

Cour fédérale



Federal Court

Date: 20120511

Docket: T-1446-11

Citation: 2012 FC 558

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, May 11, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

NOUREDDINE ZARI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal from a decision, dated May 17, 2011, of a citizenship judge denying the applicant's citizenship application, pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 (the Act). Under paragraph 300(c) of the Federal Court Rules, SOR/98-106 (Rules), appeals in citizenship matters are brought as applications and are subject to sections 300 *et seq.* of the Rules.

Facts

[2] Nouredine Zari (the applicant) is a citizen of Morocco. He is acting on his own behalf in this proceeding.

[3] The applicant obtained permanent resident status on July 9, 2002, and arrived in Canada on November 8, 2005.

[4] On January 12, 2009, the applicant submitted an application for citizenship in which he declared that he had been present in Canada for 1159 days and absent for 301 days during the period required under the Act.

[5] The applicant was interviewed by an immigration officer on June 1, 2010.

[6] In a letter dated July 19, 2010, Citizenship and Immigration Canada (CIC) advised the applicant that additional information and documents, including a residence questionnaire, were needed to process his application. The applicant completed the residence questionnaire and sent it with his documents to CIC on July 30, 2010.

[7] On February 14, 2011, the applicant appeared before the citizenship judge for an interview regarding his citizenship application. At the hearing, the citizenship judge requested further evidence from the applicant.

The decision under appeal

[8] The citizenship judge determined that the applicant did not meet the requirements of paragraph 5(1)(c) of the Act, specifically, having accumulated at least three years of residence in Canada within the four years immediately preceding the date of his application, namely, from January 12, 2005, to January 12, 2009. Relying on *Pourghasemi (Re)*, 62 FTR 122, [1993] FCJ No 232 (*Pourghasemi*), the citizenship judge found that the applicant's physical presence in Canada had not been sufficiently established by the documents and additional information provided by the applicant in support of his application.

[9] The citizenship judge noted that in accordance with subsection 15(1) of the Act, he had considered whether or not to recommend an exercise of discretion under subsection 5(4) of the Act, which provides that the Governor in Council may direct the Minister to grant citizenship to any person in order to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada. However, the citizenship judge found no reason to recommend that such direction be given to the Minister because the applicant had not presented any evidence in this regard.

Issue

[10] The Court is of the view that the only issue in this case is the following:

Did the citizenship judge err in concluding that the applicant failed to meet the requirements of paragraph 5(1)(c) of the Act?

Relevant legislation

[11] 5(1)(c) of the Act provides:

Grant of citizenship

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;

Attribution de la citoyenneté

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.

[12] Subsection 14(5) of the Act sets out the following:

Appeal	Appel
14. (5) The Minister or the applicant may appeal to the Court from the decision of the citizenship judge under subsection (2) by filing a notice of appeal in the Registry of the Court within sixty days after the day on which	14. (5) Le ministre et le demandeur peuvent interjeter appel de la décision du juge de la citoyenneté en déposant un avis d'appel au greffe de la Cour dans les soixante jours suivant la date, selon le cas :
(a) the citizenship judge approved the application under subsection (2); or	a) de l'approbation de la demande;
(b) notice was mailed or otherwise given under subsection (3) with respect to the application.	b) de la communication, par courrier ou tout autre moyen, de la décision de rejet.
[...]	...
...	

Applicable standard of review

[13] Decisions of a citizenship judge are reviewable on a standard of reasonableness (see *Pourzand v Canada (Minister of Citizenship and Immigration)*, 2008 FC 395 at paragraph 19, [2008] FCJ No 485; *Yan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1153 at paragraph 15, [2009] FCJ 1438; *Canada (Minister of Citizenship and Immigration) v Saad*, 2011 FC 1508 at paragraph 9, [2011] FCJ No 1801). The Court will intervene only if the decision does not fall within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190.

Analysis

[14] The Court points out that the period in question in this matter is between January 12, 2005, and January 12, 2009.

[15] In the present case, despite the numerous documents submitted by the applicant, the citizenship judge concluded that the applicant's evidence was somewhat lacking. Accordingly, in applying the strict test of residency set out in *Pourghasemi*, the citizenship judge determined that the applicant had failed to establish that he met the residency criteria as provided by paragraph 5(1)(c) of the Act, specifically, that the applicant had stayed in Canada for a minimum period of 1095 days.

[16] The applicant claims that the decision of the citizenship judge is wrong in fact and in law. The applicant contends that he met all of the criteria for Canadian citizenship. He submits that all of the documents he provided were in chronological order from the day he arrived in Canada until the day he filed his application. The applicant further asserts that the documents submitted demonstrate that he was physically present in Canada for a period of three (3) years out of the four (4) years preceding the date of his application. In particular, the applicant cites the following evidence:

- He worked for HUNT Personnel from December 7, 2005;
- From January 16, 2006, to June 21, 2006, he attended English courses;
- From February 20 to March 17, 2006, he attended job search training;
- From January 1, 2006, to October 31, 2007, he received income security benefits and was required to go to the bank in person and present two pieces of identification to cash his benefit cheque, which shows that he was physically present in Canada for this entire period;
- In June 2007, he rented an apartment at 7595 Viau for a 12-month period;
- From October 11, 2007, to December 6, 2007, he worked at ADP "Doctor of Quebec Foundation";

- From December 10, 2007, to January 15, 2009, he received CSST (occupational health and safety commission) benefits after an accident and was required to go to the bank in person and present two pieces of identification to cash his benefit cheque, which shows that he was physically present in Canada for this entire period;
- In 2008, he visited a physical rehabilitation clinic twice a week.

[17] In light of the parties' submissions and the evidence in the record, the Court cannot accept the applicant's arguments. The Court notes that the burden of proving physical presence in Canada rests with the applicant (*Chen v Canada (Minister of Citizenship and Immigration)*, 2008 FC 763, [2008] FCJ No 964) and that he had the opportunity to adduce additional evidence. As the citizenship judge reasonably noted, the evidence submitted by the applicant contained a number of anomalies, including: a single lease covering only the period from July 1, 2007, to June 30, 2008 (Respondent's Record, p. 58); this lease is not signed by the applicant and, of equal significance, it is not dated (Respondent's Record, p. 61); the applicant failed to report his absence from January 12, 2005, to November 8, 2005, in his residence questionnaire (Tribunal Record, p. 26); other exhibits in the records such as the Hydro Québec invoice, the CSST benefits (Tribunal Record, pp. 189, 214) as well as the job at Hunt and the English courses only cover specific, limited and brief periods that do not cover all of the required period.

[18] The applicant has not convinced this Court that the citizenship judge erred in concluding that that applicant failed to establish through satisfactory and consistent evidence that he was physically present in Canada during the requisite period.

[19] The Court finds this decision to be reasonable, within a range of acceptable outcomes and defensible in respect of the facts and law (*Dunsmuir, supra*).

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the appeal is dismissed.

“Richard Boivin”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1446-11

STYLE OF CAUSE: NOUREDDINE ZARI and MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 7, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** BOIVIN J.

DATED: May 11, 2012

APPEARANCES:

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Andrea Shahin

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