Federal Court  Cour fédérale

**Date: 20170223**

**Docket: T-1440-16**

**Citation: 2017 FC 217**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, February 23, 2017**

**PRESENT: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**SEMHAT, AJWAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicant is challenging the lawfulness and/or reasonableness of a decision dated June 22, 2016, denying his citizenship application. After having heard the applicant's representations at a hearing and reviewed the documentary evidence in the record, the citizenship judge questioned the applicant's credibility and found that it was impossible for her to determine whether he had indeed complied with the requirements set out in paragraph 5(1)(*c*) of the

*Citizenship Act*, RSC 1985, c C-29 [the Act] (i.e. 1095 days of physical presence in Canada in accordance with the approach adopted here (*Pourghasemi (Re)*, [1993] FCJ No. 232 [*Pourghasemi*]).

[2] Reasonableness applies to the analysis of the merits of the decision under review (*Saad v. Canada (Citizenship and Immigration)*, 2013 FC 570, [2013] FCJ No. 590 at para 18; *Haddah v. Canada (Citizenship and Immigration)*, 2014 FC 977, [2014] FCJ No. 1013 at para 18 [*Haddah*]; *Eskandari v. Canada (Citizenship and Immigration*, 2015 FC 239, [2015] FCJ No. 272 at para 7). In this case, the Court should not substitute its own assessment of the evidence for that of the decision-maker; it must verify whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Haddah* at para 19 referring to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47). Since this involves determining whether there was a breach of procedural fairness, correctness is the standard that applies.

[3] There is no cause to intervene in this case. After having considered the parties' written and oral representations in light of the evidence in the record and the applicable legal principles, I agree with the respondent's general reasoning in its written memorandum that this application for judicial review must be dismissed. However, I will make a certain number of observations regarding the decision under review and the applicant's points of challenge, which all seem unfounded to me in this case.

[4] To begin with, the applicant is a permanent resident, originally from Lebanon, who arrived in Canada in April 2001 with his wife and their four children. Before that, he owned a company in the Democratic Republic of the Congo—a company that specialized in exporting food products from Europe to Africa. The applicant's spouse died in 2007. On February 7, 2012, the applicant filed his citizenship application with Citizenship and Immigration Canada (CIC), reporting seven periods of absence totalling 357 days. However, this number was changed to 352 days, leaving him with an actual physical presence of 1108 days for the period at issue (February 7, 2008, to February 7, 2012). On November 15, 2014, the applicant attended an interview with an immigration officer, where he was given a residence questionnaire (RQ) that he completed in the presence of his daughter, who is a lawyer. After having received the applicant's documents, the immigration officer was of the opinion that the applicant's credibility posed problems [Template]. On June 22, 2016, the applicant was summoned to appear at a hearing before a citizenship judge.

[5] Contrary to what the applicant contends, there was no violation of procedural fairness in this case. It is clear that at the hearing, the citizenship judge brought up each issue described in the Template. The citizenship judge also took note of the answers that the applicant provided. Agreeing with the principle that the onus is on the applicant to provide clear, convincing evidence, it is clear that the applicant's explanations were quite simply insufficient and that the applicant was in effect asking the Court to substitute itself for the citizenship judge, which is not its role in this case.

[6] The onus is on the applicant to prove, clearly and convincingly, that he met the presence requirements stated in paragraph 5(1)(*c*) of the Act. acYet after having questioned the applicant on each of the items brought up in the Template, the citizenship judge made a list of the doubts and inconsistencies raised and finally found that the applicant did not discharge his burden. The citizenship judge was not required to continually share with the applicant any comments on whether or not his answers or documents were sufficient. In addition, the applicant had the opportunity to present all the evidence he wanted; he could even submit documents during and after the hearing.

[7] The citizenship judge supported her reasoning and her finding on the answers provided by the applicant. When asked to describe his typical day, he did not answer the question; instead, he gave off-topic information on his children (Decision at paragraphs 19 and 20). When the applicant was asked further about where he did his shopping or bought his clothes, the citizenship judge noted that he provided answers of a general nature, not giving her the impression that he often went to businesses near his residence in Montréal (Decision at paragraphs 21 to 23).

[8] With regard to his new passport, the applicant provided the original at the hearing; that passport confirmed his oral statements. This item in the Template was therefore clarified to the citizenship judge’s satisfaction.

[9] When asked about his many trips to Lebanon and the fact that his passport was stamped only twice, the applicant explained that the officers sometimes stamped his passport and

sometimes they did not. Because Lebanese citizens sometimes use a pink card in place of their passports, the citizenship judge wanted to know if the applicant had such a card. Yet he answered in the negative, adding that he had nothing to hide. This answer left the citizenship judge perplexed, leading her to believe quite the opposite (Decision at paragraphs 24 to 26).

[10] Moving on to use of his RAMQ card and his medical profile, the applicant explained that he was in good health. This answer still seemed contradictory given that he had stated an average of nine consultations during the three years of the period at issue, but there was a major unexplained gap. The citizenship judge therefore drew a negative inference from this (Decision at paragraphs 27 and 28).

[11] The citizenship judge also found inconsistencies or anomalies in the bank documents provided. The applicant allegedly opened an account in 1999 but did not arrive in Canada until 2001. In addition, the name of the applicant’s spouse, who died in 2007, was still on the joint bank account and withdrawals had also been made when the applicant was apparently abroad (Decision at paragraphs 29 to 31).

[12] Lastly, the citizenship judge asked the applicant about the various contradictions between his RQ and his statement. He explained that the statement was correct and that the RQ had been completed by his daughter, who acted as counsel. With regard to his day trip to Switzerland, the applicant said that he went to see someone but gave no details except that they had arranged to meet at the airport. The judge considered it unlikely that he could take a day trip to Switzerland, especially given the lack of details regarding that trip (Decision at paragraphs 32 to 34).

[13] In light of the preceding, I find that the citizenship judge did not act unreasonably. She was perfectly right to be dissatisfied with the applicant's explanations. This finding rests on the evidence and does not seem unreasonable to me in this case. Quite the opposite; the citizenship judge found that the applicant lacked credibility in that he was quite sparing in the details about his everyday life in Canada. Given that the onus was on him to prove that he met the requirements of the Act, the citizenship judge denied his citizenship application because it was impossible for her to determine, on a balance of probabilities, the exact number of days that the applicant had actually been present in Canada during the period at issue. This is an acceptable outcome.

[14] At the risk of repeating myself, the applicant's various complaints are unjustified. There is no need for a detailed analysis of these reasons for refusal. As the Supreme Court of Canada stated in *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd.*, 2013 SCC 34, [2013] 2 SCR 458 at para 54, the decision of which an application for judicial review has been filed should be approached "as an organic whole, without a line-by-line measure hunt for error." (See *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 14.

[15] The citizenship judge took into consideration all of the documents provided by the applicant, including the list stated in his memorandum, but these did not prove 1095 days of physical presence in Canada during the period at issue. I therefore disagree with the applicant's submissions that the citizenship judge failed to calculate the number of days of presence in and absence from Canada. The citizenship judge did take this relevant factor into account (*Labioui v.*

*Canada (Citizenship and Immigration)*, 2016 FC 391, [2016] FCJ No. 366). The citizenship judge did use the applicant's number of days absent based on the immigration officer's revised number (352 days), which left 1108 days of actual presence in Canada (Decision at paragraph 9).

[16] The fundamental issue is that the inconsistencies in the evidence and in the applicant's testimony made it impossible to determine, on a balance of probabilities, the exact number of days that the applicant was actually present in Canada during the periods in which he claimed that he was there (Decision at paragraph 37). Yet it is well established that courts must show a high degree of deference to findings related to credibility. It was reasonable for the citizenship judge, with respect to the test stated in *Pourghasemi*, to find that the applicant did not meet the threshold of 1095 days of physical presence in Canada.

[17] The application for judicial review is therefore dismissed. There are no questions of general importance to be certified.

## JUDGMENT

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification.

"Luc Martineau"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1440-16 |
| **STYLE OF CAUSE:** | SEMHAT, AJWAD v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | FEBRUARY 14, 2017 |
| **JUDGMENT AND REASONS:** | MARTINEAU J. |
| **DATED:** | FEBRUARY 23, 2017 |

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