Federal Court  Cour fédérale

Date: 20120104

Docket: T-699-11

Citation: 2012 FC 13

Ottawa, Ontario, January 4, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

DINA EL-KOUSSA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal of the decision of a Citizenship Judge under subsection 14(5) of the *Citizenship Act*, RSC, 1985, c C-29 (the Act). The Applicant (the Minister of Citizenship and Immigration) contests the granting of citizenship to the Respondent (Dina El-Koussa) claiming that there was insufficient evidence to establish she met the residency requirements under subsection 5(1)(c) of the Act and the Citizenship Judge failed to provide reasons.

[2] Having considered the positions of both parties, I must allow this appeal.

I. Background

[3] The Respondent was born in Lebanon. She became a permanent resident of Canada on August 5, 2002. She moved to Montreal and relocated to Halifax in November 2004. She purchased a condominium in Halifax with her husband in early 2007 that was sold before the couple returned to Lebanon with their two Canadian-born children in August 2008.

[4] She had applied for Canadian citizenship on August 1, 2007. The relevant residency period was from August 1, 2003 to August 1, 2007. She declared an absence of 27 days, leaving her physically present in Canada for 1433 days. This would be above the 1095 day minimum requirement.

[5] On February 25, 2010, the Respondent was sent a Notice to Appear. She was also asked to complete the questionnaire and provide supporting information. This letter was returned to Citizenship and Immigration Canada (CIC) unclaimed on March 18, 2010. Since the Respondent was back in Lebanon, she claims not to have received the letter until after the deadline had passed.

[6] As the Respondent had yet to fulfill requests for further information, she was referred to a Citizenship Judge for a hearing on January 12, 2011.

[7] The Citizenship Judge's notes from the hearing suggest that the Respondent answered questions regarding her return to Lebanon in 2008. However, she did not bring a completed residency questionnaire or the requested documentation. The Citizenship Judge asked that this information be submitted within 30 days.

[8] She submitted a completed residency questionnaire and some supporting documentation in that timeframe (including her children's birth certificates, passport history, deed and mortgage, history of medical care, tax returns, utility bills in her husband's name and a letter from a church referring to her membership).

[9] On February 22, 2011, the Respondent's citizenship application was approved. The decision consisted of a "Notice to the Minister of the Decision of the Citizenship Judge" form with checkmarks that she had met the residency requirements of subsection 5(1) of the Act. This form was signed by the Citizenship Judge.

II. Issues

[10] This appeal raises the following issues:

(a) Did the Citizenship Judge provide adequate reasons for approving the Respondent's application?

(b) Did the Citizenship Judge err in finding that the Respondent met the residency requirements under subsection 5(1)(c) of the Act?

III. Standard of Review

[11] As an aspect of procedural fairness and natural justice, adequacy of reasons is reviewed on a standard of correctness (see *Abou-Zahra v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1073, [2010] FCJ no 1326 at para 16; *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2009 FC 709, [2009] FCJ no 875 at para 29).

[12] In *Pourzand v Canada (Minister of Citizenship and Immigration)*, 2008 FC 395, 2008 CarswellNat 831 at para 19, it was found that reasonableness is the applicable standard of review for a citizenship judge's determination as to whether an applicant meets the residency requirement since it is a question of mixed fact and law.

[13] Reasonableness is "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

IV. Analysis

A. *Did the Citizenship Judge Provide Adequate Reasons for Approving the Respondent's Application?*

[14] Citizenship judges have a statutory obligation to provide reasons under subsection 14(2) that reads:

Consideration by citizenship judge	Examen par un juge de la citoyenneté
14. (1) An application for	14. (1) Dans les soixante jours de sa saisine, le juge de la citoyenneté statue sur la conformité — avec les dispositions applicables en l'espèce de la présente loi et de ses règlements — des demandes déposées en vue de :
(a) a grant of citizenship under subsection 5(1) or (5),	a) l'attribution de la citoyenneté, au titre des paragraphes 5(1) ou (5);
[…]	[…]
shall be considered by a citizenship judge who shall, within sixty days of the day the application was referred to the judge, determine whether or not the person who made the application meets the requirements of this Act and the regulations with respect to the application.	
[…]	[…]
Advice to Minister	Information du ministre
(2) Forthwith after making a	(2) Aussitôt après avoir statué

determination under subsection (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.	sur la demande visée au 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.
Notice to applicant	Information du demandeur
(3) Where a citizenship judge does not approve an application under subsection (2), the judge shall forthwith notify the applicant of his decision, of the reasons therefor and of the right to appeal.	(3) En cas de rejet de la demande, le juge de la citoyenneté en informe sans délai le demandeur en lui faisant connaître les motifs de sa décision et l'existence d'un droit d'appel.

[15] The reasons requirement as it pertains to the granting of citizenship was also elaborated on in *Canada (Minister of Citizenship and Immigration) v Jeizan*, 2010 FC 323, [2010] FCJ no 373 at para 17:

> [17] Reasons for decisions are adequate when they are clear, precise and intelligible and when they state why the decision was reached. Adequate reasons show a grasp of the issues raised by the evidence, allow the individual to understand why the decision was made and allow the reviewing court to assess the validity of the decision: see *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] S.C.J. No. 23 at para. 46; *Mehterian v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 545 (F.C.A.); *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (F.C.A.), [2001] 2 F.C. 25 (C.A.), at para. 22; *Arastu*, above, at paras. 35-36.

[16] Given these principles, the Applicant asserts that the failure of the Citizenship Judge to provide reasons amounts to a breach of procedural fairness and clear error justifying the intervention

of this Court (see for example *Canada (Minister of Citizenship and Immigration) v Salim*, 2010 FC 975, [2010] FCJ no 1219). The Citizenship Judge should have at least specified which of the approved tests for residency was used and how it was or was not met (see for example *Jeizan*, above at para 18; *Canada (Minister of Citizenship and Immigration) v. Behbahani*, 2007 FC 795, [2007] FCJ no 1039 at paras 3-4).

[17] The Respondent contends that the Act is silent as to the form and extent of the reasons required. She refers to CIC, Manual CP 2, s 1.20 where it is acknowledged that the "decision-maker must justify the decision" but also that "Section 15 of the *Citizenship Act* says there is an obligation to give reasons for a decision when a citizenship judge non-approves an application."

[18] The Respondent also stresses that the "Notice to the Minister of the Decision of the Citizenship Judge" is a convenient form approved for decision-making purposes. It allows the Citizenship Judge to check off whether or not the applicants have satisfied the requirements of subsection 5(1) of the Act and provides boxes to list the days of residency calculation. The box marked "has" complied with requirements was checked in this instance and the number of days was listed as 1,433, a figure above the minimum standard. While there is a box devoted to "reasons", this is not mandatory.

[19] In assessing the adequacy of reasons, the Respondent notes that "courts should make allowances for the "day-to-day" realities of administrative tribunals" as well as the "short-form modes of expression that are rooted in the expertise of the administrative decision maker" as

referred to in *Vancouver International Airport Authority et al v Public Service Alliance of Canada*, 2010 FCA 158, [2010] FCJ no 809 at para 17.

[20] The Respondent argues that the Citizenship Judge's notes referring to the family's subsequent residency in Lebanon should be considered part of the decision. They demonstrate that the Citizenship Judge considered the evidence. She relies on *Vancouver International Airport*, above, where it was suggested that information regarding the way a decision maker reached their conclusion could be gleaned from "the record of the case and the surrounding context."

[21] While I recognize that the adequacy of reasons must be assessed in context, I am not convinced that the requirements of clarity, precision and intelligibility prescribed by *Jeizan*, above, were met. I remain unclear as to the why the decision was made or, more specifically, what evidence informed the Citizenship Judge's conclusion that the Respondent should be granted citizenship.

[22] Given the persistent difficulties in acquiring supporting documentation from the Respondent to confirm residency, there should have been some indication as to why there was now sufficient evidence to support this finding, regardless of whether the conclusion is based solely on meeting the physical presence requirement. In recognition of the need for additional reasons, a box is clearly provided for this purpose on the form. Reasons can be brief, but are still expected.

[23] Even if I consider the Citizenship Judge's notes as forming part of the reasons, this does not ensure their adequacy. The notes still make reference to the need for the Respondent to fill out a

residency questionnaire. They note the applicable period for residency, confirm the date the Respondent left for Lebanon in August 2008 and make reference to her children and husband, but do not provide any clear indication as to the basis on which the decision was actually made.

[24] I am currently restricted in my ability to assess whether the Citizenship Judge reached a reasonable conclusion on the Respondent's residency based on the evidence. This reflects the provision of inadequate reasons.

B. *Did the Citizenship Judge Err in Finding that the Respondent Met the Residency Requirements Under Subsection 5(1)(c) of the Act?*

[25] The Applicant's position is that it was unreasonable for the Citizenship Judge to conclude that the Respondent met the residency requirements of the Act based on any of the three established tests. They insist that the Respondent did not provide all of the required information. More specifically, they suggest there was little provided in the way of banking information and utility bills in the relevant time period.

[26] By contrast, the Respondent contends that the Applicant simply disagrees with the decision. She suggests that the Applicant takes issue with a failure to provide all of the required supporting documentation while understating significant pieces of evidence provided, such as her passport history. According to the Respondent, the Applicant is trying to import a qualitative analysis where a quantitative one was appropriately employed.

[27] Given my discussion with respect to the adequacy of reasons, it is unnecessary for me to deal extensively with this issue. However, I must remind the Applicant that nothing precludes a Citizenship Judge from basing its conclusion solely on the strict physical presence test (see *Martinez-Caro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 640, [2011] FCJ no 881) or from arriving at the same conclusion on reconsideration with more fulsome reasons.

V. Conclusion

[28] Inadequate reasons were provided in this instance to assess whether the Citizenship Judge's conclusion that the residency requirements were met was reasonable. With the ongoing discussion concerning citizenship cases, it would be of great assistance to the Court if citizenship judges state clearly in one or two sentences which test they are using and explain their reasons for arriving at a particular conclusion. The detail required in these reasons will vary given the test employed and the surrounding context. However, even where it can be inferred that the physical presence in Canada test (which generally, in my view, is the test most in line with the legislation) is being used, citizenship judges must state that this is the case. Citizenship judges should also proceed to explain in more or less detail, depending on the facts of the case, why they either accepted or rejected the evidence placed before them.

[29] Furthermore, where a Notice to the Minister of the Decision of the Citizenship Judge Form is used, the mere "ticking" off the boxes without any further explanation is insufficient as is the case in this matter. In some cases, supplementary notes made by the judges may sufficiently illustrate their reasoning but it would far preferable if the test utilized and an explanation as to why the judge

has accepted the evidence of physical presence appears on the face of the decision. A box entitled "Reasons" has already been provided to serve this purpose.

[30] For these reasons, the appeal is allowed. The matter is referred back to a different citizenship judge for re-determination.

JUDGMENT

THIS COURT'S JUDGMENT is that this appeal is allowed and the matter is referred back to a different Citizenship Judge for re-determination.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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