Cour fédérale Federal Court

**Date: 20141015**

**Docket: T-494-14**

**Citation: 2014 FC 978**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, October 15, 2014**

**Present: The Honourable Madam Justice Bédard**

**BETWEEN:**

**LILIANE BALLOUT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicant appeals from a decision dated December 19, 2013, by a Citizenship Judge (the judge), who did not approve her application for citizenship. This case was heard at the same time as that of the applicant's spouse (docket T-492-14) and their son (docket T-493-14). For the reasons that follow, the appeal is dismissed.

I. Background

[2] The applicant is a Lebanese citizen. She arrived in Canada on June 27, 2007, as a permanent resident, with her spouse and their three children. She applied for citizenship on September 2, 2010.

[3] Subsection 5(1) of the *Citizenship Act*, RSC 1985 c C-29 (the Act), which sets out the criteria for granting citizenship, reads as follows:

| **Grant of citizenship** | **Attribution de la citoyenneté** |
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| 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 : |
| (*a*) makes application for citizenship; | *a*) en fait la demande; |
| (*b*) is eighteen years of age or over; | *b*) est âgée d'au moins dix-huit ans; |
| (*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 | (i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de |

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|---|---|
| permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and | 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 residence; | (ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent; |
| (*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; and | *e*) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté; |
| (*f*) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20. | *f*) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20. |

[4] In her application for citizenship, the applicant declared 1104 days of presence in Canada and 58 days of absence (attributable to a trip to Lebanon) during the review period, which ran from June 27, 2007, to September 2, 2010. She also stated that she has held the position of consultant in her spouse's company, Haddad, Ballout Consultant, since 2007.

[5] On November 8, 2011, the applicant was advised by a citizenship officer that she had to file her passport or passports, complete the residence questionnaire and provide supporting documentation. The applicant completed the questionnaire in which she reiterated the information contained in her application for citizenship and indicated that she was working as a consultant (assistant) for her spouse's company. She also attached a copy of the following documents:

- All the pages of her Lebanese passport;
- Certain identification documents and confirmation of her permanent residence;
- A lease relating to the family residence for the period of July 1, 2007, to June 30 2008;
- Copy of a notice of renewal for the lease for the period of July 1, 2010, to June 30, 2011;
- Copy of a notice of assessment from Revenu Québec for the year 2010;
- A bill from Hydro-Québec in her spouse's name, dated October 11, 2011;
- A bill from Bell relating to a service account in her spouse's name, dated October 26, 2011.

[6] The applicant was called to a hearing before the judge on October 31, 2013.

## II. Impugned decision

[7] It is clear from the decision that the judge applied the residency test provided at paragraph 5(1)(*c*) of the Act, which requires physical presence, developed in *Pourghasemi, (Re)* (1993) 62 FTR 122, [1993] FCJ No 232. In her view, the evidence submitted by the applicant

was insufficient to establish on a balance of probabilities that she was present in Canada for at least 1095 days during the four years immediately preceding her application for citizenship.

[8] The judge stated that she did not consider the passports to be irrefutable evidence of presence in Canada and noted that she had advised the applicant of this at the hearing.

[9] She also found that the other documents submitted by the applicant were insufficient to establish her physical presence in Canada.

[10] In her decision, the judge stressed some elements.

[11] She considered that the confusion in the applicant's testimony as to her functions in the company Haddad, Ballout Consultant undermined her credibility. The judge first noted that the applicant had stated in her application for citizenship that she was a consultant, while in her questionnaire she had added the word "assistant". The judge added that she requested that the applicant explain her work as a consultant/assistant and indicated that the applicant had then explained that she was instead a secretary and that she took calls for her spouse.

[12] The judge also noted that the applicant claimed that she took French courses but that she did not remember the name of the school where she had studied and that she could not produce transcripts. Questioned on the period during which she had taken her courses, the applicant apparently answered in the summer of 2008. The judge stated that when the applicant was confronted with the fact that in her application for citizenship, she had stated that she went to

Lebanon between June 24, 2008, and August 21, 2008, the applicant then allegedly stated that she took courses in June 2008.

[13] The judge found that the applicant's memory lapses did not help explain her presence in Canada.

[14] The judge also stated that she questioned the applicant regarding her purchases in Canada, to which the applicant allegedly responded that she paid in cash.

[15] The judge found that the applicant's testimony and the documentation that she sent left big gaps in her story.

## III. Issue

[16] As stated previously, the judge chose to apply the objective test of physical presence to determine whether the applicant had satisfied her residency obligation as required by paragraph 5(1)(*c*) of the Act. The applicant does not contend that the judge could not choose to apply this test and, for my part, I have already stated on at least three occasions that, in my view, citizenship judges can choose among the three tests traditionally recognized by jurisprudence as being reasonable interpretations of the residency test (*Tawfiq v Canada (Minister of Citizenship and Immigration)*, 2012 FC 34 at para 9, [2012] FCJ No 1711 (*Tawfiq*); *Balta v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1509 at paras 9-11, [2011] FCJ No 1830 (*Balta*); *Canada (Minister of Citizenship and Immigration) v Saad*, 2011 FC 1508 at para 14, [2011] FCJ No 1801).

[17] Accordingly, the only issue in this appeal is whether the Citizenship Judge's decision is reasonable.

IV. Standard of review

[18] The parties submit, and I agree, that the decision of a citizenship judge who must determine whether a person meets the residence conditions in paragraph 5(1)(*c*) of the Act raises a question of mixed fact and law that is reviewable on a reasonableness standard (*Saad v Canada (Minister of Citizenship and Immigration)*, 2013 FC 570 at para 18, [2013] FCJ No 590 (*Saad*); *Tawfiq*, above, at para 8; *Canada (Minister of Citizenship and Immigration) v Al-Showaiter*, 2012 FC 12 at para 13, [2012] FCJ No 7; *Balta*, above, at para 5).

[19] It is important to bear in mind that the Court reviewing a decision on a reasonableness standard may not substitute its own assessment of the evidence for that of the decision-maker, in this case the Citizenship Judge, and that it is limited to verifying whether the decision has the qualities that make it reasonable. As the Supreme Court stated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, "[r]easonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law".

[20] Regarding the adequacy of reasons in support of an administrative tribunal's decision, the Supreme Court discussed the perspective that the reviewing court must adopt in *Newfoundland*

*and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708:

> 12 It is important to emphasize the Court's endorsement of Professor Dyzenhaus's observation that the notion of deference to administrative tribunal decision-making requires "a respectful attention to the reasons offered or which could be offered in support of a decision". In his cited article, Professor Dyzenhaus explains how reasonableness applies to reasons as follows:
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> …
>
> 16 Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

## V. Analysis

[21] The applicant is essentially invoking a disagreement with the judge's assessment of the evidence adduced. She alleged that she erred in her assessment of her credibility and argued that the documents submitted to establish her physical presence in Canada should have been considered sufficient.

[22] Furthermore, she submits that the judge erred in finding that her passport was not valid evidence of when she entered and left Canada. She emphasizes the fact that the passport is an official legal document that should attest to its contents and that, in addition, she provided her

passport at the express request of the citizenship officer. In the circumstances and relying on *Saad*, above, the applicant submits that what the judge said is speculative and that if the judge had doubts about the information in the applicant's passport it was up to her to verify it with the Canada Border Services Agency (the CBSA).

[23] With respect, I consider that the decision of the Citizenship Judge, in light of the evidence submitted by the applicant, falls within the possible and reasonable outcomes.

[24] First, the Citizenship Judge did not reject the applicant's passport. She indicated in her decision that, in her view, passports do not constitute irrefutable evidence of presence in Canada. Her finding in this regard was based on the existence of possible subterfuges to circumvent stamping, including the use of passes that allow simplified customs clearance and the problem caused by candidates who use more than one travel document. She stated in the decision that she had informed the applicant of her position with respect to passports and had asked her at the end of the hearing if she wanted to add information to her file.

[25] A passport is certainly a document that contains pertinent information for the purposes of analyzing a person's application for citizenship. Moreover, it was at the request of the citizenship officer that the applicant submitted a copy of her Lebanese passport. However, I find that it was not unreasonable to conclude that a passport does not constitute a document that irrefutably attests to a person's presence in Canada. The reasons given by the judge as the basis for her conclusion are not far-fetched and can be justified in light of the evidence. The evidence shows that Canada does not routinely stamp passports. The *Citizenship Policy Manual CP-5* deals with

stamping and with monitoring entries into and exits from the country at p 20 (p 27 of the respondent's file) and contains the following statement:

> Note: Since not all countries, including Canada, routinely stamp passports at entry, a lack of entry stamps is not always indicative that no absences have occurred.

[26] The evidence also shows that Canada does not monitor exits from the country.

[27] In view of the evidence, it was therefore reasonable to find that a passport does not constitute irrefutable confirmation of its holder's physical presence in Canada. As for the applicant's argument that the Citizenship Judge should have verified the information with the CBSA, I would just like to point out that the onus is on the applicant to submit sufficient and satisfactory evidence of her presence in Canada.

[28] With respect to the *Saad* case cited above, which the applicant relied on, the context that led to the Court's judgment was completely different and Judge Gagné's comments cannot be transposed to this case. First, in *Saad*, the Citizenship Judge did not reject the application for citizenship on the basis that she was assigning no probative value to the information in the applicant's passport. Second, the Court intervened because the Citizenship Judge had applied two different residency obligation tests at the same time.

[29] Third, it was the respondent, and not the Citizenship Judge, who, during the hearing before the Court, had raised the possibility that the applicant's absences were, in fact, more numerous than those indicated in her passport because she could have left the country without her passport being stamped on her exit from or return to Canada. Moreover, this allegation by the

respondent was not supported by any evidence. Judge Gagné found that the respondent's argument was speculative and noted that the respondent could have checked with the CBSA whether the applicant's entries and exits matched the information in her passport. I understand that in this context Judge Gagné could have found that the allegation was speculative.

[30] In this case, the judge found that the passports do not constitute irrefutable evidence of entries into and exits from the country. Her finding is articulated and reasonably supported by the evidence. In addition, the judge advised the applicant of her position with respect to the probative value of the passports and, at the end of the hearing, the judge offered her the possibility of adding information to her file, an offer that she did not pursue.

[31] With respect to the conclusions of the judge relating to the applicant's credibility, I find that they are reasonable with respect to the evidence. The applicant's statements, regarding the work that she performed in her spouse's company, changed over time. In addition, the memory lapses and the total lack of documents relating to the French courses that the applicant allegedly took, are surprising, to say the least, especially since she had to know that this information could be relevant in establishing her presence in Canada.

[32] With regard to the other elements and documents submitted by the applicant, I am of the view that it was reasonable to find that they were insufficient to establish her presence. The residence questionnaire that the applicant completed provides a significant number of examples of documents that may be submitted (p 47 of the respondent's record) but the applicant did not file a sufficient number of documents to show her physical presence in Canada.

[33] Regarding the identification documents, I agree with the respondent: they are passive evidence of residence, but do not establish the applicant's physical presence.

[34] With respect to the judge's reasons, I find that they explain the reasoning on which the judge based her conclusion, which falls within the range of possible, acceptable outcomes having regard to the evidence.

[35] The appeal is therefore dismissed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the appeal is dismissed. No costs.

"Marie-Josée Bédard"
Judge

Certified true translation
Catherine Jones, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-494-14 |
| **STYLE OF CAUSE:** | LILIANE BALLOUT v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | SEPTEMBER 9, 2014 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | BÉDARD J. |
| **DATED:** | OCTOBER 15, 2014 |

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| Soury Phommachakr | FOR THE RESPONDENT |

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