Federal Court		Cour fédérale

Date: 20100715

Docket: T-2032-09

Citation: 2010 FC 748

Vancouver, British Columbia, July 15, 2010

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ALVAR RICHARD ANDERSON

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal by the Minister of Citizenship and Immigration (the "Minister") pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29, from the decision of a citizenship judge, dated October 7, 2009, approving the application for Canadian citizenship made by Alvar Richard Anderson.

BACKGROUND FACTS

[2] The Respondent is a citizen of the United Kingdom. He became a permanent resident of Canada in 1975. His wife and children are Canadian citizens.

[3] In 1992, the Respondent started working as a missionary in Guatemala. He applied for Canadian citizenship on June 4, 2008, and indicated that during the period from June 4, 2004 to June 4, 2008, he had been absent from Canada for 776 days, which he mostly spent in Guatemala.

DECISION UNDER APPEAL

[4] The citizenship judge referred to and applied the test developed by Justice Reed in *Koo (Re)*, [1993] 1 F.C. 286, (1992) 19 I.L.R. (2d) 1 (F.C.T.D.), asking himself whether Canada is "the country in which the [Respondent] has centralized his … mode of existence."

[5] On the first element of that test, physical presence in Canada prior to more recent absences, the citizenship judge found that the Respondent "lived and worked in Canada for over 17 years before his first lengthy absence. His periodic absences as a missionary preceded and later coincided with the statutory period in sharp contrast to his earlier firm establishment on Canadian soil."

[6] On the second element, the situation of the Respondent's immediate and extended family, the citizenship judge noted that the Respondent's wife, children, and grandchildren are Canadian citizens and residents, although his wife accompanies him on missionary trips. He concluded that his "family ties are strong and almost entirely Canadian."

[7] On the third element, the pattern of physical presence in Canada, the citizenship judge concluded that "[T]he [Respondent's] home has been in Canada since 1975, to which he returns between missionary assignments." He found "no indication of any act or intent to establish a home outside of Canada."

[8] On the fourth element, the extent of the Respondent's absences from Canada, the citizenship judge recognized that these were "considerable."

[9] On the fifth element, the cause of the physical absence, the citizenship judge found that the Respondent's "missionary work is temporary in nature and there is no indication that he has or intends to take any steps to establish a home outside of Canada. His intention to retire in the Creston Valley is entirely credible and consistent with his past behaviour and existing family and social ties."

[10] Finally, on the sixth element of the test, the quality of the Respondent's connection with Canada, the citizenship judge noted that the Respondent's missionary work "include a strong aid component," and is thus a "contribution to less fortunate lands considered to be a hallmark of good Canadian citizenship." He further noted that the Respondent paid Canadian income tax and contributed to the Canada Pension Plan, had active Canadian bank accounts, a health card and a driver's licence. The citizenship judge concluded that the Respondent had "strong and long standing family and social ties to Canada, which will only strengthen over time as his family continues to grow and he retires from active missionary and humanitarian duties."

[11] Thus the citizenship judge found that “in spite of considerable absences during the statutory period, the [Respondent] has sufficiently centred his mode of existence in Canada to meet the residence requirements of the Citizenship Act.”

ANALYSIS

[12] It is well-established that so long as a citizenship judge applies one of the residence tests articulated by this Court, his or her application of the chosen test to the facts of a citizenship application is reviewable on a standard of reasonableness (see e.g. *Lam v. Canada (Minister of Citizenship and Immigration)*, 164 F.T.R. 177, [1999] F.C.J. No. 410; *Canada (Citizenship and Immigration) v. Mueller*, 2009 FC 1066).

[13] The Minister submits that the citizenship judge’s decision in the case at bar is unreasonable. The Respondent has not filed either a notice of appearance or a memorandum of fact and law, and did not appear at the hearing.

[14] The Minister takes issue with the citizenship judge’s conclusion that the Respondent had “firmly established” himself in Canada. He notes that between June 4, 2000 (that is, four years before the beginning of the relevant period for establishing residence under subsection 5(1) of the *Citizenship Act*) and the end of the relevant period, the Respondent was only present in Canada for 903 days – well short of the 1095 required by the Citizenship Act.

[15] The Minister also attacks the citizenship judge's conclusion that the Respondent's pattern of presence in Canada is that of a person returning home. In this respect, he notes that the Respondent does not own a house in Canada, where he stays at his mother-in-law's residence, but "does own a small house in Guatemala."

[16] As to the extent of the Respondent's absences from Canada, the Minister submits that the citizenship judge "failed to conduct any analysis or provide any reasons as to how [the Respondent] had established sufficient ties to Canada to overcome this considerable shortcoming," thus committing a reviewable error.

[17] The Minister further submits that the citizenship judge's conclusion that the Respondent's absences were temporary is unreasonable. In his view, the Respondent's absences were "structural in nature," "for the purpose of living and working in Guatemala." There was no documentary evidence to show otherwise. The citizenship judge erred by taking into account the Respondent's future intention to return to Canada.

[18] The Minister also contends that the citizenship judge erred in evaluating the quality of the Respondent's connection to Canada. The nature of his work in Guatemala is, according to the Minister, irrelevant for this purpose. The fact that the Respondent has a bank account and pays taxes here are insufficient to demonstrate a substantial connection to Canada; these are mere "passive indicia" of residence and do not show that the Respondent reached out to the Canadian community.

[19] Finally, the Minister submits that the citizenship judge erred by allowing the Respondent to "'bootstrap his way into residency by reference to the conduct of other members of his family."

[20] I do not agree with the Minister's arguments for the following reasons.

[21] The citizenship judge could reasonably conclude that, having spent 17 years in Canada before beginning his missionary work in Guatemala, the Respondent had firmly established himself in this country. The citizenship judge rightly looked at the totality of the facts and I see no reason to interfere with his conclusion on this point.

[22] I also reject the Minister's argument that the Respondent's "home" is in Guatemala and not in Canada because he owns a house in the former country but not in the latter, although it would have been preferable for the citizenship judge to address this fact in his reasons. It is clear that the citizenship judge found that the Respondent's work in Guatemala was temporary. I do not think unreasonable to conclude that owning what the Minister himself describes as "a small house" is not indicative of intent of making that house "home." Nor do I think it unreasonable to conclude that one is at "home" at the residence of a close family member, who allows one to live there free of charge in support of one's charitable work. The *Citizenship Act* does not provide for a property test for naturalization, and the citizenship judge did not err by not imposing one on the Respondent.

[23] I also cannot accept the Minister's submission that the citizenship judge erred in taking the Respondent's intention to retire in Canada into account in concluding that his absences were temporary in nature. I note that in *Koo*, above, at p. 294, Justice Reed specifically cited "employment as a missionary abroad" as an example of "a clearly temporary situation." In both cases on which the Minister relies, *Canada (Citoyenneté et Immigration) v. Ntilivamunda*, 2008 FC 1081, 302 D.L.R. (4th) 345, and *Canada (Citizenship and Immigration) v. Ryan*, 2009 FC 1159, the court made it clear that the citizenship applicant's re-establishment in Canada was a remote or even hypothetical prospect. It was indeed nothing more than an intention, and as such was irrelevant. (See also *Canada (Minister of Citizenship and Immigration) v. Xia*, 2002 FCT 453, [2002] F.C.J. No. 613 at par. 23, where Justice Gibson held that "[t]he respondent's 'hopes' are hardly relevant.") In the present case, however, the Respondent had not only the intention or the hope to return to Canada, but a settled plan for doing so. He provided a note to the citizenship judge, explaining that he and his wife were training the people who were due to replace them, and that they planned their definitive return to Canada for the fall of 2009 (see p. 12 of the Tribunal Record). It was open to the citizenship judge to find that the Respondent's "intention to retire in the Creston Valley is entirely credible and consistent with his past behaviour and existing family and social ties."

[24] His conclusion that the Respondent's absence was temporary is thus not unreasonable. This case is unlike *Canada (Citizenship and Immigration) v. Chatterjee*, 2009 FC 1069, [2009] F.C.J. No. 1327, in which the citizenship judge's finding "that the Respondent always returned to Canada <u>for vacations</u> … seem[ed] to be the only foundation for his conclusion that the Respondent continued to call Canada home during her long absence" (par. 19; emphasis in the original). In the

case at bar, the Respondent's returns to Canada were not mere vacations, and his ties to Canada were much more extensive than those of Ms. Chatterjee.

[25] I also find that the citizenship judge's assessment of the quality of the Respondent's connection with Canada is reasonable. The Minister's main argument on this point is that he did not reach out to the Canadian community. Yet the citizenship judge found that the Respondent "has … been active in the Wyndell Community Church," and indeed he had before him a letter from the Church, a regular attendee and occasional preacher there (see p. 54 of the Tribunal Record). Even if one accepts Justice Gibson's view, expressed in *Xia*, above, at par. 26, that "there should be before a Citizenship Judge some evidence that would demonstrate a reaching out to the Canadian community," such evidence was before the citizenship judge in the case at bar.

[26] Thus, the citizenship judge had sufficient evidence before him to reasonably conclude that the Respondent met the test set out in *Koo*, above, and had established and maintained residency in Canada so as to be eligible for Canadian citizenship. Contrary to the Minister's assertion, he did not need to "bootstrap" the Respondent's application to his family members' Canadian citizenship. In short, the Minister invites this Court to re-weigh the evidence so as to arrive to a conclusion contrary to that of the citizenship judge. Mindful of the Supreme Court's caution, in *Dunsmuir v. New-Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at par. 47, that "certain questions that come before administrative tribunals do not lend themselves to one specific, particular result [and] may give rise to a number of possible, reasonable conclusions," I cannot do so.

CONCLUSION

[27] In my view the citizenship judge's decision is transparent, intelligible, and justified, and a possible outcome in view of the facts and the law; in short, it is reasonable (Dunsmuir, *ibid*.,). For these reasons, the appeal is dismissed.

JUDGMENT

THIS COURT ORDERS that the appeal be dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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