

Federal Court



Cour fédérale

Date: 20120705

Docket: T-1811-11

Citation: 2012 FC 858

Ottawa, Ontario, July 5, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

GHAZANFAR BAIG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant appeals, pursuant to section 14(5) of the *Citizenship Act*, RSC, 1985, c C-29 (*Citizenship Act*) the decision of Citizenship Judge K. Mohan (Judge), dated September 7, 2011, rejecting the applicant's application for a grant of Canadian citizenship pursuant to section 5(1) of the *Citizenship Act*. The appeal being brought pursuant to subsection 14(5) of the *Citizenship Act* is governed by the *Federal Courts Rules* (SOR/98-106) (*Rules*) pertaining to applications; hence the parties status' as applicant and respondent. The *Citizenship Act* does not provide for further appeals following a disposition by this Court. For the reasons that follow the appeal is dismissed.

Facts

[2] The applicant, Ghazanfar Baig, is a citizen of Pakistan. He and his family were granted permanent residence in Canada on August 20, 2004. His wife and three children are all now Canadian citizens.

[3] The applicant applied for Canadian citizenship on April 8, 2008 and had his citizenship hearing on July 18, 2011.

[4] In his decision dated September 7, 2011, the Judge applied the residence test articulated by Justice Muldoon in *Re Pourghasemi*, [1993] FCJ No 232 and endorsed in *Martinez-Caro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 640. Under that test, the applicant met the residence requirement of the *Citizenship Act* if he established that he had been physically present in Canada for 1095 days in the relevant four-year period. The Judge determined, correctly, that the relevant period in this case was between August 20, 2004, and April 8, 2008.

[5] At the applicant's hearing the Judge notified the applicant that he was not satisfied that the applicant met the residence requirement and afforded him an opportunity to provide additional documentation in support of his application.

[6] The Judge found that there were many gaps during the relevant period in which it was difficult to determine whether the applicant was present in Canada. The Judge found insufficient evidence to substantiate that the applicant worked as a self-employed consultant in Canada during that period. The Judge noted that the applicant's reported income on his tax returns for 2004-2007

was very low considering he was supporting a family of five. The Judge also found that the applicant had not provided a clear audit trail of his revenues and expenses, as requested.

[7] The Judge noted that the applicant provided health records for the relevant period, but found that they revealed few medical appointments in 2005, and none in 2006. While there were several visits from 2007 onwards, these records did not establish that the applicant was physically present for 2005 and 2006. He noted that the onus was on an applicant to establish that he or she fulfills the requirements for citizenship and concluded that the applicant had not established, on a balance of probabilities, that he had been physically present in Canada for the required 1095 days.

[8] Finally, in accordance with section 5(4) of the *Citizenship Act*, the Judge had considered whether to make a favourable recommendation for a discretionary grant of citizenship. He decided not to make a favourable recommendation because there were inadequate circumstances of special and unusual hardship, or services of an exceptional value to Canada to warrant such a recommendation. The application was therefore not approved.

Standard of Review/Issue

[9] The parties frame the issues as follows:

- i. Was the Judge's decision reasonable?
- ii. Were the Judge's reasons adequate?

[10] The parties agree that the Judge's findings of fact are to be assessed on a standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Al-Showaiter*, 2012 FC 12. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*,

2011 SCC 62, the Supreme Court of Canada held that the adequacy of the reasons is not a standalone ground of review or a matter of procedural fairness, but rather, forms part of the reasonableness analysis.

Analysis

[11] The applicant argues that since the Judge applied the physical presence test as articulated in *Pourghasemi* he should have examined the applicant's passport thoroughly to determine if the applicant had been physically present for the requisite number of days. However, the Judge noted that the applicant had an electronic Pakistan non-resident Card (NICOP), and therefore the lack of stamps in his passport would not necessarily establish that he had not travelled during the relevant period.

[12] The applicant also submits that the Judge failed to ask him to submit his travel records from Canada Border Services Agency; however, the applicant has presented no authority that suggests the Judge is obligated to make this request. Such an obligation appears contrary to the onus on the applicant to establish he has met all the requirements for citizenship as stated in *Maharatnam v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 405 (TD), para 5.

[13] Although the Judge's notes indicate that the applicant holds a Pakistani passport no mention of it is made in the decision, other than:

You are a Citizen of the [sic] Pakistan and you also have the Pakistani electronic non-Resident Card, NICOP where the entry-exit to Pakistan can be recorded instead of stamps on the passport. I also understand that you own or owned properties in Pakistan.

[14] It is axiomatic that the onus rests on the applicant to establish on a balance of probabilities that he or she meets the residency requirements for citizenship. The thrust of the applicant's argument is that the Judge, having given the applicant a further opportunity to produce documents, was obligated to advise the applicant of his specific concerns as to the evidence of residency presented by the applicant. I do not agree. In essence, the applicant seeks to shift the evidentiary burden back to the Judge, whereas it rest squarely with the applicant.

[15] The applicant further argues that the Judge failed to examine the applicant's passport. It is noteworthy that there is no copy of the passport in the record and the applicant made no effort to include his passport in the record. The only reasonable inference to be drawn from the fact that the passport was not included was that, given the applicant's use of the electronic NICOP is that it was not stamped and thus of no probative value. This was a conclusion reasonably open to the Judge.

[16] The applicant contends that the passport was critical evidence which ought to have been included in the record. As noted, I reject this argument as it was open to the applicant to provide copies of the evidence said to be missing and of significant probative value. Secondly, the reason why there is no analysis of the passport is clear on the face of the record.

[17] The balance of the applicant's submissions are that the Judge failed to properly consider the evidence presented and that he failed to give adequate reasons for his conclusions. Most of these arguments relate to the applicant's alleged work in Canada. The applicant argues that the Judge speculated that there were concerns about the source of the applicant's income and whether he was

working in Canada during the relevant period. The applicant claims he presented evidence on these points that was unreasonably ignored, and also that the Judge relied on irrelevant evidence.

[18] Contrary to the applicant's submissions, the Judge did not express concerns about the applicant's work history without justification. The Judge noted that the applicant's reported income did not correspond with the amounts in his bank accounts, nor with the amount necessary to support a family of five with multiple children enrolled in post-secondary education. Furthermore, the Judge's notes from his interview of the applicant reveal that the applicant acknowledged that all his business was conducted in the Middle East. Based on this evidence alone the Judge reasonably concluded that the applicant had failed to establish he was living and working in Canada for a sufficient number of days during the relevant period.

[19] The applicant asserts it was erroneous for the Judge to consider the applicant's purchase of rental properties, since these purchases occurred after the relevant period. However, the Judge's comments about these properties, when read in context, did not give rise to an error. The Judge referred to the purchase of the rental properties in response to the applicant's claim that he was supporting his family in part through savings he brought with him to Canada:

You mentioned that you had brought some money from overseas. You maintain a US dollar account in Canada. However, during the hearing you had also mentioned that you had bought three properties in Canada and they were rented out. Looking at the information you provided, it looks like these overseas funds were used to purchase these properties...

[20] Thus, this part of the analysis relates to the finding that the applicant's reported income from work in Canada was insufficient to support his family. The Judge found that the applicant also

could not have been supporting his family with the savings brought from overseas because those funds were used to purchase three properties. Thus, these purchases were relevant because they undermined the applicant's evidence about how he was supporting his family during the relevant period.

[21] I find that the Judge's decision was reasonable and, furthermore, that his reasons amply justify his conclusions. The appeal is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the appeal is hereby dismissed. Costs to the respondent in the amount of \$250.00.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1811-11

STYLE OF CAUSE: GHAZANFAR BAIG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Ottawa

DATE OF HEARING: May 30, 2012

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

DATED: July 5, 2012

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