

Federal Court



Cour fédérale

Date: 20140307

Docket: T-1151-11

Citation: 2014 FC 220

Ottawa, Ontario, this 7th day of March 2014

Present: The Honourable Mr. Justice Roy

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Plaintiff

and

JASPAL SINGH THIARA

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] Pursuant to section 10 of the *Citizenship Act*, RSC 1985, c C-29, (the “Act”) the Governor in Council may order that a person ceases to be a citizen if satisfied that the person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances. However, the report by the Minister of Citizenship and Immigration on the basis of which the Governor in Council would issue its order cannot be made without giving notice of his intention to do so.

[2] The Minister of Citizenship and Immigration referred this case to this Court under paragraph 18(1)(b) of the Act. It reads as follows:

18. (1) The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

[...]

(b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

18. (1) Le ministre ne peut procéder à l'établissement du rapport mentionné à l'article 10 sans avoir auparavant avisé l'intéressé de son intention en ce sens et sans que l'une ou l'autre des conditions suivantes ne se soit réalisée

[...]

b) la Cour, saisie de l'affaire, a décidé qu'il y avait eu fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels.

[3] This is such a case and its circumstances are rather peculiar.

Facts

[4] The defendant, Jaspal Singh Thiara, was born on November 18, 1986 and he is a citizen of the United Kingdom. He arrived in Canada in 2001 with his parents and his two sisters.

[5] On November 14, 2005, the defendant submitted his application to become a Canadian citizen. His mother assisted him in filling-out the application form. The form included a section on prohibitions under the Act. The defendant checked the box indicating that the prohibitions were not applicable to him and signed the form. His family, including his mother, father and two sisters, submitted their applications with his.

[6] On February 13, 2006, an information was laid in Court alleging that the defendant had committed attempted murder with the use of a firearm on December 29, 2005. That constitutes an offence under paragraph 239(1)(a) of the *Criminal Code*. As a result, the defendant was required to turn his Canadian passport in to law enforcement and the matter received some media coverage given the circumstances of the alleged offence.

[7] Citizenship and Immigration Canada [CIC] requested fingerprints from the defendant on January 27, 2006 and June 23, 2006. Each time the request included a statement to the effect that the person cannot become a Canadian citizen while charged with an offence or in prison. On both occasions the defendant complied and he was accompanied by his father.

[8] Clare Grewal, née Palmer [Ms. Palmer] a senior CIC officer who worked at the Surrey Citizenship Office from June 2006 to September 2008, received the defendant's citizenship file in December 2006 from the Case Processing Centre in Sydney, Nova Scotia.

[9] Using CIC's Field Operation Support System [FOSS], Ms. Palmer checked the defendant's security and immigration clearances. It is how she found an entry from the Surrey RCMP Liaison with the Canadian Border Services Agency [CBSA], one D. Chand, to the effect that the defendant had been charged with attempted murder.

[10] Ms. Palmer followed up. On December 15, 2006, she sent a letter to the defendant requesting that he provide a copy of the Indictment, the Court Information Sheet or Certificate of Conviction relating to his criminal charges. He was to bring those documents to his citizenship test

which was to be held on January 10, 2007. Once again, the defendant complied. On January 10, 2007, the defendant, together with his parents and his two sisters, presented himself at the Surrey Citizenship Office for the citizenship test. Ms. Palmer was the citizenship officer on duty that day and it is not disputed that he submitted the documentation that had been requested of him to her. Obviously, he did not show her his passport as it was still being held. Ms. Palmer added the documents to the defendant's file. She testified before this Court that this interaction with the defendant took place at the citizenship test. The defendant had originally claimed that the interaction had actually taken place at the citizenship ceremony. However, very fairly, he conceded at the trial that it took place at the citizenship test and not at the citizenship ceremony, the two having been somehow conflated in his mind.

[11] The general practice before writing the citizenship test was for a citizenship clerk to give a preamble to the test takers reiterating the prohibitions on citizenship, including criminality. There is no reason to believe that the warning was not given on January 10, 2007. The defendant then wrote the citizenship test and he passed it.

[12] Ms. Palmer testified that, subsequent to the test, she separated the defendant's file from the rest of his family's file in view of the pending criminal charges. She also submitted the defendant's fingerprints to the RCMP on three occasions, along with a copy of the defendant's Indictment. On all three occasions, the RCMP sent back a clear conviction sheet, with the note "No reportable trace."

[13] On April 26, 2007, Ms. Palmer e-mailed the Liaison Officer at CBSA, one Dave McCulley, in order to inquire about the defendant's charges. That same day, Mr. McCulley informed Ms. Palmer that the defendant's next court date would be on May 16, 2007. It is therefore clear that as of April 2007, Ms. Palmer was aware that the matter had not been dropped.

[14] The defendant was indicted for attempted murder on June 5, 2007.

[15] On August 14 and on October 22, 2007, Ms. Palmer sent two more e-mails to Mr. McCulley inquiring further about the defendant's status. She did not receive a response to either one of her inquiries.

[16] On April 17, 2008, Ms. Palmer submitted the defendant's citizenship application to a Citizenship Judge for approval. It seems that Ms. Palmer would have concluded that in light of the lack of response from CBSA and the clear fingerprint records from the RCMP that the charges against the defendant had been dropped. The Citizenship Judge approved the application.

[17] A notice to appear to take the oath of citizenship was sent to the defendant on April 21, 2008 for him to appear to take the oath of citizenship on May 9, 2008. However, the defendant arrived late at the premises of the Citizenship Office and he was advised by the commissionaire on duty that day that because of his lateness, he would not be able to participate in the ceremony.

[18] A second notice to appear was sent on June 18, 2008, to take the oath of citizenship on July 11, 2008. This time, the defendant was not late and he attended the ceremony with his father

and one of his sisters. The documentary evidence is to the effect that the notices did not contain a warning about being subject to criminal proceedings.

[19] There is no direct evidence of what took place on July 11, 2008. Instead, witnesses described how these ceremonies are usually conducted. Thus, the attendees would be greeted by the commissionaire and instructed to line up in order to be processed by two citizenship clerks. Usually a total of about 100 attendees would be processed in that fashion in about half an hour. That would suggest that the citizenship clerks would be spending between 30 seconds and one minute with each person. Rosalind Campbell, a citizenship clerk, testified that as part of the process she would ask each person whether they had been charged with or convicted of any criminal offences in the last four years.

[20] The defendant brought with him his permanent resident card to the ceremony; his passport was still in the possession of law enforcement authorities given that his case was still pending before the courts. He testifies that he was processed by a citizenship clerk who took his permanent resident card and asked him to read and sign the "Oath or Affirmation of Citizenship" form. Such form contains a notation about citizenship prohibitions.

[21] After signing the oath form, the defendant was instructed to sit in seat number one of the room where the ceremony was to take place. That was the seat number that was on his notice to appear; however, being assigned seat number one meant that he would be the last one to be called up to receive his certificate. The attendees, guided by the presiding Citizenship Judge, recited the citizenship oath. Then, Ms. Palmer, who was the citizenship officer for the ceremony, called each

person's name and that person came to the front of the room where the Citizenship Judge was standing. The judge gave each person their commemorative certificate and their citizenship card in a plastic pouch. The defendant received his citizenship card and his certificate on that day.

[22] Once the ceremony was over, Ms. Palmer received all the oath forms from the citizenship clerks who had processed the ceremony attendees and she date stamped them.

[23] A month later, on August 20, 2008, the defendant was charged on a five-count indictment with the main offence being the attempted murder count. His trial before judge and jury started on September 30, 2008. He was found guilty on three counts: attempted murder, carrying a concealed weapon, and possession of a firearm for purpose dangerous to the public peace. He was sentenced to ten years' imprisonment. His appeal to the British Columbia Court of Appeal was eventually dismissed.

[24] The defendant's case, including his trial and conviction, was accompanied by not insignificant media coverage.

[25] On March 17, 2010, the Minister of Citizenship and Immigration issued a Notice in Respect of Revocation of Citizenship through which the defendant was notified of the intent to make a report to the Governor in Council under section 10 of the *Citizenship Act*. The defendant requested that the case be referred to the Federal Court less than a month later.

[26] At the time the case was heard in the Federal Court, the defendant was still incarcerated in a federal penitentiary and his statutory release date is in June 2015.

Issues

[27] There is only one issue in this case. Did Mr. Thiara obtain Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances?

[28] I have no doubt that the witnesses who appeared before the Court testified truthfully. There is no issue of credibility that needs to be resolved in this case.

Arguments

[29] The plaintiff relies on the way things are usually done in support of his contention that the defendant has obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances. Except for Ms. Palmer, the other witnesses tendered by the plaintiff could only testify as to how citizenship cases have been handled in their experience.

[30] Paragraph 22(1)(b) of the Act prohibits the taking of the oath of citizenship if one is charged with an indictable offence. The defendant was given numerous occasions to reveal that he was charged with indictable offences, including on the very day he took the oath. The oath of citizenship form states: "I confirm that I have not been subject to any criminal or immigration proceedings since I filed my application for Canadian citizenship". In the view of the plaintiff, this constitutes a false representation sufficient to conclude against the defendant.

[31] Furthermore, the plaintiff contends that the defendant knowingly concealed material circumstances when he failed to state again on the day of the oath ceremony that he was facing outstanding criminal charges; he knew of the prohibitions and he was under a duty of candour. In the view of the plaintiff, the duty of candour is ongoing throughout the process. The existence of governmental systems to conduct clearance inquiries and inform the process do not relieve candidates of their duty of candour.

[32] The defendant reviews the evidence led at the hearing to assert that he has disclosed the existence of charges pending against him. The citizenship officer, Ms. Palmer, who followed the case all the way to the oath ceremony, did not raise the issue with the defendant as his case was being processed in spite of the fact that Mr. Thiara had disclosed the existence of the charges, had been fingerprinted and had provided a copy of the charging document. Her inquiries with the RCMP and CBSA made her conclude, erroneously, that the charges against Mr. Thiara had been dropped. She testified that she made a note for herself to check the information with Mr. Thiara but did not. Ms. Palmer was present during the oath ceremony. Thus, the citizenship was not obtained as a result of false representation since the information was given to the person in charge of the case.

[33] Both the defendant and his sister testified that the encounter with the citizenship clerk at the oath ceremony lasted merely a few seconds, not enough time to go over the oath form or the prohibitions. The warnings that the plaintiff claims are present on documents sent to candidates are less than uniform. One citizenship clerk who testified confirmed that the practice was to photocopy forms double-sided in order to be able to stuff them in one envelope. Hence, documents could be mixed up. At any rate, the defendant's parents received a different set of documents than those

received by their daughters and their son. In the case of the son, the evidence is that the notices to appear to take the oath of citizenship did not have any warning.

[34] The defendant argues that, not only did he not make any false representation, but he did not either knowingly conceal material circumstances. In order to bolster its position, the Crown speaks of a duty of candour which is not supported by any case-law. The concept does not exist in our jurisprudence, says the defendant.

[35] The sole transgression in this case is that the defendant signed an oath form that he did not read. That is an innocent misrepresentation. If the Court were to find that Mr. Thiara was wilfully blind, which would evidently displace that there was an innocent representation, it is argued that the doctrine of officially induced error ought to inoculate the defendant.

Analysis

[36] There is no doubt that the plaintiff bears the burden of establishing the grounds to support a finding that citizenship was obtained in this case by false representation or fraud or by knowingly concealing material circumstances (*Minister of Citizenship and Immigration v Furman*, 2006 FC 993, 298 FTR 163). It is not disputed either that the Court's duty under section 18 of the Act is merely to make the "factual findings", in the words of counsel for the defendant, and a "factual determination", in the words of Crown counsel.

[37] Counsel for the defendant attempted to make a case for the standard to be balance of probabilities with the evidence scrutinized with greater care, finding support in some case-law from this Court.

[38] I would respectfully decline the invitation. First, I am less than certain that I know how such standard ought to be applied. Second, and much more importantly, I believe the Supreme Court of Canada has disposed of the issue in *F.H. v McDougall*, 2008 SCC 53, [2008] 3 SCR 41. For a unanimous Court, Rothstein J. wrote at paragraph 45:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[39] I will therefore apply to the examination of the facts the only standard of proof in civil cases, which is proof on a balance of probabilities.

[40] I believe it is not disputed that citizenship was awarded by mistake to Mr. Thiara. It is not disputed that a serious criminal charge was pending against him at the time he swore the oath of citizenship. The charge was not pending when Mr. Thiara made his application for citizenship (November 2005), but the initial information alleging attempted murder came shortly thereafter (February 2006). Paragraph 22(1)(b) of the Act applies. But such is not the issue.

[41] The law requires that a factual determination be made by the Court that the citizenship was obtained, not by mistake, but rather as a result of false representation or fraud or by knowingly concealing material circumstances. The Crown must make that demonstration by a balance of probabilities. With respect, the Court comes to the conclusion that the Minister has failed his burden.

[42] The witnesses in this case were all, in my estimation, truthful and credible. Mr. Thiara, who continues to be an inmate in a federal institution as he is serving a sentence of ten years' imprisonment, struck me as someone who has changed his ways from the time he committed the attempted murder. He continues to be supported by his family; indeed family members followed the proceedings. In his testimony he conceded that, after having listened to the testimonies of others, he was mistaken in his early assertions that he advised Ms. Palmer of the pending charges at the oath ceremony. The concession, which is clearly against his interest, is that of an honest young man.

[43] Ms. Palmer, the other important witness in this case, also comes across as an honest person. She recognizes her mistake. She remembers quite clearly the Thiara family because they were so sad the day they passed the citizenship test. From the evidence before the Court, it is obvious that Ms. Palmer was aware that charges were pending against Mr. Thiara. Indeed she is the one who created a different file in the name of the defendant. Actually she followed up on the information but appears to have mistakenly concluded that charges had been dropped. She was present at the oath ceremony (she presented each successful candidate to the presiding Citizenship Judge) but Ms. Palmer and Mr. Thiara did not speak although he testifies that he saw her. Mr. Thiara could

hardly be missed as he was seated in chair number one and Ms. Palmer would have reviewed the list of people attending. She testified that she remembers seeing him.

[44] Mr. Thiara could not be faulted for having inferred that he could be sworn in. Not only did he see Ms. Palmer, to whom he had communicated that he had been charged with a serious crime, but he had been summoned much later than the rest of his family (his file had been segregated from the rest of his family's file); and then not once, but twice as he arrived late at the first ceremony.

[45] I have to believe the defendant when he says that he was not advised by the citizenship clerk about the prohibitions of section 22 of the Act at the oath ceremony. One citizenship clerk would have about 30 seconds to process a candidate, 50 candidates in about 30 minutes. To some extent, his testimony is corroborated by that of his sister who was present on July 11, 2008. Furthermore, her own recollection of her participation at her family's oath ceremony is also that nothing was mentioned by the citizenship clerk about prohibitions before she did sign the oath form. As for the oath form that refers to the prohibitions, not only was there little time to consider its contents but Mr. Thiara had to have his mother fill out his application for citizenship because of his limited reading abilities at the time (he has finished high school while incarcerated). It would be surprising if he read the form.

[46] Against that evidence, the Minister must satisfy the Court on a balance of probabilities that the defendant made false representations or knowingly concealed material circumstances. That case has not been made out on this evidence. Rather, citizenship was simply granted by mistake.

[47] I find it difficult to conclude that a representation can be considered to be false unless the person knows that the representation is made. Here, the Court is satisfied that Mr. Thiara did not know about the document he had to sign. The fact that his file had been segregated from that of his family's file, ostensibly because of his pending charge, resulted in not being called for an oath ceremony at the same time as the rest of his family (some 14 months later). Yet he was called not once but twice to attend a ceremony. At the said ceremony the senior citizenship officer responsible for his case was present and did not raise any red flag (because she had concluded that the charge had been dropped, but then she did not inquire further of the respondent on that state of affairs). What is more, Ms. Palmer testified that she signed the oath form after the ceremony as a witness to the oath taking.

[48] I accept the testimony of the citizenship clerk who says that the practice is to advise every applicant at an oath ceremony. However on a balance of probabilities I prefer the evidence of the defendant and that of his sister which deals with their specific case.

[49] Obtaining citizenship by false representation implies an action made with the intent to deceive. That to my way of thinking implies the knowledge that something is false and the conscience that a statement is made. *Black's Law Dictionary*, 7th ed., West Group, defines a representation as "a presentation of fact – either by words or by conduct – made to induce someone to act". In this case, the burden of proving that the defendant was conscious he was making a representation, i.e. that it was made to induce action, has not been discharged. On a balance of probabilities, the defendant's behaviour must be found to be innocent.

[50] The Minister also argues that the defendant knowingly concealed material circumstances. The problem with that argument is that the existence of the charge was not concealed. The information charging initially the defendant was brought to Ms. Palmer when she requested it. The FOSS had the information that Mr. Thiara had been charged. The fingerprints were submitted to the RCMP and Ms. Palmer conducted checks. The system was aware of court dates. Ms. Palmer confirms that she added notes. I fail to see how the information can be said to have been concealed. On the contrary, it was revealed.

[51] From the prohibition to knowingly conceal material circumstances the plaintiff seeks to induce an obligation to repeat the disclosure throughout the process. The defendant noted that no authority was offered in support of this novel proposition. Actually, the Crown referred in a footnote in its factum to *Her Majesty the Queen in Right of Canada v Campbell*, 2007 ONCJ 541, a case involving a prosecution under section 29 of the Act.

[52] In that case, Mr. Campbell had not been charged with a crime when he made his application for citizenship, like in this case. However, less than three months later he was charged with a number of drug-related offences. He never disclosed the existence of the charges, claiming instead that the mere fact that he was arrested, in this case by the Toronto Police Service, constituted sufficient disclosure. This is unlike the present case where disclosure was made and received by the appropriate authorities. With respect, this case does not support an argument that the disclosure must be repeated. The case certainly stands for the proposition that there is an obligation to disclose. But that is as far as it goes. In the case at bar, that disclosure was done and there is no doubt that it was received by CIC.

[53] In my view, the very peculiar circumstances of this case lead inexorably to the conclusion that citizenship was granted by mistake. The burden on the Minister was not discharged because, in effect, the information about pending charges was in the hands of the appropriate authorities. The law requires that the Minister show that there was a false representation or that, knowingly, the defendant concealed material circumstances. On this record, that burden has not been discharged.

[54] As a result, the Court comes to the conclusion that, on a balance of probabilities, Mr. Thiara did not obtain his citizenship by false representation or fraud or by knowingly concealing material circumstances. There is a cost award in favour of the defendant in accordance with column III of the table to Tariff B (Rule 407) as I see no reason to depart from the suggestion made by the parties as to what would be an appropriate cost award.

JUDGMENT

On this reference, pursuant to sections 10 and 18 of the *Citizenship Act*, RSC 1985, c C-29, the Court concludes that the defendant did not obtain citizenship by false representation or fraud or by knowingly concealing material circumstances.

Pursuant to Rule 407 of the *Federal Courts Rules*, SOR/98-106, costs are awarded in favour of the defendant in accordance with column III of the table to Tariff B.

“Yvan Roy”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1151-11

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND IMMIGRATION
v. JASPAL SINGH THIARA

PLACE OF HEARING: Vancouver, British Columbia

DATES OF HEARING: September 4 and 5, 2013

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

DATED: March 7, 2014

APPEARANCES:

Ms. Helen Park FOR THE PLAINTIFF

Mr. Aleksandar Stojicevic FOR THE DEFENDANT

SOLICITORS OF RECORD:

William F. Pentney FOR THE PLAINTIFF
Deputy Attorney General of Canada

Maynard Kischer Stojicevic FOR THE DEFENDANT
Vancouver, British Columbia