Federal Court  Cour fédérale

Date: 20140226

Docket: T-1471-13

Citation: 2014 FC 181

Toronto, Ontario, February 26, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

NINA KNEZEVIC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] For the purpose of fulfilling the requirements of acquiring citizenship, although more than one test exists according to the jurisprudence, it is incumbent on an applicant to demonstrate by objective evidence, establishment of residence in Canada. This Court has held that the tests for residency must be applied properly and coherently. Once demonstrated, a Citizenship Judge has the discretion to determine which test to apply, whether one which is qualitative or quantitative.

[2] Unless circumstances specifically warrant a quantitative approach to acquiring citizenship, long absences from Canada during the minimum period of time by which to acquire citizenship are contrary to the very spirit of the legislation as derived by the Parliament of Canada (*Savarian v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1117). Having chosen the physical presence test under the present circumstances of the case, the Citizenship Judge was not required to consider otherwise.

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[3] This judgment is in response to an application for judicial review of a decision rendered on July 4, 2013 by a Citizenship Judge who denied the Applicant's application for Canadian citizenship as per the *Citizenship Act*, RSC, 1985, c C-29, paragraph 5(1)(*c*).

[4] It is the Court's determination that the Citizenship Judge did not commit any reviewable error in the rejection of the Applicant's citizenship application. A reading of the Citizenship Judge's decision clearly demonstrates that the application was dismissed on the basis of fact and law.

[5] The Citizenship Judge clearly stated that the Applicant "did not meet the requirements of paragraph 5(1)(*c*) of the *Citizenship Act*. Under paragraph 5(1)(*c*) of the *Citizenship Act* an applicant is required to have accumulated at least three years of residence in Canada within the four years immediately preceding his or her application".

[6] Furthermore, the Citizenship Judge wrote: to "meet the residence requirements you were requested to provide additional documents. Unfortunately the documents that you submitted were, in my opinion, not satisfactory proof of residence in Canada. I have come therefore to the

conclusion that you did not meet the residence requirement as defined in paragraph 5(1)(*c*) of the *Citizenship Act*."

[7] The obligation of the Citizenship Judge was to ensure a correct interpretation of the statutory provision. It is the Court's view that it was within the discretion of the Citizenship Judge to dismiss the citizenship application of the Applicant on the basis of the evidence; the judge, subsequent to a review of the evidentiary record, could not ascertain the dates on which the Applicant was, in fact, physically present in Canada. It was, therefore, reasonable on the evidentiary record for the judge to render the decision that ensued.

[8] The Court does not find that the Citizenship Judge erred and, therefore, the appeal is dismissed.

[9] The Applicant, a citizen of Serbia and Slovenia, arrived in Canada on August 20, 2004 and became a permanent resident on March 6, 2006. She applied for citizenship on June 18, 2009.

[10] The Applicant's application demonstrated a basic residence of approximately 1330 days in the period in question. In the citizenship application "absences from Canada" are listed as 234 days but on the same list of absences the total absences from Canada is stated as 334 days.

[11] No clear passport explanations on problematic stamps and potential unclear lines of chronology were provided for the pertinent continuous period, only part of that period was provided

for by the documentation. Therefore, the required physical presence requirement of 1095 days as required by the relevant provision of the *Citizenship Act* was not considered acceptable.

[12] Subsequent to an examination of the Applicant's application, Residence questionnaires and passports, the Citizenship Judge could not ascertain the number of days of actual physical presence of the Applicant in Canada (all in accordance with jurisprudence of this Court, such as, *Fadi Atwani v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1354).

[13] The burden is on the Applicant to establish clear and compelling evidence as to the number of days of residence. The Applicant, as per the record, did not provide such clear evidence in this regard.

[14] For the purpose of fulfilling the requirements of acquiring citizenship, although more than one test exists according to the jurisprudence, it is incumbent on an applicant to demonstrate by objective evidence, establishment of residence in Canada. This Court has held that the tests for residency must be applied properly and coherently. Once demonstrated, a Citizenship Judge has the discretion to determine which test to apply, whether one which is qualitative or quantitative.

[15] Unless circumstances specifically warrant a quantitative approach to acquiring citizenship, long absences from Canada during the minimum period of time by which to acquire citizenship are contrary to the very spirit of the legislation as derived by the Parliament of Canada (*Savarian*, above). Having chosen the physical presence test under the present circumstances of the case, the Citizenship Judge was not required to consider otherwise.

[16] Explanations brought before this Court were not before the Citizenship Judge. That which was provided by way of questionnaire and documents of the Applicant did not assist in the calculation which was needed to provide clarity where ambiguity remained. Lines of chronology in respect of calculations were necessary to synchronize evidentiary documentary material with information extracted from the Residence Calculator.

[17] It is also duly noted that the Applicant is considered to be an informed, educated individual with a post graduate degree. It was her onus to respond to the requirements of the citizenship legislation as discussed above. (Thereupon, it is for the Applicant to reapply once she qualifies for citizenship, if she so qualifies.)

[18] On the basis of the record which was before the Citizenship Judge, and no other than that, a reasonable decision, under the circumstances, was rendered on the basis of fact and law.

[19] Therefore, the appeal is dismissed.

JUDGMENT

THIS COURT ORDERS the Appeal be dismissed.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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