Federal Court  Cour fédérale

Date: 20110211

Docket: T-1250-10

Citation: 2011 FC 146

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 11, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

IBRAHIM DEBAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal by the applicant under subsection 14(5) of the *Citizenship Act*, RS 1985, c C-29 (the Act) from the decision of a Citizenship Judge (the judge) dated June 25, 2010, denying the applicant's citizenship application because he did not meet the requirements of paragraph 5(1)(*c*) of the Act.

[2] The appeal will be dismissed for the reasons that follow.

[3] In his initial citizenship application, the applicant stated that he lived in Montréal between September 2001 and March 2005 and in Mississauga, Ontario from April 2006.

[4] He claims that he relied on the promise of a consultant who said that he could have his application examined more quickly. He also claims that the RCMP asked him on two occasions to testify against this consultant.

[5] The first judge denied his application. After an agreement with the respondent, his file was reassessed by another judge whose decision is the one now under appeal.

[6] A hearing was held December 21, 2009.

[7] The judge arrived at the conclusion that the applicant had not accumulated three years of residence in Canada during the four years preceding his application. In reaching his conclusion the judge relied on the applicant's lack of credibility as well as on a number of contradictions in the documents submitted and in the applicant's testimony.

[8] Under these circumstances, the judge declared that he was unable to recommend an exemption under subsection 15(1) of the Act.

[9] The issue in this case is whether the judge reached an unreasonable decision in his application of paragraph 5(1)(*c*) to the facts before him.

[10] Although the applicant did not present any arguments as to the applicable standard of review, I am of the opinion that it is the standard of reasonableness that applies (*Hernando Paez v Canada (Citizenship and Immigration)*, 2008 FC 204, at paragraph 12; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47). The Court will intervene only if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[11] I would first note that the judge chose to adopt the strict interpretation of paragraph 5(1)(*c*) of the Act, that is, that the applicant must demonstrate that he had in fact resided at least 1,095 days in Canada during the four years preceding his application.

[12] I am aware that this Court is not unanimous on the subject of the approach citizenship judges should take when accepting or denying an application for citizenship.

[13] In the very recent decision of *Hao v Canada (Minister of Citizenship and Immigration)*, 2011 FC 46, Justice Mosley examined this question in detail and concluded that it is up to Parliament to change the law to avoid different interpretations of paragraph 5(1)(*c*). In other words, he recognized the right of citizenship judges to choose either a strict or a qualitative interpretation of the residency requirements. I agree with his reasoning.

[14] In the case before us, the judge stated that he was concerned by the fact that the applicant had admitted to providing a false address in his initial application in order to speed up the

processing of his file (Respondent's Record, Volume 1, page 19). He noted that the applicant had admitted that the information provided was false but put the blame on his consultant.

[15] The judge considered the totality of the evidence and noted several doubtful elements such as that the applicant could not remember the name of the pharmacy where he worked or the names of his professors at the Université du Québec à Montréal (UQAM). He could not say where the pastry shop he worked at was located. His bank account records were incomplete.

[16] In his supplementary record, the respondent acknowledged that the judge had in his possession a lease that he did not mention in his decision and that he may have been mistaken in his analysis of an entry in the applicant's passport.

[17] These two errors are not determinative when the overall decision is examined.

[18] The judge declared that he was not satisfied with the evidence submitted to confirm that the applicant had stayed in Canada for the minimum period of 1,095 days, despite the submission of a number of documents showing that he was present during the period in question.

[19] Despite the applicant's admission that he made a false representation in his initial application, the Court considers that the judge was entitled to find that there were questions of credibility in both the applicant's testimony and in the documents filed in support of his application.

[20] I am unable to find that the decision contains a reviewable error. The intervention of the Court is, therefore, not warranted.

JUDGMENT

THE COURT ORDERS that the applicant's appeal be dismissed. Without costs.

"Michel Beaudry"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1250-10
STYLE OF CAUSE:	IBRAHIM DEBAI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	February 8, 2011
REASONS FOR JUDGMENT:	BEAUDRY J.
DATED:	February 11, 2011

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