

**Date: 20090304**

**Docket: T-1150-08**

**Citation: 2009 FC 222**

**Ottawa, Ontario, March 4, 2009**

**PRESENT: The Honourable Mr. Justice Orville Frenette**

**BETWEEN:**

**EI MOUATASSIM BELGHAZI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an appeal pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29, (the Act) against the decision rendered on May 30, 2008, by Citizenship Judge Gordana Caricevic-Rakovich, refusing the application for Canadian citizenship submitted by the applicant because the evidence he presented did not demonstrate that he met the residency requirements under paragraph 5(1)(c) of the Act.

Facts

[2] The applicant was born on March 6, 1969, in Morocco. He arrived in Canada on April 12, 2001, with his wife and his three children. On August 23, 2004, he filed his application for Canadian citizenship.

[3] The applicable reference period of four years or 1,460 days preceding his application for citizenship ran from August 23, 2000, to August 23, 2004 (the reference period).

[4] The applicant says that he was absent from Canada for a total of 90 days following his arrival in Canada on April 12, 2001. The 90 days consisted of two trips to Morocco: a 77-day trip to visit his family and a 13-day trip for vacation.

[5] In November 2004, he decided to return to France to complete his doctorate in business administration and economics. He brought his wife and children with him to France but, at the end of 2004, she and the children returned to Morocco to live.

[6] The applicant had acquired a house in Notre-Dame-de-la-Merci, in the province of Quebec, in 1998. He contends that they were established in the local community between 2001 and 2004.

[7] On February 5, 2008, the applicant appeared before the citizenship judge after being invited to an interview.

[8] At paragraph 45 of his affidavit dated August 22, 2008, signed at Rabat, Morocco, the applicant wrote:

[TRANSLATION]

At the interview, I did not understand the substance and the scope of some of the questions the citizenship judge asked; she was looking for certain information that was very specific to the questions and I had specific answers, but they slipped my mind because of stress.

[9] The Canadian notices of assessment for 2001, 2002, 2003 and 2004 show that the applicant had no taxable income in Canada during those years.

#### Impugned decision

[10] In her decision dated May 30, 2008, the citizenship judge rejected the applicant's application for citizenship. She explained that between April 12, 2001, and August 23, 2004, the applicant had accumulated 1,138 days of physical presence in Canada; he had spent 90 days outside Canada during the same period. She analyzed the evidence presented by the applicant, i.e., the acquisition of a house, his tax returns, bank statements and telephone bills. She considered the fact that, despite the applicant's submissions that he was an economist/independent consultant, he had not provided any tangible evidence of his work activities during his stay in Canada.

[11] The bank account that was opened in the name of the applicant and one Jean Lavoie shows few transactions. The telephone bill statements indicate long periods without any telephone communications. The citizenship judge also considered the lack of taxable income during the four years involved.

[12] In her decision, the judge concluded that the applicant had not met the residence conditions in Canada, as required under paragraph 5(1)(c) of the Act.

Standard of review

[13] The applicable standard of review for decisions of a citizenship judge concerning an applicant's residence, which is a question of fact or mixed law and fact, is reasonableness (*Chen v. Minister of Citizenship and Immigration*, 2006 FC 85; *Zhao v. Minister of Citizenship and Immigration*, 2006 FC 1536; *Pourzand v. Minister of Citizenship and Immigration*, 2008 FC 395, at paragraph 19).

[14] A citizenship judge's assessment on the issue of adequate knowledge of Canada is a purely factual question for which the Court should show considerable deference (*Arif v. Minister of Citizenship and Immigration*, 2007 FC 557; *Huang v. Minister of Citizenship and Immigration*, 2005 FC 861; *Wang v. Minister of Citizenship and Immigration*, 2008 FC 391; *So v. Minister of Citizenship and Immigration*, 2001 FCT 733).

[15] The applicant's explanation regarding his answers is not convincing.

Applicable legislation

[16] Paragraph 5(1)(c) of the Act reads as follows:

5. (1) The Minister shall grant citizenship to any person who

...

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois:

[...]

(c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

c) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante:

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent;

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

[17] Section 15 of the *Citizenship Regulations, 1993*, SOR/93-246, reads as follows:

**15.** The criteria for determining whether a person has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship are that the person has a general understanding of and can answer correctly simple oral questions based on the information contained in self-instructional materials approved by the Minister and presented to applicants for the grant of citizenship respecting

(a) the right to vote in federal, provincial and municipal elections and the right to run for elected office;

(b) enumerating and voting procedures related to elections; and

(c) one of the following topics, to be chosen by the person questioning the applicant, namely,

(i) the chief characteristics of Canadian social and cultural history,

(ii) the chief characteristics of Canadian political history,

(iii) the chief characteristics of Canadian physical and political geography, or

**15.** Une personne possède une connaissance suffisante du Canada et des responsabilités et privilèges attachés à la citoyenneté si elle comprend de façon générale des questions orales simples basées sur les renseignements figurant dans des documents d'auto-apprentissage approuvés par le ministre et présentés aux aspirants à la citoyenneté et si elle peut y répondre correctement. Les questions portent sur:

a) le droit de vote aux élections fédérales, provinciales et municipales et le droit de se porter candidat à une charge électorale;

b) les formalités liées au recensement électoral et au vote;

c) l'un des sujets suivants, à la discrétion de la personne chargée d'interroger l'applicant:

(i) les principales caractéristiques de l'histoire sociale et culturelle du Canada,

(ii) les principales caractéristiques de l'histoire politique du Canada,

(iii) les principales caractéristiques de la géographie physique et politique du Canada,

(iv) the responsibilities and privileges of citizenship, other than those referred to in paragraphs (a) and (b).

(iv) les responsabilités et privilèges attachés à la citoyenneté autres que ceux visés aux alinéas a) et b).

[18] The questions in paragraphs 15(a) and (b) are mandatory (*Wang*, above, at paragraph 9).

[19] The onus is on the applicant to prove, on a balance of probabilities, that the conditions required by the Act have been satisfied (*Maharatnam v. Minister of Citizenship and Immigration*, [2000] F.C.J. No. 405 (T.D.) (QL); *Malevsky v. Minister of Citizenship and Immigration*, 2002 FCT 1148).

[20] Residence is to be given its ordinary meaning (*In re Citizenship Act and in re Papadogiorgakis*, [1978] 2 F.C. 208; *Koo (Re)*, [1993] 1 F.C. 286).

[21] It is open to the citizenship judge to choose one of the methods suggested in the jurisprudence to determine “residence” and if he or she applies one of those methods in each case, his or her decision will be considered valid (*Lam v. Canada (M.C.I.)* (1999), 164 F.T.R. 177, at paragraph 14).

[22] According to the jurisprudence, if an applicant establishes that he or she was physically in Canada for 1,095 days during the reference period, the applicant has fulfilled this requirement of the Act (*So*, above, at paragraph 32).

[23] In this case, the judge chose the method suggested in *Pourghasemi (Re)*, [1993] F.C.J. No. 232 (T.D.) (QL).

Analysis

[24] The citizenship judge noted that the applicant was in Canada as a permanent resident beginning on April 12, 2001. He submitted an application for citizenship on August 23, 2004; thus, the applicable reference period of four years preceding his application ran from August 23, 2000, to August 23, 2004.

[25] The applicant states that he resided in Canada for 1,138 days during the reference period (excluding the 90 days during this period when, he admits, he was outside Canada).

[26] The applicant challenges this negative decision on the following grounds.

[27] The judge took it for granted that he had accumulated 1,138 days as a permanent resident during the reference period and therefore met the requirements of the Act. The respondent, for his part, replies that if the decision seems ambiguous about the issue of 1,138 days, it was only an introductory ambivalent comment and the subsequent reasons clearly demonstrated the *ratio decidendi* of the decision.

[28] The judge's notes (which are legally part of the decision), clearly show that she had not been persuaded that the applicant had really been present in Canada for 1,095 days during the reference period. She gave the following four reasons as the basis for her decision.

[29] First, the applicant did not provide the court with his passport, which would have showed the dates when he left and entered Canada. The applicant responds that he had to leave his passport with the Moroccan authorities. However, he did not explain why he had been unable to obtain a copy and produce it to the court.

[30] Second, the bank account shows long periods of inactivity (up to six months), which suggests that he could have been outside Canada during those periods. He held this bank account jointly with Jean Lavoie, a real estate broker, who did not have a power of attorney to carry out transactions—an explanation that is difficult to understand.

[31] Third, the telephone bills show long periods with no telephone communications, corresponding *grosso modo* to the periods when the bank account was inactive. The applicant maintains that during those periods, he was busy renovating his house and produced bills and receipts from those activities. However, these documents do not prove that the applicant was in Canada at the time indicated thereon.

[32] Last, the judge pointed out that the applicant did not provide any evidence about his work or consultation activities that he carried on during his stay in Canada. In his affidavit, the applicant tried to explain his occupations but did not really succeed in changing this ground.

[33] Finally, the respondent demonstrated that the applicant's spouse had purchased plane tickets on December 24, 2003, which does not coincide with the periods of absence from Canada that the applicant identified, i.e. from September 1 to November 18, 2003, and from August 1 to 14, 2004.



The evidence also shows that the applicant spent only a few months in Canada from August 24, 2004, to 2008.

### Conclusion

[34] Given the evidence in the record, the citizenship judge was correct in believing that the applicant had not presented sufficient evidence to establish his residence in Canada during the reference period and that, consequently, he did not meet the requirements of paragraph 5(1)(c) of the Act. This finding is not unreasonable. It is within the range of inferences that the judge could draw from the facts and the Act, as stated by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[35] For these reasons, the Court orders that the applicant's appeal is dismissed.

**JUDGMENT**

The appeal of the decision rendered on May 30, 2008, by Citizenship Judge Gordana Caricevic-Rakovich, refusing the applicant's application for Canadian citizenship because the evidence he produced did not establish that he met the requirements of paragraph 5(1)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29, is dismissed.

“Orville Frenette”

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Deputy Judge

Certified true translation  
Mary Jo Egan, LLB

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1150-08

**STYLE OF CAUSE:** EI MOUATASSIM BELGHAZI v. MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 24, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** Deputy Judge Frenette

**DATED:** March 4, 2009

**APPEARANCES:**

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