Federal Court  Cour fédérale

Date: 20160722

Docket: T-1871-15

Citation: 2016 FC 866

St. John's, Newfoundland and Labrador, July 22, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

MANINDER KAUR RANDHAWA

Respondent

JUDGMENT AND REASONS

(Judgment delivered orally from the Bench on July 20, 2016 in Toronto and St. John's)

[1] The Minister of Citizenship and Immigration (the "Applicant") seeks judicial review of the decision of Citizenship Judge Angelo Persichilli (the "Citizenship Judge), approving the citizenship application of Ms. Maninder Kaur Randhawa (the "Respondent"), pursuant to subsection 5(1) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the "Act").

[2] The within Judgment and Reasons are issued after the delivery of an oral Judgment on July 20, 2016, when the application for judicial review was granted.

[3] The Respondent is a citizen of India. She became a permanent resident of Canada on May 6, 2006, arriving in Canada on that day.

[4] The Respondent submitted her application for Canadian citizenship on August 15, 2011. The four-year relevant period, for the purpose of calculating residence**,** pursuant to paragraph 5(1)(c) of the Act, is August 15, 2007 to August 15, 2011 (the "relevant period).

[5] In her application for Canadian citizenship, the Respondent disclosed absences from Canada totaling 432 days. She made three trips outside Canada between March 2008 and March 2011. The reason for each trip was a "family visit" in India. The total number of absences means that the Respondent has a shortfall of 67 days, from the minimum requirement of 1095 days in Canada.

[6] The File Preparation and Analysis Template, forming part of the Certified Tribunal Record, was completed on May 14, 2005. This document shows that a Citizenship Officer was concerned about the Respondent's lengthy trips to India, among other things.

[7] The Respondent attended a hearing before the Citizenship Judge on September 10, 2015. In his decision, dated October 5, 2015, the Citizenship Judge outlined the facts and indicated that

there were concerns about the fact that the Respondent had only 1,030 days of physical presence in Canada during the relevant period.

[8] At paragraph 15 of his decision, the Citizenship Judge said the following:

> The two major absences are related to family issues. During the hearing she confirms the divorce from her Canadian Citizen husband and, at that time, she seriously considered to go back to India. In fact, she spent a lot of time with her own relatives in India but, eventually, she decided to come back to Canada.

[9] The Citizenship Judge adopted the residency test set out in *Papadogiorgakis*, [1978] 2 F.C. 208.

[10] The Citizenship Judge concluded that even if the Respondent declared a "shortage of a few days" her absences were related to important family issues and were temporary. He found that, after resolution of the family issues, the Respondent established herself in Canada and centralized her mode of living in Canada.

[11] The standard of review to be applied in an appeal from a decision of a citizenship judge is reasonableness; see the decision in *El Falah v. Canada*, 2009 FC 736. The reasonableness standard requires that the decision be justifiable, transparent, intelligible and fall within a range of possible, acceptable outcomes; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[12] It is open to a citizenship judge to choose any of the three residency tests so long as the selected test is applied reasonably; see the decision in *Hao v. Canada (Citizenship and Immigration)* (2011), 383 F.T.R. 125 at paragraph 24.

[13] In my opinion, the Citizenship Judge did not reasonably apply the test in *Papadogiorgakis, supra*.

[14] That is a two part test. The first part requires a Citizenship Judge determine whether a citizenship applicant centralized his or her mode of living in Canada; the second part requires a Citizenship Judge assess whether any absences should be considered residence; see the decision in *Papadogiorgakis, supra* at page 211.

[15] The Citizenship Judge's findings of fact referred to above show that the Respondent had not established herself in Canada until the end of the relevant period.

[16] In my opinion, the manner in which the Citizenship Judge applied the residency test he adopted was erroneous. He improperly counted the Respondent's absences as contributing to her presence in Canada.

[17] In the result, the application for judicial review is granted, the decision will be set aside and remitted for determination by a different decision maker.

[18] There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is granted. The decision is set aside and the matter is remitted for redetermination by a different decision maker. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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