

Federal Court



Cour fédérale

Date: 20171024

Docket: T-165-17

Citation: 2017 FC 946

Ottawa, Ontario, October 24, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

RIHAM KAMEL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a 29-year-old citizen of Iraq who arrived in Canada as a permanent resident in or around 2005 with his mother and two sisters, having been sponsored by his father. He submitted an application for Canadian citizenship on February 4, 2016. He was interviewed and took a citizenship test on July 7, 2016, and at that time was provided with a list of documents which were requested to establish his compliance with the residency and physical presence requirements to become a Canadian citizen. He was afforded 30 days to provide the documents

or to provide a reasonable excuse for non-compliance. The Applicant did not provide any of the requested documents by the specified date and was then sent a final reminder notice dated August 18, 2016, instructing him to provide the requested documentation within 30 days. This notice informed the Applicant that:

Pursuant to subparagraph 13.2(1)(a)(i) of the *Citizenship Act*, if you do not comply with this request for further information within thirty (30) days from the date of this letter, or if your reason for missing the deadline is not acceptable, we regret to inform you that your application will be treated as abandoned, and your file will be closed, with no further action being taken on your case.

On September 7 and 18, 2016, the Applicant provided some but not all of the requested documentation and included a cover letter stating that: “I Riham Kamel am providing all of the supplementary evidence that I can provide, in addition to what I have been asked.”

[2] In a letter dated December 30, 2016, a Citizenship Officer informed the Applicant that his application for citizenship was being treated as abandoned pursuant to subsection 13.2(1) of the *Citizenship Act*, RSC 1985, c C-29 [the Act]. The Officer noted in this letter that the Applicant had failed to provide the following documentation: Notice of Assessments from the Canada Revenue Agency for the tax years 2010 to 2015; a Provincial Personal Health Claim Summary for the relevant period from January 26, 2010 to January 26, 2016; complete personal bank statements for the relevant period; documents to confirm living expenses such as utilities, reward cards, insurance, vehicle registration, professional memberships and licenses, etc.; Record of Employment; and any other documents to demonstrate his connection to Canada during the relevant period. The Officer further noted in the abandonment letter that, while the Applicant’s explanation for not providing all of the requested documentation had been assessed, the Officer

was not satisfied that the excuse provided was reasonable. The Applicant now seeks judicial review of the Officer's decision in accordance with section 22.2 of the Act.

I. Issues and Analysis

A. *Amendment of Style of Cause*

[3] At the outset of the hearing of this matter, it was determined that the Respondent had been incorrectly named as the Minister of Immigration, Refugees and Citizenship. The correct Respondent to this application for judicial review is the Minister of Citizenship and Immigration. Accordingly, the style of cause will be amended, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent.

B. *Standard of Review*

[4] The parties agree, as do I, that the standard of review for an officer's determination that a citizenship application has been abandoned is reasonableness (see *Zhao v Canada (Citizenship and Immigration)*, 2016 FC 207 at para 19, [2016] FCJ No 196 [*Zhao*]).

[5] Under the reasonableness standard, the Court is tasked with reviewing a decision for "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to

determine whether the conclusion is within the range of acceptable outcomes”: *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

C. *Was the Officer’s determination reasonable?*

[6] The Applicant claims his citizenship application should not be treated as abandoned because he made every effort to substantiate that he had a connection to Canada within the relevant period, and provided as much documentation as was possible. According to the Applicant, since there is a paucity of jurisprudence on the issue of abandonment of citizenship applications, the jurisprudence on abandonment in the refugee context is instructive and analogous to the case at bar. The Applicant argues that the definitions of abandonment in the citizenship and refugee contexts are substantially similar, citing the decision in *Aslam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 514, 250 FTR 307 [*Aslam*], in which the Refugee Protection Division had declared a refugee claimant’s claim to be abandoned because he would not proceed to a hearing without his counsel and his request for a postponement was denied. Justice Harrington found in *Aslam* that the claimant had clearly not intended to abandon his claim, stating (at para 6) that: “To abandon is to give up completely, or before completion; to forsake, and abandonment in this context is more akin to a dismissal for want of prosecution.” Similarly, the Applicant argues his response to the request for documentation demonstrated that he intended to proceed with his citizenship application. In the Applicant’s view, given his stated intent to continue his application, and his substantial documentary disclosure which represented his best efforts to comply with the Officer’s request for documentation, the Officer’s determination was unreasonable.

[7] The Applicant says this case can be distinguished from *Zhao* on the basis that the applicant in that case refused to provide additional documents on the grounds that the request was excessive, illegal, and possibly discriminatory; whereas in this case, the Applicant made his best efforts to provide the requested documents. The Applicant says the evidence he provided satisfied the purpose of the Officer's request, and that the Officer ought to have reviewed the evidence to determine whether it was in fact sufficient to meet the residency requirement.

[8] The Respondent maintains that the Officer's decision was reasonable and warrants deference. The Respondent identifies three relevant statements of principle stated in *Zhao*: that Canadian citizenship is a privilege; that the onus is on an applicant to establish he or she has met the requirements of the Act; and that to require a decision-maker to advise an applicant of specific evidentiary concerns would improperly shift the onus to the decision-maker.

[9] The Respondent notes that the Applicant failed to meet the first 30-day deadline for documentary disclosure, and then only partially satisfied the second request for additional information. According to the Respondent, the Applicant's statement that he was providing all he could provide did not explain why he was not able to comply with the request. In the Respondent's view, *Aslam* is not relevant to this case since the definition of abandonment is different in the citizenship and refugee contexts. The Respondent argues that the Officer was not obligated to advise the Applicant of any specific evidentiary concerns, and was not obligated to conduct an analysis of the Applicant's documentary evidence when the Applicant failed to comply with a valid request authorized by the Act.

(1) Analysis

[10] The central issue raised by this application for judicial review is the interpretation and application of subsection 13.2 of the Act:

Abandonment of application

13.2 (1) The Minister may treat an application as abandoned

(a) if the applicant fails, without reasonable excuse, when required by the Minister under section 23.1,

(i) in the case where the Minister requires additional information or evidence without requiring an appearance, to provide the additional information or evidence by the date specified,

...

Effect of abandonment

(2) If the Minister treats an application as abandoned, no further action is to be taken with respect to it.

...

Additional information, evidence or appearance

23.1 The Minister may require an applicant to provide any additional information or evidence relevant to his or her

Abandon de la demande

13.2 (1) Le ministre peut considérer une demande comme abandonnée dans les cas suivants :

a) le demandeur omet, sans excuse légitime, alors que le ministre l'exige au titre de l'article 23.1 :

(i) de fournir, au plus tard à la date précisée, les renseignements ou les éléments de preuve supplémentaires, lorsqu'il n'est pas tenu de comparaître pour les présenter,

[...]

Effet de l'abandon

(2) Il n'est donné suite à aucune demande considérée comme abandonnée par le ministre.

[...]

Autres renseignements, éléments de preuve et comparution

23.1 Le ministre peut exiger que le demandeur fournisse des renseignements ou des éléments de preuve

<p>application, specifying the date by which it is required. For that purpose, the Minister may require the applicant to appear in person or by any means of telecommunication to be examined before the Minister or before a citizenship judge, specifying the time and the place — or the time and the means — for the appearance.</p>	<p>supplémentaires se rapportant à la demande et préciser la date limite pour le faire. Il peut exiger à cette fin que le demandeur comparaisse — devant lui ou devant le juge de la citoyenneté pour être interrogé — soit en personne et aux moment et lieu qu’il fixe, soit par le moyen de télécommunication et au moment qu’il fixe.</p>
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[11] In my view, the foregoing provisions of the Act are clear. The Minister has a discretion to request and require that a citizenship applicant provide additional information or evidence relevant to an application by a specified date. If the applicant fails, without reasonable excuse, to provide the additional information or evidence by the date specified, the Minister may treat the application as abandoned, in which case no further action is to be taken with respect to it. In the face of these statutory provisions, whether the documentation the Applicant did provide represented his best efforts to comply with the Officer’s request for documentation, or whether the Applicant intended to continue on with and not abandon his citizenship application, is irrelevant because, unless a citizenship applicant provides a reasonable excuse for not supplying the additional information or evidence, the applicant risks having the application treated as abandoned and no further action taken with respect to it.

[12] In this case, the Applicant failed to provide all of the requested documentation by the specified date and did not explain why he was unable to comply fully with the request for additional documentation. For example, he provided tax documents, but not the Notices of Assessment as requested; his bank documents did not cover the full relevant period specified;

and he did not provide any Provincial Personal Health Claim Summary. Given the Applicant's failure to provide all of the requested documentation and his statement that he had supplied "all of the supplementary evidence" he could provide, it was open to, and not unreasonable for, the Officer to find that the Applicant had not provided a reasonable excuse for not providing all of the requested documentation and, accordingly, to treat his application as abandoned. The Officer's determination in this case to treat the Applicant's citizenship application as abandoned was justifiable and falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant's application for judicial review will be dismissed.

[13] It warrants note in closing that this case is distinguishable from *Zhao*, but only to the extent that the applicant in that case had sent a letter to Citizenship and Immigration Canada stating that he was of the opinion that he had provided sufficient documents to establish his presence in Canada during the relevant period and, consequently, refused to submit the additional documents requested by a citizenship officer. This refusal resulted in Mr. Zhao's citizenship application being treated as abandoned. In contrast, the Applicant here did not refuse to supply the additional documentation but, rather, failed to provide all of the requested documentation or a reasonable excuse for such failure. This case is also distinguishable from *Lim v. Canada (Citizenship and Immigration)*, 2016 FC 217, [2016] FCJ No 157 [*Lim*], where the Court set aside the Minister's determination that the applicant's citizenship application had been deemed abandoned and the file closed after the applicant had failed to respond to the Minister's request for more complete information. In *Lim*, it was determined that the citizenship applicant had a "reasonable excuse" pursuant to subsection 13.2(1) of the Act because, unlike the Applicant in this case, Ms. Lim never received the Minister's letter requesting more complete

information and warning that failure to respond on time would result in the citizenship application being deemed abandoned. Here, the Applicant received such a letter but failed to provide all of the requested documentation or a reasonable excuse for such failure.

II. Conclusion

[14] For the reasons stated above, the Applicant's application for judicial review is dismissed.

[15] Neither party raised a serious question of general importance; so, no such question is certified.

JUDGMENT in T-165-17

THIS COURT'S JUDGMENT is that: the style of cause is hereby amended, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent rather than the Minister of Immigration, Refugees and Citizenship Canada; the application for judicial review is dismissed; and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-165-17

STYLE OF CAUSE: RIHAM KAMEL v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 18, 2017

JUDGMENT AND REASONS: BOSWELL J.

DATED: OCTOBER 24, 2017

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