

Date: 20080327

Docket: T-280-07

Citation: 2008 FC 385

BETWEEN:

SHUK FONG CHIN

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

GIBSON J.

INTRODUCTION

[1] These reasons follow the hearing of an appeal under subsection 14(5) of the *Citizenship Act*¹ (the “Act”) against a decision of a Citizenship Judge (the “Judge”) whereby the Judge rejected the Appellant’s application for Canadian citizenship. For ease of reference, the substance of the Judge’s notice of his decision and his reasons therefore is attached as an appendix to these reasons. The decision under review rejected the Appellant’s application on two (2) grounds: first, the learned Judge rejected the Appellant’s application by reason of the fact that, in his view, the Appellant had accumulated insufficient days of residence in Canada during the relevant statutory period; and

¹ R.S.C. 1985, c. C-29.

secondly, because the learned Judge concluded that the Appellant did not have an adequate knowledge of Canada and the responsibilities and privileges of Canadian citizenship.

RELEVANT STATUTORY PROVISIONS

[2] The opening words of subsection 5(1) of the *Act*, and paragraphs (c) and (e) of that subsection read as follows:

5. (1) The Minister shall grant citizenship to any person who

...

(c) is a permanent resident 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:

(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

(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;

...

(e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

...

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

...

c) est un résident permanent au 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) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

...

e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

...

THE ISSUES

[3] Counsel for the Appellant urged that the learned Judge: first, ignored relevant evidence, and considered irrelevant evidence when he found that the Appellant had failed to meet the residence requirement under paragraph 5(1)(c) of the *Act*; secondly, ignored relevant evidence, or failed to administer the citizenship test correctly, when he found that the Appellant had failed to meet the knowledge requirement under paragraph 5(1)(e) of the *Act*; and finally, failed to provide the Appellant procedural fairness when he faulted the Appellant for failing to bring evidence in support of her application when it was not specifically requested of her, and refused to consider the evidence submitted after hearing but prior to the date of notice to the Appellant of the Judge's decision.

ANALYSIS

[4] After considering the materials before the Court and taking into account the submissions of counsel at hearing, I am satisfied that the learned Judge did not err in a reviewable manner on any of the grounds urged on behalf of the Appellant against the appropriate standard of review on this statutory appeal, that is to say, "correctness", given that there is here a statutory right of appeal and given the nature of the decision at issue².

[5] On the other hand, once again against a standard of review of correctness by reason of the

² See: *Dunsmuir v. New Brunswick*, 2008 SCC 9, March 7, 2008 at paragraphs [60], [123] and [124] and [128].

fact that it is an issue of procedural fairness³, I am satisfied that this appeal should be allowed on the ground of inadequacy of the reasons.

[6] In *VIA Rail Canada Inc. v. National Transportation Agency*⁴, the Court stated:

The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision-maker must set out its findings of fact and the principle evidence upon which those findings were based. The reasons must address the major points in issue. The reasoning process followed by the decision-maker must be set out and must reflect consideration of the main relevant factors.

[7] In *Eltom v. Canada (Minister of Citizenship and Immigration)*⁵, my colleague Justice

Russell stated:

In *Gao v. Canada (Minister of Citizenship and Immigration)*,... Mr. Justice O’Keefe held that the reasons of the Citizenship Judge [on the issue of days of residence in Canada] were inadequate because they failed to articulate the test that was being applied. A similar requirement was set out in *Yang v. Canada (Minister of Citizenship and Immigration)*,... where Mr. Justice Rouleau held that while the Citizenship Judge had not articulated which test he was applying, he appeared to be applying the test from *Koo*, but based on the reasons it was not clear that he had a proper understanding of the case law, and had not properly applied his chosen approach. Reasons that do not clearly indicate that the citizenship judge understood the test that she was applying were again found to be insufficient in *Wang v. Canada (Minister of Citizenship and Immigration)*... .

[citations and some text omitted]

³ See: *Dunsmuir*, *supra*, note 2 at paragraphs 127 to 129 and 146 and 147.

⁴ [2001] 2 F.C. 25 (C.A.).

⁵ [2005] F.C.J. No. 1979 (QL).

[8] In *Abdollahi-Ghane v. Canada (Attorney General)*⁶, my colleague Justice Shore dealt with a situation where a Citizenship Judge failed to provide a detailed explanation of the criteria he or she used to arrive at his or her decision on the basis of “adequate knowledge of Canada”. At paragraph 23 of his reasons, Justice Shore held that a Citizenship Judge needs to explain the criteria used to determine that the Appellant has insufficient knowledge of Canada along with what percentage of the questions asked and answered correctly would have sufficed to satisfy the knowledge requirement.

[9] Neither of the above conditions for adequate reasons of a Citizenship Judge on an application such as that of the Appellant were here met.

CONCLUSION

[10] For the foregoing brief reasons, this statutory appeal will be allowed. The decision under appeal will be set aside and the Appellant’s application for Canadian citizenship will be referred back to the Citizenship Court for redetermination by a different Citizenship Judge.

Ottawa, Ontario
March 27, 2008

“Frederick E. Gibson”
JUDGE

⁶ [2004] F.C.J. No. 930, 2004 FC 741 (QL).

SCHEDULE

...

Dear Ms. Chin :

On December 04, 2006, you appeared before me for a hearing in respect of your application for Canadian Citizenship. In accordance with subsection 14(3) of the Citizenship Act, the following constitutes notice of: my decision, the reason therefore and your right to appeal.

The Facts:

The following is a summary of the documentary or oral evidence presented by you at your hearing before me:

- (1) You became a landed immigrant of Canada on October 25, 2001.
- (2) You applied for Canadian citizenship on July 11, 2004.
- (3) You appeared before me for a hearing of your application on December 04, 2006.

The issue:

Have you, Ms. Chin, accumulated at least three years (1,095 days) of residence in Canada within the four years (1,460) days immediately preceding the date of your application for Canadian citizenship?

Analysis:

Before approving an application for a grant of citizenship made under subsection 5(1) of the Act, I must determine whether you meet the requirements of this Act and the regulations, including the requirement set out in paragraph 5(1)(c) to have accumulated **at least three years** (1,095 days) of residence within the four years (1,460 days) immediately preceding the date of your application. "At least three years" does not mean less time; it means not fewer than three years.

There is Federal Court jurisprudence which does not require physical presence of the Appellant for citizenship for the entire 1,095 days, when there are special or exceptional circumstances. However, in my view, too long an absence from Canada, albeit temporary, during the minimum period of time set out in the Act, as in the present case, in [sic] contrary to the purpose of the residency requirements of the Act. Indeed, the Act already allows a person who has been lawfully admitted to Canada for permanent residence not to reside in Canada during one of the four years preceding the date of that person's application for citizenship.

In your case, in a letter dated July 07, 2005 from Citizenship and Immigration Canada (CIC), you were asked to provide proof of residence in Canada. I have reviewed the

documents submitted and I am not satisfied that you meet the residence criteria of paragraph 5(1)(c) of the Act.

Your application, your Residence Questionnaire and the documents you submitted did not describe or demonstrate social, economic, cultural or social activities in Canada during the relevant period of July 11, 2004 to October 25, 2001, a total of 1225 days. Joint house ownership for a brief period and attendance at school for a brief period are not sufficient to satisfy me that you have met the residence requirements. You have also stated going to Hong Kong to receive medical treatment, which is where your husband lives.

The absences you described appear to be consistent with the stamps in your two passports, however, your passports do not necessarily include all travels outside Canada. Many jurisdictions, including the USA and Canada and the European Union, do not routinely stamp passports for incoming and/or departing persons. Therefore, while a passport is excellent evidence of recorded travel, it is not an exhaustive list of actual travels.

Following your departure from Alberta, Canada, in June 2004, you stated going to the United States then coming to re-establish yourself in Ontario in June 2004 at 67 Golding Crescent, Markham, Ontario. You stated living at this address up to and including your hearing date of December 04, 2006.

At the hearing, you stated that you could not produce an Ontario Health card or an Ontario Driver's license instead, you provided an Alberta Personal Health card and an Alberta operator's license. This is despite your statement that you had moved to Ontario in June 2004.

I find that the pieces of your story do not fit well together and together with the lack of indices that you live in this country, leads [sic] me to conclude that on the balance of probabilities, I can not rely on the information you have provided or given at your hearing. I must conclude that you also do not meet the Residence criteria 5(1)(c) of the Act.

Furthermore, I found at the hearing, that you did not have an adequate knowledge of Canada and of the responsibilities and privileges of citizenship. Subsection 5(1)(e) of the Citizenship Act provides that an Appellant for citizenship must have an adequate knowledge of Canada and of the responsibilities and privileges of Canadian citizenship in order to qualify for citizenship. At the hearing, you were unable to answer correctly questions in the following categories...

Paragraph 15(c)(iii)

Canadian Physical and Political Geography

1) What are (name) the Prairie Provinces?

You answered: Ontario, Quebec, New Brunswick

2) Name three large rivers in Canada.

You answered: Lake Ontario, St. Lawrence River, Lake Erie

Paragraph 15(c)(ii)
Canadian Political History and Structure

- 3) When asked who the Premier of the Province of Ontario was, you responded
“*James Bartleman*”.
- 4) You could not name the political parties in the House of Commons with the exception of the Liberal Party.

According to Section 15 of the Citizenship Regulations, which prescribes the criteria for determining whether or not an Appellant has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship, you must be able to correctly answer questions prepared by the Minister based on the information contained in self-instructional material approved by the Minister and presented to Appellants for the grant of citizenship.

Pursuant to subsection 15(1) of the Citizenship Act, I have considered whether or not to make a recommendation for an exercise of discretion under subsection 5(3) and 5(4) of the Act.

Subsection 5(3) of the Act confers discretion to the Minister to, among other things, waive on compassionate grounds, in the case of any person, the knowledge requirements you failed to meet. As to subsection 5(4) of the Act, it empowers the Governor in Council to direct the Minister to grant citizenship to any person in cases of special and unusual hardship or to reward services of an exceptional value to Canada.

There was no evidence presented to me at the hearing of special circumstances that would justify me in making such a recommendation under either of subsections 5(3) and 5(4).

Decision:

I have no doubt that you will eventually make an excellent Canadian citizen, but regretfully at this time, for the reason provided above, I am unable to approve your application because you have not met the residence requirement under paragraph 5(1)(c) nor have you met the knowledge requirement under paragraph 5(1)(e) of the Act. ...

FEDERAL COURT
SOLICITORS OF RECORD

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