

Federal Court



Cour fédérale

Date: 20170426

Docket: T-1796-15

Citation: 2017 FC 400

Ottawa, Ontario, April 26, 2017

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

MARAWAN MOHAMED MAHROUS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the third judicial review concerning three members of an Egyptian family (mother, daughter, and son). This judicial review of the decision of a citizenship judge [Decision] relates to the son, Marawan Mohamed Mahrous (for ease of reference referred to herein as Mr. Mahrous).

[2] This decision should be read in conjunction with the decisions in *Canada (Citizenship and Immigration) v Ashmawy*, 2017 FC 398 [Ashmawy] and *Canada (Citizenship and Immigration) v Mahrous*, 2017 FC 399 [Mahrous], in regard to the basic legal issues and principles applicable to these cases.

[3] The Decision at issue was rendered by a different judge than those reviewed in *Ashmawy* and *Mahrous* and it had a different format.

II. Background

[4] Mr. Mahrous claimed that his Relevant Period was January 7, 2006 to May 15, 2009 – he declared 1,214 days of presence and 10 days of absence during that period. He was 119 days over the minimum of 1,095 days of physical presence in Canada. The Citizenship Judge expanded the Relevant Period to be May 15, 2005 to May 15, 2009.

[5] It was noted that Mr. Mahrous travelled frequently prior to becoming a permanent resident on January 7, 2006, but traveled little thereafter. He claimed that he was self-employed and had a wife and a child (not included on his Residence Questionnaire [RQ] forms). He declared the same address on Hickling Crescent as his mother and sister. His father explained that it was also occupied by other unrelated individuals. He left certain questions on the RQ blank, thus indicating that he had no business either inside or outside of Canada.

[6] At Mr. Mahrous' citizenship hearing he provided documents including travel forms (ICES records) and business records including one invoice of container sales, photos of a

refrigeration unit sold, communication with a supplier, and a scene of a quarry said to be part of a new business.

[7] The Citizenship Judge addressed a number of issues raised by the Citizenship Officer:

- Mr. Mahrous outlined the nature of the business of buying used refrigeration units from Thermo King and selling them overseas. He quit the business in 2009 and went into supplying stone for finishing in Egypt. This evidence was accepted as credible.
- The Citizenship Judge also accepted that Mr. Mahrous was trading in Canada during the Relevant Period.
- The issue of the undeclared marriage was resolved by accepting that Mr. Mahrous felt he did not have to declare a religious marriage, they were not living together and his wife only came to Canada irregularly.
- The Citizenship Judge accepted Mr. Mahrous' nine-month delay in obtaining an OHIP card as due to his good health and his aversion to doctors.
- The housing issue was resolved by accepting the Respondent's father's evidence that at the Hickling Crescent address the whole family lived in the basement while the upper floors were occupied by the owners.
- The Citizenship Judge accepted Mr. Mahrous' story that his business was run "on the side" with a partner who sold the units in Egypt. The business was later incorporated.

[8] The Citizenship Judge ultimately concluded that Mr. Mahrous met the test in *Re Pourghasemi*, 62 FTR 122, 39 ACWS (3d) 251, [1993] FCJ No 232 (TD) and had demonstrated residence in Canada for the requisite number of days.

[9] There were notes of the Citizenship Judge available, but they added little to the reasoning beyond what was stated in the Decision.

III. Analysis

[10] Despite the differences between this Decision and those of the Respondent's mother and sister, the issues and standard of review – reasonableness – are the same. The focus of these Reasons is on the reasonableness of the Decision.

[11] Although the reasons in this Decision are more fulsome than those of the mother and sister, the Citizenship Judge failed to address critical issues and to explain her reasoning such that this Court might hold the Decision to be reasonable.

[12] The Court accepts, as part of the principle of deference to the trier of fact, the Citizenship Judge's acceptance of the delay in obtaining an OHIP card. However, other areas of concern cannot be swept under the credibility "rug".

[13] The Citizenship Judge failed to adequately address the important issue of the Respondent's undeclared marriage or to enquire how Mr. Mahrous could have married in the 10-day period he was out of Canada. An explanation may exist, but none seems to have been

given. Importantly, the Citizenship Judge never pursued the significance of such marriage to the matter of residence and the likelihood that the 10-day absence was the only absence from Canada.

[14] This failure to enquire into this important issue is compounded in the case of the undeclared child: there is an absence of any explanation for not declaring the child and the Citizenship Judge did not consider the potential impact a real explanation might have on the residency analysis.

[15] The Citizenship Judge also failed to assess the importance of the Cairo address on the Respondent's Egyptian passport, particularly in light of the fact that the Respondent's wife and child were apparently resident in Cairo.

[16] The Citizenship Judge seemed to equate Mr. Mahrous' business activities with proof of residency. However, as disclosed in the Certified Tribunal Record at 24-28, the various documents related to the sale of refrigeration units establish nothing in terms of residence. While the documents contain references to Egypt as the destination, the only Canadian addresses are organizations principally in Montreal while Mr. Mahrous claimed to be working in the Toronto area.

[17] Even Mr. Mahrous' banking documents, which refer to an address on Lakeshore Road (not his residence or office), raise more questions than answers.

[18] It is unreasonable to draw a conclusion of Canadian presence and/or residence from these business records.

[19] To the extent that the Citizenship Judge relied on evidence from the Respondent's father given in a separate proceeding, this was an error without at least putting the evidence to Mr. Mahrous.

[20] Mr. Mahrous, quite rightly, conceded that there were problems with the Decision, but he eloquently and forcefully argued that there was a sufficient basis to uphold the Decision.

[21] If the problems had been minor, Mr. Mahrous would be correct. However, the gaps in the Decision are significant. I am not satisfied that this Decision is reasonable in all of the circumstances.

IV. Conclusion

[22] For these reasons, the judicial review will be granted and the Decision quashed.

[23] For reasons previously given, the attempt to supplement the Record is rejected but no costs are to be awarded.

JUDGMENT in T-1796-15

THIS COURT'S JUDGMENT is that the application for judicial review is granted, and the decision of the Citizenship Judge is quashed. No costs are awarded.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1796-15

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v MARAWAN MOHAMED
MAHROUS

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