Federal Court Cour fédérale

Date: 20150521

Docket: T-1441-14

Citation: 2015 FC 663

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 21, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

FARID AMEZIANE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant is appealing, pursuant to the former subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 (the Act), from a decision of a citizenship judge dismissing his citizenship

application on the basis that it does not meet the residency requirement prescribed by paragraph 5(1)(*c*) of the Act.

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

II. <u>Background</u>

[3] The applicant is an Algerian national. He is married and has four children between the ages of 8 and 20. He entered Canada, accompanied by his family, on July 13, 2007. He was admitted at that time, as was his spouse, as a permanent resident. On September 23, 2010, the two of them applied for citizenship.

[4] Between July 13, 2007, and September 23, 2010, the relevant period for the purposes of assessing the residency requirement that he had to meet, as required by paragraph 5(1)(*c*) of the Act, the applicant was absent from Canada for a little more than half that time, that is, for a total of 592 days. This is due to the fact that he continued working in Saudi Arabia, where he had been working, before immigrating to Canada, as a drilling consultant for a local company, thus sharing his time between that country and Canada, where his spouse and children settled.

[5] The applicant nonetheless states that he paid all his taxes in Canada, did volunteer work at his children's school and had all his bank accounts and his principal residence, where all the members of his family permanently resided, in Canada, and had no other ties to Saudi Arabia apart from his work.

[6] On February 21, 2014, a citizenship judge approved his spouse's citizenship application but rejected his. The citizenship judge, applying one of the three tests defined by this Court for the purposes of assessing the residency requirement, concluded that Canada was not the place where the applicant, because of [TRANSLATION] "his specific circumstances", [TRANSLATION] "regularly, normally and customarily lived", nor was it the place where he had centralized his mode of existence.

[7] The applicant submits that the decision should be reversed on the basis that the citizenship judge failed to conduct a comparative analysis of the applicant's ties to Canada and other countries, in this case, Saudi Arabia and Algeria. In other words, the applicant argues that the citizenship judge failed to consider the significance of these ties to Canada in comparison with those he may have had to those other two countries.

III. Standard of review

[8] The parties admit that the standard of review applicable to the applicant's challenge is reasonableness, as this concept is defined in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[9] According to this standard of review, it is not the Court's role to reassess the evidence in the record and substitute its own findings for those of the citizenship judge when evaluating the residency requirement, which is a question of mixed fact and law. Accordingly, the Court owes the citizenship judge's findings a measure of deference because the judge possesses a degree of knowledge and experience in such matters (*Paez v Canada (Minister of Citizenship and*

Immigration), 2008 FC 204, at para 12). The Court's role is therefore limited to intervening only if the impugned decision lacks justification, transparency and intelligibility, or if the resulting conclusion does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above at para 47).

IV. Analysis

[10] Paragraph 5(1)(*c*) of the Act provides that the Minister of Citizenship and Immigration shall grant citizenship to any person who makes an application for citizenship, is 18 years of age or older, has permanent resident status and, notably, has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada in total.

[11] According to the Court's case law, a citizenship judge has three available options for determining whether an applicant for citizenship has met the residency requirement. In *Paez*, above at para 13, my colleague Madam Justice Danielle Tremblay-Lamer summed up the state of the law in this area as follows:

> As has been indicated on numerous occasions, the Court's interpretation of "residence" has resulted in three different tests (*Mizani v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 697 at para. 9). The first test involves a strict counting of days of actual physical presence in Canada which must total 1095 days in the 4 years preceding the application (*Pourghasemi (Re)*, [1993] F.C.J. No. 232 (QL). The second is a less stringent test which recognizes that a person can be resident in Canada, even while temporarily absent, if there remains a strong attachment to Canada (*Antonios E. Papadogiorgakis (Re)*, [1978] 2 F.C. 208 (T.C.)). Finally, the third test builds upon the second by defining residence as the place where one "regularly, normally or customarily lives" or has "centralized his or her mode of

> existence" and includes 6 non-exhaustive factors involved in the evaluation (*Koo (Re)*, *supra*, at para. 10).

[12] In the present case, the citizenship judge chose and applied the test developed in *Re Koo*, [1993] 1 FC 286. This test is built on six factors. The first concerns the initial establishment in Canada, which is essential to any analysis of the residency requirement (*Bhatia v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 2010, 230 FTR 191, at para 9; *Jreige v Canada (Minister of Citizenship and Immigration)*, 175 FTR 250, [1999] FCJ No 1469 (QL), at paras 23-25; *Canada (Minister of Citizenship and Immigration) v Naveen* (in English only), 2013 FC 972, 439 FTR 304, at para 15). Here the citizenship judge noted that the applicant left Canada barely two months after arriving here and went back to Saudi Arabia to resume his professional activities. He found that this initial establishment was insufficient.

[13] The second factor concerns the place of residence of the citizenship applicant's immediate family. The citizenship judge noted that this factor was in the applicant's favour because his spouse and his children have been residing in Canada since their arrival here. As for the third factor, the pattern of physical presence in Canada, the citizenship judge found that it too was in the applicant's favour, insofar as when he is in Canada, he joins his family at the home that he and his spouse bought for themselves in Montréal.

[14] The fourth and fifth factors concern the extent and nature of the absences from Canada. Here the citizenship judge noted that the applicant was not present in Canada the majority of the time, spending as much time abroad as in Canada. As for the nature of his absences, the judge noted that they were attributable not to a clearly temporary situation stemming from the

requirements of a job obtained in Canada, but to the fact that the applicant was exercising his talents abroad, for a foreign employer.

[15] Finally, the sixth factor focuses on the quality of the citizenship applicant's connection with Canada. The question is whether this connection is more substantial than that which the applicant may have with another country. Here is how the citizenship judge dealt with the sixth factor:

> [TRANSLATION]
>
> The quality of the applicant's connection with Canada must demonstrate a priority of residence in Canada (the connection with Canada must be more substantial than the connection that he may have with any other country). "Example of an allowable exception: an applicant has been spending a few months abroad, each year, to look after his elderly parents. When in Canada, however, the applicant is involved in his work and business ventures. He also is involved with community organizations and the vast majority of his personal contacts (professional and social) are people who live here in Canada. Finally, the applicant pays income tax in Canada and in no other country". Unfortunately, this is not entirely the case here either.

[16] Essentially, the applicant is criticizing the citizenship judge for improperly assessing the sixth factor. He is of the opinion that, apart from his work, he has no connection, material or emotional, with Saudi Arabia and that his ties to Algeria, his country of citizenship, are limited to the presence of a few members of his family there. He argues that his connection to Canada, on the other hand, is substantial: his immediate family lives here; he pays all his taxes and has all his bank accounts here; all his assets, including the family home, are here; and he does volunteer work here.

[17] I find that this criticism is unjustified, for three reasons.

[18] First, this argument does not take into account the five other factors of the *Koo* test performed by the citizenship judge, an assessment whose reasonableness must be presumed since it was is no way called into question by the applicant. Second, there is nothing in the case law to suggest that the sixth factor in the *Koo* test should take precedence over the other five. Even if we were to assume that the citizenship judge erred in concluding as he did with regard to the sixth factor, the applicant would still have to show that this error irredeemably tainted the entire analysis. He did not.

[19] Finally, I cannot say that the citizenship judge's conclusions regarding the sixth factor are unreasonable. Work is an important, some would say essential, component of a person's way of life, or of how he or she regularly, normally and customarily lives, to paraphrase *Koo*. In this case, like it or not, the applicant is earning his living abroad. This is no trivial factor. His absences are the product of a regular way of life, not a temporary phenomenon. They indicate, in the words of my colleague Justice Luc Martineau in *Canada (Minister of Citizenship and Immigration) v Chen*, 2004 FC 848, at para 10, "a life split between two countries, rather than a centralized mode of existence in Canada, as is contemplated by the Act". The fact that the applicant lives in trailers on construction sites when he is in Saudi Arabia changes nothing, in my opinion.

[20] Clearly, the applicant's ties to Canada are significant, but two comments need to be made in this regard. First, possessing houses, cars, credit cards, driver's licences and bank accounts,

filing tax returns, taking out health insurance and joining community associations are all just "passive" indicia of a connection with Canada. On their own, these are insufficient to demonstrate a centralized mode of existence (*Paez*, above, at para 18).

[21] Second, the presence of the applicant's immediate family in Canada, while important, is not the decisive factor for the purposes of the analysis required by *Koo*. A citizenship applicant cannot bootstrap his or her way into residency based on the conduct of his or her family (*Paez*, at para 15; see also: *Sleiman v Canada (Minister of Citizenship and Immigration)*, 2007 FC 230, at para 25; *Eltom v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1555, 284 FTR 139 at para 22; *Faria v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1385, at para 12; *Canada (Minister of Citizenship and Immigration)* v *Chang*, 2003 FC 1472, at para 9).

[22] On the whole, the applicant's connection to Saudi Arabia is still substantial because it is where he earns his living. As such, this factor, which causes him to be absent from Canada on a regular basis, is structural, not temporary. In this respect, which is significant in terms of centralization of mode of existence, the applicant has no connection to Canada; in fact, his employer does not even maintain a presence of any kind on Canadian soil, and he is not engaged in any professional activities here that are in any way related to this job. In such a context, I cannot say that, having regard to the sixth factor of the *Koo* test, the citizenship judge drew an erroneous conclusion from the evidence.

[23] On this point, I note that it is not my role here to reassess the evidence in the record and substitute my own findings for those of the citizenship judge. My role is, rather, is to ask myself,

while showing due deference, whether the conclusions drawn by the citizenship judge with regard to the sixth factor fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above at para 47). In my opinion, they do. In other words, it is not enough to disagree with the citizenship judge's decision. For the Court to be able to intervene, it must be shown that the impugned decision is based on an indefensible explanation. This was not shown.

[24] In conclusion, the applicant has not persuaded me that there are grounds in this case for the Court to intervene pursuant to *Dunsmuir*, above, insofar as I am satisfied that the citizenship judge (i) correctly identified the analytical framework that he chose to apply for the purposes of determining whether the applicant met the residency requirement prescribed by paragraph 5(1)(*c*) of the Act; (ii) applied this analytical framework rigorously; and (iii) drew reasonable conclusions on the basis of his analysis.

[25] The applicant's appeal will therefore be dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal is dismissed.

"René LeBlanc"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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