

Federal Court



Cour fédérale

**Date: 20160607**

**Docket: T-1870-15**

**Citation: 2016 FC 627**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, June 7, 2016**

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

**BETWEEN:**

**NADIA BOUHIA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review against a citizenship judge's decision to deny the application for Canadian citizenship made by the applicant, Ms. Bouhia. The application was made before the *Citizenship Act* was changed in 2014. In the judge's opinion, the applicant had not discharged her burden to show that she had been in Canada for at least three of the four years (1,095 days) preceding her application. The judge, in exercising his discretionary power, chose

the strict criterion of physical presence, as established by Mr. Justice Muldoon in *Re Pourghasemi*, [1993] F.C.J. No. 232, 62 F.T.R. 122. That should not have been a problem because the applicant claimed to have been in Canada for 1,126 days.

[2] The judicial review hearing was scheduled for May 25, 2016. On May 6, the Minister submitted a written motion, proposing that the parties agree to a judgment allowing the application for judicial review and sending the matter back to another citizenship judge for reconsideration.

[3] Ms. Bouhia refused to agree to the proposed terms. She considered that she was entitled to costs under Column V of Tariff B, given the shocking nature of the decision currently under review and the delay in rendering the decision. She also insisted that a hearing be held before another citizenship judge within 30 days of this Court's judgment and that this new judge be required to find that the evidence showing that the applicant's children had been present in Canada was proof that she had been present in Canada and that the bank statements submitted by the applicant were valid.

[4] The Minister vigorously opposed the applicant's proposals. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* states that

22 No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

22 Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[5] Under the circumstances, I issued a directive to the effect that [TRANSLATION] "The Court [was] not prepared to render a written decision regarding the judicial review" and ordered that the hearing be held on May 25, 2016, as planned.

[6] The hearing did, in fact, take place. I advised the applicant that, before I could examine her claims regarding the findings of fact and costs, I first needed to decide on the merit of the underlying application for judicial review. I therefore could not limit myself to deciding only the question of the findings of fact and costs, even if the Minister seemed prepared to concede that the citizenship judge's decision was unreasonable.

[7] In this case, the applicant convinced me that the decision should be set aside. The citizenship judge's assessment of the bank statements constituted a breach of procedural fairness.

[8] I advised the parties that I was going to issue a judgment in accordance with that proposed by the Minister and that I would not grant the applicant's motions regarding the findings of fact or costs. There was no particular reason to award her costs. Moreover, the findings of fact are the responsibility of the citizenship judge during reconsideration of the file, and not of the Federal Court during the judicial review.

[9] Obviously, under the circumstances, the Minister claimed costs for the incidental expenses he incurred. He pointed out that, in the end, the applicant obtained no more than she would have obtained had she accepted the Minister's proposal two weeks earlier, which would have avoided the hearing.

[10] Although I was tempted to award costs to the Minister, I thought it best to end this sad story quickly. I am not awarding costs to either party.

**JUDGMENT**

**FOR THESE REASONS**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The citizenship judge's decision rendered on September 23, 2015 is dismissed and the matter is sent back to another citizenship judge for reconsideration of the applicant's citizenship application.
3. No serious questions of general importance were certified.
4. Without costs.

"Sean Harrington"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1870-15

**STYLE OF CAUSE:** NADIA BOUHIA v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MAY 25, 2016

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HARRINGTON J.

**DATED:** JUNE 3, 2016

**APPEARANCES:**

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