Federal Court  Cour fédérale

Date: 20180202

Docket: T-1689-14

Citation: 2018 FC 116

Ottawa, Ontario, February 2, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Plaintiff

and

BOZIDAR VUJICIC

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The defendant, Mr Bozidar Vujicic, a citizen of Montenegro and Bosnia, applied for permanent residence in Canada in 1999. Canadian authorities interviewed him, reviewed his application, and approved it. He arrived in Canada in 2002 and was granted permanent residence. He subsequently applied for Canadian citizenship and succeeded. He swore his oath of citizenship in 2006.

[2] In 2009, the plaintiff, the Minister of Citizenship and Immigration, notified Mr Vujicic that he intended to report to the Governor in Council that Mr Vujicic had obtained his citizenship by false representation, pursuant to s 10 of the *Citizenship Act*, RSC 1985, c C-29 (all enactments cited and in force at the relevant time are set out in an Annex). Mr Vujicic requested that the Minister refer the case to this Court to determine whether he had, indeed, obtained his citizenship by false representation (under s 18(1)).

[3] There is no suggestion that Mr Vujicic made any false claim in his citizenship application; the Minister's allegations relate solely to Mr Vujicic's application for permanent residence (which is a sufficient basis on which to conclude that his citizenship was wrongly acquired; see s 10(2)).

[4] The Minister claims that Mr Vujicic made four false statements:

1. In his application for permanent residence, Mr Vujicic stated that he had never been convicted of any crime or offence in any country when, in fact, he had been convicted in 1987 of a criminal offence arising from a car accident.

2. Mr Vujicic also failed to mention in that application that he had been convicted in 1994, and on a retrial in 1998, of manslaughter. (The offence is variously translated as "murder", "homicide", or "manslaughter". As the crime could likely be classified as manslaughter in Canada, that is the term I will use.)

3. During his interview with a Canadian immigration officer in 2001, Mr Vujicic denied having had contact with the MUP police when, in fact, he had been arrested by the MUP police in 1994.

4. When he arrived in Canada, Mr Vujicic told an immigration officer at the port of entry that he had never been charged or convicted of a crime, notwithstanding the two convictions mentioned above.

[5] My role is to determine whether the evidence presented by the Minister establishes that Mr Vujicic obtained permanent residence in Canada as a result of a false representation. Before weighing it, I must first consider what evidence is properly before me. Mr Vujicic asks me to find that some of the evidence on which the Minister relies is inadmissible.

II. Mr Vujicic's Request to Strike Evidence

[6] Mr Vujicic seeks to strike three affidavits on which the Minister relies. The first is an affidavit of Ms Christine Hutchinson, a Senior Analyst at Immigration, Refugees and Citizenship Canada. Mr Vujicic contends that Ms Hutchinson's evidence is not based on personal knowledge (contrary to Rule 81 of the *Federal Courts Rules*, SOR/98-106) and that it contains hearsay, most particularly the notes of the officer who interviewed Mr Vujicic in 2001 in Sarajevo. Further, Mr Vujicic argues that the foreign court documents attached to Ms Hutchinson's affidavit are inadmissible as they do not comply with s 23 of the *Canada Evidence Act*, RSC 1985, c C-5. Finally, Mr Vujicic submits that Ms Hutchinson engages in speculation about the consequences he would have faced if he had disclosed his convictions.

[7] The second impugned affidavit is that of Ms Nela Damjanovski, a certified translator. Ms Damjanovski attaches to her affidavit three Serbian court documents and her translations of them. Mr Vujicic maintains that the documents appended to Ms Damjanovski's affidavit are inadmissible because they do not comply with the requirements of s 23 of the *Canada Evidence Act*.

[8] The third affidavit Mr Vujicic challenges is Mr Zeljko Kuvicic's. Mr Kuvicic is a lawyer in Novi Sad, Serbia. At the time of the challenge, Mr Vujicic anticipated that Mr Kuvicic's affidavit would, like those of Ms Hutchinson and Ms Damjanovski, attach uncertified and inadmissible versions of Serbian court documents. In fact, Mr Kuvicic obtained certified copies of court documents from the Higher Court in Leskovac, Serbia. The first is a letter from Chief Justice Zoran Petrusic, who explains the sequence of proceedings against Mr Vujicic in Leskovac between 1994 and 1998. The second is a 1998 judgment of the District Court in Leskovac. Both documents were later translated into English. Accordingly, Mr Vujicic's objection to Mr Kuvicic's affidavit no longer applies, and the two certified documents Mr Kuvicic obtained are properly before me.

[9] I agree with Mr Vujicic that much of Ms Hutchinson's affidavit is based on information and belief, not personal knowledge, and cannot be admitted. Indeed, Ms Hutchinson states that she was not personally involved in Mr Vujicic's applications for permanent residence or citizenship. There is only one area where Ms Hutchinson's personal knowledge is expressed in her affidavit. She states that it was standard practice for immigration officers at the port of entry

to ask prospective permanent residents if they had ever been charged or convicted of a crime. That statement is admissible.

[10] Ms Hutchinson's understanding of the processing of Mr Vujicic's applications arises from her review of the contents of his file, and she attaches some of the documents she found. The two most important exhibits to her affidavit are Mr Vujicic's 1999 application for permanent residence and his 2002 record of landing. In his testimony, Mr Vujicic accepted the authenticity of those documents, so they are properly before the Court even without Ms Hutchinson's affidavit. (She also attaches a number of other documents that are not relevant to this proceeding, such as Mr Vujicic's application for citizenship).

[11] Mr Vujicic strongly contests the admissibility of the notes attached to Ms Hutchinson's affidavit, which were taken by the immigration officer who interviewed him in 2001. The notes were entered into the Computer Assisted Immigration Processing System (CAIPS). They were authored by Ms Donna Capper and state that, during the interview, Mr Vujicic denied "contacts with or work for MUP". Ms Hutchinson states that she believes the accuracy of the CAIPS entry because officers would routinely make their notes in the usual course of their duties, and would prepare them more or less contemporaneously with the interviews. Ms Tapper retired several years ago and was not asked to attest to the accuracy of her notes.

[12] There is clear authority for Mr Vujicic's position that CAIPS notes are inadmissible hearsay. Justice Barbara Reed arrived at that conclusion in *Chou v Canada (Minister of Citizenship and Immigration*) [2000] F.C.J. No. 314 after reviewing numerous decisions to the

same effect. She found that CAIPS notes are admissible for the truth of their contents only if accompanied by an affidavit from the officer attesting to their veracity. When an affidavit has been filed, the person affected will have an opportunity to cross-examine the officer and challenge the accuracy of his or her recorded observations. Without an affidavit, the notes are admissible only to show the officer's reasons for any decision that was taken. The Federal Court of Appeal upheld Justice Reed's treatment of officers' notes: *Chou v. Canada (Minister of Citizenship and Immigration)* 2001 FCA 299.

[13] The Minister points to a decision where Justice Russell Zinn concluded that CAIPS notes assessing written applications were admissible under the business records exception to the hearsay rule: *Cabral v Canada (Minister of Citizenship and Immigration)* 2016 FC 1040 at para 10. The Federal Court of Appeal recently upheld Justice Zinn's conclusion, but distinguished notes assessing a written application from notes recording statements made at an interview. This distinction is important because an oral interview constitutes an investigation, and the resulting notes describe evidence from the interview without any collateral guarantee of authenticity. Under those circumstances, a declarant may be motivated to record details from the interview in a manner that supports his or her own conclusions: *Cabral v. Canada (Citizenship and Immigration* 2018 FCA 4.

[14] The concern about hearsay evidence is that its admission denies the opposite party an opportunity to challenge the truthfulness of a declarant's out-of-court statement. In the immigration context, for example, the declarant may be a person seeking status in Canada and

the person hearing the declaration may be an immigration officer. The CAIPS notes may, as here, purport to record the declarant's statements at an interview.

[15] However, unless the declarant's statements are sought to be admitted for the truth of their contents, the notes are not hearsay at all. First, where the issue is what the declarant said, not the truth of the contents of his or her statement, there is no hearsay issue. The officer can testify as to what the declarant said at the interview, and the veracity of the officer's testimony on that issue can be tested by cross-examination on the officer's affidavit. In that sense, Justice Reed was correct to say that CAIPS notes are inadmissible without an affidavit from the officer who made them.

[16] Second, where the declarant is the person affected, hearsay is not an issue because that person cannot dispute the admissibility of his or her own statement. As mentioned, the concern about hearsay is the absence of an opportunity to cross-examine the declarant. An applicant on judicial review, or any other affected person, cannot complain about the lack of opportunity to cross-examine himself or herself. Again, however, there must be an opportunity to cross-examine the person who recorded the statement to determine the accuracy of that record.

[17] Here, the CAIPS notes purport to record Mr Vujicic's statement at an interview. The question is not whether his statement was true; the issue is whether what was recorded in the officer's notes is accurate. That can be ascertained only by cross-examination of the person who made the notes, but that person is unavailable here. The problem cannot be cured by Ms Hutchinson's affidavit. She may well believe that the notes are reliable, but any cross-

examination of her on that point cannot replace the missing opportunity to cross-examine the officer who made the notes. Ms Hutchinson is essentially averring that the notes should be admitted as proof of the contents of the officer's statement about what Mr Vujicic said at the interview. That is clearly hearsay. Even if the officer correctly recorded Mr Vujicic's statement, we have no evidence about the question Mr Vujicic was actually asked. It could have been about the MUP police in a particular jurisdiction, Montenegro, for example, versus Bosnia. In his oral testimony, Mr Vujicic agreed that the officer asked him about contact with the MUP police, but it is still unclear whether the officer asked him about the police in a particular jurisdiction. We do not know. In my view, the notes are inadmissible.

[18] In respect of the *Cabral* case on which the Minister relies, I note that Justice Zinn admitted the affiant's evidence based on officers' notes because those notes reflected the "various officers' assessments and decisions". Nowhere in his judgment do I see any hearsay use of the notes, that is, to support the truthfulness of the contents of any statement made to an officer. Justice Zinn admitted the notes as they reflected the reasons why certain applications were rejected, a valid use recognized in the case law set out above. Justice Zinn's decision does not contradict the prevailing jurisprudence on the evidentiary use of CAIPS notes. Further, at the Federal Court of Appeal, Justice Mary Gleason emphasized the distinction between notes assessing written applications, which was the case in *Cabral*, and notes that record statements made at an interview. In the latter situation, there exists no collateral guarantee of authenticity, as there is for written applications. The risk arising from admission of an officer's interview notes is that the officer may be motivated to record details from the interview in a manner that supports

his or her conclusions (at para 28). In any case, *Cabral* confirms that an officer's interview notes are inadmissible hearsay.

[19] Mr Vujicic also disputes the admissibility of a statutory declaration attached to Ms Hutchinson's affidavit. The declaration was sworn by Mr Donald Gautier, an immigration official at the Canadian embassy in Vienna, Austria. Mr Gautier addresses the processing of Mr Vujicic's permanent residence application. In granting a visa to Mr Vujicic in January 2002, Mr Gautier relied on hearsay evidence, the CAIPS notes mentioned above, as well as his own independent security checks. Given that his statement is attached to Ms Hutchinson's affidavit and is not contained in his own affidavit, there is no basis on which to test the credibility of Mr Gautier's evidence. Ms Hutchinson never spoke to Mr Gautier and could only express her opinion that there was no reason to doubt the accuracy of his evidence. In my view, this evidence is hearsay on hearsay, and therefore inadmissible.

[20] With respect to the other objections to Ms Hutchinson's affidavit, I agree that the attached foreign court documents are inadmissible because they are uncertified. Further, I agree with Mr Vujicic that Ms Hutchison improperly provided her opinion about how his application would have been treated if he had disclosed his prior convictions. Ms Hutchinson was not qualified to provide expert evidence, and her opinion is therefore inadmissible.

[21] I also agree with Mr Vujicic's contention that the court documents attached to Ms Damjanovski's first affidavit are inadmissible because they are uncertified.

[22] Therefore, in light of these findings, the evidence properly before me consists of:

- Mr Vujicic's 1999 application for permanent residence.
- Mr Vujicic's 2001 record of landing in Canada.
- Ms Hutchinson's statement that the standard practice of immigration officers at the port of entry was to question prospective permanent residents about any previous charges or convictions, as well as her oral testimony.
- Mr Kuvicic's affidavit attaching certified copies of a letter from the Chief Justice of the Higher Court in Leskovac, Serbia, and of a 1998 judgment of the District Court in Leskovac, Serbia, and his oral testimony about them.
- Translations of the documents provided by Mr Kuvicic.
- Mr Vujicic's affidavit attaching two police certificates, and his oral testimony.
- The affidavit of Mr Vujicic's brother, Predrag, attaching a notice that was attempted to be served on Mr Vujicic in Serbia in 2002, after he had left for Canada, and his oral testimony about it.

III. Does the evidence establish that Mr Vujicic obtained permanent residence on the basis of a false representation?

[23] Mr Vujicic argues that the evidence fails to establish that he obtained permanent residence based on false representations. Accordingly, he says there is no basis for finding that he obtained Canadian citizenship improperly.

[24] In particular, Mr Vujicic submits that there is only one alleged misrepresentation that has any evidentiary support – the statement in his application for permanent residence that he had never been charged or convicted of a crime in any country – and that he has a valid explanation for failing to disclose his criminal history.

[25] I agree with Mr Vujicic that there is really only one misrepresentation that has any basis in the evidence – the failure to disclose his conviction for manslaughter. However, I disagree with his suggestion that he had a valid explanation for omitting to disclose that conviction.

[26] The Minister argues that Mr Vujicic also had a duty to disclose his 1987 conviction for a motor vehicle infraction. Mr Vujicic explained in his testimony that this was a minor incident – a "fender-bender" – that resulted in the judge giving him a warning to be careful to keep to the right on single-lane roads. I am not satisfied that the circumstances gave rise to an obligation on Mr Vujicic to disclose this incident when asked about past criminal charges or convictions.

[27] The Minister's submission that Mr Vujicic was shown to have lied in his interview with an unknown immigration officer in 2001 is defeated by my conclusion above that the officer's notes of the interview are inadmissible hearsay.

[28] The Minister's further contention that Mr Vujicic made a false statement when he arrived at the port of entry is also unsupported by the evidence. The record of landing on which the Minister relies contains a field that is empty but for the word "no" and Mr Vujicic's signature. Ms Hutchinson's evidence was that officers at the port typically asked potential permanent

residents whether they had been charged or convicted of crimes and recorded the applicants' answers in that box. But her evidence was not that officers invariably asked that question. We have no idea to what question Mr Vujicic answered "no". Therefore, I cannot find any misrepresentation on Mr Vujicic's part.

[29] That leaves the sole remaining allegation against Mr Vujicic – that he failed to disclose his conviction for manslaughter in his application for permanent residence. That allegation requires an assessment of the court documents relating to Mr Vujicic, as well as the police certificates he acquired which, he says, show that he was entitled to declare that he was conviction-free.

[30] The letter from Chief Justice Zoran Petrusic of the Higher Court summarizes the proceedings relating to Mr Vujicic in Leskovac, Serbia between 1994 and 1998. Mr Vujicic was prosecuted for manslaughter and convicted on November 23, 1994. That conviction was overturned on appeal and a new trial was ordered. On April 29, 1998, Mr Vujicic was convicted again of manslaughter by the District Court in Leskovac and sentenced to 8 years' imprisonment (less time already spent in custody, about four months). The judgment became effective on December 5, 2000.

[31] Accordingly, the evidence shows that Mr Vujicic applied for permanent residence in 1999 – after his conviction and sentencing, but before the judgment took effect.

[32] The 1998 judgment of the Leskovac District Court indicates that Mr Vujicic and his defence counsel were present when the judgment was rendered (along with co-accused and their lawyers). The judgment makes reference to the previous conviction against Mr Vujicic in 1987 for a motor vehicle infraction, referred to above. It also mentions the fact that Mr Vujicic was held in custody from August 1, 1994 until November 23, 1994 (from the time of his arrest until the date of his first conviction).

[33] After declaring Mr Vujicic guilty of manslaughter, the Court provided a summary of the facts. Mr Vujicic and some others, including his co-accused, were involved in a fight on the evening of July 31, 1994 in Leskovac. At some point, Mr Vujicic discharged his firearm in the direction of Mr Dragan Stojanovic striking him in the heart. Mr Stojanovic bled to death.

[34] The Court went on to set out a more detailed version of the evidence and analyzed Mr Vujicic's claim to have acted in self-defence. The Court rejected his defence. It found that Mr Vujicic had actually been involved in instigating the fight and that his version of events was inconsistent with forensic evidence about the gunshot wound. It also concluded that Mr Vujicic's level of intoxication at the time did not prevent him from understanding the significance of his actions. In the Court's view, the risk of Mr Stojanovic's death was foreseeable in the circumstances.

[35] The Court imposed on Mr Vujicic an 8-year sentence based on the seriousness of the offence and Mr Vujicic's degree of liability. The Court also considered mitigating circumstances – Mr Vujicic was married, he had not been previously convicted of similar crimes, and his

brother was ill. In addition to the 8 years, the Court ordered Mr Vujicic to pay costs and surrender his firearm.

[36] In his testimony before me, Mr Vujicic expressed confusion about the legal system in Serbia. He agreed that he was present at the 1994 court proceeding, but claims he did not realize he had been convicted and sentenced because he was allowed to leave at the end of the hearing. At some point, he was told that he needed to go back to court.

[37] Mr Vujicic admitted that he shot Mr Stojanovic, that he was present at the second court hearing in Leskovac in April 1998, and that he was convicted of manslaughter. However, because he was once again let go at the end of the hearing, he says he did not realize the legal significance of the proceedings. He thought his claim of self-defence might have succeeded. If he had really been convicted, he believed he would have been incarcerated immediately. Instead, he was simply told to return to court if needed. He never spoke to his lawyer about his situation. He never received any kind of summons. Mr Vujicic's brother received a summons for him in 2002, but that was after Mr Vujicic had left for Canada.

[38] Given his uncertainty about his legal situation, Mr Vujicic obtained two certificates indicating that he had no convictions against him. The first was issued on March 3, 1999 by the District Court of Trebinje, Republika Srpska, which is in Bosnia. While Mr Vujicic was a citizen of Bosnia, and was a resident there from 1997 to 2002, his conviction occurred in Serbia. He explained that he thought he had to obtain a certificate from his countries of residence.

[39] The second certificate was issued by the Ministry of the Interior in Niksic, Montenegro. Mr Vujicic had previously lived in Niksic. Again, however, the certificate was not from Serbia, where Mr Vujicic had been convicted. Mr Vujicic explained that at the time Montenegro and Serbia were part of the Federal Republic of Yugoslavia. Therefore, he understood that a certificate from Montenegro would cover Serbia, too. In fact, he believed he could not obtain a certificate from Serbia because he was never a resident there.

[40] Mr Vujicic testified that his wife also received a police certificate. Hers was from Podgorica, Montenegro, the place of her residence. (Mr Vujicic proffered his wife's certificate at the hearing, but I find it unnecessary to admit it because it is irrelevant to the issues before me).

[41] The Minister argues that this evidence shows that Mr Vujicic knew that he was convicted of manslaughter at the time he applied for permanent residence, and that by failing to disclose that conviction, he obtained his permanent residence by misrepresentation. Further, the Minister maintains that Mr Vujicic's conduct displays an intention to deceive.

[42] Mr Vujicic submits that the evidence falls short of proving that he obtained his permanent residence by false representations. He was simply confused, he says, and, out of caution, obtained police certificates to support his declaration that he had never been convicted of a crime.

[43] I disagree with Mr Vujicic. I am satisfied that the Minister has proved that Mr Vujicic failed to disclose his conviction for manslaughter in his application for permanent residence,

knowing that he had been found guilty and sentenced for that offence in 1998. His conduct is consistent with an intention to deceive Canadian immigration officials.

[44] Mr Vujicic was arrested and charged with manslaughter in July 1994. He spent three months in custody before his first hearing, which resulted in a finding of guilt and the imposition of a sentence of imprisonment on November 23, 1994. While he was released from custody at that point, it is difficult to believe that he did not understand that he had been convicted.

[45] In 1998 he was told to return to court, but did not seem to understand why. The evidence before me shows that an appeal from the first judgment resulted in an order for a new trial. Perhaps the appeal was taken by one of Mr Vujicic's co-accused, without his direct knowledge.

[46] In any case, Mr Vujicic agrees that he was present at a second hearing on April 29, 1998 at which he was once again found guilty and sentenced to 8 years' imprisonment, less time served. The judge definitively rejected Mr Vujicic's claim of self-defence. Again, Mr Vujicic was allowed to walk away from the proceeding because the judgment did not take immediate effect – it was to become effective on December 5, 2000. However, it is inconceivable that he would not have realized that he had been convicted and sentenced for a serious crime. While he claims that no verdict or sentence was ever pronounced against him, his testimony is flatly contradicted by the documentary evidence.

[47] Just over a year later, in July 1999, Mr Vujicic applied for permanent residence – after his conviction but before the court's judgment took effect. On the form, Mr Vujicic swore that he

had never been convicted of, and was not currently charged with, any crime in any country. He testified that he knew he had legal problems, but claimed he did not fully understand the jeopardy he was in.

[48] Accordingly, Mr Vujicic sought certificates that would indicate whether he had been convicted of any crime or was currently charged with anything. Again, he sought and obtained these certificates after his conviction but before the court judgment against him took effect.

[49] The first document, from Bosnia, is irrelevant. While Mr Vujicic was a resident of Bosnia for a period of time, the crime took place in Serbia. It is noteworthy that this certificate states that there were no charges against Mr Vujicic, nor any convictions that were not yet final and binding. If Mr Vujicic had been convicted in Bosnia (instead of Serbia) in 1999, with a final and binding date conviction of December 2000, this certificate presumably would have disclosed that conviction.

[50] The second certificate is from Montenegro, where Mr Vujicic had also been a resident. This document states that Mr Vujicic had not been convicted of an offence. As mentioned, Mr Vujicic claimed that this certificate should have recorded convictions in Serbia as well as Montenegro. I have no evidence before me on that question. At the time, Serbia and Montenegro may well have been part of the same country but constituted separate judicial jurisdictions. But two things are clear. First, Mr Vujicic did not seek a certificate from Serbia, where he had actually been tried and convicted. Second, the certificate from Montenegro, unlike the one from

Bosnia, did not purport to record convictions, like Mr Vujicic's, that were not yet final and binding.

[51] Therefore, the value of these certificates as evidence of Mr Vujicic's clear criminal record is questionable.

[52] Nevertheless, Canadian officials obviously were satisfied by these certificates as showing that Mr Vujicic had not been charged or convicted of any crimes in his countries of residence. However, Mr Vujicic's declaration on his permanent residence application was broader than the scope of these certificates. He claimed not to have been convicted of, or subject to charge for, any crime in any country. The certificates he obtained could not have erased his memory and knowledge of his conviction and sentencing for manslaughter in Serbia in 1994 and again in 1998.

[53] The Minister contends that the fact that Mr Vujicic has never returned to Montenegro or Serbia or Bosnia suggests that Mr Vujicic knew that he was in legal jeopardy. Mr Vujicic testified that he was simply too busy and could not afford to go back. In 2007, he did buy a ticket to Dubrovnik, Croatia, but never made the trip (the ticket was admitted as evidence in his defence at the hearing). Instead, his wife travelled to Canada to visit him. The Minister suggests that this, too, shows consciousness of guilt on Mr Vujicic's part – he was likely aware that the conviction against him was in force in 2007, so he arranged to travel to Croatia instead of any of the countries where he could be apprehended. I find this evidence to be tenuous and speculative. Mr Vujicic was earning little income at the time and Dubrovnik is near the border with

Montenegro. This evidence does not persuade me that Mr Vujicic was worried about returning to the region where he once lived.

[54] In my view, the evidence establishes that Mr Vujicic obtained permanent residence in Canada by a false representation. If he had disclosed his conviction for manslaughter, it is highly unlikely that he would have obtained permanent residence in Canada.

[55] Further, in his application, Mr Vujicic undertook to report any changes in the information he had provided. Accordingly, he also had a duty to inform Canadian officials when his conviction took legal effect in 2000. His failure to do so represents another misrepresentation in the form of knowingly concealing material circumstances (s 10).

IV. Conclusion and Disposition

Based on the admissible evidence before me, I am satisfied that Mr Vujicic obtained permanent residence in Canada based on a false representation, namely, that he had never been charged or convicted of any crime in any country. He falsely declared in his application that the information he provided was truthful, complete, and correct. The evidence shows that Mr Vujicic was present at hearings both in 1994 and 1998 at which he was convicted and sentenced for manslaughter. Mr Vujicic's failure to disclose that conviction displayed his intent to deceive Canadian immigration authorities on his permanent residence application, which is sufficient to establish that he obtained Canadian citizenship by false representation.

JUDGMENT IN T-1689-14

THIS COURT'S JUDGMENT is that Mr Vujicic obtained his permanent residence by a false representation.

"James W. O'Reilly"
Judge

ANNEX

Citizenship Act, RSC 1985, c C-29	*Loi sur la citoyenneté*, LRC (1985), ch C-29
Order in cases of fraud	Décret en cas de fraude
10 (1) Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,	**10 (1)** Sous réserve du seul article 18, le gouverneur en conseil peut, lorsqu'il est convaincu, sur rapport du ministre, que l'acquisition, la conservation ou la répudiation de la citoyenneté, ou la réintégration dans celle-ci, est intervenue sous le régime de la présente loi par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels, prendre un décret aux termes duquel l'intéressé, à compter de la date qui y est fixée :
(a) the person ceases to be a citizen, or	a) soit perd sa citoyenneté;
(b) the renunciation of citizenship by the person shall be deemed to have had no effect,	b) soit est réputé ne pas avoir répudié sa citoyenneté.
as of such date as may be fixed by order of the Governor in Council with respect thereto.	
Presumption	Présomption
(2) A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.	(2) Est réputée avoir acquis la citoyenneté par fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels la personne qui l'a acquise à raison d'une admission légale au Canada à titre de résident permanent obtenue par l'un de ces trois moyens.

Notice to person in respect of revocation

18 (1) The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

(a) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court; or

(b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

Avis préalable à l'annulation

18 (1) Le ministre ne peut procéder à l'établissement du rapport mentionné à l'article 10 sans avoir auparavant avisé l'intéressé de son intention en ce sens et sans que l'une ou l'autre des conditions suivantes ne se soit réalisée :

a) l'intéressé n'a pas, dans les trente jours suivant la date d'expédition de l'avis, demandé le renvoi de l'affaire devant la Cour;

b) la Cour, saisie de l'affaire, a décidé qu'il y avait eu fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels.

Federal Courts Rules, SOR/98-106

Règles des Cours fédérales, DORS/98-106

Content of affidavits

81 (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.

Contenu

81 (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

Affidavits on belief

(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party

Poids de l'affidavit

(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas

to provide evidence of persons having personal knowledge of material facts.

offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

Canada Evidence Act, RSC, 1985, c c-5

Loi sur la preuve au Canada, LRC (1985), ch C-5

Evidence of judicial proceedings, etc.

Preuve des procédures judiciaires, etc.

23 (1) Evidence of any proceeding or record whatever of, in or before any court in Great Britain, the Supreme Court, the Federal Court of Appeal, the Federal Court or the Tax Court of Canada, any court in a province, any court in a British colony or possession or any court of record of the United States, of a state of the United States or of any other foreign country, or before any justice of the peace or coroner in a province, may be given in any action or proceeding by an exemplification or certified copy of the proceeding or record, purporting to be under the seal of the court or under the hand or seal of the justice, coroner or court stenographer, as the case may be, without any proof of the authenticity of the seal or of the signature of the justice, coroner or court stenographer or other proof whatever.

23 (1) La preuve d'une procédure ou pièce d'un tribunal de la Grande-Bretagne, ou de la Cour suprême, ou de la Cour d'appel fédérale, ou de la Cour fédérale, ou de la Cour canadienne de l'impôt, ou d'un tribunal d'une province, ou de tout tribunal d'une colonie ou possession britannique, ou d'un tribunal d'archives des États-Unis, ou de tout État des États-Unis, ou d'un autre pays étranger, ou d'un juge de paix ou d'un coroner dans une province, peut se faire, dans toute action ou procédure, au moyen d'une ampliation ou copie certifiée de la procédure ou pièce, donnée comme portant le sceau du tribunal, ou la signature ou le sceau du juge de paix, du coroner ou du sténographe judiciaire, selon le cas, sans aucune preuve de l'authenticité de ce sceau ou de la signature du juge de paix, du coroner ou du sténographe judiciaire, ni autre preuve.

Certificate where court has no seal

Certificat si le tribunal n'a pas de sceau

(2) Where any court, justice or coroner or court stenographer referred to in subsection (1) has no seal, or so certifies, the evidence may be given by a copy purporting to be certified under the signature of a judge or presiding provincial

(2) Si un de ces tribunaux, ce juge de paix, ce coroner ou ce sténographe judiciaire n'a pas de sceau, ou certifie qu'il n'en a pas, la preuve peut se faire au moyen d'une copie donnée comme certifiée sous la signature d'un juge

court judge or of the justice or coroner or court stenographer, without any proof of the authenticity of the signature or other proof whatever.

ou du juge de la cour provinciale présidant ce tribunal, ou de ce juge de paix, de ce coroner ou de ce sténographe judiciaire, sans aucune preuve de l’authenticité de cette signature, ni autre preuve.

FEDERAL COURT

SOLICITORS OF RECORD

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