

Federal Court



Cour fédérale

Date: 20150508

Docket: T-817-14

Citation: 2015 FC 605

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 8, 2015

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Plaintiff

and

**JIHAD ACHKAR
MARIE SASSINE
YOUMNA ACHKAR
YASMINA ACHKAR
ANIS ACHKAR
IYAD ACHKAR**

Defendants

JUDGMENT AND REASONS

I. INTRODUCTION

[1] The Minister of Citizenship and Immigration (the Minister) seeks summary judgment declaring that the defendants, six members of the same family, obtained their Canadian citizenship by false representations or fraud, or by knowingly concealing material circumstances

[2] I am satisfied that the defendants have not raised a genuine issue for trial as to whether they obtained their Canadian citizenship as a result of false representations made in their citizenship applications and consequently I will issue the summary judgment sought by the Minister.

II. BRIEF STATEMENT OF FACTS

[3] The defendants are a family made up of the spouses, Jihad Achkar and Marie Sassine, and their four children, Youmna, Yasmina, Anis and Iyad.

[4] On July 6, 2001, the defendants arrived in Canada and were landed as permanent residents of Canada.

[5] On January 20, 2005, Ms. Sassine signed her application for Canadian citizenship and also signed the application for each of the couple's children. Thus, the reference period for their applications is from July 6, 2001, to January 20, 2005.

[6] Ms. Sassine stated on her application that she was absent from Canada for 157 days and present 1137 days during the reference period. Ms. Sassine stated on the application that she signed for each child that they were not absent from Canada for six months or more during the reference period.

[7] On March 4, 2005, Mr. Achkar signed his application for Canadian citizenship. The reference period for his application is from July 6, 2001, to March 4, 2005.

[8] Mr. Achkar stated on his application that he was absent from Canada for 138 days and present 1199 days during the reference period.

[9] Moreover, all the members of the family indicated only Canadian home addresses during the entire reference period.

[10] On May 30, 2006, Mr. Achkar was granted Canadian citizenship and on April 11, 2006, Ms. Sassine and the four children were granted Canadian citizenship.

[11] On November 3, 2011, pursuant to section 18 of the *Citizenship Act*, RSC 1985, c C-29 (*Citizenship Act*), the Minister served on each defendant notices of citizenship revocation dated June 29, 2011, (the Notices) informing them that he intended to file a report with the Governor in Council stating that they obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances so that their Canadian citizenship could be revoked.

[12] In the Notices sent to Mr. Achkar and Ms. Sassine, the Minister claims that they [TRANSLATION] “failed to declare all of [their] absences from Canada during the four years immediately preceding the date of their citizenship applications [and made] false representations on their citizenship applications with respect to the residency requirement during the four years immediately preceding the date of their citizenship applications.”

[13] In the Notices sent to the children, the Minister claims that [TRANSLATION] “[their] parents failed to declare all of their absences from Canada during the four years immediately preceding the date of their citizenship applications [and] provided false information on their citizenship applications with respect to their residency in Canada during the four years immediately preceding the date of their citizenship applications.”

[14] Indeed, according to the evidence adduced by the Minister, the parents allegedly were not present in Canada for the number of days indicated in their forms, the children allegedly were absent from Canada for over six months and all the family members allegedly did not live at the home addresses provided.

[15] Indeed, contrary to the information provided in their citizenship applications, the defendants came to Canada on July 6, 2001, to obtain their permanent resident status, stayed in the country for a few weeks to complete the administrative procedures and then left to live in Lebanon. During the following two years, the parents returned to Canada only a handful of times and the children never returned.

[16] The family came to Canada and lived there only from July 2003 to July 2006.

[17] On November 3, 2011, the defendants requested that their case be referred to the Federal Court in accordance with the provisions of subsection 18(1) of the *Citizenship Act*.

[18] On April 3, 2014, the Minister filed a statement of claim under Rule 171(a)(i) of the *Federal Courts Rules*, SOR/98-106 (the Rules). On September 15, 2014, the defendants filed their statement of defence and on September 30, 2014, the Minister filed his reply.

[19] In their statement of defence, the defendants admit that they made false representations on their applications and that they were not present in Canada the number of days stated in their Canadian citizenship applications. It is difficult to follow their reasoning when they try to justify their actions since they state that they were not informed of the need to be physically present in Canada while at the same time claiming that they were informed of that requirement by an officer of the Canadian Border Services Agency in December 2002, and thus they then decided to reside in Canada.

[20] The defendants allege that they were scammed by their immigration consultant, they made their representations in good faith, they are innocent even if they made false or misleading representations and that the parents and particularly the minor children did not intend to deceive the Minister. The defendants even contend that the Minister himself is responsible for their actions since his lax border controls encourage applicants for Canadian citizenship to commit fraud.

[21] On October 28, 2014, the defendants filed an affidavit of documents under Rule 223 and on November 3, 2014, the Minister filed an affidavit of documents under the same rule.

[22] However, the defendants did not file any affidavit to establish the facts within their personal knowledge.

III. ISSUE

[23] The Court must determine whether this case raises a genuine issue for trial or, on the contrary, whether it may find that a genuine issue for trial has not been raised and consequently grant summary judgment.

IV. LEGISLATIVE FRAMEWORK

A. Loss of Citizenship

[24] Subsection 10(1) of the *Citizenship Act* provides that “where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained ... citizenship ... by false representation or fraud or by knowingly concealing material circumstances”, the person ceases to be a citizen (paragraph 10(1)(a), subject to section 18 of this Act.

[25] Subsection 18(1) of the *Citizenship Act* provides, however, that the Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and (a) that person does not within thirty days after the day on which the notice is sent, request that the Minister refer the case to the

Court; or (b) that the person does so request and the Court decides that there has been false representation or fraud or knowing concealment of material circumstances.

[26] The referral set out in subsection 18(1) of the *Citizenship Act* has been deemed “essentially an investigative proceeding used to collect evidence of facts surrounding the acquisition of citizenship, so as to determine whether it was obtained by fraudulent means” (*Canada (Minister of Citizenship and Immigration) v Obodzinsky*, 2002 FCA 518, at para 15).

[27] Thus, as Justice Mactavish stated, “[t]he task for the Court in a proceeding such as this is to make factual findings as to whether the defendants obtained their Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. Findings made by this Court under paragraph 18(1)(b) of the *Citizenship Act* are final, and cannot be appealed.” (*Canada (Minister of Citizenship and Immigration) v Houchaine*, 2014 FC 342 at para 12).

[28] The Court’s findings may form the basis of a report submitted by the Minister to the Governor in Council for the revocation of citizenship.

[29] The burden is on the Minister to demonstrate, on the balance of probabilities, that the defendants obtained their Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances (*Canada (Minister of Citizenship and Immigration) v Skomatchuk*, 2006 FC 994 at para 21).

[30] The Court has established certain principles in that regard. Thus, citizenship applicants must have intended to mislead the decision-maker so that a technical error made innocently or inadvertently does not result in a declaration under section 10 (*Canada (Minister of Citizenship and Immigration) v Savic*, 2014 FC 523 at para 74).

[31] The Court has also established that “‘willfull blindness’, when practised by an applicant for Canadian citizenship in the pursuit of his or her application, is not to be condoned. ...In those circumstances, the applicant for Canadian citizenship, when faced with a situation of doubt, should invariably err on the side of full disclosure to a citizenship judge or citizenship official.” (*Canada (Minister of Citizenship and Immigration) v Phan*, 2003 FC 1194 at para 33).

[32] Last, in situation where a parent signs the application for a minor child, the Court has confirmed that, since the *Citizenship Act* permits a parent to make a citizenship application on behalf of their minor child, any allegation of false representations or fraud or knowing concealment of material circumstances must pertain to the acts or omissions of the parent and thus, the child does not have to intend to mislead the decision-maker (*Canada (Minister of Citizenship and Immigration) v Zakaria*, 2014 FC 864 at para 84).

B. Summary Judgment

[33] Rule 215 of the *Federal Court Rules* states that the Court shall grant a summary judgment if on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence. There is no genuine issue for trial when the summary judgment proceeding “(1) allows the judge to make the necessary findings of fact, (2)

allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.” (*Hryniak v Mauldin*, 2014 SCC 7 at para 49).

[34] In that type of proceeding, it is well settled that the “defendant must put its ‘best foot forward’ and this requires that the defendant lead evidence and make an argument that there is a genuine issue requiring a trial.” (*Moroccanoil Israel Ltd v Lipton*, 2013 FC 667 at para 10).

V. ANALYSIS

[35] The defendants admit that they made false representations in their citizenship applications and the Minister submitted the documents needed to support his claims.

[36] The Court reviewed the documents on the record and is satisfied that the Minister met his burden and that the defendants made false representations. Indeed, they failed to declare material facts, specifically that for all intents and purposes they were absent from Canada from July 2001 to July 2003, that the children were absent from Canada for periods of six months or more and that the family members did not live at the home address provided from July 2001 to July 2003. The copies of the children's school records were probative here since they confirm that the children went to school in Lebanon until the end of the 2003 school year.

[37] The defendants chose not to adduce affidavit evidence to support their arguments. They have no obligation under the Rules to adduce such affidavits; however, failure to do so considerably limits their evidence and their submissions. Indeed, filing an affidavit makes it possible to establish the facts that a party relies upon in its representations (*Palmar Inc v*

Canada, (1998), 98 GTC 6281 at para 4 (FCTD)) and in a summary judgment matter, the Court weighs the evidence contained in the affidavits to determine if there is a genuine issue for trial (*0871768 BC Ltd v Aestival (Vessel)*, 2014 FC 1047 at para 55).

[38] The defendants also submitted that they would like a trial in order to be able to adduce the evidence to support their defence. As mentioned above, they had to make their best arguments in relation to this motion for summary judgment in order to prove that there is a genuine issue for trial, and thus, the Court cannot agree with their position.

[39] Since they chose not to submit affidavits, the defendants did not adduce evidence to support their arguments, particularly evidence of their understanding of whether there was a need to be physically present in Canada during the period from July 2001 to July 2003. Moreover, it should be recalled that they admitted in their statement of defence that they made false representations in their citizenship applications and they reiterated those admissions before the Court during the hearing.

[40] Both in their statement of defence and before the Court, they tried to claim that they were misled and confused in their interpretation of the residency requirements for granting citizenship.

[41] On the contrary, the Court is satisfied that the defendants' false representations and factual omissions are not innocent and that if they had been in doubt, they should have disclosed all the information about their situation in their citizenship applications.

[42] Last, as mentioned above, the Court finds that any allegation of false representations or fraud or knowing concealment of material circumstances must pertain to the acts or omissions of the parent acting on behalf of their children, and thus, the children do not have to have intended to mislead the decision-maker

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. Each of the defendants, Jihad Achkar, Marie Sassine, Youmna Achkar, Yasmina Achkar, Anis Achkar and Iyad Achkar obtained citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances within the meaning of paragraph 18(1)(b) of the *Citizenship Act*, RSC 1985, c C-29;-
2. The plaintiff is entitled to costs based on the upper end of Column V of Tariff B to the *Federal Courts Rules*, SOR/98-106 .

“Martine St-Louis”

Judge

Certified true translation
Monica F. Chamberlain, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-817-13

STYLE OF CAUSE: MCI and JIHAD ACHKAR MARIE SASSINE
YOUNNA ACHKAR YASMINA ACHKAR ANIS
ACHKAR LYAD ACHKAR

DATE OF HEARING: APRIL 28, 2015

JUDGMENT AND REASONS ST-LOUIS J.

DATED: MAY 8, 2015

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