Federal Court  Cour fédérale

Date: 20150601

Docket: T-2409-14

Citation: 2015 FC 699

Vancouver, British Columbia, June 1, 2015

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

CHLOE DANIELLE PATMORE

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review under s. 22(1) of the Citizenship Act, RS 1985, c C-29, of a decision by a Citizenship Judge, dated October 24, 2014, approving the Respondent's citizenship application. The Applicant challenges the Citizenship judge's decision essentially on the basis that he erred in finding that the Respondent had established residence in Canada after an initial stay of six days.

[2] Having carefully considered the record and the submissions (written and oral) of the parties, I have come to the conclusion that this application must be dismissed.

Facts

[3] The Respondent is a citizen of the United Kingdom (UK). She was landed as a permanent resident of Canada, along with her family, on January 2, 2008; she was then 17 years of age. She left Canada six days later to complete her final semester of high school in France. The rest of her family remained at their new home in Victoria, British Columbia.

[4] After graduating from high school, the Respondent completed a dual law degree (English and French law) at University College in London (England) and at Université Paris II in Paris (France) from September 2008 to June 2012. During the 2012-2013 academic year, she completed the Legal Practice Course in London.

[5] Throughout those years, the Respondent returned to Canada for short visits. The total number of days of physical presence in Canada during the relevant period (March 10, 2008 – March 10, 2012) is not entirely clear, although the differences are not significant for the purpose of this application. In her Application for Canadian citizenship, the Respondent listed 10 absences for a total number of 1178 days of absence, whereas in the Residence Questionnaire completed in July 2012, she listed 11 absences totaling 1202 days of absence. Upon review of her application, a citizenship officer revised the calculation to 1183 days of absence resulting in 277 days of physical presence and a shortfall of 818 days of the legislated requirement of 1095 days.

[6] During her summer vacation in 2008, the Respondent came to Canada for one month before beginning university in London. She declared that she worked at Tim Hortons during this period. During her 2009 summer vacation, the Respondent came to Canada for 24 days. She again claimed that she worked for Tim Hortons during this period. In summer 2010, the Respondent returned to Canada from May 30 until September 2010 and claims that she worked at a dress shop. In summer 2011, the Respondent came to Canada for a 17 day period, during which she states that she worked for Cascade Painting (her father's business).

[7] On March 10, 2012, while residing in the United Kingdom, the Respondent completed an application for Canadian citizenship.

[8] During her summer 2012 vacation, the Respondent returned to Canada in May 2012 and volunteered at a law firm in Victoria, British Columbia, for a period of four weeks in June and July of 2012.

[9] From the information on the record, it is not clear when the Respondent returned to Canada or for how long she remained in Canada after completing the Legal Practice course in 2013, although she attended an interview with a citizenship judge in July 2013. She later attended a further interview with the citizenship judge who wrote the impugned decision on October 24, 2014.

The Citizenship Judge's decision

[10] In a decision dated October 24, 2014, the Citizenship judge approved the Respondent's application for Canadian citizenship. He applied the residency test set out in *Re Papadogiorgakis*, [1978] FCJ No 31, [1978] 2 FC 208 [*Re Papadogiorgakis*], and made the following findings:

- During the material time, the Respondent centralized her mode of living as a minor child living with her family in their home in Victoria, BC. Although she was in Canada for less than a week after first arriving in Canada before she returned to France to complete her secondary education, "in no way could her initial time in Canada or subsequent periods be called a 'stay' or a 'visit'";
- Her absences from Canada were for the temporary purpose of pursuing her studies and did not break the continuity of her maintaining or centralizing her ordinary mode of living with her family in Canada;
- She returned home at frequent intervals at Christmas and on summer holidays;
- She was engaged in Canadian society during those brief periods through employment (including part-time work at Tim Hortons, at a clothing shop, and as painter for her father's business) or social and charitable activity;
- She left the bulk of her belongings at her parents' house in Victoria and was totally dependent on her parents for the entire period;
- The Respondent completed her studies in June 2013 and obtained law degrees from the UK and France;
- In July 2013, the Respondent informed a citizenship judge that she intended to remain in Canada and wished to get accredited as a lawyer;
- The Respondent must be a Canadian citizen in order to practice law in Canada.

Issues

[11] The only substantive issue to be determined in this application is whether the Citizenship judge erred in his interpretation of the residence requirement under the *Citizenship Act*, and more particularly in finding that the Respondent had initially established residency in Canada before returning to France to pursue her studies a mere six days after being landed in Canada.

Analysis

[12] Subsection 5(1)(c) of the *Citizenship Act* sets out three criteria that an applicant must satisfy to be granted citizenship:

(a) Lawful admission to Canada as a permanent resident;

(b) Retention of permanent resident status; and

(c) The accumulation of at least three years of residence in Canada, within the four years immediately preceding the date of the application, as calculated under the prescribed formula set out under the paragraph.

[13] The third criterion, namely "residence", is the issue in this Application. "Residence" is not specifically defined under s 2(1) of the *Citizenship Act*. As a result, three tests have emerged in the jurisprudence of this Court in order to determine whether an applicant has satisfied the residency requirement. I recently summarized these tests in *Boland v The Minister of Citizenship and Immigration*, 2015 FC 376:

> [14] In *Re Papadogiorgakis*, [1978] 2 FC 208, the Court created a test that requires a citizenship judge to assess the quality of the applicant's attachment to Canada (the so-called "centralized mode of living test"). The applicant's absences from Canada during the relevant period can be counted towards satisfying the residence requirement where such absences are for a temporary purpose and the applicant demonstrates an intention to establish a permanent home in Canada.

> [15] The Court articulated a second test in *Re Pourghasemi* that requires the citizenship judge to determine whether the applicant has been physically present in Canada for at least 1095 days during the relevant period. According to this test, physical presence in Canada is essential to satisfy the residency requirement.
>
> [16]A third test was developed in *Re Koo*, 1992 CanLII 2417 (FC), [1993] 1 FC 286 [*Koo*], drawing on the elements of the other two approaches. The *Koo* test requires the citizenship judge to determine whether Canada is the place where the applicant "regularly, normally or customarily lives" or has "centralized his or her mode of existence" by examining six factors to guide the assessment.

[14] Counsel for the Applicant did not dispute that the Citizenship judge could apply either one of these tests, and did not submit that his choice of the "centralized mode of living" test was in error. The argument, rather, is that the Citizenship judge misapplied the chosen test and did not properly assess the evidence before him. Despite counsel's submissions to the contrary, this is clearly an issue of mixed fact and law, and citizenship judges are owed a degree of deference on such issues by reason of their special knowledge and expertise in these matters. Indeed, I would come to the same conclusion even if a discrete legal issue relating to the interpretation of one of the tests or, for that matter, the selection of the proper test, was the issue, for the reasons given by the Chief Justice in *Huang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 576 (at para 13). These are matters that go to the interpretation of the "home statute" of citizenship judges, and the Supreme Court has made it clear in a number of recent decisions that such matters are reviewable on a standard of reasonableness: see, for example, *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61; *Agraira v Canada (Minister of Public Safety and Emergency Preparedness*), 2013 SCC 36; *Smith v Alliance Pipeline Ltd.*, 2011 SCC 7; *McLean v British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 SCR 895; *Canadian Artists' Representation v National*

Gallery of Canada, 2014 SCC 42, [2014] 2 SCR 197; *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner),* 2014 SCC 31, [2014] 1 SCR 674.

[15] The Applicant argues that the Citizenship judge erred in finding that the Respondent had initially established residency in Canada after a mere six day stay before returning to France and failed to provide any reasons or analysis as to how the Respondent had established residence in less than one week. The Applicant further argues that the Citizenship judge misapplied the test articulated in *Re Papadogiorgakis* and erred in finding that the Respondent had met the residence requirement based on her commitment to return to Canada at every opportunity, her dependency on her parents and her intention to reside in Canada.

[16] I agree with the Applicant that in order to meet the residence requirements under s. 5(1)(c) of the *Citizenship Act*, an applicant must first show by objective facts that they have initially established a residence in Canada. As noted by Madame Justice Layden-Stevenson in *Ahmed v Canada (Minister of Citizenship and Immigration),* [2002] FCJ No 1415 (at paras 4-5), the issue regarding the divergence of opinion in the Federal Court jurisprudence is not relevant to the issue of whether an Applicant has established a residence in Canada, but whether or not it has been maintained (see also: *Canada (Minister of Citizenship and Immigration) v Takla*, 2009 FC 1120, at para 50; *Canada (Minister of Citizenship and Immigration) v Camorlinga-Posch,* 2009 FC 613, at para 18; *Jreige v Canada (Minister of Citizenship and Immigration),* [1999] FCJ No 1469 (QL)(TD), at paras 23-25; *Canada (Minister of Citizenship and Immigration) v Naveen*, 2013 FC 972, at para 15 [*Naveen*]).

[17] That being said, and with all due respect, I disagree with counsel for the Applicant that the Citizenship judge did not provide any reasons for his finding as to how the Respondent had initially established residence. While his reasons could have been more explicit, the Citizenship judge found that the Respondent had centralized her mode of living in Canada even though she departed from Canada a mere six days after having initially established residency in Canada for a number of reasons:

> She was a minor child both on her arrival in Canada, and on her departure to resume her studies. She had been living with her parents previously and only returned to France because she was pursuing her studies there;
>
> Her absences were temporary;
>
> She kept all her goods in the family home she moved into as a minor child, and took with her out of Canada only those goods she absolutely required;
>
> She returned to Canada during each break, even if not for the entire period of those breaks. While in Canada she resumed living with her family in the family home, she took part-time employment both in and out of the family business, she volunteered for a charity, she took recreational trips in Canada, she attended family events, she obtained a British Columbia Driver's license, and she sought direction from the Federation of Law Societies of Canada to receive credit for her education. On that last point, it is agreed between the parties that the Citizenship judge erred in holding that the Respondent needed to become a Canadian citizen in order to practice law in Canada: see *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143.

[18] There is a long line of cases from this Court suggesting that the period of time an applicant spends in a foreign country to pursue studies should qualify as residency in Canada even if they have left the country shortly after having initially established residency: see, for example, *Ng v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 55; *Re Chan*, [1997] FCJ No 1457; *Canada (Minister of Citizenship and Immigration) v Luk*, [1998] FCJ No

1661; *Canada (Minister of Citizenship and Immigration) v Yeung*, [1999] FCJ No 615; *Canada (Minister of Citizenship and Immigration) v Wong*, [1999] FCJ No 620; *Re Chung*, [1997] FCJ No 732; *Re Hsu*, [1998] FCJ No 1660; *Re Wong*, [1998] FCJ No 1; *Re Cheung*, [1990] FCJ No 11; *Re Khoury*, [1995] FCJ No 1518.

[19] In oral and written submissions, counsel for the Applicant placed much reliance on the decision of my colleague in *Naveen, supra*. As in this case, Ms Naveen had spent only a few days (four) in Canada before leaving to pursue her educational degree abroad, and she had spent a total of either 143 or 159 days in Canada during the relevant period. As in the case at bar, the Citizenship judge had applied the *Papadogiorgakis* test to find that Ms Naveen had centralized her mode of living in Canada.

[20] In that case, Mr Justice Annis acknowledged that the courts have minimized the importance of physical presence in Canada in student cases and have treated an inferred intention to return to Canada as the most salient factor. In other words, the dependency of the student on the family will be a key factor in assessing the implied intention to return to Canada. As he stated:

> In effect, these decisions piggyback the students' residency on that of their families. So long as there is a strong family nexus and a state of dependency of the student, the requirements of section 5(1)(c) are considered to have been met.
>
> *Naveen*, at para 17.

[21] Contrary to the situation in *Naveen*, the evidence here could reasonably be found to be sufficient to establish this strong family nexus and a state of dependency. Ms Naveen was 23

years old when she became a permanent resident in Canada, she had left home at 19 to study in California until graduating in 2005, and then went to Harvard Medical School. She had never worked in Canada but did work in the United States as a college residence advisor, a teaching assistant and a research mentor. Moreover, there was no evidence showing that the Respondent was dependent on her parents to subsidise her education.

[22] It is readily apparent that the situation is quite different in the case at bar. The Respondent was a minor when she and her parents arrived in Canada, and as such she was presumably more dependent on her parents than a young adult who has left home three years before her parents arrived in Canada. With regard to the Respondent's financial dependence on her parents, the Applicant contends that there was no documentary evidence before the Citizenship judge that the Respondent was financially dependent on her parents. Yet, both a letter from the Respondent's parents dated March 22, 2012 and the Respondent's citizenship application confirmed that she was supported by her parents throughout her education. In my view, it was not unreasonable for the Citizenship judge to accept that the Respondent, as a young university student living in London, was dependent on her parents without requiring further corroborating evidence. Notably, her parents in their letter offered to provide additional bank statements to prove her dependence if required.

[23] With respect to the failure of the Respondent to return home at every available opportunity, the evidence before the Citizenship judge indicates that she did so with some regularity at least twice annually. Again, this is quite different from the situation in *Naveen*,

where the Respondent apparently repeatedly failed to return to Canada when opportunities availed themselves.

[24] In short, the Citizenship judge had the opportunity to interview the Respondent and to assess her commitment to Canada. He came to the conclusion that she had centralized her mode of living in Canada, that her initial establishment and her subsequent visits could not properly be referred to as "visits or stay", and that she was significantly engaged with Canadian society when in Canada to the extent her studies permitted. The issue for the Court is not whether it would have come to the same conclusion, but whether the Citizenship judge could reasonably come to his conclusion on the basis of the record that was before him. I believe he could. While his reasons could perhaps have been more articulate, it cannot be said that they lack intelligibility or that they are not supported by the evidence. As such, they are defensible and meet the standard of reasonableness.

Conclusion

[25] For all of the foregoing reasons, this application for judicial review is dismissed, without costs.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, without costs.

"Yves de Montigny"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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