Federal Court  Cour fédérale

Date: 20151127

Docket: T-788-15

Citation: 2015 FC 1328

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 27, 2015

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

LINA KETTANI

Respondent

JUDGMENT AND REASONS

I. Nature of the case

[1] This is an application for judicial review pursuant to section 22.1 of the *Citizenship Act*, RSC, 1985, c C-29 [the Act], of a decision dated April 14, 2015, by which a citizenship judge approved the citizenship application of Lina Kettani [Ms. Kettani].

[2] The Minister of Citizenship and Immigration [the Minister] submits that the citizenship judge's decision is unreasonable and that this Court's intervention is warranted. For the reasons that follow, I am of the opinion that the application for judicial review should be dismissed.

II. Background and alleged facts

[3] Ms. Kettani was born on December 13, 1983, in Casablanca, Morocco, and arrived in Canada as a permanent resident on September 10, 2006. Before settling in Canada, Ms. Kettani studied in the United States and continued her studies at Concordia University, in Montréal, from September 2006 to May 2007. After completing her studies, she worked several jobs on a casual basis and did volunteer work for organizations. Since her arrival in Canada, she has travelled outside Canada on a number of occasions since March 2011.

[4] On March 3, 2011, Ms. Kettani applied for citizenship. Her reference period is from March 3, 2007, to March 3, 2011. In her application for citizenship, she provides information regarding the number of days she was outside Canada during the reference period. On August 14, 2013, Ms. Kettani received a residence questionnaire. This questionnaire was sent to her because there was little supporting evidence in her file and certain points needed to be clarified. On March 11, 2014, she was asked to take the citizenship test and to report for an interview with a citizenship officer. Her file was referred to a citizenship judge, and a hearing was held on April 14, 2015.

III. Impugned decision

[5] On the same day as the hearing, April 14, 2015, the citizenship judge approved Ms. Kettani's application for citizenship. The citizenship judge found that, on a balance of probabilities, Ms. Kettani met the residency requirement under paragraph 5(1)(*c*) of the Act. The citizenship judge stated that she had based her findings on the physical presence test for residency as laid down by Justice Muldoon in *Pourghasemi (Re)*, [1993] FCJ No 232, 62 FTR 122 [*Pourghasemi*]. The citizenship judge found that Ms. Kettani was in Canada during the periods she claimed to be here. The citizenship judge had no doubts as to Ms. Kettani's credibility or her good faith. The judge stated that Ms. Kettani gave clear and honest answers at all times at the hearing.

[6] In her analysis, the citizenship judge addressed the six concerns raised by the citizenship officer in the Template and made the following findings:

1. [TRANSLATION] "Three Canadian entry stamps are missing for trips reported by the applicant". For Ms. Kettani's first trip, the citizenship judge did not question her statement and stated that it was not unusual for passports not to be stamped by Canadian customs when people return from the United States by land. For the second trip, the citizenship judge assumed that Ms. Kettani returned to Canada on the stated date because there was a Moroccan exit stamp and no other stamp that indicated an entry in any other country. For the third trip, she consulted the travel history provided by the Canada Border Services Agency, which confirmed Ms. Kettani's entry to Canada.

2. [TRANSLATION] "Visas were issued in Casablanca on two occasions, when the applicant claimed to be in Morocco". The citizenship judge simply remarked that this was not a matter of concern, given that Casablanca is in Morocco.

3. [TRANSLATION] "A home address in the name of the applicant's father, located at 1155 Sherbrooke Street, #815, in Montréal, was not mentioned in the documents". The citizenship judge found that Ms. Kettani had not mentioned this address because it was a former address where her father had lived until the lease expired in August 2006, before Ms. Kettani even arrived in Canada.

4. [TRANSLATION] "There are errors in the address of the condo located at 1445 Stanley, and a change of apartment is not mentioned". The citizenship judge was satisfied with Ms. Kettani's statement that she simply made a typing error in the first application (entering 1145 instead of 1445). The citizenship judge was also satisfied with Ms. Kettani's explanations to the effect that she did not mention the change of apartment because the family kept the same address and only changed units.

5. [TRANSLATION] "Transactions were using the applicant's personal account when the applicant reported being abroad, and there are no transactions from July 2007 to January 2008. Furthermore, there are no transactions related to rent or mortgage payments". Ms. Kettani affirmed before the citizenship judge that she did not travel with her debit card and that any purchases made during her absence had surely been made by her brother, given that they were minor purchases. The citizenship judge also noted that there were no transactions from July 2007 to January 2008 because Ms. Kettani was outside Canada during that period. Finally, regarding the lack of

transactions related to rent or mortgage payments, the citizenship judge stated that Ms. Kettani lived with her parents, who paid the rent, and then bought a condominium outright, without having to pay a mortgage.

6. [TRANSLATION] "The documents on file are for the most part passive indicators". After tallying the dates and carefully analyzing the documents, the citizenship judge simply concluded that, on a balance of probabilities, Ms. Kettani was indeed in Canada during the periods she claimed to be here.

IV. Issue

[7] The issue is whether the citizenship judge's decision that Ms. Kettani passed the physical presence test is reasonable.

V. Standard of review

[8] The parties agree on the standard of review applicable to the decision of a citizenship judge regarding residence requirements. The reasonableness standard should therefore be used, given that the task at hand is to apply the residence test to the particular facts of the case and that such an analysis involves questions of fact and of law (*Canada (Minister of Citizenship and Immigration) v Matar*, 2015 FC 669, [2015] FCJ No 683 at para 10; *Kohestani v Canada (Minister of Citizenship and Immigration)*, 2012 FC 373, [2012] FCJ No 443 at para 12). An impugned decision is reasonable if it contains sufficient reasons to allow the Court to understand the decision-making process that was used (*Newfoundland and Labrador Nurses' Union v*

Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708 at para 16 [*Newfoundland Nurses'*]) and whether the decision falls within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

VI. Statutory provision

[9] Under paragraph 5(1)(*c*) of the Act (reproduced in Appendix A), as it read at the time of the judicial review, a person applying for citizenship must prove that he or she resided in Canada for at least three of the four years that preceded the date of his or her application, that is, for 1,095 days.

VII. Analysis

[10] This Court has established that the concept of residence can be interpreted in three different ways: actual, physical presence in Canada, calculated on the basis of a strict counting of days; the maintenance of a strong attachment to Canada (a less stringent approach); or the place where one regularly lives or has centralized his or her mode of existence (*Mizani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 698, [2007] FCJ No 947 at para 10 [*Mizani*]). The first is a physical test, while the others are qualitative tests (*Canada (Minister of Citizenship and Immigration) v Nandre*, 2003 FCT 650, [2003] FCJ No 841 at para 11). A citizenship judge is thus free to adopt any of these tests in his or her analysis (*Mizani*, above at para 12). The case law also establishes that a citizenship judge cannot blend these tests when analyzing an application (*Ukaobasi v Canada (Minister of Citizenship and Immigration)*, 2015

FC 561, [2015] FCJ No 541 at para 13; *Canada (Minister of Citizenship and Immigration) v Demurova*, 2015 FC 872, [2015] FCJ No 1209 at para 24).

[11] The Minister argues that, in light of certain concerns, the citizenship judge should have required additional documentation instead of accepting Ms. Kettani's verbal statements. However, I note that a citizenship application does not require that all the evidence be corroborated (*Canada (Minister of Citizenship and Immigration) v El Boussergh*ini, 2012 FC 88, [2012] FCJ No 106 at para 19 [*El Boussergh*ini]; *Canada (Minister of Citizenship and Immigration) v Pereira*, 2014 FC 574, [2014] FCJ No 604 at para 22 [*Pereira*]; *Canada (Minister of Citizenship and Immigration) v Lee*, 2013 FC 270, [2013] FCJ No 311 at para 38 [*Lee*]).

[12] In this case, the citizenship judge clearly indicated that the test she applied to the facts was actual, physical presence in Canada, the test developed by this Court in *Pourghasemi*, above. Ms. Kettani had to show, on a balance of probabilities, that she satisfied the physical presence requirement (*Taleb v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1147, [2015] FCJ No 1181 at para 18 [*Taleb*]). Accordingly, it is inappropriate to impose on Ms. Kettani an additional burden of a qualitative test. Bearing in mind that Ms. Kettani provided the required documents and answered the citizenship judge's questions to her satisfaction, the judge's analysis fell within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47), so the intervention of this Court is unwarranted in this regard.

[13] When a citizenship judge analyzes an application for citizenship, he or she must bear in mind that Canadian citizenship is a privilege that ought not to be granted lightly (*Canada (Minister of Citizenship and Immigration) v Dhaliwal*, 2008 FC 797, [2008] FCJ No 994 at para 26). Before allowing a citizenship application, the citizenship judge must be satisfied that the applicant has established, through sufficient, consistent and credible evidence, that he or she meets the various statutory requirements (*Pereira*, above at para 21). To do so, the citizenship judge must determine whether the requirements have been met on a balance of probabilities (*Pereira*, above at para 21; *El Bousserghini*, above at para 19). This required standard of proof thus allows citizenship judges to assess the facts and evidence in a given context, as well as the applicant's credibility. Credibility issues are owed a significant degree of deference, as the citizenship judge is best placed to assess the facts of the case at the hearing (*Aguebor v Canada (Minister of Employment Immigration)*, [1993] FCJ No 732, 160 NR 315 at para 4; *Canada (Minister of Citizenship and Immigration) v Vijayan*, 2015 FC 289, [2015] FCJ No 263 at para 64). This Court cannot substitute its own views on how the evidence should be weighed or assessed by the citizenship judge, and it cannot reassess the evidence that was presented (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113, [2014] FCJ No 472 at para 99; *Canada (Minister of Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020, [2015] FCJ No 1017 at para 16; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 61). I am of the opinion that the citizenship judge, having considered the evidence and Ms. Kettani's verbal answers, rendered a decision meeting the standard of reasonableness as set out in *Dunsmuir*, above.

[14] Furthermore, I am of the opinion that the citizenship judge in this case did indeed take note of the concerns raised by the citizenship officer. Although the citizenship judge did not "hypercritically" examine all the arguments raised (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35 at para 16), her reasons are sufficient to allow the Court to understand the reasoning process undertaken (*Newfoundland Nurses'*, above at para 16; *Lee*, above at para 37). In this case, the reasons clearly show that the citizenship judge addressed any significant inconsistencies and gaps with Ms. Kettani at the hearing, which is entirely normal and is even part of a citizenship judge's duty of procedural fairness (*Taleb*, above at paras 17, 21). Her reasons make it clear that she received answers to her questions, and her conclusions are justified, transparent and intelligible (*Dunsmuir*, above at para 47).

VIII. Conclusion

[15] To sum up, the citizenship judge's reasons, as a whole, allow me to understand her reasoning and the factors that persuaded her that Ms. Kettani was in Canada for the days declared. Furthermore, I find that her decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. This Court's intervention is therefore not required.

JUDGMENT

THE COURT:

DISMISSES the application for judicial review without costs, and no question is certified.

"B. Richard Bell"
Judge

Certified true translation
Michael Palles

APPENDIX A

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 :
…	…
(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 residence;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;
…	…

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Andrea Shahin	FOR THE APPLICANT
Julius H. Grey Comelia Zvezdin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE APPLICANT
Julius H. Grey Comelia Zvezdin Grey Casgrain, s.e.n.c. Montréal, Quebec	FOR THE RESPONDENT