Federal Court  Cour fédérale

Date: 20150512

Docket: T-1785-14

Citation: 2015 FC 623

Montréal, Quebec, May 12, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AL-ASKARI, SAMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision rendered by a Citizenship Judge refusing the Applicant's application for citizenship on the basis that the Applicant failed to meet the requirements of paragraph 15(1)(*c*) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

II. Factual Background

[2] The Applicant was born in 1989 in Abu Dhabi, United Arab Emirates [UAE] and became a permanent resident of Canada on July 8, 2004.

[3] The Applicant filed an application for citizenship on June 8, 2011. Therefore, the relevant time period for the purposes of determining residency in accordance with paragraph 5(1)(*c*) of the Act is from June 8, 2007 to June 8, 2011.

[4] The Applicant attended an interview with a citizenship officer in March 2013 and, upon referral, appeared before the Citizenship Judge on November 20, 2013.

[5] On December 12, 2013, the Applicant submitted additional documentation relating to his travel activities.

III. Impugned Decision

[6] In a letter dated June 26, 2014, the Citizenship Judge communicated her decision (dated January 20, 2014) to the Applicant, wherein she refuses the Applicant's application for citizenship on the basis that the Applicant failed to meet the residency requirements for the applicable four-year period. In particular, the Citizenship Judge concluded:

> […] I am not satisfied that the information submitted allows me to conclude that Mr. AL-ASKARI was physically and distinctly present in Canada for at least 1 095 days during the relevant time period under examination as prescribed by law to meet the requirements of subsection 5(1)c) of the *Citizenship* [*Act*].

(Decision and reasons, Certified Tribunal Record, at p 13).

[7] In the reasons, the Citizenship Judge acknowledges receipt of additional documents in December 2013 and January 2014 submitted by the Applicant, which included officially sealed school transcripts and income tax declarations.

[8] First, the Citizenship Judge noted discrepancies in respect of the Applicant's declared absences from Canada, as found in his Original Application and Residency Questionnaire. According to the Citizenship Judge, although these variations in respect of length of absences leave the Applicant within the requisite 1,095 days prescribed under the Act, they nonetheless impugn the Applicant's credibility.

[9] The Citizenship Officer then proceeded to analyze the official travel documents provided by the Applicant in support of his application for citizenship: the translated UAE Residency and Nationality System Report and the Applicant's three Syrian passports, two of which cover the entire period under examination.

[10] The Citizenship Judge raised numerous concerns pertaining to the passports used by the Applicant in his travels, as evidenced in the Applicant's Residency and Nationality System Report for the UAE. In sum, the Citizenship Judge found that the evidence raised "doubts as to the completeness [of] the Applicant's declarations regarding his absences from Canada" and that she could therefore not "rely on these declarations with any great degree of confidence" (Decision and Reasons, Certified Tribunal Record, at p 16).

[11] The Citizenship Judge then assessed additional documentary evidence adduced by the Applicant, such as evidence pertaining to education in Canada, banking and financial transactions, tenancy, social ties and other indicators of residence, in order to validate the Applicant's "physical" and "distinct" presence in Canada for the relevant timeframe.

[12] In particular, the Citizenship Judge noted that segments of the four-year relevant timeframe were not accounted for and that portions of the evidence amounted to "passive indicators" of residency.

[13] The Citizenship Judge ultimately found that the evidence was "incomplete, inconsistent and unclear" and did not form sufficient and "satisfactory indicia of residence" (Decision and Reasons, Certified Tribunal Record, at p 19).

[14] These findings led the Citizenship Judge to conclude:

> The sum effect of all the above is that I am unable to determine with any degree of confidence or accuracy the actual number of days the Applicant was within Canada and the actual number of days that the Applicant was absent from Canada. I find that, on a balance of probabilities, the evidence before me does not reasonably show nor suffice to establish residence in the Applicant's case.
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> (Decision and Reasons, Certified Tribunal Record, at p 19)

IV. Legislative Provisions

[15] Section 5 of the Act outlines the requirements applicants must fulfill in order to receive Canadian citizenship. Notably, paragraph 5(1)(*c*) provides that permanent residents must

demonstrate that they have accumulated three years of residence in Canada within the four years preceding the date of their application:

Grant of citizenship	**Attribution de la citoyenneté**
5. (1) The Minister shall grant citizenship to any person who	**5**. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :
(*a*) makes application for citizenship;	*a*) en fait la demande;
(*b*) is eighteen years of age or over;	*b*) est âgée d'au moins dix-huit ans;
(*c*) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:	*c*) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :
(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;
(*d*) has an adequate knowledge of one of the official languages of Canada;	*d*) a une connaissance suffisante de l'une des langues officielles du Canada;

(*e*) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and	*e*) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;
(*f*) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.	*f*) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.

V. Issue

[16] This application raises the following issue:

Did the Citizenship Judge err in finding that the Applicant failed to meet the requirements of physical presence in Canada pursuant to paragraph 5(1)(*c*) of the Act?

VI. Standard of Review

[17] A Citizenship Judge's decision in respect of whether an applicant has met the residency requirements for the purposes of establishing citizenship is reviewable on the standard of reasonableness (*Chaudhry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 179 at para 20 [*Chaudhry*]; *Atwani v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1354 at para 10 [*Atwani*]).

[18] The highly discretionary nature of the Citizenship Judge's findings attracts considerable deference from this Court:

> [14] It is now settled law that the standard of review applicable to the decisions of Citizenship Judges is that of reasonableness: see, for example, *Zhang v. Canada (Citizenship and Immigration)*, 2008 FC 483; *Chen v. Canada (Citizenship and Immigration)*,

> 2007 FC 1140. Whether dealing with questions of mixed fact and law, as when applying one of the jurisprudential tests of the concept of residency to the particular facts of the case, or purely factual questions, as when computing days of absence, *Dunsmuir v. New Brunswick* (2008 SCC 9) instructs us that the reviewing court should show deference and resist substituting its own view for that of the Citizenship Judge. To the extent that the impugned decision is intelligible and justified and can be considered a defensible outcome in respect of the facts and the law, it should not be set aside on judicial review: *Paez v. Canada (Citizenship and Immigration)*, 2008 FC 204.
>
> (*El Falah v Canada (Minister of Citizenship and Immigration)*, [2009] FCJ 1402 at para 14)

[19] As such, it is not within this Court's mandate to substitute its view for the Citizenship Judge's findings of fact and of mixed fact and law (*Canada (Minister of Citizenship and Immigration) v Vijayan*, 2015 FC 289 at para 64; *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1081 at para 38).

VII. Analysis

[20] The Applicant bears the onus of providing sufficient evidence demonstrating that he meets the residency requirements set out in paragraph 5(1)(*c*) of the Act (*Mizani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 698 at para 19; *Chaudhry*, above at para 25). Justice Judith A. Snider's reasoning in *Atwani*, above, is instructive:

> [12] The Applicant submits that the Citizenship Judge erred by failing to make a specific determination of how many days the Applicant was actually physically present in Canada. In the absence of such a determination, the Applicant argues, the Judge cannot reasonably have concluded that the residency requirement of s. 5(1)(c) was not met. This argument, in my view, is fatally flawed. The burden is on the Applicant - not on the Citizenship Judge - to establish, with clear and compelling evidence, the number of days of residence. In this case, the Applicant failed to

> provide consistent and credible evidence with respect to his absences from Canada.
>
> [13] As recently stated by Justice Rennie in *Abbas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 145 at para 8, [2011] FCJ No 167:
>
> > Irrespective of which test is applied, each applicant for citizenship bears the onus of establishing sufficient credible evidence on which an assessment of residency can be based, whether it is quantitative (Re *Pourghasemi*) or qualitative (*Koo*).
>
> [Emphasis added.]

[21] In the matter at hand, the Applicant was required to demonstrate at least 1,095 days of physical presence in Canada within the four-year period between June 2007 and June 2011.

[22] The Citizenship Judge ultimately found that the Applicant's evidence lacked clarity, credibility, and was overall ambiguous, which led her to conclude that the Applicant failed to meet his burden of establishing his physical presence in Canada for the relevant time period.

[23] The Applicant claims that the Citizenship Officer made mathematical calculation errors in respect of the Applicant's number of days of absence from Canada, therefore unreasonably impugning his credibility. The Applicant argues that the Citizenship Judge erred in finding that the Applicant's passport data, or even proof of his continued enrolment in educational institutions in Canada, as evidenced by academic transcripts and attestations, are inconclusive, in and of themselves, to determine his physical presence in Canada for the minimum requisite 1,095 days. Moreover, the Applicant submits that in applying the strict physical presence test, the

Citizenship Judge's findings in respect of other indicators of residence such as banking, housing and other social activities are superfluous.

[24] The Court finds that the Applicant's submissions amount to a disagreement with the Citizenship Judge's weighing of the evidence and fail to demonstrate a reviewable error.

[25] It is this Court's view that the Citizenship Judge conducted a thorough assessment of the evidentiary record before her and identified numerous shortcomings in respect of the evidence of the Applicant's physical presence in Canada during the material four-year period.

[26] Upon review of the Citizenship Judge's decision and reasons, parties' submissions and the Certified Tribunal Record, the Court finds no basis upon which it may intervene.

VIII. Conclusion

[27] In light of the above, the Court's intervention is unwarranted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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