Federal Court Cour fédérale

Date: 20160404

Docket: T-1671-15

Citation: 2016 FC 363

Ottawa, Ontario, April 4, 2016

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

SAMIR HASSAN MOHAMED SALHA

Respondent

JUDGMENT AND REASONS

[1] On this application the Minister of Citizenship and Immigration (Minister) challenges the reasonableness of a decision of the Citizenship Court by which the Respondent, Samir Hassan Mohamed Salha, was granted Canadian citizenship.

[2] The standard of review is reasonableness, which means, of course, that the decision under review is to be afforded considerable deference (*Canada (Minister of Citizenship and*

Immigration) v Abdulghafoor, 2015 FC 1020 at paras 15-17, [2015] FCJ No 1017 [*Abdulghafoor*]).

[3] In *Abdulghafoor,* above, Justice Denis Gascon provided the following helpful description of the approach to be adopted in cases of this type:

> [29] The Minister submits that the citizenship judge's reasons are inadequate in that they do not show a grasp of the paucity of the evidence in this case, let alone the concerns raised by the citizenship officer. As such, they do not allow a reviewing party to understand why the citizenship judge made his decision. I do not agree and rather find that the citizenship judge's reasons were adequate.
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> [30] The law relating to the sufficiency of reasons in administrative decision-making has evolved substantially since *Dunsmuir*, both with respect to the degree of scrutiny to which fact-based decisions (such as the decision at issue in this case) should be subjected, and in relation to the sufficiency of reasons as a stand-alone ground for judicial review. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII) [*Newfoundland Nurses*], the Supreme Court provided guidance on how to approach situations where decision-makers provide brief or limited reasons. Reasons need not be fulsome or perfect, and need not address all of the evidence or arguments put forward by a party or in the record.
>
> [31] The decision-maker is not required to refer to each and every detail supporting his or her conclusion. It is sufficient if the reasons permit the Court to understand why the decision was made and determine whether the conclusion falls within the range of possible acceptable outcomes (*Newfoundland Nurses* at para 16). The reasons are to be read as a whole, in conjunction with the record, in order to determine whether the reasons provide the justification, transparency and intelligibility required of a reasonable decision (*Dunsmuir* at para 47; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 (CanLII) at para 53; *Construction Labour Relations v Driver Iron Inc.*, 2012 SCC 65 (CanLII) at para 3). This Court discussed the issue of adequacy of reasons in a citizenship judge's decision in the recent *Safi* decision. In that decision, Justice Kane echoed the *Newfoundland Nurses* principles and stated that the decision-maker is not required to set out every reason, argument or detail in the

> reasons, or to make an explicit finding on each element that leads to the final conclusion. The reasons are to "be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Safi* at para 17).
>
> [32] In this case, the citizenship judge's decision meets this standard; the reasons explain why he decided that Mr. Abdulghafoor met the residency requirement and how he considered the evidence.
>
> [33] Reasonableness, not perfection, is the standard. In citizenship matters, reasons for decision are often very brief and do not always address all discrepancies in the evidence. However, even where the reasons for the decision are brief, or poorly written, this Court should defer to the decision-maker's weighing of the evidence and credibility determinations, as long as the Court is able to understand why the citizenship judge made its decision (*Canada (Minister of Citizenship and Immigration) v. Thomas*, 2015 FC 288 (CanLII) at para 34 [*Thomas*]; *Canada (Minister of Citizenship and Immigration) v Purvis*, 2015 FC 368 (CanLII) at paras 24-25).

[4] In this case the Minister argues that the Citizenship Court failed in its duty to verify Mr. Salha's Canadian residency in the face of material evidentiary deficiencies or to explain why it decided that Mr. Salha met the residency requirement.

[5] It is common ground that the reference period for calculating Mr. Salha's residency ran from June 30, 2007 to May 26, 2011. Under the *Pourghasemi* test adopted by the Citizenship Court, Mr. Salha was required to establish his physical presence in Canada for at least 1095 days during the reference period (*Pourghasemi, Re,* (1993) 62 FTR 122 (Fed TD), [1993] FCJ No 232). In his application he declared 1300 days of physical presence and 125 days of absence.

[6] Mr. Salha's declaration of residency was, however, not corroborated by the documents he submitted. The Citizenship Court described the problem in the following way:

> The applicant has presented copies of all pages of his travelling documents and he doesn't declare a shortfall but some of his statements cannot be verified. For example he declares six absences during the relevant period but only four of his re-entry dates could be verifies [sic] through the ICES report.

[7] The sum total of the Citizenship Court's analysis of the evidence bearing on the above problem is then set out in the following passages:

> It is true that the applicant declares six absences during the relevant period and only four of his re-entry dates could be verified through the ICES report. However, it is also true that the ICES report doesn't contain information contradicting what the applicant declares. I have also tried to get more information about the trips not supported by the ICES report. Unfortunately the applicant, as it is very common in some communities, doesn't use the credit card very much. However, I was able to find some activities on one card in the days immediately after his two not verified re-entries in Canada in Sept. 2007 and March 2009, (see copy of the cc in the file).
>
> …
>
> Given the foregoing, and referring to the residency test set by Muldoon J. in *Pourghasemi*, (Re): [1993] F.C.J. No. 232, I find that, on a balance of probabilities, the Applicant has demonstrated that he resided in Canada for the number of days he claimed to reside in Canada and has therefore met the residence requirement under s. 5(1)(c) of the *Act*.

[8] The apparent justification for this decision is that, notwithstanding the absence of corroborating travel documentation or other probative circumstantial evidence of a presence in Canada during the periods affected by unverified re-entry dates, the Citizenship Court accepted Mr. Salha's declaration of residency at face value.

[9] In my view the decision fails to conform with the approach described by Justice Yves de Montigny in *Falah v Canada (Minister of Citizenship and Immigration),* 2009 FC 736 at para 21, [2009] FCJ No 1402:

> In applying this test, the Judge cannot rely on the applicant's claims alone. He must also verify the applicant's actual presence in Canada during the periods when the applicant claims that he was not outside the country. Accepting the applicant's argument that the Judge erred by failing to accept the statements made by the applicant in his residence questionnaire would amount to saying that the Judge must blindly accept the submissions made to him as to the number of days of absence from or presence in Canada. That is not my understanding of the approach taken in *Re Pourghasemi*. If one relies on a strict counting of days during which the applicant must be present in Canada, it follows that the Judge can and must ensure that the applicant was actually on Canadian soil during the period when he claims to have been. One need only point out that it is the applicant who bears the burden of proving that he meets the conditions set out in the Act, and in particular the residence requirements: *El Fihri* v. *Canada (Citizenship and Immigration)*, 2005 FC 1106; *Saqer* v. *Canada (Citizenship and Immigration)*, 2005 FC 1392. In this case, the different versions given by the applicant could only lead the Judge to show prudence and to require proof of his physical presence in Canada

[10] The reasons provided by the Citizenship Court are not sufficient to explain why it found the residency requirement to be satisfied without evidence to corroborate the dates of some of Mr. Salha's re-entries to Canada. Simply put, the Citizenship Court's finding that the ICES report does not contradict Mr. Salha's claim is unhelpful, as the absence of evidence confirming Mr. Salha's physical presence in Canada is not probative of anything. The onus was on Mr. Salha to prove his residency, and his failure to prove the return dates for two of his six trips to the United Arab Emirates created a material gap in the evidence.

[11] The vague reference by the Citizenship Court to credit card transactions is also problematic. Contrary to the decision, the credit card statements in the certified tribunal record show that the family were frequent users of their credit cards. In the absence of Canadian transactions that could be plausibly attributed to Mr. Salha, to the exclusion of his wife, those records carried no probative weight in proof of his residency.

[12] I would add that the cases relied upon by Mr. Salha are distinguishable. In all of those cases the reasons given by the Citizenship Court explained the evidentiary basis of the residency finding: see *Abdulghafoor*, above, at para 32; *Canada (Minister of Citizenship and Immigration) v Ibrahim*, (March 14, 2016), Toronto T-1167-15 (FC) at para 9; *Canada (Minister of Citizenship and Immigration) v Lee*, 2013 FC 270 at para 48, [2013] FCJ No 311; *Canada (Minister of Citizenship and Immigration) v Purvio*, 2015 FC 368 at paras 37-39, [2015] FCJ No 360; *Canada (Minister of Citizenship and Immigration) v Suleiman*, 2015 FC 891 at paras 17 and 39, [2015] FCJ No 932; and *Canada (Minister of Citizenship and Immigration) v Goo*, 2015 FC 1363 (CanLII) at paras 41-42. In this case the Citizenship Court did nothing more than identify the evidentiary problem and assert a bare conclusion. This approach fails to provide the justification that is required for a reasonable decision.

[13] It should not be difficult for Mr. Salha to prove the details of his international travel. Airline records are an obvious source of reliable information of the dates of his travel. Other records of his transactions and attendances in Canada at the relevant times should also be readily available. Indeed, it is perhaps unfortunate for Mr. Salha that the Citizenship Court declined his offer of further and better documentation to confirm his residency. Because that opportunity was

missed, it is regrettably necessary that the matter be revisited with a rehearing on the merits by a different decision-maker. Mr. Salha will of course, have the opportunity, hopefully with the assistance of counsel, to supplement his evidence in order to verify his physical presence in Canada.

[14] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed with the matter to be redetermined on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1671-15
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v SAMIR HASSAN MOHAMED SALHA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 21, 2016
JUDGMENT AND REASONS:	BARNES J.
DATED:	APRIL 4, 2016

APPEARANCES:

Leanne Briscoe	FOR THE APPLICANT
Cristina Guida	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT
Green and Spiegel LLP Barrister and Solicitor Toronto, Ontario	FOR THE RESPONDENT