

Federal Court



Cour fédérale

Date: 20150224

Docket: T-1591-14

Citation: 2015 FC 239

Vancouver, British Columbia, February 24, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

FATEMEH ESKANDARI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] These are the reasons why I indicated to the parties at the close of the oral hearing of this appeal that it had to be dismissed.

[2] This is an appeal of a decision of a citizenship judge who determined that Ms. Eskandari failed to meet the knowledge requirement under paragraph 5(1)(e) of the *Citizenship Act*, RSC 1985 c C-29, and who further determined that he would not make a recommendation to the

Minister under the Act to waive on compassionate grounds the knowledge requirement that was not met.

[3] Ms. Eskandari, her husband, and two daughters became permanent residents of Canada in July 2006. In February of 2010, Ms. Eskandari submitted an application for Canadian citizenship. She wrote and failed a citizenship test on April 28, 2011.

[4] Ms. Eskandari was sent a Notice to Appear for an oral hearing before a citizenship judge on August 2, 2012, but it was returned as she had a change in address. On May 21, 2014, she did appear before a citizenship judge and she was again tested for her knowledge of Canada and scored 10 out of 20, whereas a passing mark is 15 out of 20.

[5] The citizenship judge decided not to exercise his discretion on compassionate grounds under subsections 5(3) or (4) of the Act, finding that Ms. Eskandari had not presented evidence of special or unusual hardship or services of an exceptional value to Canada. It is this aspect of the decision that is under appeal.

[6] Ms. Eskandari submitted to the court that there were a number of factors that prevented her from doing well on the test. These include that she has exam phobia and that her mother had a stroke one week prior to her appearance before the citizenship judge. She also submits that she is suffering from some physical and mental health problems. She says that these factors weigh in favour of granting her citizenship.

[7] The legal framework for citizenship appeals was recently described by Justice Manson in *Desai v Canada (Minister of Citizenship and Immigration)*, 2013 FC 194 at paragraphs 7-9:

The applicable standard of review for a decision of a Citizenship Judge, including discretionary determinations is reasonableness (*Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 874 at paras 10-11; *Amoah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 775 at para 14).

Citizenship appeals are not trials de novo and are to be based on the record before the Citizenship Judge (*Lama v Canada (Minister of Citizenship and Immigration)*, 2005 FC 461 at para 21; *Hassan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 755 at para 10).

Therefore, the Court will only intervene where there is a lack of justification, transparency and intelligibility or an unacceptable outcome in light of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[8] The suggestion that the results may have been adversely affected because of the various circumstances Ms. Eskandari now raises were not known to the citizenship judge. Accordingly, they could not have been taken into account when he was administering the test.

[9] Similarly, these claims and her history with her family members, all of whom are now Canadian citizens, were also not before the judge as a basis upon which he might exercise his discretion to grant citizenship on compassionate grounds. Accordingly, the citizenship judge reasonably found that there were no special circumstances to waive the knowledge requirement.

[10] For these reasons, this appeal must be dismissed. Ms. Eskandari is free to reapply for citizenship. The court hopes that she does and that she makes known in her application all of the information disclosed to the court in this appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this appeal is dismissed, without costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1591-14

STYLE OF CAUSE: FATEMEH ESKANDARI v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 23, 2015

JUDGMENT AND REASONS: ZINN J.

DATED: FEBRUARY 24, 2015

APPEARANCES:

Fatemeh Eskandari

APPLICANT
ON OWN BEHALF

Krysta Cochrane

FOR THE RESPONDENT

SOLICITORS OF RECORD:

- Nil -

APPLICANT
SELF REPRESENTED

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FOR THE RESPONDENT