

Federal Court



Cour fédérale

**Date: 20150408**

**Docket: T-1457-14**

**Citation: 2015 FC 427**

**Ottawa, Ontario, April 8, 2015**

**PRESENT: The Honourable Madam Justice Gagné**

**BETWEEN:**

**NADA ASHRAF SALLAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Nada Ashraf Sallam, a citizen of Egypt and Belgium, is appealing a decision rendered on April 17, 2014, whereby a Citizenship Judge found that she did not meet her burden of proof in relation to the residency requirement set out in paragraph 5(1)(c) of the *Citizenship Act*, RSC 1985 c C-29 [Act], and consequently dismissed her Citizenship Application.

[2] The Citizenship Judge found that the applicant's overall credibility was undermined because she failed to declare her Belgium citizenship when she applied for Canadian citizenship and when she attended the citizenship exam.

[3] The applicant argues that she was a minor for 31 out of the 48 month relevant residency period (April 9, 2006 to April 9, 2010) and that she relied on her mother and lawyer who recommended that she not declare her Belgium citizenship in fear of losing it. She adds that she corrected the omission during her interview with the citizenship agent and tendered her current Belgium passport, valid from November 8, 2010 to November 7, 2015. The applicant further argues that she was a student at Kells Academy, Marianopolis College and at McGill University during the residency period and that the content of her successful academic records should be sufficient proof of her physical presence in Canada during those school years, especially since it corresponds with the information found on her Egyptian passport. The Belgium passport valid during the residency period, which would allegedly show absences during the summers and other school holidays, was not tendered.

[4] For the reasons discussed below, this appeal will be dismissed.

## II. Issues and standard of review

[5] This appeal raises the following issues:

- Did the Citizenship Judge err in finding that the Applicant did not meet the residency requirement?
- Did the Citizenship Judge breach his duty of procedural fairness?

[6] The first issue, as it involves the assessment of the evidence and a question of mixed fact and law, is reviewable on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]; *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 408). On the other hand, the issue of procedural fairness is reviewable on a correctness standard (*Dunsmuir*; *Navidi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 372 at paras 12-13).

### III. Analysis

#### A. *The residency requirement*

[7] Although he did not specifically say so, the Citizenship Judge chose the residency test set out by this Court in *Pourghasemi (Re)*, [1993] FCJ No 232, which requires physical presence in Canada for 1095 days in the four years preceding the application date. The question before this Court is therefore whether or not that test was properly applied.

[8] In her affidavit filed in support of her appeal, the applicant states: i) “[t]hat the topic [of her] Belgium passport was not discussed during [her June 1st, 2011] meeting with the citizenship agent...” (at paras 8 and 10); ii) that the June 3, 2011 letter “contains the first explicit and unequivocal request by *Citizenship and Immigration Canada* to provide copies of [her] **passports**” (at para 13); and iii) that “when [she] was explicitly and unequivocally requested to provide a copy of any passport ‘...*given to [her] since [her] entry into Canada*’, that [she] provided the same to Citizenship and Immigration Canada on or about June 18, 2011...” (at para 26).

[9] Before the Citizenship Judge, the applicant blamed her mother and counsel for having told her not to disclose her Belgium citizenship in her citizenship application. Before this Court, she blames Citizenship and Immigration Canada and the Citizenship agent for not having explicitly and unequivocally requested, before June 3, 2011, that she file her Belgium passports.

[10] The applicant was 19 years old when she signed her citizenship application which contained, in the signature box, the following statement:

I understand the contents of this form. I declare that the information provided is true, correct, and complete, and that the photographs enclosed are a true likeness of me. I understand that if I make a false declaration, or fail to disclose all information material to my application, I could lose my Canadian citizenship and be charged under the Citizenship Act.

[11] Section 6 C asks whether the applicant is a citizen of any other countries; she checked yes and indicated Egypt. Her Belgium citizenship is nowhere mentioned in her application form.

[12] She also declares in section 9 that she did not receive assistance in completing her application form.

[13] In addition, the applicant failed to mention in her affidavit that the Notice to Appear, to write the citizenship exam on June 1<sup>st</sup>, 2011 which was sent to her on May 17, 2011, “explicitly and unequivocally” states that she must bring with her “all passports and travel documents in [her] possession (current and expired)”.

[14] Under the circumstances discussed above, the citizenship agent cannot be blamed for not raising the topic of the applicant's Belgium passport during the June 1<sup>st</sup>, 2011 interview; first, the applicant did not declare her Belgium citizenship prior to June 18, 2011, and second, she did not comply with the specific request to bring all passports in her possession for the exam and interview. At that time, she had her current and former Egyptian passports, which she tendered, but she also had her current Belgium passport, which she chose not to tender.

[15] The applicant's statement that she did declare her Belgium citizenship as soon as she was explicitly and unequivocally required to do so is therefore inaccurate and misleading.

[16] In *Raslan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 189, Justice Lemieux states the following:

[14] The law is clear that the grant of judicial review is a discretionary remedy which may be refused on grounds of equity – the lack of clean hands.

[...]

[18] ...As was pointed out in *Canada (Minister of Citizenship and Immigration) v Wysocki*, 2003 FC 1172, [2003] F.C.J. No. 1505 a misrepresentation of a material fact includes an untruth, the withholding of the truthful information or a misleading answer...

[17] I am of the view that in the case at bar, the applicant's failure to provide a satisfactory explanation as to why she did not declare her Belgium citizenship, in her application form or during her June 1<sup>st</sup> interview with the citizenship agent, coupled with the fact that she was not straightforward with the topic in her affidavit before this Court, is sufficient for her application to be dismissed.

[18] I am also of the view that in light of the entire evidence adduced before the Citizenship Judge, his decision was reasonable. The applicant did not file her Belgium passport that was valid during the residency period as it has allegedly been held by the Belgium authorities when they issued her current passport. As the applicant has travelled abroad with her current Belgium passport, she could have traveled with her Belgium passport during the relevant period. It was therefore open to the Citizenship Judge to question the absences declared by the applicant and to find that the applicant had not met her burden of proof.

B. *Procedural fairness*

[19] The applicant submits that the Citizenship Judge “failed to observe a principle of natural justice, procedural fairness or other procedure he was required by law to observe in failing to provide [her] with an opportunity to provide any additional documents or evidence” to support any factual issues related to residency.

[20] In her written submissions, the applicant is silent as to what additional evidence she could have tendered, had she had the opportunity to do so. On the contrary, she argues that considering her age and status, her school transcripts were sufficient proof of her physical presence in Canada. In addition, the applicant cites the following passage of my decision in *Saad v Canada (Minister of Citizenship and Immigration)*, 2013 FC 570 [Saad 1], for the proposition that failure by a citizenship judge to obtain from the Canada Border Services Agency the information contained in its Integrated Customs Enforcement System (ICES), would result in a breach of procedural fairness:

[25] ..... At the hearing before this Court, the respondent submitted that it is possible that the applicant visited other countries during the reference period, such as the United States, and that his passport was not stamped when leaving or re-entering Canada. This is highly speculative, and it would have been relatively easy for the respondent to verify with the Canada Border Services Agency whether the applicant's entries and exits during the reference period matched those appearing in his passport. No such verification was done.

[21] At the hearing, counsel for the applicant attempted to file a print out of the ICES report that the applicant obtained several months ago but only communicated to counsel for the respondent few days before the hearing. Counsel for the respondent objected to the filing of that document and I maintained her objection.

[22] First, the reason why I granted Mr. Saad's application for judicial review in *Saad 1* is because the Citizenship Judge simultaneously applied two different residency tests. After my decision was rendered, Mr. Saad's citizenship application was re-determined by a second citizenship judge who granted it. The Minister of Citizenship and Immigration appealed that decision and a few weeks ago, I issued my decision in *Saad v Canada (Minister of Citizenship and Immigration)*, 2015 FC 245 [*Saad 2*]. In *Saad 2*, I granted the Minister's appeal on the basis that the second Citizenship judge did not provide adequate reasons for his decision and that, in addition, he failed to consider the evidence adduced by the Minister and the Citizenship agent, particularly the warning pertaining to the lack of reliability of the information contained in the CBSA's ICES. At paragraph 21 of *Saad 2*, I reproduced the following extract of the citizenship agent's notes:

[...]

Note: CBSA report has limitations. Even if the client would have provided a record from CBSA, the exits of Canada are NOT recorded by CBSA. In addition, the entries are only indicated in the report if a travel document (passport or permanent resident card) has been scanned. Travel documents are not systematically scanned at Canada's points of entry. Finally, we can't rely on the passport only since many countries do not stamp the passport when travellers enter and exit a country but rather stamp travel cards for example. This is the case for Lebanon. Also, clients may have more than one passport valid at the same time.

[23] Second, the procedural fairness issue, as presented by the applicant, has no bearing on the determinative issue before the Citizenship Judge and before me, which is that the applicant failed to disclose her Belgium citizenship in due time and that she failed to file a copy of her Belgium passport valid during the residency period. This passport was in her possession when she filed her citizenship application but allegedly not in her possession when she filed the residency questionnaire. In addition, before this Court, she failed to provide a satisfactory explanation as to why she did not bring her Belgium passport for her citizenship exam and interview with the citizenship agent. This argument will also be dismissed.

#### IV. Conclusion

[24] For all of these reasons, the applicant's appeal will be dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The applicant's appeal is dismissed.
2. No costs are granted.

"Jocelyne Gagné"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1457-14

**STYLE OF CAUSE:** NADA ASHRAF SALLAM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** FEBRUARY 25, 2015

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