Date: 20080617

Docket: T-1931-07

Citation: 2008 FC743

Ottawa, Ontario, June 17, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

MIKHAIL SABRY MEGALLY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A reasoned decision that is brief is to be admired - a brief decision with no reasoning is not.

[2] The Minister appeals the decision of the Citizenship Judge which, in its entirety, reads: "The applicant has established to the satisfaction of the Judge that he has become a resident of Canada, despite the unique nature of his job".

REQUEST FOR ADJOURNMENT

[3] This application for judicial review was filed November 8, 2007. The Respondent, Mikhail Sabry Megally, filed a Notice of Appearance on November 23, 2007. On April 17, 2008, this Court ordered that this matter he heard in Toronto on June 11, 2008, at 11:00 a.m. The Court files indicate that on April 18, 2008, the Registry Officer called the Respondent to inform him of the Order fixing this hearing date. The Registry Officer was hung up upon twice and the third time someone said that there was no one at that number by that name. Accordingly, on April 25, 2008, the Respondent was sent a letter by registered mail enclosing a certified copy of the Order time and place for the hearing.

[4] No responding materials have been filed by the Respondent in this matter. On June 6, 2008, a letter was received by the Court from the Respondent which states, in relevant parts, as follows:

> It would be my ultimate honour to meet with Your Honour to discuss the details of my case with you further. Unfortunately, I am unable to avail myself of the opportunity to do so on June 11, 2008. I have made prior commitments to the youth of my ministry who are on holidays during the summer months and am sadly unable to break these commitments. I pray that Your Honour excuses my attendance on that day and grants me the indulgence of rescheduling the appointment.

[5] The jurisprudence on the exercise of discretion under Rule 36(1) of the *Federal Courts Rules* provides that parties with a fixed hearing date will receive an adjournment only in exceptional cases. Relevant factors in considering whether to grant an adjournment include the prejudice the

adjournment would cause to one and more of the parties, the prejudice to the Court of losing a scheduled hearing time and the public interest in a timely conclusion of litigation and efficient use of trial facilities.

[6] A request for adjournment must be made on motion to the Court with an affidavit detailing the reasons for the request and addressing the relevant criteria governing the exercise of discretion to adjourn. In this case, accepting the one page letter from the Respondent as a notice of motion and affidavit, the letter does not address in any material way the applicable criteria.

[7] As noted above, notice of this fixed date was provided to the Respondent by registered letter mailed April 25, 2008. The Respondent's letter, although dated May 28, 2008, was in fact not received by the Court until June 6, 2008. There is no evidence in the record to indicate that the Respondent attempted to contact the Court or the Applicant at any earlier date and nothing to explain the delay taken in making this request.

[8] In my view there was nothing in the Respondent's letter that indicates his to be such an exceptional circumstance that an adjournment should be granted. Accordingly, in the exercise of my discretion, I did not grant the adjournment requested by the Respondent.

[9] My direction that this matter would proceed on June 11, 2008, commencing at 11:00 a.m. in Toronto as scheduled, was sent by the Registry to the Respondent by voice message on June 9, 2008. On June 10, 2008, the Registry attempted to contact the Respondent by phone. The call was

answered by Mr. Rifat Ghabril, who identified himself as a friend of the Respondent. He advised that the Respondent was out of the country and that he would most likely not be appearing at the hearing on June 11th. It was confirmed that the voicemail message left by the Registry on June 9, 2008, and the written direction were forwarded to the Respondent.

[10] The Respondent did not attend at the hearing of this matter on June 11, 2008, at 11:00 a.m. in Toronto. The matter proceeded in his absence.

[11] At the commencement of the hearing counsel for the Applicant filed with the Court a copy of a letter he had received late in the evening of June 10th from the Respondent. Mr. Megally confirmed that he is not in Canada and that he will not be appearing at the hearing. He also stated: "I had presented all my data and documents to her honour Judge Patricia Phenix on August 14th 2007, and actually I have nothing more to say."

BACKGROUND

[12] Mr. Megally is a priest of the Coptic Orthodox Church. He was born in Egypt in 1964 and became a permanent resident in Canada in April of 1997. He first applied for Canadian citizenship on February 26, 2002, but failed to appear at his hearing and his application was either abandoned or withdrawn.

[13] He again applied for citizenship on January 2, 2006, and attended at a hearing before Citizenship Judge Phenix who, on August 28, 2007, granted his application.

[14] Mr. Megally asserted in his application and his Residency Questionnaire that he had been absent from Canada on 15 occasions during the four years prior to his application for a total of 319 days. Accordingly, on its face, he met the conditions of residency set out in section 5(1)(b) of the *Citizenship Act*, RSC 1985, c.C-29.

[15] However, there was substantial evidence before the Citizenship Judge that raised the issue of whether the Respondent was indeed physically present in Canada on the dates he asserted and further, that raised the issue of whether he had ever established residence in Canada at all. This evidence included the following:

a. The Respondent's passport indicated that he had obtained 12 visas from Geneva, Cairo and Bern for travel to Switzerland, Germany, U.K. and U.S.A. that were issued to him on dates that he claimed he was physically in Canada;
b. The Respondent's passport showed three overseas date stamps that were issued on dates he claimed to be physically present in Canada;
c. On July 24, 2005, when entering Canada at Port Erie, he stated to the officer that he spends considerable time outside Canada, that since 2002 he has spent five to six months a year in Switzerland, that his family has been residing in Switzerland and his son has been enrolled in a Swiss school for the past three years; and
d. On December 30, 2005, when at the Canadian Embassy in Paris for the purpose of securing a visa to return to Canada he stated that his family resides in

> Switzerland, that he has been residing outside Canada for the past three years and that he has frequent travel abroad.

[16] Further, the Respondent provided little in the way of the usual evidence to show his connection to Canada. The only document presented to establish his and his family's residency in Canada was a letter dated September 7, 2007 from his "landlord" stating that Mr. Megally and his family were provided with accommodation free of charge "during their assignments in Canada".

GROUNDS OF APPEAL

[17] The Minister asks the Court to set aside the decision of the Citizenship Judge on three grounds:

a. That the Citizenship Judge erred in determining that the Respondent had satisfied the residency requirements of the Act;
b. That the Citizenship Judge erred in failing to provide adequate reasons for her decision; and
c. That the Citizenship judge erred in ignoring relevant evidence; and

ANALYSIS

[18] The necessity for and adequacy of reasons has been discussed recently in a number of decisions. In *Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 the Federal Court of Appeal outlined the reasons why there is a duty on an administrative tribunal to give reasons, albeit in circumstances different that those here. Justice Sexton, for the Court, wrote at paragraphs 16 to 19 of his reasons:

> 16. Although the Act itself imposes no duty on the Agency to give reasons, section 39 of the National Transportation Agency General Rules does impose such a duty. In this case, the Agency chose to provide its reasons in writing.
>
> 17. The duty to provide reasons is a salutary one. Reasons serve a number of beneficial purposes including that of focussing the decision maker on the relevant factors and evidence. In the words of the Supreme Court of Canada:
>
> > Reasons, it has been argued, foster better decision making by ensuring that issues and reasoning are well articulated and, therefore, more carefully thought out. The process of writing reasons for decision by itself may be a guarantee of a better decision.
>
> 18. Reasons also provide the parties with the assurance that their representations have been considered.
>
> 19. In addition, reasons allow the parties to effectuate any right of appeal or judicial review that they might have. They provide a basis for an assessment of possible grounds for appeal or review. They allow the appellate or reviewing body to determine whether the decision maker erred and thereby render him or her accountable to that body. This is particularly important when the decision is subject to a deferential standard of review.

[19] The Act requires a Citizenship Judge to provide reasons. Subsection 14(2) of the Act provides as follows:

14.(2) Forthwith after making a determination under subsection	14.(2) Aussitôt après avoir statué sur la demande visée au

(1) in respect of an application referred to therein but subject to section 15, the citizenship judge shall approve or not approve the application in accordance with his determination, notify the Minister accordingly and provide the Minister with the reasons therefor.	paragraphe (1), le juge de la citoyenneté, sous réserve de l'article 15, approuve ou rejette la demande selon qu'il conclut ou non à la conformité de celle-ci et transmet sa décision motivée au ministre.

[20] It is impossible to determine from the one sentence reasons of this Citizenship Judge whether she turned her mind to the obvious contradictions in the evidence, why she accepted the evidence of the Respondent from his application over the other evidence in the record – much of which was from the Respondent, whether or how she determined that the Respondent had ever been resident in Canada and when that occurred, and, if he was absent from the country for more than one year, what test was used to determine his residency.

[21] In short, the Citizenship Judge gave no reason at all for her finding that he has met the residency requirement of the Act. She made an error of law and the decision cannot stand.

[22] The appeal is allowed.

[23] The Minister asks that this matter not be referred back to another Citizenship Judge for a rehearing. It is the Minister's position that on appeal the more appropriate course is simply to allow the appeal as there is no impediment to the Respondent reapplying for citizenship if he chooses.

[24] While that may be appropriate in some cases, it is in my view that in this case the Respondent should have the opportunity, if he chooses, to have his application reheard by a different Citizenship Judge. If he chooses that course of action, it is to be expected that the Citizenship Judge will question the inconsistencies and contradictions as to time spent outside Canada in the application and questionnaire submitted by the Respondent with the other evidence in the record noted previously. It is also expected that the Citizenship Judge will first determine whether Mr. Megally has ever established residency in Canada before considering whether he has the minimum period of residency required under the Act.

[25] Having been advised by Applicant's counsel that the spelling of the Respondent's first name as stated in the style of cause of the Notice of Application contains a typographical error, the style of cause shall be amended to read:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

MIKHAIL SABRY MEGALLY

Respondent

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The style of cause is amended to read:

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Applicant

and

MIKHAIL SABRY MEGALLY

Respondent

2. This appeal is allowed and the decision of Citizenship Judge Phenix dated September 18, 2007, is set aside.
3. Mr. Megally's application for citizenship shall be sent back for a new hearing before a different Citizenship Judge if and only if within 30 days of the date of issuance of the Reasons for Judgment and Judgment Mr. Megally advises The Minister of Citizenship and Immigration in writing that it is his wish that his application be reheard, failing which it is at an end.

"Russel W. Zinn"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1931-07
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. MIKHAIL SABRY FARID MEGALLY
PLACE OF HEARING:	Toronto, ON
DATE OF HEARING:	June 11, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	Zinn J.
DATED:	June 17, 2008

APPEARANCES:

Bradley Gotkin	FOR THE APPLICANT
No one appearing for the Respondent	FOR THE RESPONDENT

SOLICITORS OF RECORD:

JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE APPLICANT
Mikhail Sabry Megally, personally	FOR THE RESPONDENT