

Federal Court



Cour fédérale

Date: 20100108

Docket: T-1053-09

Citation: 2010 FC 25

Ottawa, Ontario, January 08, 2010

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

SHAHIDA NAVID BHATTI

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Shahida Navid Bhatti (the Applicant) appeals pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985 c. C-29 (the *Act*) the Citizenship Judge's decision on May 14, 2009 denying her application for citizenship. She comes to this Court unrepresented and is not fluent in English. I granted leave to her daughter, Reema Navid, to assist her.

Background

[2] Shahida Navid Bhatti is a 50 year old woman from Pakistan. Her mother tongue is Urdu. She landed in Canada on August 5, 2002, became a permanent resident and applied for citizenship on July 31, 2007 along with other members of her family.

[3] Ms. Bhatti suffers from high blood pressure and diabetes. She is also at risk of going blind and suffers from poor eyesight. These conditions require different treatments which she finds arduous and painful.

[4] On March 17, 2009, she was given notice of her scheduled citizenship hearing. She was advised “You will be asked questions to determine if you have an adequate knowledge of English or French and an adequate knowledge of Canada.” Ms. Bhatti appeared before the Citizenship Judge on April 8, 2009.

Decision Under Review

[5] The Citizenship Judge advised in the Notice to the Minister:

The Applicant has not met the language & knowledge requirements.
See attached tasks for details. (emphasis in the original)

[6] The attached Schedule “A” stated:

At the Hearing the Applicant could not verify information on the application or answer simple questions in English.

[7] The Schedule also states the Applicant could not correctly answer questions from three out of seven categories: Canadian Charter of Rights and Freedoms, voting procedures pertaining to elections in Canada, and Canada's Social and Political History and its Geography.

[8] In the letter advising Ms. Bhatti of his decision, the Citizenship Judge stated he found Ms. Bhatti did not have an adequate knowledge of English or French. He referred to section 14 of the *Citizenship Regulations* (the *Regulations*) requiring she understand basic spoken statements. He explained:

At the hearing, you could not verify information on the application or answer simple questions in English.

[9] The Citizenship Judge also found Ms. Bhatti failed to achieve a passing grade on the knowledge test.

[10] Finally, the Citizenship Judge stated, pursuant to section 15(1) of the *Act*, he considered whether to recommend the Minister exercise discretion and grant citizenship by waiving the language and knowledge requirements as provided for under subsection 5(3) for compassionate grounds, or recommending citizenship pursuant to subsection 5(4) to alleviate special and unusual hardship. He concluded there was no evidence presented at the hearing that would justify such a recommendation.

[11] I have decided to grant the appeal and refer the matter to a different citizenship judge for redetermination. I add proper consideration should be given to a favourable recommendation for Ministerial discretion pursuant either to subsection 5(3) or 5(4) of the *Act*.

Legislation

[12] The relevant provisions of the *Act* are:

5. (1) The Minister shall grant citizenship to any person who
(a) makes application for citizenship;

...

(d) has an adequate knowledge of one of the official languages of Canada;

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

...

(3) The Minister may, in his discretion, waive on compassionate grounds,
(a) in the case of any person, the requirements of paragraph (1)(d) or (e);

...

(4) In order to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada, and notwithstanding any other provision of this Act, the Governor in Council may, in his discretion, direct the Minister to grant citizenship to any person and, where such a direction is made, the Minister shall forthwith grant citizenship to the person named in the direction.

14. (3) Where a citizenship judge does not approve an application

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

a) en fait la demande;

...

d) a une connaissance suffisante de l'une des langues officielles du Canada;

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

...

(3) Pour des raisons d'ordre humanitaire, le ministre a le pouvoir discrétionnaire d'exempter:

a) dans tous les cas, des conditions prévues aux alinéas (1)d) ou e);

...

(4) Afin de remédier à une situation particulière et inhabituelle de détresse ou de récompenser des services exceptionnels rendus au Canada, le gouverneur en conseil a le pouvoir discrétionnaire, malgré les autres dispositions de la présente loi, d'ordonner au ministre d'attribuer la citoyenneté à toute personne qu'il désigne; le ministre procède alors sans délai à l'attribution.

14. (3) En cas de rejet de la demande, le juge de la citoyenneté

under subsection (2), the judge shall forthwith notify the applicant of his decision, of the reasons therefore and of the right to appeal.

...

15. (1) Where a citizenship judge is unable to approve an application under subsection 14(2), the judge shall, before deciding not to approve it, consider whether or not to recommend an exercise of discretion under subsection 5(3) or (4) or subsection 9(2) as the circumstances may require.

en informe sans délai le demandeur en lui faisant connaître les motifs de sa décision et l'existence d'un droit d'appel.

...

15. (1) Avant de rendre une décision de rejet, le juge de la citoyenneté examine s'il y a lieu de recommander l'exercice du pouvoir discrétionnaire prévu aux paragraphes 5(3) ou (4) ou 9(2), selon le cas.

Citizenship Regulations, (SOR/93-246):

14. The criteria for determining whether a person has an adequate knowledge of one of the official languages of Canada are, based on questions prepared by the Minister, (a) that the person comprehends, in that language, basic spoken statements and questions; and (b) that the person can convey orally or in writing, in that language, basic information or answers to questions.

14. Une personne possède une connaissance suffisante de l'une des langues officielles au Canada si, à l'aide de questions rédigées par le ministre, il est établi à la fois:
a) qu'elle comprend, dans cette langue, des déclarations et des questions élémentaires;
b) que son expression orale ou écrite dans cette langue lui permet de communiquer des renseignements élémentaires ou de répondre à des questions.

Issues

[13] I find there are two issues on this appeal. The first is pleaded by Ms. Bhatti and essentially asks this court to find the decision of the Citizenship Judge was unreasonable with regards to the language and knowledge test, and alleges a failure for not waiving these requirements on the grounds of compassion or recommending citizenship to alleviate special and unusual hardship. I find there is a second issue with regard to the adequacy of the Citizenship Judge's reasons.

Standard of Review

[14] This is an appeal of a decision by a citizenship judge. I cite Mr. Justice Michael Kelen's concise survey of the law concerning the appropriate standard of review in *Amoah v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 775 at paragraphs 14 and 15.

“This Court has held that the standard of review for the decision of a citizenship judge is reasonableness: *Zhao v. Canada (MCI)*, 2006 FC 1536, 306 F.T.R. 206, per Russell J. at para. 45; *Chen v. Canada (MCI)*, 2006 FC 85, 145 A.C.W.S. (3d) 770, per Phelan J. at para. 6. Prior to *Dunsmuir v. New Brunswick*, 2008 SCC 9, discretionary decisions under subsection 5(3) and 5(4) were also subject to a patent unreasonableness standard: *Arif v. Canada (MCI)*, 2007 FC 557, 157 A.C.W.S. (3d) 557, per Blais J. at para. 8. In *Dunsmuir*, the Supreme Court eliminated the patent unreasonableness standard of review. Post-*Dunsmuir*, the appropriate standard of review for all decisions of a citizenship judge is reasonableness simpliciter: *Canada (MCI) v. Aratsu*, 2008 FC 1222, per Russell J. at paras. 16-20.

In reviewing the Citizenship Judge's decision on a reasonableness standard, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para. 47). The Court will only intervene if the decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47).”

[15] Interpretation of statute is a question of law, reviewable on a standard of correctness to which citizenship judges are afforded no deference: *Dunsmuir*. Finally, questions of procedural fairness are questions of law and therefore reviewable on a standard of correctness: *Pourzand v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 395 at para. 21.

Analysis

[16] Ms. Bhatti acknowledges she is not fluent in English. However, her submissions before me were read slowly, at a measured pace, with excellent enunciation and correct pronunciation. Ms. Bhatti asserts she is knowledgeable enough about Canada and the responsibilities of citizenship to become a Canadian. She says she answered the Citizenship Judge's questions correctly. She says she told him about her family, her medical hardships including her high blood pressure, her diabetes, her weekly painful eye laser treatments (panretinal photocoagulation) and her high risk of blindness. She says he appeared to believe her and did not ask for proof of medical hardship. She believes the Citizenship Judge refused her application for citizenship because she "answered to his questions in short form", and not in the full sentences she says the judge asked her for. She concluded by stating all her family in Canada are citizens except her. She was not a citizen because, as she says, "I am 27 years diabetes, no good my vision."

[17] Reema Navid, Ms. Bhatti's daughter, said she was present at her mother's citizenship hearing. She says her mother answered questions correctly and in short form. Ms. Navid also said her mother told the Citizenship Judge everything about her laser treatments, her diabetes and her high blood pressure. She says her mother could not see the questions of the Citizenship Knowledge Test because the font was too small. She held her mother's prepared submission up before me; they were printed in a very large font and Ms. Navid explained it was the only size her mother could read. She said of her mother: "She can't really see."

[18] Ms. Bhatti came to this Court self represented. Her understanding of its procedures is less than rudimentary and the case she presented is fundamentally defective. Much of what would have been her evidence was submitted as argument. Evidence on an appeal consists of the Record and the affidavits. Submissions are not evidence. The Court has an obligation to make some accommodations for self-represented litigants. But this obligation cannot extend to ignoring rules of evidence: *Scheunaman v. Canada (Human Resources Development)*, 2003 FCT 37 at para. 4; *Kalevar v. Liberal Party of Canada*, 2001 FCT 1261 paras. 22-26; *Gilling v. Canada*, [1998] F.C.J. No. 952 (QL) at para.1; and *Jones v. Canada*, 2009 FC 46 at para. 29.

[19] Ms. Bhatti's story as provided in her submissions, the questions posed to her and her responses, her health ailments and their bearing on her vision, her painful eyesight treatments, reading, the citizenship granted to all her family members, are not in her affidavit. The additional information submitted by her daughter similarly is not presented by affidavit.

[20] The Minister is correct in asserting none of this is admissible evidence before the Court. The Minister is entitled to only respond to the evidence properly before the Court in this appeal.

[21] Ms. Bhatti's affidavit includes medical letters and reports concerning her health problems. Again the Minister is correct in submitting this evidence cannot be considered since it is all dated after Ms. Bhatti's citizenship hearing on April 8, 2009. This appeal is not an appeal *de novo* and the appeal must proceed on the Record that was before the Citizenship Judge. *Zhao v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1536.

[22] Finally, Ms. Bhatti says she alerted the Citizenship Judge to her high blood pressure and diabetes, but he did not ask for more information. However, Ms. Bhatti does not say in her affidavit she informed the Citizenship Judge about her problems with her vision and its impact on her ability to study and respond to the language and knowledge requirements. The Citizenship Judge stated he found no evidence to justify making a recommendation to the Minister to waive the language or knowledge requirements on the grounds of compassion or recommend citizenship to alleviate special and unusual hardship.

[23] There is simply not enough evidence to judge the reasonableness of the Citizenship Judge's decision.

[24] This brings me to the second issue. The Citizenship Judge is required by subsection 14(3) of the *Act* to provide reasons when an application for citizenship is denied.

[25] Justice Russell in *Pourzand v. Canada (MCI)*, 2008 FC 395 at paragraph 21 has characterized the failure to provide adequate reasons as a question of procedural fairness and natural justice reviewable on a standard of correctness:

Procedural fairness questions are pure questions of law reviewable on a correctness standard. ... The third issue raised concerning the adequacy of reasons is also a question of procedural fairness and natural justice and is also reviewable on a standard of correctness (*Andryanov v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 272, 2007 FC 186 at para. 15; *Jang v. Canada (Minister of Citizenship and Immigration)* (2004), 250 F.T.R. 303, 2004 FC 486 at para. 9; *Adu v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 693, 2005 FC 565 at para. 9).

[26] Justice Blanchard in *Canada (Minister of Citizenship and Immigration) v. Li*, 2008 FC 275 at paragraph 6 states reasons must be sufficient to enable the appeal court to discharge its appellate function, a reviewable error is committed by a failure of a citizenship judge to provide insufficient reasons for a decision:

The Act imposes a statutory obligation on citizenship judges to provide reasons for their decisions. The reasons must be sufficient to enable the appeal court to discharge its appellate function. The jurisprudence has established that a citizenship judge commits a reviewable error by failing to provide sufficient reasons for a decision. See: *Seiffert v. Canada (M.C.I.)*, [2005] F.C. J. No. 1326, at para. 9 and *Ahmed v. Canada (M.C.I.)*, [2002] F.C.J. No. 1415, at para. 12.

[27] The Citizenship Judge provided only cursory reasons to find Ms. Bhatti's knowledge of English inadequate. Restating these reasons:

At the hearing, you could not verify information on the application or answer simple questions in English. (emphasis added)

[28] A review of the Record discloses that the Citizenship Officer who reviewed the file found Ms. Bhatti's knowledge of English to be "satisfactory". The Citizenship Judge is within his right to administer an oral test after the applicant had passed the written test of her knowledge of an official language, *Liu v. Canada*, 2008 FC 836 but his reasons must explain how he found Ms. Bhatti's language inadequate.

[29] The Citizenship Judge stated Ms. Bhatti could not "verify" information on her application. Verification is not necessarily a language test since to verify is to establish truth or validity of something: *Canadian Oxford Dictionary* (2d Edition). The criteria established by section 14 of the

Regulations for determining a person has an adequate knowledge of one of the official languages are that a person comprehends basic spoken statements and questions and can answer orally or in writing basic information. This criteria does not require verification of information.

[30] In addition, the Citizenship Judge did not explain what “simple questions” were not answered by Ms. Bhatti. Without more, I have no way to reconcile the contradiction between the evidence on Record showing Ms. Bhatti’s language is satisfactory and the Citizenship Judge’s finding it isn’t.

[31] As for the results of the Knowledge Test, the Record is of no assistance since the Minister exercised his rights under rule 318(2) of the *Federal Court Rules*, (SOR/98-106) objecting to the release of the questions and answers with regard to the test of Ms. Bhatti’s knowledge of Canada. The Respondent argues releasing these questions would undermine the secrecy of the test since others could memorize the question sheet. I understand the Minister’s concern, but without the test before me I cannot assess a Citizenship Judge’s assertions concerning the Applicant’s results.

[32] Finally, Ms. Bhatti submitted copies of medical reports as exhibits to her affidavit. They confirm Ms. Bhatti has serious medical problems. In a letter dated July 5, 2009, an ophthalmic medical doctor reports Ms. Bhatti has significant diabetic retinopathy, a condition which pre-existed the citizenship hearing date of April 8, 2009. While this evidence would not have been before the Citizenship Judge, I am satisfied Ms. Bhatti suffered from this condition prior to the citizenship

hearing. Ms. Bhatti's impaired sight was demonstrated by the inordinately large print font Ms. Bhatti required to read her submissions in Court; a copy of which has been filed.

[33] While the Citizenship Judge found there was no reason presented at the hearing to justify recommending the Minister waive the language or knowledge requirements, I accept Ms. Bhatti's medical condition is serious. Her vision problems would impede her preparation for citizenship. This was not in evidence at the citizenship hearing but should be since these problems make it difficult for her to study and perform any written form of a knowledge test.

[34] Ms. Bhatti's medical conditions, particularly with respect to her problems with her eyesight, are factors that should be considered in the course of a citizenship hearing.

Conclusion

[35] The appeal is granted. The matter is to be remitted to another citizenship judge with directions to consider recommending the Minister waive the knowledge test on compassionate grounds or recommend citizenship to alleviate special and unusual hardship.

[36] In the new hearing, Ms. Bhatti is to submit medical reports, with interpretations ordinary people can understand, relating to her eyesight problems and medical health to form the record before the next citizenship judge.

[37] Given Ms. Bhatti was self represented, I make no order for costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The appeal is granted.
2. The matter is to be remitted to another citizenship judge with a directions to consider recommending the Minister waive the knowledge test on compassionate grounds pursuant to subsection 5(3) of the *Citizenship Act* or recommend citizenship to alleviate special and unusual hardship pursuant to subsection 5(4) of the same act.
3. I make no order as to costs.

"Leonard S. Mandamin"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1053-09

STYLE OF CAUSE: SHAHIDA NAVID BHATTI and MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 15, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANDAMIN, J.

DATED: JANUARY 8, 2010

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