

Federal Court



Cour fédérale

**Date: 20120524**

**Docket: T-1229-11**

**Citation: 2012 FC 593**

Ottawa, Ontario, this 24<sup>th</sup> day of May 2012

**Present: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**GULNAZ ZARQA KHAN**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] On July 26, 2011, Gulnaz Zarqa Khan (the “applicant”), a citizen of Pakistan, filed the present appeal from the Citizenship Judge Philip M. Gaynor’s decision, under subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the “Act”). The Citizenship Judge denied the applicant’s application for citizenship because of her failure to meet the requirements under paragraph 5(1)(e)

of the Act, lacking adequate knowledge of Canada and of the responsibilities and privileges of Canadian citizenship.

[2] In his letter notifying the applicant of his decision, pursuant to subsection 14(3) of the Act, the Citizenship Judge concluded that the applicant did not have an adequate knowledge of Canada, nor of the responsibilities and privileges of Canadian citizenship, as required by paragraph 5(1)(e) of the Act. This conclusion was based on the applicant's poor performance at the hearing, having only answered nine out of the 20 questions of the citizenship test correctly. The Citizenship Judge considered 15/20 to be the passing mark.

[3] Having failed to satisfy the knowledge requirement under the Act, the Citizenship Judge went on to consider whether, pursuant to subsection 15(1) of the Act, he should exercise his discretion under subsections 5(3) and 5(4) of the Act. However, no evidence of such special circumstances was presented at the hearing.

[4] Consequently, the applicant's citizenship application was not approved, the applicant being invited to reapply or appeal the decision.

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[5] The applicant first appears to argue that she did not have a fair hearing by reason of a "tough interview atmosphere". Absent a request for an adjournment of the interview before the Citizenship

Judge, the alleged nervousness and intimidation felt by the applicant, in the particular circumstances of this case, do not amount to procedural unfairness.

[6] The other issue raised by the present application is whether the Citizenship Judge's decision is unreasonable, although the present case is a citizenship appeal and not a judicial review (*Akan v. Minister of Citizenship and Immigration* (1999), 170 F.T.R. 158 at para 9 [*Akan*] citing *Lam v. Minister of Citizenship and Immigration* (1999), 164 F.T.R. 177; *Arif v. Minister of Citizenship and Immigration*, 2007 FC 557 at para 6 [*Arif*]).

[7] The Citizenship Judge's determination with regards to the sufficiency of the applicant's knowledge of Canada is essentially a question of fact warranting great deference, as is also owed to the Citizenship Judge's decision not to exercise his discretion under subsection 5(3) or 5(4) of the Act (*Arif*, above, at paragraphs 7 and 8; *Zahra v. Minister of Citizenship and Immigration*, 2009 FC 444 at para 9). Thus, the issue becomes whether the Citizenship Judge based his decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the evidence before him (*Arif*, above, at para 9).

[8] While this Court may sympathize with the applicant's circumstances and the many challenges she has faced, in the words of Justice Pierre Blais, "it remains that becoming a Canadian citizen is a great privilege and that, in order to fully exercise the rights and responsibilities associated with citizenship, one is required to have a basic knowledge of Canada" (*Arif*, above, at para 27). The applicant obtained 9/20 on her citizenship test, thereby failing to demonstrate sufficient knowledge and failing to meet the requirements of the Act. Thus, the Citizenship Judge's

decision was reasonable and the applicant has not established that the intervention of this Court is justified: mere assertions of stress or nervousness at the time of the hearing do not allow this Court to grant a citizenship appeal.

[9] The applicant has also failed to prove that the Citizenship Judge erred in refusing to exercise the discretion granted to him under the Act. As previously stated, determinations and recommendations made under subsections 5(3) and 5(4) of the Act are purely discretionary and great deference is owed to the Citizenship Judge's decision (*Akan*, above, at para 11). The latter explained in his letter to the applicant that there was not sufficient evidence before him to justify a recommendation under either subsection 5(3) or 5(4) of the Act and the evidence before the Court today does not establish that such a conclusion was unreasonable (see *Arif* at para 22 and *Re Koo*, [1993] 1 F.C. 286 (T.D.)).

[10] Rather, the applicant should consider the other alternative proposed by the Citizenship Judge in his decision, specifically, that she reapply for citizenship at a later time, when she has sufficient knowledge of Canada and of the responsibilities and privileges of Canadian citizenship.

\* \* \* \* \*

[11] For the above reasons, the appeal is dismissed, without costs.

**JUDGMENT**

The appeal from Citizenship Judge Philip M. Gaynor's decision, denying the applicant's application for citizenship because of her failure to meet the requirements under paragraph 5(1)(e) of the *Citizenship Act*, R.S.C. 1985, c. C-29, is dismissed, without costs.

“Yvon Pinard”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1229-11

**STYLE OF CAUSE:** GULNAZ ZARQA KHAN v. MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 24, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Pinard J.

**DATED:** May 24, 2012

**APPEARANCES:**

Gulnaz Zarqa Khan THE APPLICANT ON HER OWN BEHALF

Neal Samson FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

THE APPLICANT ON HER OWN BEHALF

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