Federal Court  Cour fédérale

Date: 20171017

Docket: T-251-17

Citation: 2017 FC 916

Ottawa, Ontario, October 17, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

THOMAS CLIFFORD KWASIE VAAH

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review brought by the Minister of Citizenship and Immigration, seeking to quash a decision by a Citizenship Judge [the Judge] dated January 19, 2017 [the Decision], which approved the Respondent's application for citizenship under s. 5(1)(c) of the *Citizenship Act*, RSC 1985, c C-29 [the Act].

[2] For the reasons explained in greater detail below, this application is allowed. The Decision is not reasonable, because it does not demonstrate that the Judge considered whether the Respondent established residence in Canada at the beginning of the relevant time period or, in assessing whether he remained resident in Canada during his subsequent absences, considered whether those absences can be characterized as being for a temporary purpose.

II. Background

[3] The Respondent, Mr. Thomas Clifford Kwasie Vaah, is a citizen of Ghana. He is 48 years old and an employee of the United Nations. Mr. Vaah entered Canada as a permanent resident on December 24, 2010. On April 10, 2014, he applied for Canadian citizenship with his spouse and children as a family unit, despite having a self-declared shortfall of 768 days in the preceding four year period [the Relevant Period] from the 1,095 days required under s. 5(1)(c) of the Act. His absences from Canada were due to his work with the United Nations, for which he is required to travel to war zones around the world.

[4] In deciding whether Mr. Vaah satisfied the residence requirement for Canadian citizenship, the Judge chose to adopt the analytical approach used in *Papadogiorgakis (Re)*, [1978] 2 FC 208 (FCTD) [*Papadogiorgakis*]. The Judge's analysis, which results in her approving Mr. Vaah's application for citizenship, reads as follows:

> [19] In *Papadogiorgakis,* [1978] 2 F.C. 208 (F.C.T.D.), Thurlow A.C.J. considered whether an applicant, who had been physically present in Canada only for comparatively short periods of time during the relevant four-year period, continued to be resident in Canada within the meaning of the *Citizenship Act*, while he was absent for the purpose of attending the University of

Massachusetts. In his reasons for judgment, Thurlow A.C.J. stated that:

> A person with an established home of his own in which he lives does not cease to be resident there when he leaves it for a temporary purpose whether on business or vacation or even to pursue a course of study. The fact of his family remaining there while he is away may lend support for the conclusion that he has not ceased to reside there. The conclusion may be reached, as well, even though the absence may be more or less lengthy. It is also enhanced if he returns there frequently when the opportunity to do so arises.
>
> It is, as Rand J. appears to me to be saying in the passage I have read, "chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question".

[20] The Applicant bought a house and carried a big mortgage. He returns every six to eight weeks to be with his family. In his culture, the father figure is very important to the children. He has established his home in Canada and he does not go anywhere else. He does not cease to be resident when he leaves for UN assignments which provide a livelihood for his own family and he sometimes sends money to his eight siblings in Ghana to alleviate their poor living condition.

[21] It is obvious that he has maintained his ordinary mode of living here with his family in Canada - his spouse is gainfully employed here and his children are all going to school or university. Canada is his home, even though he does not have the luxury of staying here all the time.

[22] Given the foregoing, I find that the Applicant did not cease to be resident in Canada during his absences and that he centralized his mode of existence in Canada during the relevant period.

III. Issues and Standard of Review

[5] The issue raised by the Minister is whether the Judge erred in her application of the principles of the analytical approach set out in *Papadogiorgakis*. The parties agree, and I concur, that the applicable standard of review is reasonableness: *Kohestani v Canada (Citizenship and Immigration)*, 2012 FC 373 at para 12.

IV. Analysis

[6] The Minister submits, and Mr. Vaah does not dispute, that a citizenship judge's assessment whether an applicant meets the residence requirements of s. 5(1)(c) of the Act involves a two-step test. The judge must first decide, as a threshold issue, whether the applicant has established residence in Canada prior to or at the beginning of the relevant time period. If so, the next question is whether the applicant has the required number of days of residence in that time. It is in answering that second question that the judge can choose different analytical approaches, including the *Papadogiorgakis* analysis selected by the Judge in the case at hand: *Canada (Citizenship and Immigration) v Ojo*, 2015 FC 757 at paras 25-26; *Canada (Citizenship and Immigration) v Udwadia*, 2012 FC 394 at para 21.

[7] The Minister argues that the Judge erred by failing to determine if Mr. Vaah met the threshold issue of demonstrating his establishment of residence in Canada before assessing his absences. Mr. Vaah's position is that the Decision demonstrates that the Judge did make an explicit finding on this question and that, even in the absence of an explicit finding, a conclusion on the threshold issue can be implicit in a judge's decision when read in the context of the

evidence on the record: *Canada (Citizenship and Immigration) v Ileubby*, 2016 FC 946 at paras 44 and 52. Mr. Vaah refers to the Judge's finding that he "has established his home in Canada and he does not go anywhere else" and "has maintained his ordinary mode of living here with his family in Canada."

[8] I am unable to conclude that the Decision demonstrates either an explicit or implicit finding on the threshold issue. While the Judge does state that Mr. Vaah has established his home in Canada, this statement follows the Judge's reference to Mr. Vaah having bought a house, carrying a big mortgage, and returning every six to eight weeks to be with his family. It is therefore not clear that the reference to establishing a home can be read as a conclusion that Mr. Vaah established residence in Canada at the beginning of the Relevant Period. This is particularly the case given that, as noted by the Respondent at the hearing of this application, the house purchase referenced by the Judge took place in 2012, well into the Relevant Period. Nor can I conclude that the Judge's reference to Mr. Vaah maintaining his ordinary mode of living here with his family in Canada can be interpreted as a conclusion on the threshold issue.

[9] The Minister notes that Mr. Vaah first arrived in Canada on December 24, 2010, acquiring permanent resident status on that day, and then stayed in Canada for only 12 days before leaving on his next overseas assignment on January 6, 2011. The Minister therefore relies on the decision in *Canada (Citizenship and Immigration) v Ntilivamunda*, 2008 FC 1081 [*Ntilivamunda*], which considered a somewhat similar set of circumstances in which an applicant, who worked abroad as a physician with the World Health Organization [WHO], arrived in Canada and spent only 22 days here before leaving to resume his work abroad. Justice

Martineau concluded, at paragraphs 13-14, that the citizenship judge had erred in granting citizenship to the respondent in that case, because the 22 day stay in Canada before leaving again for abroad was clearly insufficient to amount to genuine establishment of residence within the meaning of the case law.

[10] As every application for citizenship turns on its own individual set of facts, I am not concluding that *Ntilivamunda* necessarily precludes a favourable result in Mr. Vaah's citizenship application. However, given Justice Martineau's decision in relation to the threshold issue in that case, I cannot find that the Judge addressed it in the case at hand in the absence of a clear and supportable analysis and conclusion on that issue.

[11] The Minister also argues that the Judge erred in considering the second question relevant to the residency analysis, i.e whether the applicant has the required number of days of residence in the relevant time period. The Minister's position is that the Judge did not consider a factor fundamental to the *Papadogiorgakis* analysis, which is whether Mr. Vaah's absences from Canada can be considered temporary, given their nature, frequency and length. The Minister notes that, as a consequence of his overseas employment, Mr. Vaah has had absences of 6 to 8 weeks abroad, following which he would return to Canada for an average of 21 days between assignments, and that at no time did he spend more than 42 continuous days in Canada since he acquired permanent residence.

[12] Again, the Minister relies on *Ntilivamunda*, in which the respondent's employment with the WHO resulted in him having stays in Canada averaging 28 days between assignments and

overall only 167 days of physical presence in Canada during the relevant period. Justice Martineau concluded at paragraph 17 of that decision that the respondent's physical absences from Canada were due to a permanent situation, not a temporary one.

[13] It is noteworthy that, while the respondent in *Ntilivamunda* indicated he intended to retire from the WHO in eight years, Justice Martineau concluded that the respondent's future intentions were not relevant in assessing the nature of the absences during the relevant period. In the case at hand, Mr. Vaah notes that he explained to the Judge at his citizenship hearing that, once he was granted Canadian citizenship, he wished to apply for employment with the Canadian Foreign Service. However, there is no indication in the Decision that the Judge that took this evidence into account in assessing whether Mr. Vaah's absences for his employment could be characterized as being for a temporary purpose. Indeed, there is no explicit analysis of this question in the Decision at all.

[14] As with the threshold issue, because of the fact-specific nature of each citizenship application, I am not concluding that *Ntilivamunda* necessarily precludes a conclusion that Mr. Vaah's absences for his overseas employment can be characterized as temporary in nature. However, as that case clearly raises a concern whether a pattern of repeated absences for overseas employment can be characterized as temporary, I again find that the Decision is not reasonable in the absence of a clear and supportable analysis and conclusion on that issue.

[15] Having identified the errors explained above, my conclusion is that the Decision is unreasonable, and this application for judicial review must be allowed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN T-251-17

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is returned to another citizenship judge for re-determination. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-251-17
STYLE OF CAUSE:	MINISTER OF CITIZENSHIP AND IMMIGRATION v THOMAS CLIFFORD KWASIE VAAH
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 20, 2017
JUDGMENT AND REASONS:	SOUTHCOTT, J.
DATED:	OCTOBER 17, 2017

APPEARANCES:

Laoura Christodoulides	FOR THE APPLICANT
Max Chaudhaury	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT
Chaudhary Law Office North York, Ontario	FOR THE RESPONDENT