

Federal Court



Cour fédérale

Date: 20170717

Docket: T-1869-16

Citation: 2017 FC 693

Ottawa, Ontario, July 17, 2017

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

MOHAMAD FARAS SUKKAR

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, the Minister of Citizenship and Immigration [the Minister], challenges a decision dated October 4, 2016, which approved Mohamad Firas Sukkar's application for Canadian citizenship under paragraph 5(1)(c) of the *Citizenship Act*, RSC 1985, c C-29 [the Act]. Mr. Sukkar received citizenship despite the Minister's allegations that he failed to demonstrate

sufficient physical presence in Canada over the past four years. I am dismissing this judicial review for the reasons that follow.

II. Background

[2] Mr. Sukkar is a citizen of Syria. He has a wife and two children, one of whom was born in Canada on June 23, 2008.

[3] Mr. Sukkar first applied for Canadian citizenship in November 2010 but later withdrew his application. He applied a second time on May 29, 2015. In this application, he declared a physical presence in Canada of 1146 days over the previous four year period [the relevant period].

[4] Mr. Sukkar and his wife appeared for a program integrity interview where it was discovered by a citizenship officer that Mr. Sukkar had three undeclared absences. He was issued a residence questionnaire in which he admitted to the three absences. His new declared total number of days of physical presence during the relevant period dropped from 1146 to 1120. Mr. Sukkar's case was referred to a Citizenship Judge to determine whether he met the requirements under paragraph 5(1)(c) of the Act.

[5] Mr. Sukkar's citizenship hearing was held on August 8, 2016, and approved on October 4, 2016. In a separate decision, Mr. Sukkar's wife had her Canadian citizenship approved on October 5, 2016. The Citizenship Judge noted that Mr. Sukkar entered Canada as a permanent

resident on July 22, 2007, and Mr. Sukkar now declared 1118 days of physical presence during the relevant period.

III. Issues

[6] The Minister raised the following issue in this application:

- A. Did the Citizenship Judge reasonably conclude that Mr. Sukkar satisfied the residency requirement for Canadian citizenship?

IV. Standard of Review

[7] The standard of review applicable to the judicial review of citizenship determinations is reasonableness. The question of whether an individual has met the residency requirements of the Act is a question of mixed fact and law also reviewable on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Rahman*, 2013 FC 1274 at para 13, citing *Saad v Canada (Minister of Citizenship and Immigration)*, 2013 FC 570 at para 18).

V. Analysis

[8] The onus of establishing residency lies with the citizenship applicant; in this case, Mr. Sukkar (*El Falah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 736 at para 21). Inadequacy of reasons is not a stand-alone basis for quashing a decision. The reasons must be read “together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14). A decision-maker such as a citizenship

judge is deemed to have considered all the evidence on the record (*Canada (Minister of Citizenship and Immigration) v Samaroo*, 2016 FC 689 at para 30 [*Samaroo*]).

[9] The three legal tests which the Citizenship Judge must pick are described by Justice Tremblay-Lamer in *Mizani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 698 at paragraph 10. The *Pourghasemi* test (*Re: Pourghasemi*, [1993] FCJ No 232) is a quantitative test, relying on number of days of residence which must add to a minimum of 1,095 over the relevant period.

[10] Since the Citizenship Judge chose the *Pourghasemi* test in this case, the real question in this case is whether the Citizenship Judge reasonably concluded that Mr. Sukkar had at least 1,095 days residency in Canada during the relevant period.

[11] The following are the citizenship officer's concerns that were to be addressed by the Citizenship Judge:

- i. Mr. Sukkar shared the same address with multiple individuals during the relevant period which had been flagged as a suspected fraudulent address;
- ii. Mr. Sukkar's work history was questionable given information found on his LinkedIn account; and
- iii. No proof of physical presence was provided for the relevant period, particularly prior to 2012.

[12] The Minister argues that the Citizenship Judge failed to address credibility concerns and documentary evidence regarding Mr. Sukkar's presence in Canada. Specifically, the Citizenship Judge failed to address the lack of evidence that Mr. Sukkar was in Canada prior to September 28, 2011. Mr. Sukkar alleges a two day trip from Canada to the United Arab Emirates [UAE] in

June, 2011. While there are entry and exit stamps for the UAE, there is no re-entry stamp into Canada at that time. Therefore, according to the Minister, this does not support Mr. Sukkar's claim of physical presence in Canada.

[13] The Minister points out that the Citizenship Judge relied on Mr. Sukkar's medical and dental reports as indicators of physical presence in Canada. However, Mr. Sukkar's first medical visit during the relevant period is not until October 2012 and first dental record is in May 2013 which does not support his presence throughout 2011. Further the subsequent documents that were which were provided to the Citizenship Judge, are not found in the tribunal record.

[14] The Minister submits that documentary evidence which contradicts Mr. Sukkar's testimony was ignored by the Citizenship Judge including Gulf Council Country visa permits (which are only issued to residents of Gulf countries) and a United States visa on December 4, 2012 (during which time Mr. Sukkar was allegedly in Canada). This contrary evidence, the Minister argues, undermines Mr. Sukkar's assertions that he was in Canada during the relevant period and was wholly disregarded by the Citizenship Judge. The Minister points out that Mr. Sukkar has failed to provide an affidavit in response to the expressed concerns, relying instead on assertions that the analysis conducted was sufficient.

[15] The Minister refers to Mr. Sukkar's LinkedIn profile (which was later changed) as evidence of his employment with a logistics company in Kuwait until 2014. Furthermore, the purchase of a Canadian business with business partners does not demonstrate physical presence in Canada, contrary to the Citizenship Judge's conclusions.

[16] The Minister's position is that the personal banking statements provided by Mr. Sukkar are held jointly with his wife so it is not possible to determine who made each transaction. Mr. Sukkar's sole credit card was a basis for determining physical presence in Canada even though transactions were processed in Canada while he was away on a declared business trip to the UAE and Kuwait in 2012. As such, Mr. Sukkar's financial records cannot be used as reliable determinants of physical presence in Canada.

[17] The Minister concludes that Mr. Sukkar failed to meet the onus of providing sufficient objective evidence to demonstrate that he satisfied the residence requirement. Of particular concern to the Minister is whether Mr. Sukkar was physically present in Canada starting May 29, 2011.

[18] The argument advanced on this point is that, the Citizenship Judge gave no reasons how or why he reconciled the contradictory evidence to arrive at his conclusions. The contradictory evidence was simply ignored. The Minister submits that it was not reasonable for the Citizenship Judge to accept Mr. Sukkar's bald assertions over conflicting objective evidence without at least some analysis.

[19] I cannot agree with the Applicant that the Citizenship Judge's decision that Mr. Sukkar had demonstrated his presence in Canada through the interview process and proof of residence, medical and financial activity during the relevant period falls outside the range of possible outcomes.

[20] Credible testimony should be afforded at least as much weight as documentary evidence and that it can be accepted as sufficient evidence of facts in lieu of substantiating documentary evidence (*John v Canada (Minister of Citizenship and Immigration)*, 2016 FC 915). Credibility findings by the Citizenship Judge are owed significant deference by this Court.

[21] Furthermore, the Citizenship Judge made a specific finding of fact that Mr. Sukkar's medical and dental records were consistent with his declared presence in Canada. The fact that the Citizenship Judge was satisfied and notes the further proof of dental records provided by Mr. Sukkar is more persuasive to me than the fact the document was not included in the Certified Tribunal Record [CTR]. There can be many explanations for a missing document in the CTR but what is important is that the Citizenship Judge, upon reviewing it, was satisfied that Mr. Sukkar was in Canada at that time.

[22] Also, the existence of a foreign visa in Mr. Sukkar's passport does not indicate entry into that foreign country or that you could not obtain it outside that country. It is a reasonable conclusion that these visas could be in Mr. Sukkar's passport while he remained resident in Canada. The Citizenship Judge after the interview determined that despite these foreign visas, Mr. Sukkar met the requirements of the Act.

[23] Mr. Sukkar points out that the Citizenship Judge considered his LinkedIn profile and was satisfied that he worked remotely. The professional profile was posted in an effort to improve business contacts and not for the purpose of establishing residence. Mr. Sukkar explained to the Citizenship Judge that his LinkedIn profile provided potential clients with his background

experience outside Canada. Mr. Sukkar had no job in Canada between July, 2007 and April, 2012, but was receiving payments for online logistic projects in Kuwait. Mr. Sukkar purchased a residence in Mississauga, Ontario, in February 2008, as confirmed by a mortgage with RBC.

[24] I agree with Mr. Sukkar that his LinkedIn profile does not meaningfully demonstrate his physical presence abroad any more than it demonstrates his physical presence in Canada. To the extent that the Applicant draws a negative inference from whatever may have been on his online profile, I would not weigh it for or against Mr. Sukkar.

[25] The joint bank account statements and credit statements do not necessarily demonstrate physical presence in Canada as Mr. Sukkar's credit card was still being used in Canada while he was away on a business trip abroad. But the Citizenship Judge satisfied himself after the interview when they determined whether that Mr. Sukkar was present in Canada nonetheless.

[26] There is not a detailed description in the reasons why the Citizenship Judge was satisfied but it is clear that he put his mind to that concern and was satisfied. Mr. Sukkar's investment in a franchise in Canada in February of 2012, though passive, combined with the Canada Revenue Agency Notices of Assessment were submitted by Mr. Sukkar for the 2011, 2012, 2013, and 2014 tax years along with T4 tax documents for 2013, 2014, and 2015. These all satisfied the Citizenship Judge. A decision-maker such as a citizenship judge is deemed to have considered all the evidence on the record even if not each document is mentioned (*Samaroo* above, at para 30).

[27] The Citizenship Judge assessed an agreement to lease and postdated cheques to verify Mr. Sukkar's residence. Mr. and Mrs. Sukkar were each asked to draw a basic layout of their apartment's floorplan which was found to be identical. As a result, the Citizenship Judge concluded that Mr. Sukkar occupied the claimed residence for the majority of the relevant period.

[28] On each of the Citizen Officer's concerns the Citizenship Judge concluded that Mr. Sukkar's explanations were both plausible and credible. On a balance of probabilities, the Citizenship Judge found Mr. Sukkar resided in Canada for the number of days claimed and met the *Pourghasemi* residency test. Mr. Sukkar's application for Canadian citizenship was approved.

[29] Mr. Sukkar relies heavily on the Citizenship Judge's decision which found him to be credible. Such is his right. The onus is on the Minister to prove the decision is unreasonable. In this case, the Citizenship Judge was satisfied himself that Mr. Sukkar met the residency requirement to qualify for citizenship.

[30] The decision is reasonable and some of the microscopic errors argued at the hearing were in fact explainable or at least not errors that would make the decision unreasonable.

[31] In conclusion, all the concerns identified by the Minister in their submissions were canvassed by the Citizenship Judge who was satisfied with Mr. Sukkar's answers. The standard of review is reasonableness. It is not for me to substitute my own decision for that of the

Citizenship Judge. I find the decision was reasonable and am therefore dismissing this judicial review.

[32] No costs were sought and none are ordered.

JUDGMENT in T-1869-16

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;
2. No costs are ordered.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1869-16

STYLE OF CAUSE: MCI V MOHAMAD FARAS SUKKAR

PLACE OF HEARING: TORONTO, ONTARIO

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