

Federal Court



Cour fédérale

**Date: 20150916**

**Docket: T-156-15**

**Ottawa, Ontario, September 16, 2015**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**NENA FELICILDA AMPO**

**Respondent**

**JUDGMENT**

**UPON** hearing this application at Toronto, Ontario on Tuesday, September 1, 2015;

**AND UPON** hearing counsel for the parties and reading the materials filed;

**AND UPON** reserving decision;

**AND UPON** determining that the application be dismissed for the following reasons:

[1] The Applicant, the Minister of Citizenship and Immigration, challenges a decision of the Citizenship Court granting citizenship to the Respondent, Nena Felicilda Ampo.

[2] The Minister argues that the Citizenship Judge erred in concluding that Ms. Ampo had satisfied the test for establishing her Canadian residency between the reference dates of August 24, 2006 and August 24, 2010.

[3] The record discloses initial problems with Ms. Ampo's evidence of residency. This led to a request to produce her passports. Even then Ms. Ampo failed to produce one of her relevant passports and, in the case of her 2003 passport, two pages were missing. These deficiencies, in turn, led to the requirement that Ms. Ampo complete a residency questionnaire. When her application was referred to the Citizenship Court, the CIC identified these deficiencies as matters of concern.

[4] The Minister contends that the Citizenship Judge failed in his duty to resolve the identified residency ambiguities, primarily because he failed to demand production of the two pages missing from Ms. Ampo's 2003 passport. The Minister advances this argument on the strength of the absence of those two pages from the Certified Tribunal Record (CTR). This is said to support an inference that the missing pages were never produced by Ms. Ampo to the Citizenship Court because, if they had, copies would have been added to the CTR.

[5] A similar inference is sought in connection with additional residency evidence requested at the hearing by the Citizenship Judge. Although Ms. Ampo has sworn an affidavit attesting to the delivery of those supplementary materials in the first full week of January 2015 to the Citizenship Court, they, too, are not contained in the CTR. The Minister argues that the Citizenship Court thus rendered its decision without the benefit of those documents and in the face of its own acknowledgment at the hearing of the weakness of Ms. Ampo's other residency evidence.

[6] The inference I draw from the evidence is not that Ms. Ampo failed to produce her complete passports or the supplementary residency documentation to the Citizenship Court but, rather, that the Citizenship Court failed to make copies of everything placed before it.

[7] Ms. Ampo has sworn an affidavit which attests to the production of her original passports to the Citizenship Court (see p 2 of the Application Record at para 7). The Minister elected not to cross-examine Ms. Ampo and, not having had representation at the hearing, is not otherwise able to contest her evidence. Added to this is the statement in the Citizenship Court decision that Ms. Ampo "provided full copy [sic] of all passports covering the relevant period (see attached) and she did not find any discrepancies with what [sic] already known".

[8] It is also of significance that Ms. Ampo clearly provided a copy of her missing passport at the hearing because a complete copy of that document is contained in the CTR. This provides some independent corroboration of Ms. Ampo's evidence that she brought her passports to the hearing.

[9] In the face of this evidence, I am not disposed to draw an inference that the two missing pages from Ms. Ampo's 2003 passport were not produced to the Citizenship Court. Given the apparent laxity of that court's administrative practises, it seems far more likely that the Citizenship Judge examined Ms. Ampo's original 2003 passport and, seeing nothing of concern, returned it to her without making copies of the missing pages. This is also borne out in some measure by the production before me of the two missing passport pages. They contain no material notations and Ms. Ampo would have had no motive to withhold them from the Court. I consider this evidence, not to supplement the record before the Citizenship Court, but only to clarify what likely took place at the hearing.

[10] The Minister's concern about the absence of any supplementary residency documentation in the CTR is similarly misplaced. The impugned decision confirms the court's request at the hearing for additional corroboration of Ms. Ampo's employment and leasing arrangements. Ms. Ampo's affidavit states that she delivered those materials to the court during the first full week of January 2015 (a week that began on January 5, 2015) and the decision was rendered on January 6, 2015. It seems likely to me that the court prepared a draft decision in advance of the receipt of those documents and, upon being satisfied, the court rendered its decision – once again without adding copies of the documents to the CTR.

[11] There is no doubt that the court's administrative practices in this case were less than exemplary. Copies of all documents considered by the Citizenship Court should always be obtained and added to the record. In a case where logical inferences cannot be drawn from the

reasons and the record, the failure to produce a complete evidentiary record may justify the quashing of the decision. That is not the situation here.

[12] The Minister also challenges the Citizenship Court's analysis of the evidence bearing on Ms. Ampo's constructive residency – the so-called *Re Koo* considerations: see *Koo (Re)*, [1993] 1 FCR 286, 1992 CanLII 2417 (FC). One concern arises from the court's failure to clarify whether Ms. Ampo was two days short of the physical presence requirement, or 9 days short of that threshold. While I agree the decision appears to overlook Ms. Ampo's admission at the hearing that she had spent an additional week in the United States, I do not accept that this discrepancy would have led to a different outcome. In either case Ms. Ampo was just a few days short of the requirement, and the difference is immaterial to the application of the *Re Koo* test for residency.

[13] I also agree with the Minister's counsel that the Citizenship Court's analysis of the *Re Koo* factors is very thin and somewhat difficult to follow. In one instance the court seemingly contradicts itself about where the members of Ms. Ampo's family reside. That error obviously arises from the court's poor proofreading, leading to its failure to extract a passage from another decision concerning some other applicant (a male). This type of mistake happens from time to time and does not justify this Court's intervention.

[14] The Minister's additional concern arises from a lack of clarity in the Court's treatment of the *Re Koo* factors. The impugned passages are the following:

Was the individual physically present in Canada for a long period prior to recent absences which occurred immediately before the application for citizenship?; **Yes**

Where are the applicant's immediate family and dependants (and extended family) resident; **She is not married, the parents are dead and the only relatives are old brothers and sisters living in the Philippines.**

Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?; **Yes**

What is the extent of the physical absences – if an applicant is only a few days short of the 1,095 day total it is easier to find deemed residence than if those absences are extensive?; **Yes.**

Is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, following a course of study abroad as a student, accepting temporary employment abroad, accompanying a spouse who has accepted temporary employment abroad?; **She is only two days short from the 1,095 days required and the reason is related to the date of her application, presented only two years after she was landed.**

What is the quality of the connection with Canada: is it more substantial than that which exists with any other country; **Yes. All her social and business activities are in Canada and she has no connections stronger than the one with this Country with any other Country.**

[15] I accept that the above reasoning is not a model of clarity or precision. It can be difficult to know which part of a compound question is being addressed where the answer is limited to “yes”. Nevertheless, from the overall context of these reasons, it is apparent that the Citizenship Judge accepted Ms. Ampo’s evidence pertaining to the quality of her ties to Canada.

[16] It seems to me that this is the very type of decision that was recently discussed and upheld by Justice Denis Gascon in the *Minister of Citizenship and Immigration v Suleiman* 2015 FC 891, 2015 CarswellNat 3291. There the Court observed that a decision will be maintained on

judicial review if the reviewing Court “can connect the dots and draw the lines in the Citizenship Judge’s decision”. Justice Gascon’s application of the reasonableness standard of review also has application to this case:

[34] The Court understands the Minister’s desire to receive more detailed or more complete reasons from a citizenship judge, as the process established by the *Citizenship Act* requires a citizenship officer to refer a matter to a citizenship judge when the officer has concerns and is not satisfied that residency requirements are met. But the test this Court has to apply is not whether the decision satisfies the expectations of the Minister; the test is the reasonableness of the decision. None of the conclusions of the citizenship judge are outside the range of reasonableness. Where there might have been some alleged inconsistencies, they were either immaterial or could be reasonably reconciled within the decision.

[17] I am satisfied that the Citizenship Judge’s reasons in this case are sufficiently robust to meet the above standard. The Minister’s application is accordingly dismissed.

**THIS COURT’S JUDGMENT is that** this application is dismissed.

"R.L. Barnes"

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Judge