, in any event, did not produce any such letter from the Crown. Therefore, for the reasons expressed by Justice Verchere, with which I agree, she remained a person charged with one or more indictable offences, as contemplated by paragraph 22(1)(b) of the Act.

[39] In my view, the plain meaning of subsection 579(2) of the *Criminal Code* is that proceedings that have been stayed have been suspended, but not terminated or nullified. It is only after the expiry of one year after the entry of the stay of proceedings that the proceedings are "deemed never to have commenced", if the proceedings are not reinstated. Prior to that time, a person whose charges are the subject of the stay remains a person who "is charged," within the meaning of paragraph 22(1)(b) of the Act, assuming that the charges are in respect of one or more indictable offences contemplated by that provision.

[40] I do not believe that it is appropriate to interpret paragraph 22(1)(b) of the Act based on the jurisprudence regarding the effect of a stay in criminal law. In my view, there are important reasons why a different approach is warranted in the area of immigration and citizenship.

[41] When a criminal proceeding is instituted, it is clear that important rights enshrined in the *Canadian Charter of Rights and Freedoms*, particularly those identified in section 7 of the *Charter* (the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice), are at risk. In this context, the policy basis for the approach adopted in the *Larosa, Smith* and *Pawluk* cases, discussed above, is stronger than it is in the immigration and citizenship context, where it is the privilege of citizenship, rather than any *Charter* rights, which is at risk.

[42] While the adverse consequences of a rejection of a citizenship application can be quite significant for the applicant and his or her family and friends, those consequences cannot be equated with the deprivation of *Charter* rights, particularly those set forth in section 7. In this regard, it must be kept in mind that an unsuccessful applicant for citizenship can always reapply, although, for persons such as the applicant, they would first have to wait for the expiry of the one year period contemplated by subsection 579(2) of the *Criminal Code*.

[43] In striking the appropriate balance between the interests of an individual applying for citizenship and the interests of Canadian society, and in the absence of any purpose clause or similar guidance in the Act, it is relevant to consider the objectives set forth in subsection 3(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). Those objectives set forth in Annex "A" hereto.

[44] In my view, in determining whether a person whose charges have been stayed remains a person who "is charged" with an offence as contemplated by paragraph 22(1)(b) of the *Citizenship Act*, one cannot ignore paragraph 3(1)(h) of IRPA. In that provision, Parliament expressed a clear intent to place a priority on safeguarding the health and safety of Canadians, and in maintaining the security of Canadian society, in respect of immigration matters. As the Chief Justice McLaughlin observed on behalf of the Supreme Court of Canada in *Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539, at para. 10:

> The objectives as expressed in the *IRPA* indicate an intent to prioritize security. This objective is given effect … by emphasizing the obligation of permanent residents to behave lawfully while in Canada …Viewed collectively, the objectives of the *IRPA* and its provisions concerning permanent residents, communicate a strong desire to treat criminals and security threats less leniently than under the former Act.

[45] In my view, the objective set forth in paragraph 3(1)(h) of IRPA is essentially the same objective that underlies paragraph 22(1)(b) of the *Citizenship Act*. This objective would be better advanced by considering a person who has been charged with the type of serious offence contemplated by that provision to be a person who still "is charged" with that offence, notwithstanding that the charge may have been stayed. In short, this interpretation of paragraph 22(1)(b) will protect Canadians from the risk posed by a person who, by virtue of having been charged with one or more serious indictable offences contemplated by that provision, demonstrably poses a potential risk to Canadians. (*Pushpanathan v. Canada (Minister of Citizenship and Immigration*), [1998] 1 S.C.R. 982, at paras. 143 and 144.)

[46] To interpret paragraph 22(1)(b) in the manner suggested by Ms. Zhan may allow for persons whose charges have been stayed and are subsequently recommenced within the one year period contemplated by subsection 579(2) of the *Criminal Code*, to avoid the application of that provision. This would occur if they were granted, and then took the oath of, citizenship after the stay of proceedings had been issued and before the proceedings were recommenced. In my view, Parliament did not intend paragraph 22(1)(b) to be interpreted in a manner that would permit such a perverse outcome.

[47] In a situation such as that which is presented by the case at bar, the fact that the applicant for citizenship has already been charged with an offence helps to explain why the approach to such persons contemplated by paragraph 22(1)(b) differs in some respects from the approach to persons who are believed on reasonable grounds to pose a security risk contemplated by section 19 of the Act. Accordingly, I do not accept Ms. Zhan's argument that the absence from section 22 of some of the procedural provisions that are included in section 19 supports the view that paragraph 22(1)(b) should be interpreted as being confined to persons who are facing charges in proceedings that have not been stayed, and who are not in need of the same procedural safeguards as persons who are merely believed to pose a future security risk.

[48] In conclusion, for all of the foregoing reasons, I find that a person who has been charged with one or more indictable offences contemplated by paragraph 22(1)(b) of the Act remains a person who "is charged" with such an offence, notwithstanding that the Crown may have stayed the proceedings in respect of those charges. It was not unreasonable for the Citizenship Judge to reach this same conclusion. Indeed, it was entirely appropriate and correct.

B. *Was the Citizenship Judge's reference to subsection 22(2) of the Act a reviewable error?*

[49] The reference to subsection 22(2) in the Citizenship Judge's decision was clearly an error, as Ms. Zhan has not been convicted of any offence described in that provision. The question is whether that error is sufficiently serious or significant to warrant setting aside the decision and remitting the matter back to a different Citizenship Judge for reconsideration. I conclude that the error did not rise to that level of seriousness or significance.

[50] It is settled law that modest or inconsequential errors which would not affect the result in a case do not warrant the exercise of this Court's discretion to set aside a decision (*Dubé v. Lepage*, [1997] F.C.J. No. 616 (T.D.), at paras. 45-46).

[51] In the case at bar, the issue is whether the reference to subsection 22(2) was inadvertent or reflects a misunderstanding of the material evidence by the Citizenship Judge (*Petrova v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 506, at para. 57; *Sandhu v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 134, at paras. 6 - 9).

[52] I am satisfied from my review of the Citizenship Judge's decision as a whole that he correctly understood that Ms. Zhan had simply been charged with an offence contemplated by paragraph 22(1)(b) of the Act, rather than convicted of an offence contemplated by subsection 22(2) of the Act.

[53] In short, at the outset of the Citizenship Judge's decision letter, he stated: "According to the evidence on file, you are presently charged with the following indictable offences" (emphasis

added). In addition, in the copy of the completed *Notice to the Minister of the Decision of the Citizenship Judge* that was attached to the Citizenship Judge's decision, the Citizenship Judge wrote: "Section 22. Stay of proceedings valid to 11 May 2010. I cannot approve the application for C.C.". Moreover, an internal note to file made by the Citizenship Judge stated, among other things "Court Info Sheet show [sic] 'stay of proceedings' registered 2009-05-12. This is considered a suspension of court proceedings … As per supervisor, 'Stays' are valid for 1 year, thus subject to 22(1)b."

[54] Based on the foregoing, I am satisfied that the Citizenship Judge properly understood that Ms. Zhan had merely been charged with an indictable offence contemplated by paragraph 22(1)(b), rather than convicted of an indictable offence contemplated by subsection 22(2). Accordingly, I find that the reference to subsection 22(2) on page 2 of his decision letter was inadvertent, inconsequential, did not affect the outcome of his decision, and therefore did not amount to a reviewable error.

C. *Did the Citizenship Judge fail to make his decision in accordance with natural justice and the principles of procedural fairness?*

[55] Ms. Zhan submits that the advice received by the Citizenship Judge from his supervisor, to the effect that "'Stays' are valid for 1 year, thus subject to 22(1)b," constituted extrinsic evidence. As such, she asserts that the principles of natural justice and procedural fairness required him to provide her with an opportunity to address that evidence, and to address any concerns that he had about her application, before he made his final decision with respect to her citizenship application. She asserts that those concerns included the fact that there was no indication as to whether or not the

Crown would be taking further proceedings against her and whether the Crown would be proceeding by way of summary process or indictment.

[56] I do not agree with these submissions.

[57] In my view, the advice received by the Citizenship Judge from his supervisor was internal advice, not extrinsic evidence. There was no obligation on the Citizenship Judge to disclose to Ms. Zhan such advice or to disclose to her CIC's internal policy that "[a] stay of proceedings is an outstanding charge unless a Crown agent confirms in writing that the Crown does not intend to take further proceedings against the applicant on the charge they face".

[58] As to the Citizenship Judge's observation that there was no indication as to the Crown's plans with respect to the proceedings in question, this was simply a fact noted by the Citizenship Judge in his note to file. The Citizenship Judge was under no obligation to request Ms. Zhan or the Crown to advise as to whether the Crown would be taking further proceedings against her and whether the Crown would be proceeding by way of summary process or indictment. Once Ms. Zhan was asked, during her interview on July 15, 2009, to submit a copy of the court record of her charges and the disposition of those charges, she was put on notice that the status and potential disposition of those charges were potentially relevant to the Citizenship Judge's decision. Thereafter, she had every opportunity to provide to the Citizenship Judge with whatever information that might be relevant to these issues. Unfortunately, she did not avail herself of the opportunity to request the Crown to advise her of its plans with respect to her charges, as was done by the applicant in *Re: Holvenstot*, above.

[59] In her oral submissions, Ms. Zhan's counsel further asserted that the reasons provided by the Citizenship Judge for his decision were inadequate, because they did not sufficiently explain why Ms. Zhan was considered to be still charged with the offences in question, notwithstanding that the Crown had stayed the proceedings against her.

[60] I disagree. The reason why her application was rejected was because, at the time of the Citizenship Judge's decision, she was a person who "is charged" with an offence contemplated by paragraph 22(1)(b) of the Act. This fact was explicitly articulated to her in the second paragraph of the decision. The Citizenship Judge was under no obligation to explain to Ms. Zhan why he interpreted paragraph 22(1)(b) to continue to apply after the proceedings on the charges in question had been stayed. Ms. Zhan is presumed to know the law, including the plain language of subsection 579(2) of the *Criminal Code*, and the decision in *Re: Holvenstot*.

[61] In summary, I find that the Citizenship Judge did not breach the principles of natural justice or procedural fairness by failing to: (i) provide Ms. Zhan with an opportunity to review and address the internal advice he received from his supervisor, (ii) request Ms. Zhan or the Crown to advise as to whether the Crown would be taking further proceedings against her and whether the Crown would be proceeding by way of summary process or indictment, or (iii) explain in his decision why he interpreted paragraph 22(1)(b) to continue to apply after the proceedings on the charges in question had been stayed.

[62] Ms. Zhan had every opportunity to: (i) disclose the fact that she had been charged with offences contemplated by paragraph 22(1)(b) prior to her interview on July 15, 2009, (ii) inform herself of the legal effect of both a stay of proceedings under that provision and any letter that she

might be able to obtain from the Crown regarding its intentions in respect of those proceedings, and (iii) request such a letter from the Crown. Unfortunately, she failed to do all of those things.

V. Conclusion

[63] This appeal is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES THAT this appeal is dismissed.

"Paul S. Crampton"

_____

Judge

ANNEX "A"

Immigration and Refugee Protection Act, S.C. 2001, c. 27	*Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, c. 27
3. (1) The objectives of this Act with respect to immigration are	**3. (1)** En matière d'immigration, la présente loi a pour objet :
(*a*) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;	*a*) de permettre au Canada de retirer de l'immigration le maximum d'avantages sociaux, culturels et économiques;
(*b*) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;	*b*) d'enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel;
(*b.1*) to support and assist the development of minority official languages communities in Canada;	*b.1*) de favoriser le développement des collectivités de langues officielles minoritaires au Canada;
(*c*) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;	*c*) de favoriser le développement économique et la prospérité du Canada et de faire en sorte que toutes les régions puissent bénéficier des avantages économiques découlant de l'immigration;
(*d*) to see that families are reunited in Canada;	*d*) de veiller à la réunification des familles au Canada;
(*e*) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;	*e*) de promouvoir l'intégration des résidents permanents au Canada, compte tenu du fait que cette intégration suppose des obligations pour les nouveaux arrivants et pour la société canadienne;
(*f*) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;	*f*) d'atteindre, par la prise de normes uniformes et l'application d'un traitement efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après consultation des provinces;
(*g*) to facilitate the entry of visitors,	*g*) de faciliter l'entrée des visiteurs,

students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;

étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d'activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l'échelle internationale;

(*h*) to protect the health and safety of Canadians and to maintain the security of Canadian society;

h) de protéger la santé des Canadiens et de garantir leur sécurité;

(*i*) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and

i) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;

(*j*) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

j) de veiller, de concert avec les provinces, à aider les résidents permanents à mieux faire reconnaître leurs titres de compétence et à s'intégrer plus rapidement à la société.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1852-09
STYLE OF CAUSE:	MEI ZHEN ZHAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	June 9, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Crampton J.
DATED:	August 18, 2010

APPEARANCES:

Avvy Yao-Yao Go	FOR THE APPLICANT
Brad Gotkin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Metro Toronto Chinese & Southeast Asian Legal Clinic Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT