Federal Court  Cour fédérale

Date: 20160819

Docket: T-1475-15

Citation: 2016 FC 951

Ottawa, Ontario, August 19, 2016

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

WEI ZHANG

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [Act] of a decision of a Citizenship Judge (CJ) dated August 4, 2015, that approved the Respondent's application for citizenship. The Applicant submits that the Respondent did not meet the residency requirements set out under section 5(1)(c) of the Act during the relevant period which was from November 21, 2003 to November 21, 2007. Specifically, the Applicant alleges the Respondent failed to provide sufficient proof of residence in Canada from April 1, 2004 to October 17, 2007.

[2] For the reasons that follow this application is dismissed.

I. **Background**

[3] The Respondent is a citizen of China. He entered Canada and received permanent resident status on October 8, 2002. He applied for citizenship on November 21, 2007 declaring 41 days of absence and 1419 days of presence.

[4] The File Preparation and Analysis Template (FPAT) prepared by an analyst for the Applicant stated that the Respondent "has not provided proof of residence from 2004/01/01 to 2007/10/17". The FPAT identified and passed on to the CJ for further inquiry several concerns about the Respondent's application including:

i. Whether his Passport was extended in Canada or Beijing;
ii. That random, sparse evidence of bank, credit card, Rogers and Fido statements was produced;
iii. The residence lease required rent greater than his declared income plus he also had to support his wife and two children;
iv. He only availed himself of OHIP services during two months of the four year relevant period;
v. There was no proof of his children's school attendance, his own volunteer work or his wife's employment.

[5] At the hearing, the Respondent produced an original passport. Only a copy had been provided with his application. After examining the original passport, the CJ asked the Respondent to provide further documentation to support his claim. Shortly after the hearing the Respondent provided:

i. Lease agreements for the period April 1, 2005 to October 1, 2007 and rental receipts from March 2003 to March 2007 for the rent of an unfinished master bedroom;
ii. School attendance summary for one son;

iii. His Record of Employment for the period May 1, 2007 to October 31, 2007;
iv. Income Tax Return information for 2007.

[6] The CJ applied the strict physical presence test set out in *Re: Pourghasemi* [1993] FCJ No. 232 and found, on a balance of probabilities, that the Respondent had demonstrated he resided in Canada for the number of days he claimed and he therefore met the residence requirement under the Act.

II. **Issue and Standard of Review**

[7] At the hearing, the Applicant abandoned the arguments in their written submissions that the hearing was procedurally unfair. The only issue remaining is whether the CJ erred in finding the Respondent met the residency requirement.

[8] The standard of review of a decision of a citizenship judge under the Act is reasonableness. (*Canada (Citizenship and Immigration) v Suleiman*, 2015 FC 891 at para 18)

III. **Submissions**

[9] The Applicant submits that the declared and proven income of the Respondent is insufficient to support a family of four and purchase a house as the Applicant did in the fall of 2007. The Applicant also alleges that as the CJ chose to apply the strict physical presence test the Respondent had to show he was resident in Canada during the relevant period. One indicator of residence is income, of which the Applicant alleges the Respondent did not have enough to support his family.

[10] The Applicant also submits the CJ in his reasons for granting citizenship did not “connect the dots” as he did not mention any other relevant evidence he considered. Given the paucity of

evidence in the record the Applicant says the finding does not accord with the evidence. The Applicant submits that a grant of citizenship is not a "rubber stamp" and the reasons for decision do not show how the Respondent met the test or why the CJ found nonetheless that he did.

[11] Most critically, the Applicant submits that "if the citizenship judge examined the passport 'very carefully'" as he states in his reasons then the CJ misapprehended the evidence because it casts doubt on the physical presence of the Respondent during the relevant period.

[12] The Respondent says there was no "rubber stamp" - the Applicant took eight years to process the application. He notes the citizenship hearing was held on July 6, 2015 at which time, presumably because of the concerns identified in the FPAT, the CJ asked the Respondent to submit additional documents. In response, after the hearing, the Respondent delivered further documents including school attendance records for 1 son, a lease agreement, a record of employment for the period May 1 – October 31, 2007, his 2007 income tax return, notices of assessment for 2004, 2005, 2006 and 2007 and some evidence for every year from 2003 to 2008.

[13] The Respondent points out the FPAT simply says the stamps in the passport indicate the Respondent "could have been in China" when it was extended. The CJ indicated he looked closely at the original passport. The Respondent also says the CJ has the discretion to determine whether the evidence has satisfied him but the Applicant seeks to have it re-weighed.

[14] The Respondent says the CJ is in the best position to assess the evidence. He met with the Respondent in person, he looked at the issues raised in the FPAT, he closely examined the critical documents and he satisfied himself as to the test.

IV. **Analysis and Conclusion**

[15] The Applicant claimed 1419 days of physical presence. Under the strict physical presence test, an applicant for citizenship must prove that during the four year period (1460 days) immediately preceding the date of their application they had accumulated at least three years (1095 days) of residence in Canada.

[16] In this case, whether the Respondent's passport was extended in Beijing on April 29, 2005 is important. If it was, it indicates he was outside of Canada at a time when he said he was present in Canada. The Applicant says the CJ misapprehended the passport evidence as it "casts doubt" on the days of presence by the Respondent. But doubt is not proof. When there is doubt about an application it is noted in the FPAT and the CJ is expected to address it at the hearing. In this case, the CJ noted it and addressed it.

[17] In his reasons for decision the CJ indicates he raised the passport issue. He quizzed the Respondent about where the passport was extended. The Respondent said he could not remember for sure because it was extended ten years prior. The CJ says he then examined the Respondent's original passport very carefully and he could not find an entry stamp for China "around that period". The FPAT notes the Respondent had only submitted with his application a copy of his cancelled passport. At the hearing, the Respondent provided his original passport. The CJ therefore had before him evidence that the analyst who prepared the FPAT did not possess.

[18] The CJ also determined there were two dates in 2007 in the passport that could be entry and exit stamps. He asked the Respondent to provide documentation about his domicile in Canada during the relevant period. The Respondent delivered the additional documents (as set

out in the background facts, above) and the CJ examined them. He then made his determination that he was satisfied the Respondent met the residence requirement.

[19] The Applicant disagrees with the quality of the evidence and the assessment of it made by the CJ. However, nothing in the Act or the case law requires an Applicant to submit specific forms of evidence. The citizenship judge must only be satisfied that an Applicant has met the evidentiary onus. (*Canada (Citizenship and Immigration) v Askari*, 2014 FC 592 at para 14)

[20] Here, the CJ's summary, while brief, confirms he turned his mind to the issues raised in the FPAT. He held a lengthy hearing where he questioned the Respondent and accepted his answers. He examined the documents provided with the application, considered the Residence Questionnaire and the FPAT and required the Respondent to provide further documentation. The CJ's conclusion was that both during and after the hearing he "did not find valid elements to dispute the Applicant's statements about his days of physical presence".

[21] Whether the Court or the Applicant would have viewed the evidence differently or arrived at the same conclusion is not relevant. The evidence cannot be re-weighed. When, after a review of the record, the reasons provided meet the criteria of justification, intelligibility and transparency and the decision falls within the range of possible acceptable outcomes as established in *Dunsmuir v New Brunswick* 2008 SCC 9 the decision is reasonable. This also means that a reviewing court in giving deference to the specialized tribunal should give "a respectful appreciation that a wide range of specialized decision-makers routinely render decisions in their respective spheres of expertise, using concepts and language often unique to their areas and rendering decisions that are often counter-intuitive to a generalist".

(*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 13)

[22] I am satisfied the reasons provided by the CJ show why he came to the conclusion he did. They meet the *Dunsmuir* criteria. I am also mindful that he had the benefit of directly interviewing the Respondent and examining the documents that were provided by the Respondent after which he drew his conclusion based on his experience as a citizenship judge.

[23] This application is therefore dismissed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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