Federal Court Cour fédérale

Date: 20120523

Docket: T-1046-11

Citation: 2012 FC 621

Ottawa, Ontario, May 23, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

FIREHIWOT WOLDEMARIAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Firehiwot Woldemariam, brings an appeal of the decision of a Citizenship Judge made under subsection 5(1)(e) of the *Citizenship Act*, RSC 1985, c C-29 (the *Act*).

[2] For the reasons set out below, her appeal is dismissed.

I. Background

[3] Since July 25, 2006, the Applicant has remained in Canada as a permanent resident. She is a single mother of three children.

[4] She appeared before a Citizenship Judge for a hearing on June 2, 2011. At that time, she scored only 7 out of 20 on the knowledge test.

[5] In a letter dated June 3, 2011, the Citizenship Judge found that she had not met the requirement of subsection 5(1)(e) to have adequate knowledge of Canada and of the responsibilities and privileges of citizenship. She had "poor knowledge of Canada's social history, political structure and legal system."

[6] The Citizenship Judge also considered whether to make a recommendation for the exercise of discretion. The Citizenship Judge nonetheless concluded that "[t]here was no evidence presented to me at the hearing of special circumstances that would justify me in making such a recommendation under either of subsections 5(3) or 5(4)." As a consequence, her application was not approved.

II. Issue

[7] The Applicant raises the following issue:

(a) Did the Citizenship Judge err in failing to recommend the exercise of discretion under subsections 5(3) or 5(4)?

III. Standard of Review

[8] Following *Dunsmuir v New Brunswick*, 2008 SCC 9, [2009] 1 SCR 190, discretionary decisions of a Citizenship Judge under subsections 5(3) or 5(4) are reviewed according to the reasonableness standard (see for example *Amoah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 775, [2009] FCJ no 947 at para 14).

[9] It may be open to the Court to refer the matter back to a citizenship judge if it is not satisfied that relevant factors have been taken into account in the exercise of that discretion (see *Hassan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 755, [2002] FCJ no 1049 at paras 14-15).

[10] The Court should have regard to the "existence of justification, transparency and intelligibility" as well as whether the decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47).

IV. Analysis

[11] A Citizenship Judge can recommend that the Minister exercise discretion and waive the knowledge requirement on compassionate grounds (subsection 5(3)) or in "cases of special or unusual hardship" (subsection 5(4)).

[12] The Applicant argues that the Citizenship Judge erred by not recognizing the special circumstances in her case that would warrant the exercise of discretion. She is burdened with the care of her three children, the oldest being diagnosed with autism. This made it difficult for her to focus on and prepare for the test. She provides a medical letter to the Court to substantiate these claims, but acknowledges that this information was not before the Citizenship Judge.

[13] Whatever the circumstances facing the Applicant on taking the knowledge test, the critical issue is that they were not brought to the Citizenship Judge's attention for consideration at the time of the hearing. The Citizenship Judge found there was no evidence presented to recommend waiving the knowledge requirement and exercising discretion in the Applicant's favour. That approach was reasonable under the circumstances.

[14] In *Huynh v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1431, [2003] FCJ no 1838 at para 5, when faced with new evidence of an applicant's illnesses, Justice Sean Harrington concluded that "the Citizenship Judge can hardly be criticized for not considering whether to make a recommendation to the Minister to grant Mrs. Huynh's citizenship on compassionate grounds on material which was *not* before him" [emphasis in original].

[15] Similarly, Justice Frederick Gibson held in *Maharatnam v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 405 at paras 5-6 that a citizenship judge did not commit an "error in determining that there was "no evidence" presented before him or her to establish "special circumstances" that would have justified a recommendation of exercise of discretion" where no medical evidence was previously adduced.

[16] Justice Gibson also confirmed that "the onus is on an applicant for Canadian citizenship to satisfy a Citizenship Judge that he or she fulfills the requirements of the Act or warrants an exercise of discretion by the Citizenship Judge." The Applicant failed to satisfy this onus by presenting the evidence to the Citizenship Judge in this case. This shortcoming cannot be resolved simply by bringing new information to the Court.

[17] The authorities relied on by the Applicant are of limited assistance as they address situations where a citizenship judge ignored or may have provided inadequate reasons for rejecting medical evidence and related statements by an applicant at the time of the initial determination (see *Re Yousefi* (1995), 91 FTR 296, [1995] FCJ no 326; *Bhatti v Canada (Minister of Citizenship and Immigration)*, 2010 FC 25, [2010] FCJ no 26).

V. Conclusion

[18] Lacking any evidence of special circumstances, it was reasonable for the Citizenship Judge not to recommend the exercise of discretion based on subsections 5(3) or 5(4) of the *Act* in this instance. The Applicant's appeal is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this appeal is dismissed.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**T-1046-11**
STYLE OF CAUSE:	**FIREHIWOT WOLDEMARIAM v MCI**
PLACE OF HEARING:	**TORONTO**
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