

Federal Court



Cour fédérale

Date: 20170602

Docket: T-1701-16

Citation: 2017 FC 547

Ottawa, Ontario, June 2, 2017

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**OMAR FAKEH
AND
TASNIM FAKEH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] The applicants are stateless Palestinians. They submitted an application for Canadian Citizenship on December 9, 2011. Between July 2013 and August 9, 2016, they received several requests for clarification with respect to their application from Citizenship and Immigration

Canada (CIC). Acting on their own behalf, the applicants responded to those additional information requests.

[2] On June 2, 2016, the applicants received a letter from CIC requesting further additional information or evidence. On June 30, 2016, the applicants responded to the CIC letter of June 2, 2016 and indicated that they will continue to try to obtain all requested information, and that some documents may be difficult, if not impossible, to obtain.

[3] On July 29, 2016, CIC sent a letter labelled “Final Notice” to Mr. Fakeh requesting supplementary information and informing him that the previous request for information remained outstanding. The applicants claim that they never received this letter.

[4] On September 15, 2016, the applicants received a Notice of Abandonment, dated September 12, 2016, wherein the Citizenship Official decided to treat their citizenship application as abandoned. This is an application for judicial review of that decision under section 22.1 of the *Citizenship Act*, RSC, 1985, c C-25 [*Citizenship Act*]. The applicants are seeking to have their citizenship application reopened and processed in an expeditious manner.

[5] For the reasons below, this application is dismissed.

II. ISSUE

[6] The sole issue to be determined on this application is whether the Citizenship Official breached procedural fairness in treating the applicants' citizenship application as abandoned.

III. ANALYSIS

[7] There is no dispute between the parties that the issue of whether the applicants received the July 29, 2016 letter and whether they had a proper opportunity to respond to the decision maker's concerns is an issue of procedural fairness attracting the standard of correctness: *Halder v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1346. [2012] FCJ No 1687 at para 21; *Tareen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 35, [2013] FCJ No 43 at para 17.

[8] The applicants submit that, with the exception of the letter dated July 29, 2016, they have demonstrated a pattern of responding to every correspondence received from CIC since they complied with all requests received between December 9, 2011 and August 9, 2016. The applicants argue that this demonstrates that they had no intention to abandon their citizenship application which had been in process for five (5) years.

[9] The applicants rely on *Lim v Canada (Minister of Citizenship and Immigration)*, 2016 FC 217, [2016] FCJ No 157 [*Lim*] to support their argument that their file should be reopened. They submit that in *Lim*, the judicial review was granted because the applicants had not received the supposedly sent correspondence, much like the case at bar.

[10] The jurisprudence is clear that where it is shown, on a balance of probabilities, that a correspondence has been sent, the risk of non-delivery lies with the applicant: *Zare v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1024, [2010] FCJ No 1283 at para 36; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2009 FC 935, [2009] FCJ No 1530 at para 12; *Alavi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 969, [2010] FCJ No 1197 at para 5; *Cruz v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1114, [2016] FCJ No 1112 at paras 15-16.

[11] In the circumstances of this case, I am satisfied that the respondent has shown on a balance of probabilities that the July 29, 2016 letter was sent to Mr. Omar Fakeh, by regular mail, for the following reasons:

- (1) a copy of the letter dated July 29, 2016 is contained in the CIC's file;
- (2) the address found on the letter was provided by the applicants and is the correct address;
- (3) earlier and later correspondence sent to the applicants at the same address was received; and,
- (4) there are at least two explicit references in the GCMS notes indicating that the Final Notice was sent.

[12] I am also satisfied that the facts of this case are distinguishable from those in *Lim*. In *Lim*, there was no evidence that the letter had in fact been sent, and there was no notation in the GCMS system, as was the usual practice, that the letter was sent. For reasons noted above, it is my view that there was no breach of the duty of procedural fairness in this case.

[13] At the hearing, counsel for the respondent brought a motion on consent for a confidentiality order pursuant to Rule 151 of the *Federal Court Rules*, SOR/98-106 in order to have page 23 of the Respondent's Record filed in this proceeding removed from the public record.

[14] The respondent's motion related to an earlier confidentiality Order from this Court dated May 4, 2017. Despite that Order, which was also issued on consent, information which was meant to be protected was inadvertently disclosed in the Respondent's Record. I am satisfied that the information at issue should be protected for the reasons set out in the respondent's earlier motion record.

JUDGMENT in T-1701-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The respondent's motion for a confidentiality order under Rule 151 of the Federal Courts Rules is granted. Page 23 of the Respondent's Record filed in this proceeding shall be removed from the public record. Moreover, counsel for the parties shall not disclose the content of the confidential information; they shall not permit that information to be reproduced in whole or in part, and counsel shall destroy the confidential information and any copies made of that information.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1701-16

STYLE OF CAUSE: OMAR FAKEH AND TASMIN FAKEK V THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 1, 2017

JUDGMENT AND REASONS: MOSLEY, J.

DATED: JUNE 2, 2017

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