Federal Court  Cour fédérale

Date: 20170911

Docket: T-208-17

Citation: 2017 FC 821

Ottawa, Ontario, September 11, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

RABBIYA NASIR ABIDI

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated January 23, 2017, in which a citizenship judge determined the Respondent met the residence requirements of s 5(1)(c) of the *Citizenship Act*, RSC 1985, c C-29 ("*Citizenship Act*"). The Applicant, the Minister of Citizenship and Immigration Canada ("Minister"), brings this application pursuant to s 21.1(3) of the *Citizenship Act*.

[2] The Respondent is a citizen of Pakistan. She became a permanent resident of Canada on December 22, 2004, and on March 16, 2012, applied for Canadian citizenship. Accordingly, the relevant period for determining whether she met the residence requirement pursuant to s 5(1)(c) of the *Citizenship Act* was March 16, 2008 to March 16, 2012.

[3] In her citizenship application, the Respondent declared she was physically present in Canada for 1319 days during the relevant period and had five absences totaling 41 days. She submitted a Residence Questionnaire dated March 10, 2013 with supporting documentation. Initially, by way of a File Preparation and Analysis Template - Short, dated September 3, 2015, a reviewing citizenship officer concluded the Respondent met the requirements of s 5(1)(c) of the *Citizenship Act*. Subsequently, in a File Preparation and Analysis Template - Long, dated November 22, 2016, a different reviewing officer ("Citizenship Officer") concluded the Respondent was absent during the relevant residence period for 481 days and that she was present in Canada for 979 days, resulting in an undeclared shortfall of 116 days. The Citizenship Officer recommended a hearing before a Citizenship Judge to address identified residence concerns.

[4] On January 23, 2017, the Citizenship Judge determined that the Respondent provided sufficient proof to show that she had at least 1193 days of physical presence in Canada and met the physical presence requirement of s 5(1)(c) of the *Citizenship Act*.

Decision Under Review

[5] The Citizenship Judge stated that the application for citizenship was approved because the Respondent provided sufficient reliable evidence to establish, on a balance of probabilities, that she met and exceeded the physical presence requirements of s 5(1)(c) of the *Citizenship Act*.

[6] The Citizenship Judge acknowledged the concern raised by the Citizenship Officer which pertained to the Respondent's credibility, specifically, with an earlier investigation for possible misrepresentation as the Respondent had not declared a child in her immigration application, as well as the Citizenship Officer's concerns pertaining to his or her inability to verify re-entry following some of the Respondent's declared absences; that the Respondent's declared income was far less than what was expected for her work as a physician in Canada; and, that the Respondent had a lack of active indicators supporting her application. The Citizenship Judge found that the Respondent had provided sufficient proof to satisfactorily resolve these concerns.

[7] The Citizenship Judge noted the Respondent had the burden of proving, on a balance of probabilities, that she met the conditions set out in the *Citizenship Act*, in particular, the residence requirements (*Saqer v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1392 at paras 20-21) and was required to show when she was actually absent and for how long (*Pornejad v Canada (Citizenship and Immigration)*, 2014 FC 455 at para 9). Further, that a passport by itself does not constitute irrefutable evidence of physical presence in Canada (*Haddad v Canada (Citizenship and Immigration)*, 2014 FC 976 at para 26).

[8] The Citizenship Judge stated that he was conducting a three step analysis. First, determining the number of declared absences and whether the departure and return dates of those absences could be verified on a balance of probabilities. Second, determining whether there was evidence of undeclared trip(s). Third, determining on a balance of probabilities the duration of any undeclared trip(s).

[9] As to declared absences, the Respondent declared the same absences in her application form as in the Residence Questionnaire. As a result, the Citizenship Judge found the Respondent declared five trips.

[10] The Citizenship Judge found he was able to verify all five departure dates on a balance of probabilities as follows:

i. March 16, 2008 - the Citizenship Judge noted the Respondent was absent from Canada at the start of the relevant period. He therefore assigned March 16, 2008 as the departure date of the first absence;

ii. April 7, 2009 - the Respondent's passport contained an entry stamp to Pakistan for April 8, 2009. As travel to Pakistan generally involves an overnight flight from Canada, the Citizenship Judge established April 7, 2009 as the departure date for the second absence;

iii. October 4, 2009 - a passport entry stamp showed the Respondent entered the United States of America ("US") on October 4, 2009. The Citizenship Judge therefore accepted that date as the departure date for the third absence;

iv. February 26, 2010 - a passport stamp showed the Respondent entered Pakistan again on February 27, 2010. The Citizenship Judge therefore established February 26, 2010 as the departure date for the fourth absence;

v. December 6, 2011 - a passport entry stamp showed the Respondent entered the United Arab Emirates on December 7, 2011. As travel to the United Arab Emirates generally involves an overnight flight from Canada, the Citizenship Judge established December 6, 2011 as the departure date for the fifth absence.

[11] As to return dates, the Citizenship Judge found that he was able to verify on a balance of probabilities the return date for three of the five declared absences. An Integrated Customs Enforcement System ("ICES") report dated September 10, 2014 showed the Respondent entered Canada three times during the relevant period, and all three entries matched her declared return dates.

[12] The Respondent also declared a return to Canada on May 10, 2008. At the hearing before the Citizenship Judge, she explained that she had returned to Canada to obtain a license to practice medicine in Ontario. As a result, she mainly stayed at the home of a relative to prepare for the medical board exams. She received her medical certificate from the College of Physicians and Surgeons of Ontario on September 4, 2008. The Citizenship Judge stated that the certificate verified the Respondent's testimony at the hearing before him which testimony was forthright, consistent, and credible. However, the Respondent recognized that she did not have any active indicators to show her presence in Canada from May 10 to the end of August 2008. A letter from the administrator of the Castlemore Health Centre in Brampton, Ontario, confirmed she began her practice there in September 2008. Further, an invoice showed she started paying the necessary fees for practice insurance in September 2008. At the hearing, she explained that she began her practice on September 15, 2008. Given this, the Citizenship Judge set September 14, 2008, and not May 10, 2008 as the return date for this absence.

[13] The Respondent also declared a return from the US on October 11, 2009. The Citizenship Judge reviewed reimbursements from the Ontario Ministry of Health for 2009, which showed she received $14,088 in October of that year; $18,004 in November, and $21,926 in

December. She received $27,000 in January 2010. The Citizenship Judge found the Respondent was clearly at her medical practice during this time. Further, she had explained that she had reported travelling to the US to attend a family wedding. As the Respondent was forthright, consistent, and credible with her testimony at the hearing, and given the evidence that she was working at her medical practice in October 2009, the Citizenship Judge accepted October 11, 2009 as the return date as declared.

[14] The Citizenship Officer found no evidence of an undeclared trip and the Citizenship Judge agreed, concluding on a balance of probabilities there were no undeclared absences pertaining to the Respondent's application. As a result, he did not have to complete the third step of the analysis.

[15] The Citizenship Judge found, on a balance of probabilities, that the Respondent was absent 267 days stemming from five absences:

- March 16, 2008 (start of the relevant period) to September 14, 2008: 182 days;
- April 7, 2009 to May 3, 2009: 26 days;
- October 4, 2009 to October 11, 2009: 7 days;
- February 27, 2010 to March 21, 2010: 22 days; and
- December 6, 2011 to January 5, 2012: 30 days.

[16] Further, that she had provided sufficient proof to show at least 1193 days of physical presence in Canada to support her application.

[17] The Citizenship Judge acknowledged the Citizenship Officer's concern regarding the amount of income the Respondent declared in her Notice of Assessment from the Canada Revenue Agency, being that the amount was too low for the period when the Respondent claimed to practice medicine in Canada. The Citizenship Judge found the Respondent was reimbursed $21,705 for two months in 2008, $197,417 for 2009, $254,676 for 2010, $257,667 for 2011, and $158,713 for the first nine months of 2012. This was consistent with her claim that she worked as a medical doctor from September 2008 to the end of the relevant period. The Respondent had also explained that it was common practice for doctors to incorporate themselves and for medical fees billed to be paid to the corporation. In this case, the Respondent's corporation paid her share of the clinic's costs and paid an income to her husband, who was part of the corporation, thereby reducing her own personal income. The Citizenship Judge found the Respondent adequately explained her reported income for tax purposes and that her reported income did not undermine her credibility for the citizenship application. The Citizenship Judge also concluded the Applicant provided sufficient active indicators of her physical presence in Canada based on the documentation of her employment as a physician from September 15, 2008 to the end of the relevant period.

[18] The Citizenship Judge again stated that the Respondent was forthright, consistent, and credible at the hearing and, given this, concluded on a balance of probabilities that she provided sufficient documentary evidence to show her claimed presence in Canada.

[19] Finally, the Citizenship Judge noted the Respondent was investigated for possible misrepresentation in 2011. However, the investigation was closed and retired on July 30, 2014

with the Citizenship Officer noting the allegations against the Respondent would not be pursued. As a result, the Citizenship Judge stated that neither the allegation nor the ensuing investigation affected his decision.

Issues and Standard of Review

[20] In my view, one issue arises in this matter, being whether the Citizenship Judge's determination that the Respondent met the residence requirements of the *Citizenship Act* is reasonable.

[21] The Minister submits, and I agree, that the question of whether or not an applicant for citizenship has met the residence requirements of the *Citizenship Act* is to be reviewed on the reasonableness standard (*Huang v Canada (Citizenship and Immigration)*, 2013 FC 576 at paras 26-27; *Canada (Citizenship and Immigration) v Abdallah*, 2012 FC 985 at para 8; *Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323 at para 12).

[22] Under the reasonableness standard, the Court must be satisfied that the decision making bears the qualities of justification, transparency, and intelligibility and that the decision falls "within a range of possible, acceptable outcomes which are defensible with respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Deference is owed to the findings of a citizenship judge who is better positioned to make the factual determination as to whether residency has been established (*Martinez-Caro v Canada (Citizenship and Immigration)*, 2011 FC 640 at para 46 ("*Martinez-Caro*"). The citizenship judge's findings

regarding credibility also draw significant deference (*Martinez-Caro* at para 46; *Canada (Citizenship and Immigration) v Sukkar*, 2017 FC 693 at para 20 ("*Sukkar*")).

Positions of the Parties

Minister's Position

[23] The Minister submits the Citizenship Judge erred in his application of the physical presence test as set out in *Pourghasemi (Re)* (1993), 62 FTR 122 (TD) ("*Re Pourghasemi*"); the Citizenship Judge's conclusion on the residence requirement under s 5(1)(c) of the *Citizenship Act* was not supported by the evidence before him; and, the Citizenship Judge's reasons are inadequate. In this regard, the Minister refers to the Citizenship Officer's concerns in the File Preparation Analysis Template - Long. The Minister submits these concerns indicate a lack of evidence verifying the accuracy of the Respondent's declared absences from Canada and supported the Citizenship Officer's recalculation of the days the Respondent was present in Canada. The Minister submits the Citizenship Judge did not address any of the Citizenship Officer's concerns or explain what part of the Respondent's testimony resolved those concerns and established her residence in Canada. Further, the Citizenship Judge failed to conduct any discernable analysis of the Citizenship Officer's concerns.

[24] The Minister submits the Citizenship Judge erred in accepting the Respondent's testimony as to her presence in Canada, in the absence of other confirming documentary evidence, thereby misapplying *Re Pourghasemi*. Further, the Citizenship Judge failed to verify whether the Respondent was in Canada during the periods claimed, and erred by relying on her

testimony alone (*El Falah v Canada (Citizenship and Immigration)*, 2009 FC 736 at para 21 ("*El Falah*")). The Minister also submits the Citizenship Judge erred by setting his own departure and return dates, which had no evidentiary foundation and does not satisfy the first step of the analysis. The Citizenship Judge's decision is unreasonable because the Respondent failed to meet her onus of providing sufficient objective evidence that she satisfied the residence requirement (*Abbas v Canada (Citizenship and Immigration)*, 2011 FC 145 at paras 8-9, 11).

[25] The Minister also submits the Citizenship Judge erred in finding the Respondent was in Canada in September 2008. Further, the Citizenship Judge noted an entry stamp into Pakistan for April 8, 2009 and, on that basis, determined the Respondent left Canada on April 7, 2009. This finding was critically flawed as the Citizenship Judge ignored that the passport was issued to the Respondent in Pakistan on February 13, 2009, a time when she declared being present in Canada. As to returning to Canada in October 2009, the Citizenship Judge erred by ignoring a lack of active indicators of presence in Canada and failed to note that the Respondent's business was a corporation and fees paid to it did not establish the Respondent was physically in Canada. The Respondent provided insufficient objective evidence to establish she was working at her practice from October 11, 2009. Given these evidentiary gaps, the Citizenship Judge erred in concluding that he could conduct the first step in his analysis and his reasons failed to demonstrate how he resolved the evidentiary gaps. The decision is also unreasonable because the Citizenship Judge's reasons are inadequate; they fail to sufficiently justify the Citizenship Judge's decision with reference to the evidence. For example, the Citizenship Judge did not address the lack of stamps in the Respondent's passport; her passport being issued to her in Pakistan at a time when she claimed to be in Canada; her low personal income and failure to

file Notice of Assessment for 2009, mainly automated bank transactions and her corporate status; her September 2009 return to Canada could not be verified and was not analyzed in reference to her first OHIP entry for that year, being in December despite the fact that she gave birth in March 2008; and, there was no analysis of her declared but undocumented residences.

[26] Subsequent to this Court granting leave, the Minister filed further written representations. The Respondent at that time had filed only her affidavit sworn on July 14, 2017. The Minister objected to Exhibit A of that affidavit. This is a printout entitled Preventive Care Target Population/Service Report ("Medical Record") for the Respondent's medical group, Castlemore Family Health Group, listing her as the physician and indicating services provided (childhood immunization services) including during dates at issue. The Minister submits the record was not before the Citizenship Judge and cannot be relied upon to establish his decision was reasonable. Moreover, the document is an egregious breach of confidentiality as it includes names, birth dates, health card numbers, and other information concerning patients who attended the clinic. The Medical Record should also be struck on this basis, particularly given its lack of probative value as it was not before the decision-maker.

[27] The Minister also conceded, contrary to his prior arguments, that the Respondent's Pakistani passport appears to have been issued in Toronto. The Minister therefore no longer argued that the Citizenship Judge erred by not engaging with that document as evidence placing the Respondent in Pakistan when she claimed to be in Canada, but submits that nothing turns on this point.

Respondent's Position

[28] The Respondent notes that the Minister abandoned his argument concerning the place of issue of her Pakistani passport, but states raising the issue with such vigour at the leave stage was inappropriate. Similarly, the Minister relied heavily on the File Preparation and Analysis Template - Long and criticized the Citizenship Judge for allegedly failing to heed its findings, however, the Minister failed to disclose the prior File Preparation and Analysis Template - Short which supported the Citizenship Judge's conclusions.

[29] The Respondent further submits that the absence of stamps in her passport for re-entry on May 10, 2008, September 14, 2008, and October 11, 2009, does not undermine her credibility; this Court has recognized that Canada Border Services Agency does not keep complete records of entry into Canada and that this is beyond applicants' control (*Canada (Citizenship and Immigration) v Gao*, 2015 FC 1363 at para 25; *Canada (Citizenship and Immigration) v Purvis*, 2015 FC 368 at paras 37-39). In addition, passport stamps do not constitute irrefutable proof of a person's movements across the Canadian border because not all countries, including Canada, routinely stamp passports at entry (*Ballout v Canada (Citizenship and Immigration)*, 2014 FC 978 at para 25; Citizenship Policy Manual CP-5, p 18). In any event, the Citizenship Judge's reasons demonstrate he scrutinized both the return and departure dates, including associated passport stamps, and was able to verify on a balance of probabilities the return dates for three of the five declared absences.

[30] And, to address the Minister's assertions, the Respondent disclosed the Medical Record, which the Ontario Ministry of Health and Long Term Care created and issued to the Respondent. This document confirms she was physically present in Ontario because she serviced patients during the disputed periods. The Respondent submits the document is the Ministry of Health's corporate record made in the usual course of business and is admissible under s 30 of the *Canada Evidence Act*, RSC, 1985, c C-5 ("*Canada Evidence Act*"). Moreover, the probative value of this evidence is so high that it displaces any real or perceived prejudice to the Minister; it is dispositive of the main contentious issue and admitting it would restore the "balance of procedural fairness" which was negatively tipped against the Respondent by the Minister's submissions at the leave stage; the fact the record unequivocally places the Respondent in Canada during the disputed periods should have been conceded by the Applicant; and, procedural fairness requires that the record be before the Court given the importance of the decision to the Respondent and the risk of a potential injustice if it is not. This would also bring the administration of justice into disrepute as the Minister will be attempting to persuade this Court that the Respondent was absent from Canada while knowing this is not true.

[31] The Respondent submits the Citizenship Judge found her to be forthright, consistent, and credible and that she provided sufficient documentary proof to establish her claimed presence in Canada. It was open to the Citizenship Judge to afford at least as much weight to her credible testimony as to documentary evidence and such evidence can be accepted as sufficient in lieu of substantiating documents (*Sukkar* at para 20). Similarly, it was open to the Citizenship Judge to rely on the Respondent's testimony to fill in gaps in the record, this Court has previously rejected the Minister's contrary interpretation of *El Falah* (*Canada (Citizenship and Immigration) v*

Gouza, 2015 FC 1322 at paras 14-17 ("*Gouza*")). Additionally, the Citizenship Judge's credibility findings attract significant deference (*Martinez-Caro* at para 46). Nor is the adequacy of reasons an independent ground for the granting of a judicial review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 ("*Newfoundland Nurses*"). In essence, the Minister is simply unhappy with the well-reasoned decision of the Citizenship Judge and seeks to have this Court re-weigh the evidence, which is not its role (*Canada (Citizenship and Immigration) v Golafshani*, 2015 FC 1136 at para 23).

Analysis

Respondent's Affidavit

[32] As a starting point, I note that the jurisprudence is clear that in determining the admissibility of an affidavit in support of an application for judicial review, as a general rule, the evidentiary record before a reviewing Court is restricted to the evidentiary record that was before the decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible. While the categories are not closed, the identified exceptions allow an affidavit that: provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review; brings to the Court's attention procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, allowing the Court to fulfil its role of reviewing for procedural unfairness; and, highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA

22 at para 20 ("*Assn of Universities and Colleges*"); *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23-25; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 42 ("*Delios*")).

[33] Paragraph 12 of the Respondent's affidavit and Exhibit A, the Medical Record, do not fall within any of these exceptions.

[34] As to the Respondent's submission that the Medical Record is admissible as a business record based on s 30 of the *Canada Evidence Act*, which provides a hearsay exception for business records created in the usual and ordinary course of business, she provides no jurisprudence in support of this position. In my view, *Delios*, *Assn of Universities and Colleges*, and *Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 151 create an exclusionary evidence rule that applies to judicial reviews precluding fresh evidence and none of the recognized exceptions permit introducing records simply because they were created in the ordinary course of business. The issue here is not the reliability or probative value of the Medical Record, but rather the fact the record was not before the decision-maker. Allowing business records to be admitted because they fall under a hearsay exception would allow parties to introduce fresh evidence going to the merits of a citizenship judge's decision and to invite the Court to re-determine the matter on the merits. This is not the role of this Court on judicial review.

[35] And while I agree that disclosing patients' personal information by filing an unredacted Medical Record was inappropriate, contrary to the Minister's submissions, an alleged breach of

patient confidentiality is not a basis upon which the document should be struck. Rather, in the context of judicial review, the issue is one of confidentiality and could and should have been addressed as such.

[36] In summary, paragraph 12 of the Respondent's affidavit and Exhibit A thereof are not admissible. To protect the personal information of patients contained in Exhibit A, the Registry shall be directed to remove it from the filed copy of the affidavit and to return the document to the Respondent.

Reasonableness of the Decision

[37] As to the Minister's position that the Citizenship Judge's decision was unreasonable, in my view, this cannot succeed.

[38] Reasons are adequate if they permit a reviewing court to understand why the tribunal made its decision, and to determine whether the conclusions fall within the range of acceptable outcomes in light of the evidence before the tribunal and the nature of the statutory task (*Newfoundland Nurses* at paras 16, 18). Moreover, adequacy of reasons is not a stand-alone basis for quashing a decision because "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses* at para 14).

[39] The Citizenship Judge assessed the Respondent's citizenship application in accordance with s 5(1)(c) of the *Citizenship Act* and the quantitative physical presence test in

Re Pourghasemi, which required her to establish, on a balance of probabilities that she was a resident in Canada for a minimum of 1095 days during the relevant period. The Citizenship Judge's reasons are clear and explain why he concluded the Respondent met this residence requirement on that standard. Moreover, he tied his reasons to the evidentiary record and, where there were gaps in the Respondent's residence record, these were addressed. He explicitly found that the Respondent had provided sufficient reliable evidence.

[40] The Citizenship Judge found the Respondent to be "forthright, consistent, and credible", which warrants deference (*Martinez-Caro* at para 46, *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) at para 4). Deference also flows from the Citizenship Judge being in the best position to assess both the factual record and the Respondent's credibility (*Martinez-Caro* at para 46). Further, credible testimony can be weighed equally with documentary evidence when assessing the Respondent's travel and residence record (*Sukkar* at para 20). The Citizenship Judge relied on both the Respondent's credible testimony and her documentary evidence to find that she was present in Canada for the times set out. This approach was consistent with the Respondent's burden of proof and did not involve the Citizenship Judge arbitrarily filling in evidentiary gaps.

[41] Moreover, it was not necessary for the Respondent to provide documentary corroboration for every verbal statement she made at the citizenship hearing. The Citizenship Judge reasonably relied on the Respondent's credible testimony to explain gaps in the residence record (*Gouza* at paras 14-17). Nor does relying on credible testimony amount to 'blindly accepting submissions on residency' as warned against in *El Fallah*. The citizenship judge in *El Fallah* did

not find the citizenship candidate forthright, consistent, and credible and also struggled with a great deal of confusion regarding the candidate's residence record (*El Fallah* at para 16).

[42] The Minister places great weight on the details of the File Preparation and Analysis Template - Long. However, it should be pointed out that this report does not fetter the Citizenship Judge's discretion, nor was he bound to address the report on a microscopic level (*Gouza* at para 18; *Canada (Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 at paras 31-36). A citizenship judge is presumed to have considered all of the evidence (*Canada (Citizenship and Immigration) v Suleiman*, 2015 FC 891 at para 23 ("*Suleiman*")). And, the Citizenship Judge was required, taking context into consideration, to and did determine the extent and nature of the evidence requirement (*Canada (Citizenship and Immigration) v El Boussergh*i, 2012 FC 88 at para 19; *Suleiman* at para 27). The Citizenship Judge's reasons explicitly addressed the Minister's credibility concern pertaining to a possible misrepresentation investigation which was closed and not pursued by the Minister and, for that reason, found it need not be addressed; the reasons addressed departure dates and explained that the Citizenship Judge accepted them as verified based on passport stamps, which he was entitled to do (*Zhao v Canada (Citizenship and Immigration)*, 2016 FC 207 at para 21, *Saad v Canada (Citizenship and Immigration)*, 2013 FC 570 at para 26); the reasons addressed the two re-entry dates that the Citizenship Officer was unable to verify and where the Citizenship Judge was not satisfied, given an absence of active indicators, that the May 10, 2008 return date was verified, he adjusted this to September 14, 2008, at which date the Respondent's presence in Canada was verified by the issuance of the Respondent's medical certificate, a letter from the administrator of Castlemore Health Centre confirming that the Respondent commenced her practice there in

September 2008, other active indicators, and, her credible evidence. The October 11, 2009, return date was confirmed by reimbursements received from the Ministry of Health which the Citizenship Judge found clearly demonstrated that the Respondent was at her practice from October to December of that year.

[43] As to the Citizenships Officer's comment that the Respondent's income appeared to be low for her profession, contrary to the Minister's submissions, the Citizenship Judge directly addressed the Respondent's income and the incorporation at the hearing. He noted documentation confirming reimbursement for two months in 2008, all of 2009-2011, and the first nine months of 2012 and accepted the Respondent's explanation of the incorporation of her medical practice for tax purposes, thereby reducing her personal income. And to the extent that the Minister may now be suggesting that the Respondent did not personally provide the services for which fees were claimed, in effect, this suggests the Respondent fraudulent billed for services. Yet the Citizenship Judge accepted her testimony that she had been paid on a case-by-case basis and, therefore, had to be seeing patients at her practice in order to bill the Ontario Ministry of Health. Further, the record contains OHIP Medical Claims Payment Histories for 2008 - 2012 which name the Respondent personally and the January 30, 2013, letter from the administrator of Castlemore Health Centre confirms that the Respondent practiced with that group as a family practice consultant since September 2008 and that her monthly income from the Ministry of Health was approximately $16,000. And while the Minister asserts the OHIP payment history not only named her but also included the name and address of her clinic and the wording "Provider: [provider number redacted] – SOLO/GROUP PAYMENT", the Citizenship Judge was satisfied that the evidence established the Respondent's practice in

Canada. Accordingly, I see no merit in the Minister's position and, in any event, this was adequately addressed by the Citizenship Judge who accepted that the Respondent was clearly at her medical practice during the period at issue.

[44] The Citizenship Judge also turned his mind to the gaps in the record, received explanations from the Respondent, and accepted those explanations as credible having had the benefit of a hearing and the documentary evidence. While his reasons may not have referred to every detail or set out every reason or argument or made an explicit finding on every element of the evidence, this does not, in this case, amount to a reviewable error (*Suleiman* at paras 17, 23, 38, 41). Nor am I persuaded that his review of the evidence was lacking or that he was required to delve further. His reasons were sufficient to permit this Court to understand why he reached the conclusion he did and that his conclusion falls within the range of possible, acceptable outcomes. Accordingly, and for the above reasons, I find that the Citizenships Judge's decision was reasonable.

Costs

[45] The Respondent seeks costs, even if only in a symbolic amount, asserting that had the Minister disclosed the conflicting report of the first citizenship officer or had the Minister not made the erroneous argument concerning the place of issuance of her Pakistani passport, described by the Minister as a critical flaw in her application, this Court would likely not have granted leave. Further, once the Respondent filed her affidavit attaching the Medical Record, which established beyond question that she was in Canada during some of the disputed dates, the Minister should have discontinued the application. Failure to do so caused the Respondent

unnecessary expense and worry. Moreover, the Minister's submissions to the Court were vastly overstated and did not reflect the circumstances of the matter.

[46] That may be so, but costs are not ordinarily awarded in immigration proceedings in this Court. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 states that "No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders". Upon review of the jurisprudence, I am not persuaded that the high threshold for establishing the existence of special circumstances has been met in these circumstances (*Suleiman* at para 47-48; *Deheza v Canada (Immigration, Refugees, and Citizenship)*, 2016 FC 1262 at para 39).

JUDGMENT IN T-208-17

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. Exhibit A of the Affidavit of Rabbiya Nasir Abibi, sworn on July 14, 2017, and paragraph 12 of that affidavit are struck. The Registry of the Court shall return all copies of Exhibit A, which contain confidential patient information, to the Respondent.
3. No question of general importance for certification was proposed or arises.
4. There shall be no order as to costs.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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