Federal Court  Cour fédérale

Date: 20160405

Docket: T-1613-15

Citation: 2016 FC 375

Toronto, Ontario, April 5, 2016

PRESENT: The Honourable Mr. Justice Diner

Docket: T-1613-15

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

MONSURAT ADEDOLAPO BALOGUN

Respondent

JUDGMENT AND REASONS

I. BACKGROUND

[1] This is a judicial review of a decision by a Citizenship Judge [the Judge] dated August 26, 2015. In that decision, the Judge found that the Respondent met the residence requirements under paragraph 5(1)(c) of the *Citizenship Act*, RSC 1985, c-29 [the Act] and approved her application for citizenship.

[2] Briefly, the Respondent is a petroleum engineer from Nigeria and a permanent resident of Canada. She submitted her citizenship application on April 14, 2014. There were absences and inconsistencies in her application. These were flagged by a Citizenship Officer in a File Preparation and Analysis Template [FPAT] completed February 18, 2015. As a result of that FPAT analysis and of various concerns raised about residency period, including her work, travel and medical history, the Judge held a lengthy hearing [the Hearing] on August 11, 2015.

[3] Ultimately, the Judge found that the Respondent had sufficiently explained the concerns about her residency. Both at the Hearing and in a subsequent Affidavit, the Respondent addressed the issues raised by the Judge, including: her reasons for spending time in the U.S.; her L-1 "intracompany" work authorization, maternity leave and subsequent resignation from her employer in the U.S.; her reliance on travel from U.S. airports; and the birth of her children in the U.S. She also explained related points such as the Canadian visas she had obtained; the details of her Nigerian passports; and a discrepancy between the residency questionnaire she completed and her entry stamps. The Respondent also addressed questions raised about her OHIP claim history and various periods of non-use; her PR card history; her receipt of a diploma from a British Columbia-based institution when she claimed to be living in Ontario; and her living arrangements in Brampton, Ontario with her extended family before purchasing a home there. Finally, she provided explanations for the work status of her husband, a Canadian citizen, and his ability to telework as an IT project manager.

II. ANALYSIS

[4] A citizenship judge's assessment of whether an individual has met the residency requirements under the Act is reviewable on a standard of reasonableness (Canada (Citizenship and Immigration) v Abdulghafoor, 2015 FC 1020 at para 15; Canada (Minister of Citizenship and Immigration) v Matar, 2015 FC 669 at para 11; Hussein v Canada (Minister of Citizenship and Immigration), 2015 FC 88 at para 10). As such, this Court must approach this decision with deference, and with this guidance in mind, the Applicant has failed to persuade the Court that the Judge's decision should be disturbed.

[5] Citizenship judges are the primary arbiters of credibility when it comes to citizenship hearings. This Court is not and so should defer when credibility is at issue. Such deference is warranted because citizenship judges conduct their credibility assessments through a hearing, and this Court unfortunately does not have a transcript or written record of this hearing. As Justice Rennie – then of this Court – stated in *Martinez-Caro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 640 at para 46:

> Citizenship Court judges are unquestionably better situated as triers of fact and assessors of credibility. They are better situated to make the factual determination as to whether the threshold question of the existence of "a residence", has been established. They are unquestionably better situated to determine whether exigent circumstances exist and to make recommendations under subsection 5(4) of the *Act*. These are matters of proof requiring the production and assessment of evidence and the hearing of testimony. It is in this regard that deference is properly accorded.

[6] In this case, the Judge interviewed the Respondent for "a lengthy period", identified credibility as a "major issue", found the Respondent credible, and ultimately concluded that she met the quantitative residency test. Credibility determinations, particularly when there is *viva voce* evidence given, invariably attract a heightened measure of deference. I can see no reason to diverge from that well-established axiom.

[7] Furthermore, as Justice Gascon recently wrote in *Canada (Citizenship and Immigration) v Suleiman*, 2015 FC 891 at para 23 [*Suleiman*]:

> A decision-maker like a citizenship judge is deemed to have considered all the evidence on the record (*Hassan v Canada (Minister of Citizenship and Immigration)*, [1992] FCJ No 946 (FCA) at para 3). A failure to mention an element of evidence does not mean that it was ignored or that there was a reviewable error. In this case, the judge has also had the benefit of a long hearing with Mr. Suleiman, for which there is no transcript to contradict the evidence on the record or the affidavit filed by Mr. Suleiman. The decision of the citizenship judge evidently took into account the oral evidence provided by Mr. Suleiman.

[8] Justice Gascon went on to explain that while there is a positive obligation on citizenship applicants to provide true, correct and complete information and to refrain from making false declarations, this does not mean that corroborative evidence is required on every single element. Rather, it is the responsibility of the Judge, taking the context into consideration, to determine the extent and nature of the evidence required (*Suleiman* at para 27; see also *Canada (Minister of Citizenship and Immigration) v El Boussergh*ini, 2012 FC 88 at para 19).

[9] In the present case, the Judge accepted the evidence of the Respondent and wrote a complete set of reasons. Those reasons may not have been perfect, but they are more than adequate, and, it is not this Court's role to intrude on that basis. Nor is it this Court's role to reweigh that evidence to come to a different conclusion (*Canada (Minister of Citizenship and Immigration) v Lee*, 2013 FC 270 at para 48), particularly when that conclusion is based on testimony provided during a lengthy hearing in which the Judge focused specifically on a list of concerns enumerated by a Citizenship Officer in an FPAT. Indeed, the Judge even provided further opportunity for post-hearing clarifications, of which the Respondent availed herself, both in the form of a detailed Affidavit and in accompanying submissions from her counsel. As the Judge wrote,

> All of the concerns previously listed were brought to the attention of Ms. Balogun and her legal representative during the 11 Aug. 2015 hearing. They addressed some of them during the hearing while they asked [for] a few days to collect more information and forward them to me during the next ten days… Ms. Balogun addressed my concerns in an affidavit and a presentation letter from her lawyer.
> (AR, p 8)

[10] Certainly deference does not mean blind adherence to the result or carte blanche immunity for the Judge: where reasons are deficient, inadequate or unjustifiable and the outcome falls outside of the range of acceptable outcomes, they will not stand (see e.g. *Canada (Minister of Citizenship and Immigration) v Bayani*, 2015 FC 670 paras 31; and *Canada (Minister of Citizenship and Immigration) v Saad*, 2015 FC 245 at paras 22-23).

[11] In this case, however, I find that the Judge provided ample reasons as to the facts to be distinguishable from those cases. The decision displayed all the markers of justifiability, transparency, intelligibility, and adequacy of reasons that define reasonableness.

[12] I make two observations by way of *obiter* in closing. First, since no transcript or recording is provided to this Court of citizenship hearings, it is difficult to assess a citizenship judge's decision when it relies on an applicant's credibility and the explanations they provided in a hearing.

[13] Second, in addition to the Hearing materials, the Respondent provided a further Affidavit for the purpose of this judicial review, incorporating by reference the preceding Affidavit. The Applicant could have cross-examined the Respondent on the material in the further Affidavit but decided not to do so. Later, before this Court, the Applicant took issue with a lack of documentation tying the Respondent to Canada during a certain portion of the residency period in question. This, however, is exactly the kind of concern that the Applicant should have had the Respondent address on cross-examination.

[14] All that is before the Court from the citizenship application process is the Judge's decision and the paper record, which includes the FPAT notes and related internal documents, such as the Judge's Feedback Form. A review of all of these, when read together and in their full context, shows that the Judge addressed the points of concern raised by the Citizenship Officer and concluded that the Applicant was credible, with accompanying explanations on the points of contention. Faced with this evidence, I see no basis in which to interfere in the decision.

III. CONCLUSION

[15] Despite able representations from counsel, this application for judicial review is denied. There are no certified questions or costs ordered.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is denied.

2. There are no questions for certification.

3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1613-15
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v MONSURAT ADEDOLAPO BALOGUN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 21, 2016
JUDGMENT AND REASONS:	DINER J.
DATED:	APRIL 5, 2016

APPEARANCES:

NUR MUHAMMED-ALLY	FOR THE APPLICANT
WARDA SHAZADI-MEIGHEN	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT
WALDMAN AND ASSOCIATES Barristers and Solicitors Toronto, Ontario	FOR THE RESPONDENT