

Federal Court



Cour fédérale

Date: 20160418

Docket: T-1019-15

Citation: 2016 FC 424

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 18, 2016

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

NAZIH ABDALLAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] **WHEREAS** Nazih Abdallah is appealing a citizenship judge's decision to deny his application for citizenship (for the second time) because he does not meet the residence criteria set out in paragraph 5(1)(c) of the *Citizenship Act*, R.S.C., 1985, chapter C-29 (the Act);

[2] **WHEREAS** the applicant contends that: i) the citizenship judge breached her duty of procedural fairness by finding the new evidence that the applicant tried to provide inadmissible, and that ii) the citizenship judge erred in rejecting the citizenship application on the ground that the applicant did not meet the residence criteria set out in paragraph 5(1)(c) of the Act;

[3] **WHEREAS** the response to the first issue raised by the application is conclusive and, as a result, this Court does not need to rule on the second issue;

[4] **WHEREAS** the standard of correctness applies to all issues that raise questions of procedural fairness (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at paragraph 43; *Fan v. Canada (Citizenship and Immigration)*, 2013 FC 789, at paragraph 23);

[5] **AFTER** having reviewed the parties' memorandums and the certified tribunal record, and after having heard both parties, this Court is of the opinion that the application for judicial review should be allowed for the following reasons:

[6] On the whole, the citizenship judge concludes that the applicant did not present sufficient evidence of his presence in Canada, particularly during the first few months of the reference period for the purposes of applying the residency test, beginning on April 5, 2006, and ending on April 5, 2010. She concludes that for the first two months that the applicant alleges he was present in Canada, he provided no active evidence that he was residing with a friend in Bedford, Nova Scotia. The only document provided is a health insurance card issued by the province, which is not an indicator of his physical presence in Canada.

[7] She also concludes that the applicant's son resided with him in Canada for only the first few months of his residency, and then went to live with his paternal grandmother in Turkey and Lebanon. The citizenship judge therefore concludes that it is reasonable to infer that the applicant travelled abroad to visit his son on several occasions.

[8] In support of his application for judicial review, the applicant submits an affidavit in which he attests to having tried to submit new evidence to the citizenship judge, which she found inadmissible. The applicant argues that this new evidence was significant and provided proof of his physical presence in Canada during the first two years of the reference period. It essentially consists of an identification card issued by the Province of Nova Scotia, his son's academic transcripts for the 2006/2007 and 2007/2008 school years, and invoices for the cost of his son's lunches for the same period (showing the addresses declared by the applicant).

[9] I share the respondent's opinion that even if the citizenship judge had taken the identification card into consideration, her conclusion would likely have been the same: it is no more active evidence of his presence than his health insurance card. However, the same cannot be said for his son's academic transcripts, which are a clear indication of his physical presence in Canada and, if they had been taken into account, could have influenced the citizenship judge's finding of fact.

[10] The respondent provides no evidence in this regard and does not deny that the applicant tried to provide this evidence before the citizenship judge. At most, he alleges that there is

nothing in the judge's notes, which span only one page, or in her reasons, that indicates that she found the evidence inadmissible.

[11] Under the circumstances and given that I do not have a transcript of the hearing, I have to trust in the applicant's affidavit. I accept this new evidence and conclude that it factors among the list of exceptions to which Mr. Justice Stratas refers in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at paragraph 20:

(b) Sometimes affidavits are necessary to bring to the attention of the judicial review court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness [reference omitted] . . .

[12] I therefore conclude that the citizenship judge breached her duty of procedural fairness by refusing to consider the applicant's son's academic transcripts and meal invoices and, for that reason alone, the citizenship judge's decision must be overturned and the case returned to the respondent for reconsideration.

JUDGMENT

THIS COURT RULES that:

1. The applicant's appeal is allowed;
2. The decision rendered by Citizenship Judge Lillian Klein on April 27, 2015, is overturned;
3. The case is returned to the respondent for reconsideration.

“Jocelyne Gagné”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1019-15

STYLE OF CAUSE: NAZIH ABDALLAH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 9, 2015

JUDGMENT AND REASONS: GAGNÉ J.

DATE OF REASONS: APRIL 18, 2016

APPEARANCES:

Jacques Beauchemin

FOR THE APPLICANT

Charles Junior Jean

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Beauchemin, Brisson
Attorneys
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT