Federal Court  Cour fédérale

Date: 20140722

Docket: T-2021-13

Citation: 2014 FC 724

Ottawa, Ontario, July 22, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALI AL-KAISI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The bestowal of citizenship from a country where one was not born is a privilege, not a right. The citizens of Canada, through their legislative branch of government, have established minimum requirements that one must meet if the privilege of citizenship and the rights which ensue are to be bestowed. An ability to communicate with other citizens and to have a basic fundamental knowledge of the history, political structure, and characteristics of Canada are

amongst the reasonable requirements by which to be granted the privilege of citizenship (*Shah v Canada (Minister of Citizenship and Immigration)*, 2012 FC 852).

II. Introduction

[2] This is an appeal, pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 and section 21 of the *Federal Courts Act*, RSC 1985, c F-7, brought on behalf of the Applicant, from a decision of a Citizenship Judge, dated October 25, 2013, in which his application for Canadian citizenship was denied according to paragraph 5(1)(*d*) and (*e*) of the *Citizenship Act*.

III. Background

[3] The Applicant, Mr. Ali Al-Kaisi, is a citizen of Iraq. In 2007, he and his wife and their children applied for refugee protection. They were granted refugee status by the Canadian Embassy in Syria approximately 12-18 months later.

[4] The Applicant and his family arrived in Canada on October 20, 2008, and applied for Canadian citizenship exactly three years later, on October 20, 2011.

[5] On October 9, 2013, the Applicant attended a hearing before the Citizenship Judge, and on October 25, 2013, the Citizenship Judge issued his decision in which he did not approve the Applicant's citizenship application on the basis that the Applicant failed to meet the requirements of paragraph 5(1)(*d*) and (*e*) of the *Citizenship Act*.

IV. Decision under Review

[6] The Citizenship Judge found that the Applicant did not meet the requirements of paragraph 5(1)(*d*) of the *Citizenship Act* as he did not have an adequate knowledge of either French or English. The Citizenship Judge noted that the Applicant was unable to provide answers to simple questions and did not demonstrate an adequate vocabulary for basic everyday communication.

[7] The Citizenship Judge also found that the Applicant did not meet the requirements of paragraph 5(1)(*e*) of the *Citizenship Act* as he did not have an adequate knowledge of Canada. The Citizenship Judge indicated that the Applicant was unable to correctly answer questions related to one or more of the subjects outlined in the *Citizenship Regulations*, SOR/93-246 in his assessment of his knowledge of Canada.

[8] Finally, the Citizenship Judge declined to recommend a favourable exercise of discretion on the basis of compassionate grounds pursuant to subsection 5(3) of the *Citizenship Act*, or as a case of special or unusual hardship or to reward services of exceptional value to Canada pursuant to subsection 5(4), as the Applicant did not present any evidence of special circumstances that would justify making such a recommendation.

V. Issues

[9] The following issues are to be decided by this Court:

1) Did the Citizenship Judge breach the duty of fairness owed to the Applicant by failing to adjourn the hearing?
2) Did the Citizenship Judge err by providing insufficient reasons on the Applicant's failure to meet the knowledge requirement?
3) Did the Citizenship Judge err by failing to consider evidence and exercise his discretion to recommend a waiver of the language and knowledge requirements?

VI. Relevant Legislative Provisions

[10] Paragraphs 5(1)(*d*) and (*e*) of the *Citizenship Act* are relevant in this matter:

Grant of citizenship	Attribution de la citoyenneté
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 :
…	[…]
(*d*) has an adequate knowledge of one of the official languages of Canada;	*d*) a une connaissance suffisante de l'une des langues officielles du Canada;
(*e*) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship;	*e*) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

VII. Standard of Review

[11] The first question raised by the Applicant is a question of law and is reviewable on a standard of correctness (*Elfar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 51).

[12] The second and third questions raised are reviewable on the standard of reasonableness (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708; *Desai v Canada (Minister of Citizenship and Immigration)*, 2013 FC 194).

VIII. Analysis

A. *Did the Citizenship Judge breach the duty of fairness owed to the Applicant by failing to adjourn the hearing?*

[13] The Applicant primarily attacks the Citizenship Judge's decision for breach of procedural fairness by arguing that he proceeded with an oral examination despite having been informed of a problem with the Applicant's mental state. The Applicant argues that he informed the Citizenship Judge that he was having difficulty focusing on the questions due to fatigue from his wife having been in the hospital two days prior to the hearing.

[14] Counsel for the Respondent objects to this argument on the basis that there is no evidence on the record that the Applicant informed the Citizenship Judge of this issue. The Respondent submits that this is a new issue raised by the Applicant in an attempt to contest the results of his oral examination.

[15] The Court also approaches this allegation with some scepticism. There is no evidence on the record to suggest that the Applicant informed the Citizenship Judge of a weakened mental state during the hearing or that he requested an adjournment. As pointed out by the Respondent, the record does not even contain the medical report that the Applicant claims he submitted to the

Citizenship Judge during the hearing to corroborate his wife's hospitalization (Applicant's Application Record [AR] at p 24). The Court finds it difficult to believe that this key piece of evidence would be excluded from the Certified Tribunal Record if it had in fact been provided to the Citizenship Judge.

[16] The Court also notes that the record contains a letter drafted by the Canadian Center for Victims of Torture, which was not before the Citizenship Judge (AR at p 22). In fact, it was drafted post-hearing.

[17] Given these irregularities, the Court finds it improbable that the Applicant's mental state was in fact brought before the Citizenship Judge. It would appear that the Applicant has added additional documentary evidence to the record to support his application.

[18] Without adequate and reliable evidence on the record to substantiate the Applicant's claim on this issue, the Court does not find that its intervention is justified.

B. *Did the Citizenship Judge err by providing insufficient reasons on the Applicant's failure to meet the knowledge requirement?*

[19] In his submissions, the Applicant also submits that the Citizenship Judge was obligated to explain why he failed to meet the knowledge criteria of the *Citizenship Act*. The Applicant argues that the Citizenship Judge's failure to explain which sections of the test he failed makes it difficult for him to understand why he failed it and prevents the Court from discharging its appellate function.

[20] The Court does agree with the Applicant that the Citizenship Judge's reasons related to the knowledge requirement are inadequate. They effectively list the general criteria outlined in the *Citizenship Regulations*, without any further analysis; however, the Court is nonetheless of the view that its intervention is unwarranted.

[21] The Citizenship Judge's decision, when read as a whole, is still well within the range of acceptable outcomes. As recently held by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union*, above, the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible, acceptable outcomes" (at para 14).

[22] In this case, the Court finds that it does. In addition to his finding regarding the Applicant's knowledge of Canada, the Citizenship Judge found that the Applicant had not met the language requirements in order to be granted citizenship. The Citizenship Judge noted that the Applicant was unable to answer even simple questions on familiar topics "using a variety of short sentences with connecting words" and "demonstrate an adequate vocabulary for basic everyday communication" The Court finds that this determination was sufficient, in and of itself, to deny the Applicant's application for Canadian citizenship. Therefore, the Citizenship Judge was not required to undertake an analysis of the results obtained by the Applicant on the knowledge portion of the test. The Citizenship Judge's finding regarding the Applicant's language proficiency was dispositive of the application.

C. *Did the Citizenship Judge err by failing to consider evidence and exercise his discretion to recommend a waiver of the language and knowledge requirements?*

[23] The Applicant submits that the Citizenship Judge erred by failing to consider the evidence of his wife's hospitalization in considering whether to exercise his discretion pursuant to subsections 5(3) and 5(4) of the *Citizenship Act*. The Applicant argues that his wife's hospitalization impeded him from performing at the hearing and therefore could have justified a waiver of the requirements of paragraph (1)(*d*) and (*e*) of the *Citizenship Act*. The Citizenship Judge was therefore required, at least, to consider such in the reasons. The Applicant relies on the case of *Bhatti v Canada (Minister of Citizenship and Immigration)*, 2010 FC 25, 87 Imm LR (3d) 166, in support of this argument, and asks the Court to use a similar rationale in this matter.

[24] To be brief, the Court notes that the Applicant's argument on this issue is based on a supposition that the Citizenship Judge actually had the document before him. As discussed above, the Court is not convinced that it was; therefore, the Court finds that this argument is without merit.

[25] In any event, even if the Court did agree that the document had been put before the Citizenship Judge, this factor would not have been sufficient to warrant a waiver of the requirements of the *Citizenship Act*. In the present case, unlike the Applicant in *Bhatti*, above, there is nothing on the record that demonstrates that Mr. Al-Kaisi's capacity to take the citizenship test would be impeded in the future.

[26] The Court notes that in the case of *Bhatti*, above, this Court was deciding on a case of an applicant who had serious and permanent vision problems caused by diabetic retinopathy, which made it difficult for her to study or perform any written form of the citizenship test. The Court

found that Ms. Bhatti's medical condition was sufficiently serious to warrant consideration of a waiver of the language and knowledge requirements, as it would inevitably continue to impede her preparation for the citizenship test. These facts are highly distinguishable from the Applicant's circumstances.

[27] As the Applicant has provided no further evidence of special circumstances to justify a favourable recommendation to waive the requirements of paragraph (1)(*d*) or (*e*) of the *Citizenship Act*, the Court does not see a need to comment further on this issue.

IX. Conclusion

[28] For all of the above reasons, the Applicant's appeal is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's appeal be dismissed.

Obiter:

The Court recognizes that having to reapply and retake the citizenship test will require additional time, energy and resources from the Applicant, however, there is no evidence on the record that he will be unable to proceed with a new application. The Applicant can reapply for citizenship and use the time before his next citizenship test to hone his language skills and acquire a basic fundamental knowledge of the history, political structure, and characteristics of Canada**.**

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Prasanna Balasundaram	FOR THE APPLICANT
Laoura Christodoulides	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Downtown Legal Services Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT