

Federal Court



Cour fédérale

Date: 20170112

Docket: T-782-16

Citation: 2017 FC 39

Ottawa, Ontario, January 12, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SAMAR EL SAYED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of a decision by an officer [the Officer] of Citizenship and Immigration Canada holding the position Citizenship Supervisor, dated April 21, 2016, refusing the Applicant's application for Canadian citizenship and imposing a prohibition period during which any subsequent application for citizenship she submits within five years will be refused,

based on the Officer's determination that the Applicant misrepresented material facts in relation to her citizenship application.

[2] As explained in greater detail below, this application is dismissed.

II. Background

[3] The Applicant, Ms. Samar El Sayed, is an Egyptian citizen. She arrived in Canada on December 4, 2001 as a permanent resident and applied for Canadian citizenship on June 15, 2013. As such, the relevant period for assessing the number of days she was resident in Canada was from June 15, 2009 to June 14, 2013. Ms. El Sayed declared 1422 days of physical presence in Canada and 38 days of absence during that period. On her application, she declared that she was a housewife and left her education and employment histories blank.

[4] The Officer subsequently sent a fairness letter to Ms. El Sayed, alleging misrepresentation in her application and giving her thirty days to respond, following which she attended an oral hearing with the Officer on February 10, 2016. The Officer advised the Applicant of a LinkedIn account bearing the name "Samar Hegazy", a name which Ms. El Sayed indicated on her application she sometimes uses. The LinkedIn account contained information, including education and employment history which appeared to contradict information in Ms. El Sayed's application and her claim of residency in Canada. She was given an opportunity to provide additional documentation to support her claim and refute the allegations of misrepresentation. Ms. El Sayed provided further submissions on April 12, 2016.

[5] On April 21, 2016, the Officer issued the decision that is the subject of this judicial review, refusing Ms. El Sayed's citizenship application and imposing the prohibition period against future applications.

[6] In the reasons for his decision, the Officer noted that the LinkedIn account indicates employment in the banking industry outside of Canada during the relevant period, specifically with Mashreq Bank, United Arab Emirates [UAE], as Head of Business Strategy Planning & Development, Private Banking, from April 2007 to August 2009; Vice President Private Banking, Middle East & North Africa, with Arner Bank from February 2010 to July 2011; and presently Executive Director, Private Banking, Middle East & Africa, with UBP. The Officer noted that Ms. El Sayed refuted the evidence of the LinkedIn account, indicating that she did not create it, nor was the information accurate. However, the Officer observed that Ms. El Sayed did not refute the education history listed on the LinkedIn account and stated that she did attend Cairo University. He also noted that, when Ms. El Sayed initially applied for permanent residence in Canada, she listed her occupation as a banker, which accords with the employment listed on the LinkedIn account. Although Ms. El Sayed claimed the account belongs to another person named Samar Hegazy, the Officer observed that she stated in her citizenship application that she also goes by the name Samar Hegazy.

[7] The Officer considered the documentary evidence Ms. El Sayed provided to refute the allegations of misrepresentation. She provided a letter from the Human Resources department of Mashreq Bank in Dubai, UAE, dated March 16, 2016, stating that she was not employed with their company. However, the Officer found several discrepancies in this letter, leading to the

conclusion that this document was not credible: it contained a misspelling of the Applicant's name, it bore no name of an employee associated with the Human Resources department; the company logo on the letterhead did not match that on the company website, and it included phone and fax numbers and an address that did not match those on the website. The letter also did not address whether the bank had employed a "Samar Hegazy", referring only to having no employee by the name of "Samar Elsayed". The Officer therefore rejected this evidence and found on a balance of probabilities that Ms. El Sayed was in fact employed with Mashreq Bank until at least August 2009, thus misrepresenting herself in the citizenship process by failing to truthfully declare her work history and absences from Canada.

[8] With respect to the other two banks, both based in Switzerland, Ms. El Sayed was unable to obtain written evidence. She instead submitted a statutory declaration, in which she attested that she was not employed with either bank and that each of the banks had confirmed to her verbally that it had no record of an employee with the name Samar El Sayed. The Officer rejected this evidence in light of an article entitled "Gulf Women – A Growing Segment", which includes a photo of Ms. El Sayed. The Officer showed this article to Ms. El Sayed at the oral hearing and noted in the decision that she did not refute that the article, which quoted a Samar Hegazy, used her photograph. However, Ms. El Sayed took the position that the photo could have been used without her knowledge. Based on this article, the information in the LinkedIn account, and the lack of documentary evidence, the Officer concluded on a balance of probabilities that the Applicant was employed with Aner Bank, Switzerland. In the absence of documentation from UBP, the Officer also determined on a balance of probabilities that she was

employed with them in Switzerland. As a result, the Officer again determined that the Applicant had misrepresented the information in her citizenship application.

[9] The Officer also reviewed the record of entries and exits to Egypt and the UAE provided by Ms. El Sayed, as well as an email exchange from government officials in Switzerland confirming that no such control records exist for their country. The Officer observed that the record of movement from the UAE did not cover the entire relevant period and concluded that the record of movement from UAE and Egypt was contradicted by the evidence demonstrating that Ms. El Sayed was employed in Switzerland from at least February 2010 to the end of the relevant period. The Officer also noted that, while Ms. El Sayed's passport number 4020972 was stated to have been renewed on December 20, 2008, the record of movement for her travel to the UAE indicated that she exited Dubai on December 14, 2008 and re-entered Dubai on December 22, 2008.

[10] Finally, the Officer noted that Ms. El Sayed had declared only three absences from Canada on her citizenship application and residence questionnaire, all involving travel from Canada to New York. However, the Officer found that these absences were not supported by the evidence in the passports Ms. El Sayed had provided, referring in particular to the US port of entry code in her passport as indicating that she arrived from a country other than Canada. The Officer therefore determined that Ms. El Sayed had misrepresented her declared absences in the relevant period and had possibly withheld another passport with evidence of travel during this period.

[11] The Officer was therefore satisfied on a balance of probabilities that Ms. El Sayed had misrepresented material circumstances related to a relevant matter which would induce an error in the administration of the *Citizenship Act*, RSC 1985, c C-29 and therefore refused her application under s.22(1)(e.1) and imposed a prohibition of five years pursuant to s.22(1)(e.2).

III. Issues and Standard of Review

[12] Whether a citizenship officer erred in finding that an applicant misrepresented material facts on her or his citizenship application is reviewable on a standard of reasonableness (see *Huang v Canada (Minister of Citizenship and Immigration)*, [2005] FCJ No. 1078, *Housen v Nikolaisen*, 2002 SCC 33, *Canada (Minister of Citizenship and Immigration) v Sturabotti*, 2009 FC 777).

[13] The parties' arguments raise the following issues for the Court's consideration in this application for judicial review:

- A. Is a personal affidavit by the Applicant required to support her arguments?
- B. Is the Officer's decision reasonable?

IV. Analysis

A. *Preliminary Matter*

[14] As a preliminary matter, Ms. El Sayed requests an amendment of the style of cause in this application to correct the spelling of her name to "SAMAR EL SAYED". The Respondent does not object, and the Court is prepared to grant this amendment.

B. *Is a personal affidavit by the Applicant required to support her arguments?*

[15] Relying on the decision of *Canada (HRC) v Pathak*, [1995] 2 FC 455 (CA), and Rule 12(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, the Respondent takes the position that a personal affidavit of the Applicant is necessary and that, where there is no such affidavit, and therefore no evidence based on personal knowledge, any error asserted by the Applicant must appear on the face of the record. The Respondent therefore submits the bulk of Ms. El Sayed's arguments are improper and ought not to be entertained by this Court, as they represent an attempt to offer alternate explanations for the Officer's concerns, without any supporting evidence.

[16] The affidavit filed on Ms. El Sayed's behalf was sworn by a legal assistant in the employ of her solicitors. It is restricted to attaching as exhibits copies of the documentation that formed part of the record before the Officer. I find nothing improper in Ms. El Sayed's reliance on this affidavit in her application.

[17] The Respondent's counsel explained at the hearing that the principal concern, surrounding the lack of an affidavit sworn by Ms. El Sayed, related to the Applicant advancing arguments for which there was no evidentiary support. As an example of such a concern, I note that Ms. El Sayed asserts that the Officer failed to consider that there are more than 10 LinkedIn profiles of persons with the name Samar Hegazy and whether the Applicant was one of the others. Ms. El Sayed has not referred to evidence to support the assertion that there are 10 such profiles. However, my decision on this application does not turn on this argument or on any other

argument for which there is insufficient evidentiary support. I find the record before the Court is sufficient to adjudicate this application.

C. *Is the Officer's decision reasonable?*

[18] Ms. El Sayed takes the position that the Officer's finding that the LinkedIn profile belongs to her is based on speculative conclusions and is therefore unreasonable. She argues that anyone can create a LinkedIn profile, and that there is no explanation as to why the Officer believed that this profile should carry more weight than her oral testimony. Ms. El Sayed takes particular issue with the Officer relying on unsecure information from the internet. She argues this information formed the basis for the Officer's conclusion that she worked for the foreign banks reflected in the LinkedIn profile and contributed to the Officer's analysis that the entry/exit records and passport documentation she submitted did not support her declared absences in the relevant residence period.

[19] At the hearing of this application for judicial review, Ms. El Sayed relied heavily on this Court's decision in *ITV Technologies Inc. v WIC Television Ltd.*, 2003 FC 1056 [ITV], in which Justice Tremblay-Lamer considered the reliability and admissibility of evidence obtained from the internet. Ms. El Sayed referred in particular to the following analysis at paragraphs 16 to 18 of that decision:

[16] With regard to the reliability of the Internet, I accept that in general, official web sites, which are developed and maintained by the organization itself, will provide more reliable information than unofficial web sites, which contain information about the organization but which are maintained by private persons or businesses.

[17] In my opinion, official web sites of well-known organisations can provide reliable information that would be admissible as evidence, the same way the Court can rely on Carswell or C.C.C. for the publication of Court decisions without asking for a certified copy of what is published by the editor. For example, it is evident that the official web site of the Supreme Court of Canada will provide an accurate version of the decisions of the Court.

[18] As for unofficial web sites, I accept Mr. Carroll's opinion that the reliability of the information obtained from an unofficial web site will depend on various factors which include careful assessment of its sources, independent corroboration, consideration as to whether it might have been modified from what was originally available and assessment of the objectivity of the person placing the information on-line. When these factors cannot be ascertained, little or no weight should be given to the information obtained from an unofficial web site.

[20] The decision in *ITV* was affirmed by the Federal Court of Appeal (2005 FCA 96), although, at paragraphs 29 to 31, the appellate Court expressly declined to take a position on the Federal Court's approach to internet evidence.

[21] Ms. El Sayed also referred the Court to the decision of the Saskatchewan Court of Queen's Bench in *Thorpe v Honda Canada, Inc.*, 2010 CarswellSask 78, which at paragraphs 20 to 24 described the *ITV* analysis of the reliability of internet evidence as the test to be met to make such evidence admissible in Court proceedings. In *1429539 Ontario Ltd. v Cafe Mirage Inc.*, 2011 FC 1290, at paragraph 82, Justice Mandamin declined to rely upon internet evidence in the absence of expert evidence on its reliability.

[22] Ms. El Sayed's position is that the Officer did not engage in the analysis of the factors set out in paragraph 18 of *ITV* and therefore erred in relying on the internet evidence in refusing her

citizenship application. She acknowledges that the rules of evidence are relaxed in administrative law proceedings but nevertheless argues that consideration of the *ITV* factors is required before relying on internet evidence, even if not a prerequisite to its admissibility.

[23] The Respondent notes that *ITV* and the other decisions relied on by Ms. El Sayed all involve the consideration of evidence by a court, not by an administrative decision-maker as in the case at hand. The Respondent submits that *ITV* is inapplicable to the role of an immigration officer considering a citizenship application.

[24] I agree with the Respondent's position on this issue. The formal rules of admissibility of evidence, applicable to civil proceedings, do not apply in the matter at hand, as the Courts have repeatedly held that the admissibility of evidence is relaxed in administrative proceedings (see *Gil v Canada (Minister of Citizenship and Immigration)*, 172 FTR 255, at para 12; *Ossé v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1552, at para 15). While Ms. El Sayed's arguments focused more on the reliability of evidence than on its admissibility, she has referred the Court to no authority to support her position that the analysis in *ITV* applies even in that respect to administrative proceedings.

[25] Rather, the appropriate approach to issues of the sort raised by Ms. El Sayed is explained and demonstrated by the decision in *Jahazi v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 242 [*Jahazi*], which considered an immigration officer's reliance on information obtained from the internet, including from the open source website Wikipedia. At paragraphs 56 to 61, Justice de Montigny considered the applicant's arguments that the officer had erred by

relying on information collected for intelligence purposes and information obtained from the internet, which the applicant submitted was unreliable. The Court acknowledged the reliability concerns but held that these concerns should not lead to a conclusion that the information should have been disregarded. Nor was it open to the Court to determine what weight should appropriately have been given to the evidence. Rather, the concerns about the reliability of the evidence should be factored in when assessing the reasonableness of the officer's conclusions.

[26] Adopting that approach, I am unable to conclude that the Officer's conclusions in the present case were unreasonable. I recognize that the Officer's decision was significantly influenced by the content of the LinkedIn profile in the name of Samar Hegazy, which Ms. Sayed says she did not create and is not accurate. However, the Officer afforded her an opportunity to respond to this evidence, and the information she provided all spoke to whether the three banks identified in the LinkedIn profile had a record of an employee named Samar El Sayed or Samar Elsayed. Neither the letter purportedly from Mahsreq Bank nor Ms. Sayed's statutory declaration addressed whether these banks had employed a Samar Hegazy, the name in the LinkedIn profile which had given rise to the Officer's concerns based on the Officer's observation from the Applicant's citizenship application that this was a name she used.

[27] The Officer also relied on the magazine article which reflected an interview with Samar Hegazy, deputy head of the Middle East and North Africa desk of Arner Bank, and included a photograph of Ms. El Sayed. Ms. El Sayed suggested that the photo could have been used without her knowledge, and she argues in this application that this article, like the LinkedIn profile, is unreliable internet evidence. However, given that the article appears to be a

publication of Arner Bank, this argument is less compelling than in relation to the LinkedIn profile. Given that the article corroborates the information in the LinkedIn profile, and given Ms. Sayed's failure to provide evidence addressing the employment of Samar Hegazy, I cannot find the Officer to have acted unreasonably in concluding that Ms. El Sayed had in fact been employed with the banks identified in the profile and had therefore made misrepresentations in her citizenship application.

[28] I also note that, in oral argument, Ms. El Sayed's counsel characterized the Officer's treatment of the internet evidence as a breach of procedural fairness, submitting that the Officer had an obligation to confront her not only with the internet evidence but also with corroborating or expert evidence supporting its reliability. Recognizing that such an issue would be reviewable on a standard of correctness, I nevertheless find no merit to this position. Procedural fairness was achieved by giving Ms. El Sayed an opportunity to respond to the internet evidence.

[29] My finding, that the Officer's conclusions surrounding the evidence of Ms. El Sayed's employment are reasonable, largely disposes of her arguments in relation to the entry and exit records, as she argued principally that unreasonable reliance on the internet evidence influenced the Officer's conclusions with respect to those records. She also argues that the Officer engaged in speculation in analyzing those records, in relation to the lack of US entry stamps and the US port of entry code in her passport indicating that she arrived from a country other than Canada. These arguments relate to the Officer's weighing of the evidence, which it is not the role of the Court to question. I find nothing unreasonable in this aspect of the Officer's analysis.

V. Certified Question

[30] Ms. El Sayed proposes that the Court certify the following question as a question of general importance warranting consideration by the Federal Court of Appeal:

Do the criteria for the consideration of evidence obtained from the internet, set out in *ITV Technologies Inc. v WIC Television Ltd.*, 2003 FC 1056, apply to evidence in an administrative law proceeding?

[31] The Respondent opposes certification on the basis that this is neither a question of broad significance or general application, nor would it be determinative of an appeal.

[32] My conclusion is that the issues raised by Ms. El Sayed surrounding the internet evidence involved in this case are properly characterized as related to the Officer's weighing of the evidence, which is highly specific to the facts of an individual case and to which the applicable principles, such as expressed in *Jahazi*, are well established. I find that the proposed question does not meet the test for certification, and I decline to certify this question.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause in this application is amended to correct the spelling of the Applicant's name to SAMAR EL SAYED;
2. This application for judicial review is dismissed;
3. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-782-16

STYLE OF CAUSE: SAMAR EL SAYED v THE MINISTER OF
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