

Federal Court



Cour fédérale

Date: 20160111

Docket: T-1107-15

Citation: 2016 FC 23

Ottawa, Ontario, January 11, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

HOMAYOUN SHAHNAVAZ

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Minister of Citizenship and Immigration [the Minister] has brought an application for judicial review pursuant to s 22.1(1) of the *Citizenship Act*, RSC 1985, c 29 [the Act]. The Minister seeks to set aside the decision of a Citizenship Judge [the Judge] to approve the application for Canadian citizenship of Homayoun Shahnava. The Judge found that

Mr. Shahnavaz had demonstrated that he was resident in Canada for at least three of the four years preceding his application, as required by s 5(1)(c) of the Act.

[2] For the reasons that follow, I have concluded that there was sufficient evidence upon which the Judge could reasonably find that Mr. Shahnavaz had met the residency requirement under the Act. The application for judicial review is therefore dismissed.

II. Background

[3] Mr. Shahnavaz is 78 years old and a citizen of the Islamic Republic of Iran. He arrived in Canada with his wife and children on September 13, 2004, and became a permanent resident the same day.

[4] Mr. Shahnavaz applied for Canadian citizenship on April 4, 2010. In order to meet the residency requirement under s 5(1)(c) of the Act, an applicant must have accumulated at least three years of residence in Canada, or a total of 1,095 days, within the four years immediately preceding the application for citizenship. The parties agree that the relevant period for determining whether Mr. Shahnavaz met the residency requirement under the Act is from April 4, 2006 to April 4, 2010 [the relevant period].

[5] In his application for citizenship, Mr. Shahnavaz declared three separate trips to Iran, resulting in a total absence from Canada of 206 days.

[6] On June 8, 2008, Mr. Shahnavaz appeared before an officer with Citizenship and Immigration Canada [CIC]. The officer expressed concern that Mr. Shahnavaz had not provided a passport to demonstrate his exit from and entry to Canada for most of the relevant period. The officer asked him to complete a residence questionnaire, and to provide photocopies of all current and expired passports used to enter Canada, additional tax information, proof of domicile such as tenancy agreements or mortgage payments, and boarding passes or itineraries related to his absences from Canada.

[7] On July 6, 2011, Mr. Shahnavaz provided CIC with the following documents: (i) a copy of his valid passport; (ii) a written explanation that his passport for the majority of the relevant period (which was issued in 1999 and remained valid until December 13, 2009) was not available, and he did not retain his flight itineraries or boarding passes; (iii) letters from the Canadian Council for the Arts and Imagika Productions confirming his participation in social and cultural activities in Canada; (iv) a letter from the Hamsaz Cultural Centre confirming that he had volunteered with them since 2005; (v) income tax statements from 2005 to 2009; (vi) various documents outlining Mr. Shahnavaz's medical history from 2006 to 2011, including a letter from his oncologist dated June 29, 2011 stating that he had been a patient since April 2006, was treated for colon cancer, and required ongoing treatment over the following three years; and (vii) sworn letters from his sister and brother-in-law attesting that he had lived with them since 2007.

[8] On August 18, 2011, a citizenship officer [the Officer] reviewed Mr. Shahnavaz's application and concluded that the absence of his 1999 passport made it difficult to determine

whether he met the residency requirement under the Act. The Officer requested that Mr. Shahnavaz provide further documentation, including financial statements, bills to support his residence in Canada, and medical records.

[9] By letter dated October 4, 2011, CIC asked Mr. Shahnavaz to provide additional information to establish his residency in Canada during the relevant period, and requested that he complete a second residence questionnaire. Mr. Shahnavaz responded that he was in Iran working on a film project and provided a letter from his Iranian employer. He also explained that he could not provide his 1999 passport because it had been destroyed by Iranian authorities. He maintained that all relevant documents were submitted in his initial application and on July 6, 2011.

[10] On May 4, 2015, Mr. Shahnavaz appeared before the Judge. He was accompanied by his niece, who confirmed his physical presence in Canada during the relevant period. Following the hearing, the Judge requested that Mr. Shahnavaz provide further documentation, including employment records, notices of tax assessments, banking and credit card statements, airline tickets, and additional information regarding his absences from Canada.

[11] By letter dated May 13, 2015, Mr. Shahnavaz sent CIC a third residence questionnaire and provided the following documents: (i) a letter explaining that the loss of his 1999 passport had resulted in some miscalculations in his initial citizenship application; (ii) a letter explaining that he had returned to Iran to raise funds for a Canadian film production; (iii) three letters from medical professionals, all of which were included in his initial application; (iv) a photocopy of a

court summons from Iran; (v) photocopies of his family members' Canadian passports; (vi) photocopies of his permanent residence card and British Columbia Services Card; (vii) letters confirming his involvement in the film industry in Vancouver since 2008; (viii) an affidavit stating that his 1999 passport may have been misplaced six years earlier; (ix) photocopies of credit cards issued by Sears, HBC and Wal-Mart, none of which contained any financial information; and (x) confirmation from the Royal Bank of Canada that he had been a client since December 2005, that he had opened a joint account with his son, and that he had also opened a visa account on April 21, 2006 which became inactive on December 18, 2007.

III. The Judge's Decision

[12] In a decision dated June 2, 2015, the Judge found, on a balance of probabilities, that Mr. Shahnavaaz had met the burden of proving that he met the residency requirement under s 5(1)(c) of the Act. The Judge noted that he was applying the quantitative test established in *Re Pourghasemi*, [1993] FCJ No 232, 62 FTR 122, which requires a strict counting of the days that an applicant has been physically present in Canada.

[13] The Judge noted that the unavailability of Mr. Shahnavaaz's 1999 passport made it difficult to determine whether he met the residency requirement under the Act. The Judge acknowledged that Mr. Shahnavaaz's valid passport confirmed his entry to and exit from Canada for only the last nine months of the relevant period. However, the Judge stated that "he was convinced the applicant has not had the missing passport during the application process", and that "the applicant has been consistent with his presentation over eight years".

[14] The Judge found Mr. Shahnavaz to be credible and forthright in answering questions, and also accepted the statements of his niece, noting that she “represented the applicant as having lived in Canada as described”. He found that Mr. Shahnavaz’s three declared absences from Canada were confirmed by a report from the Canada Border Services Agency’s Integrated Customs Enforcement System [ICES]. The Judge also found that Mr. Shahnavaz’s banking records showed no activity during the periods of his stated absences, but otherwise the account was “very active”. The Judge acknowledged that no records were available prior to April 30, 2008. Based on the evidence, the Judge concluded that there was a period of uncertainty from April 4, 2006 to April 30, 2008 [the period of uncertainty].

[15] The Judge held that there was sufficient objective evidence to find that Mr. Shahnavaz was physically present in Canada during the period of uncertainty. He determined that it was highly improbable that Mr. Shahnavaz would have been able to travel during this period, because of his need for ongoing medical treatment following his diagnosis of colon cancer in 2006, which included chemotherapy. In light of his medical history, the Judge held that the missing passport was unlikely to reveal any absences from Canada prior to April, 2008. The Judge therefore approved Mr. Shahnavaz’s application for citizenship, noting that the information he provided had been consistent throughout the application process.

IV. Issue

[16] The sole issue in this application for judicial review is whether the Judge reasonably found Mr. Shahnavaz to have met the residency requirement under the Act.

V. Analysis

[17] A citizenship judge's determination of whether the residency requirement under the Act has been met is a question of mixed fact and law, and is reviewable by this Court against the standard of reasonableness (*Kohestani v Canada (Minister of Citizenship and Immigration)*, 2012 FC 373 at para 12; *Idahosa v Canada (Minister of Citizenship and Immigration)*, 2013 FC 739 at para 9).

[18] There were inconsistencies in Mr. Shahnnavaz's evidence respecting the reasons why his 1999 passport was not available. During his initial interview with a citizenship officer on June 8, 2011, Mr. Shahnnavaz did not provide a passport for the relevant period because he "forgot to bring his old passports with him". In a letter dated July 5, 2011, Mr. Shahnnavaz informed CIC that he could not provide his old passport or his boarding passes and flight itineraries "because he was not aware he had to keep them". Following several requests by CIC, Mr. Shahnnavaz explained in a letter dated October 24, 2011 that his old passport was destroyed by Iranian authorities. Finally, in an affidavit dated May 4, 2015, he said that he "might have misplaced the passport" six years ago.

[19] The Judge acknowledged that the absence of the 1999 passport was of particular concern. However, it is unclear whether he turned his mind to the inconsistencies in Mr. Shahnnavaz's evidence. At para 15 of his decision, the Judge said only that he was convinced Mr. Shahnnavaz "did not have the passport during the application process" and that he had been "consistent with his presentation over the years".

[20] This Court has cautioned that it would be “unusual and perhaps reckless” to rely upon the testimony of an individual to establish his residency with no supporting documentation (*Canada (Minister of Citizenship and Immigration) v El Bousserghini*, 2012 FC 88 at para 19).

Nevertheless, the Judge’s assessment of Mr. Shahnnavaz’s credibility is entitled to significant deference (*Martinez-Caro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 640 at para 46).

[21] The central issue in this case is whether the evidence relied upon by the Judge was sufficient to overcome the concern arising from the absence of Mr. Shahnnavaz’s 1999 passport. The remaining evidence comprised the following: (i) the periods of absence reported by Mr. Shahnnavaz in his citizenship application were consistent with the information found in ICES; (ii) the joint bank account showed no activity during periods of absence but was otherwise very active; and (iii) Mr. Shahnnavaz was diagnosed with cancer in 2006, required ongoing treatment for three years, and was treated for a urinary tract infection in February, 2007.

[22] The Minister says that the remaining evidence was not sufficient for the Judge to find that Mr. Shahnnavaz had met the heavy burden of establishing that he was physically present in Canada for the requisite number of days under the Act. The Minister notes that the banking information was for a period ending in 2008, and one of the accounts was held jointly with Mr. Shahnnavaz’s son. Furthermore, while periods of inactivity corresponded with Mr. Shahnnavaz’s absences, there were also periods of inactivity that fell outside the periods of declared absence. According to the Minister, it was unreasonable for the Judge to rely on Mr. Shahnnavaz’s medical history to find that he was probably present in Canada during the

period of uncertainty. The Minister notes that there were lengthy gaps between Mr. Shahnavaз's medical appointments, that none of his physicians indicated that he was unable to travel, and that he did in fact travel for extended periods in 2010 and 2011.

[23] In my view, the Judge's decision demonstrates that he reviewed all of the evidence and found that it was sufficient to corroborate Mr. Shahnavaз's claim that he remained in Canada during the period of uncertainty. The Judge does not appear to have considered the inconsistency in Mr. Shahnavaз's explanations for the absence of his passport. Nevertheless, the Judge acknowledged that the missing passport made it difficult to establish Mr. Shahnavaз's residency, and he therefore clearly turned his mind to the issue.

[24] The evidence available to the Judge comprised not only Mr. Shahnavaз's medical history and banking statements, but also sworn letters from his sister and brother-in-law affirming that he had lived with them since 2007. The Judge also placed significant weight on the statements of Mr. Shahnavaз's niece during the interview, noting that they confirmed "that he had lived in Canada as described". There is no reason to doubt the veracity of the niece's statements, or those of the sister and brother-in-law.

[25] Given the deference that is owed by this Court to the Judge's credibility findings, I am unable to say that the Judge's conclusion falls outside of the range of possible, acceptable outcomes that are defensible in respect of the facts and law (*New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9 [*Dunsmuir*]). While I may not have come to the same conclusion as the Judge, it is not the role of this Court to reweigh the evidence (*Canada*

(Minister of Citizenship & Immigration) v Anderson, 2010 FC 748 at para 26, citing *Dunsmuir* at para 47). The Judge's decision to approve Mr. Shahnava's application for Canadian citizenship was therefore reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. No question is certified for appeal.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1107-15

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v HOMAYOUN SHAHNAVAZ

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 17, 2015

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JANUARY 11, 2016

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