Federal Court Cour fédérale

Date: 20170208

Docket: T-1359-16

Citation: 2017 FC 158

Vancouver, British Columbia, February 8, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SEYED MOHAMMADAMIN EHSAEI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an appeal of a decision dated July 7, 2016, rendered by a Citizenship Judge refusing the Applicant's application for citizenship on the ground that the Applicant failed to meet the requirements of paragraph 5(1)(c) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

II. Facts

[2] The Applicant, aged 31, is a citizen of Iran. He arrived in Canada on July 13, 2008 and became a permanent resident. He applied for citizenship on August 28, 2013. Therefore, the reference period for the purposes of determining residency in accordance with the law spans from August 28, 2009 to August 28, 2013.

III. Impugned Decision

[3] On July 7, 2016, the Citizenship Judge refused the Applicant's application for citizenship on the basis that the Applicant did not meet the residency requirement under paragraph 5(1)(c) of the Act. The Citizenship Judge found that the Applicant had demonstrated 1039 days of physical presence, 421 days of absence, and a shortfall of 56 days from 1095 days required by the Act.

[4] Applying the test of *Re: Pourghasemi*, [1993] FCJ No 232 [*Pourghasemi*], the Citizenship Judge concluded that the Applicant did not provide sufficient and credible evidence to establish his physical presence in Canada for a minimum of 1095 days during the reference period. She found that there were discrepancies in the Applicant's work and study history between his application and residence questionnaire.

IV. Issues

[5] This matter raises the following issues:

1) Did the Citizenship Judge err in finding that the Applicant did not meet the residence requirements of the law?
2) Did the Citizenship Judge err by not raising concerns with the Applicant's credibility at the hearing?

[6] A Citizenship Judge's findings on the fulfilment of the residence requirements as dictated by paragraph 5(1)(c) of the Act is a question of mixed fact and law which should be reviewed on the standard of reasonableness. The decision must be justified, transparent, and intelligible, and must fall within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[7] Whether the Applicant had the opportunity to address the Citizenship Judge's concerns about his credibility raises a question of procedural fairness which should be reviewed on the standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339).

V. Relevant Provisions

[8] At the time of the Applicant's application for citizenship, paragraph 5(1)(c) of the Act prescribed following residence requirements read as follows:

Grant of citizenship	**Attribution de la citoyenneté**
5 (1) The Minister shall grant citizenship to any person who	**5 (1)** Le ministre attribue la citoyenneté à toute personne qui, à la fois :
…	[…]
(c) is a permanent resident	c) est un résident permanent au

within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:	sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :
(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

VI. Submissions of the Parties

[9] The Applicant claims that the Citizenship Judge erred in failing to assess the Applicant's establishment in Canada as a threshold question, although he submitted documentary evidence of his establishment of residence (*Hao v Canada (Citizenship and Immigration)*, 2011 FC 46). The Applicant further argues that the decision is unreasonable because the Citizenship Judge ignored relevant evidence demonstrating his physical presence in Canada during the relevant period of reference (*Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 157 at paras 85-86). Finally, the Applicant asserts that the Citizenship Judge breached her duty of

procedural fairness by failing to inform the Applicant at the hearing of her concerns regarding the lack of transcripts from the University of Reading and from the University of Ottawa, and by rather speculating on whether the Applicant had taken courses for his degrees online or by distance learning.

[10] The Respondent contends that the Citizenship Judge's assessment of the threshold residency determination can be presumed (*Boland v Canada (Citizenship and Immigration)*, 2015 FC 376 [*Boland*]. The Respondent argues that the decision was reasonable; the Citizenship Judge properly applied the *Pourghasemi* test and reasonably concluded that the Applicant failed to provide sufficient credible evidence establishing his physical presence in Canada during the reference period for his application. She did not ignore documentary evidence provided by the Applicant in support of his presence in Canada, but rather weighed this evidence and found it insufficient. Lastly, the Respondent disputes the alleged procedural fairness breach, underlining that the Citizenship Judge had no duty to request specific additional documents (*Zheng v Canada (Citizenship and Immigration)*, 2007 FC 1311) and that the Applicant was given the opportunity to address inconsistencies in the evidence.

VII. Analysis

[11] The Court determines that the Citizenship Judge neither committed a reviewable error in rejecting the Applicant's citizenship application by determining that his physical presence in Canada was not established nor a breach of procedural fairness by omitting to request additional documentary evidence.

[12] As stated by the Respondent, it is trite law that, in assessing residence requirements under paragraph 5(1)(c) of the Act following the two-part approach established by our Court's jurisprudence, a Citizenship Judge's threshold residency determination ought not to be explicit, but may be presumed or implicit in the Citizenship Judge's reasons:

> [22] … it must be presumed that the Citizenship Judge was prepared to accept that the Applicant had established residence on the day of landing, otherwise there would have been no reason to determine whether the Applicant's residency satisfied the statutorily prescribed number of days. That being the case, I fail to understand what the Applicant is complaining about, as the Citizenship Judge implicitly decided that he had satisfied the first part of the analysis and had established residency at the earliest possible date.
>
> (*Boland*, above, at para 22)

[13] Therefore, the Citizenship Judge's threshold residency determination was implicit.

[14] The Court notes that the Applicant bears the onus of providing sufficient evidence demonstrating his compliance with the residency requirements of the law. In her decision, the Citizenship Judge raised many inconsistencies and discrepancies in the evidence submitted by the Applicant; the dates of his studies at the Allameh Tabatabaei University (Iran), at the University of Reading (United Kingdom) and at the University of Ottawa were incomplete and inconsistent, and there were discrepancies in some of the documentary evidence, such as the translation of his Iranian Bachelor's degree and his Aeroplan Activity Report. In light of these shortcomings, the decision was reasonable, as it was open to the Citizenship Judge to weigh the evidence and to conclude that the physical presence requirements were not met by the Applicant (Reference is made to paragraph 16 and, also, paragraph 26 to 30 inclusive of the judgment in *Fotros v Canada (Citizenship and Immigration)*, 2016 FC 842 [*Fotros*], penned by Justice Simon

Fothergill; and, also, paragraph 25 to 27 inclusive of the judgment in *Ballout v Canada (Citizenship and Immigration)*, 2014 FC 978, penned by Justice Marie-Josée Bédard).

[15] In the case at bar, the Court finds that the Citizenship Judge's duty of procedural fairness was met. The Applicant was not entitled to specific, additional document requests in order to complete his file (*Fotros*, above, at para 11).

VIII. Conclusion

[16] The appeal is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the appeal be dismissed. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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