Federal Court  Cour fédérale

Date: 20140516

Docket: T-1384-13

Citation: 2014 FC 476

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Montréal, Quebec, May 16, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

TLILI, NAIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary remarks

[1] The Court notes that citizenship is granted only to applicants who meet the criteria set out in section 5 of the *Citizenship Act*, RSC 1985, c C-29. A certain period of residence is required in this sort of case in order for an applicant to be granted Canadian citizenship. According to paragraph 5(1)(*c*), a person who applies for citizenship must show that he or she has, within the

four years immediately preceding the date of his or her application, accumulated at least 1,095 days of residence in Canada.

[2] Justice Donald J. Rennie explained as follows in *Abbas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 145:

> [8] Irrespective of which test is applied, each applicant for citizenship bears the onus of establishing sufficient credible evidence on which an assessment of residency can be based, whether it is quantitative (*Re Pourghasemi*) or qualitative (*Koo*). In this regard, the citizenship judge must make findings of fact—findings which this Court will only disturb if unreasonable.

[3] Contrary to what the applicant claims, the onus is on him alone to prove that he met the residence requirements established in the *Citizenship Act* (*Chen v Canada (Minister of Citizenship and Immigration)*, 2008 FC 763, 169 ACWS (3d) 956 at para 18). It was not up to the citizenship judge to present sufficient evidence that the applicant was not present in Canada. Justice Frank Muldoon noted as follows in *Pourghasemi* (1993), 62 FTR 122, 39 ACWS (3d) 251 (FCTD):

> [3] It is clear that the purpose of paragraph 5(1)(*c*) is to insure that everyone who is granted precious Canadian citizenship has become, or at least has been compulsorily presented with the everyday opportunity to become, "Canadianized". [Emphasis added.]

II. Introduction

[4] This is an appeal filed pursuant to subsection 14(5) of the *Citizenship Act*, against a decision of a citizenship judge dated May 23, 2013, rejecting the applicant's application for

Canadian citizenship on the basis that he did not meet the residence requirements under paragraph 5(1)(*c*) of the *Citizenship Act*.

III. Facts

[5] The applicant, Naim Tlili, entered Canada on January 4, 2006, on a study permit. He allegedly studied at the École des Hautes Études Commerciales [HEC] in Montréal from January 2006 to May 2008.

[6] The applicant became a permanent resident of Canada on May 13, 2007.

[7] On December 11, 2009, he submitted an application for citizenship. In his application, the applicant declared that he had been physically present in Canada for 1,113 days and outside Canada for 76 days in the four years immediately preceding the date of his application (the relevant period).

[8] After returning a Residence Questionnaire and supporting documents for his application to a citizenship officer, the applicant was summoned to a hearing before a citizenship judge. The hearing was held on April 3, 2013.

[9] In addition to giving answers regarding his alleged period in Canada, the applicant admitted to the citizenship judge having declared personal bankruptcy because his spending had exceeded his income.

[10] The citizenship judge rejected the applicant's citizenship application on May 23, 2013. The applicant is now appealing against that decision.

IV. Decision under judicial review

[11] Relying on the test set out in *Pourghasemi*, above, the citizenship judge found that the applicant had not presented sufficient documentary evidence to show that met the residence requirement under paragraph 5(1)(*c*) of the *Citizenship Act*, that is, the applicant had not established that he was physically present in Canada for 1,095 days in the four years immediately preceding the date of his application. In particular, she noted that the applicant had not filed any work-related documents in support of his declaration that he had been a self-employed worker in Canada in 2008 and 2009.

[12] The citizenship judge also noted that some of the items of documentary evidence submitted to the Minister of Citizenship were inconsistent with the applicant's written and verbal statements, and that the statements themselves were contradictory at times.

[13] She found that these contradictions, in addition to the evasive answers given at the hearing, undermined the applicant's credibility. She therefore gave little weight to the other documents that were submitted to her.

V. Issue

[14] Did the citizenship judge err in finding that the applicant did not meet the residence requirements under paragraph 5(1)(*c*) of the *Citizenship Act*?

VI. Relevant statutory provisions

5. (1) The Minister shall grant citizenship to any person who	5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :
. . .	[…]
(*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:	*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) 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	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
(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	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

residence;

VII. Standard of review

[15] The standard of review applicable to appeals against decisions of citizenship judges is the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Abdallah*, 2012 FC 985, 417 FTR 13; *Pourzand v Canada (Minister of Citizenship and Immigration)*, 2008 FC 395, 166 ACWS (3d) 222).

VIII. Analysis

[16] The applicant argues that the citizenship judge erred in basing her decision on his presence in Canada on subjective doubts and irrelevant facts. The applicant alleges that he was not given the benefit of the favourable presumptions included in the Act.

[17] The applicant also submits that the citizenship judge erred in finding that there were contradictions between his written and oral statements and the documentary evidence he filed. The applicant submits that there were no real contradictions; rather, he alleges that the citizenship judge misinterpreted his statements.

[18] Finally, the applicant submits that the citizenship judge erred in applying the residence test. The applicant claims that she did not discharge her duty to show that, on a balance of probabilities, the applicant was not present in Canada during the relevant period.

[19] Although the *Citizenship Act* does not define the words "resident" or "residence", the case law of this Court has established that there are three approaches to the question of how to determine the "residence" of an applicant in the context of paragraph 5(1)(*c*) of the *Citizenship Act*. It was one of these approaches, the quantitative approach, that was adopted by the citizenship judge in this case. This approach entails asking whether the applicant was physically present in Canada for at least 1,095 days in the four years immediately preceding the date of his or her application (*Pourghasemi*, above).

[20] In the present case, the citizenship judge found that the applicant had not filed sufficient evidence establishing his physical presence in Canada during the relevant period. She noted that the applicant had shown a possible presence in Canada in the year 2006, having provided a transcript of marks from the HEC, but it was difficult to confirm his presence after that time. She agreed that the applicant had had several medical appointments after 2006 but determined that these appointments did not confirm a continuous presence in Canada.

[21] Having regard to the evidence in the record, the Court is of the opinion that the decision of the citizenship judge is entirely reasonable. Despite the evidence filed by the applicant confirming the abovementioned medical appointments, the fact remains that there are long periods during which the applicant has not demonstrated his physical presence in Canada. The Court agrees that the other documents presented by the applicant are definitely proof of the applicant's life in Canada; however, they do not establish that he was physically present in Canada during the relevant period (*Dachan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 538, [2010] FCJ no 643 (QL/Lexis) at para 24).

[22] In her decision, the citizenship judge also raised the numerous inconsistencies in the evidence submitted by the applicant, thereby reaffirming her doubts as to whether the applicant had truly been present in Canada for the number of days required under the *Citizenship Act*.

[23] The Court is not persuaded that the citizenship judge misinterpreted the evidence in this regard. Her reasons clearly indicate that she asked the applicant specific questions regarding his presence in Canada and that the answers he gave contradicted his written answers and certain items of documentary evidence. It was therefore open to the citizenship judge to make an unfavourable finding concerning the credibility of the applicant's story.

[24] In short, the Court finds that the citizenship judge's reasons were intelligible and entirely justified by the evidence. The decision therefore falls within a range of possible, acceptable outcomes and should not be disturbed.

IX. Conclusion

[25] For all the above reasons, the applicant's appeal is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the applicant's appeal be dismissed, with no question of general importance to be certified.

"Michel M.J. Shore"

Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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