

Federal Court



Cour fédérale

Date: 20180525

Docket: T-2097-17

Citation: 2018 FC 546

Ottawa, Ontario, May 25, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

ONUR YILDIRIM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review by the Applicant, Onur Yildirim, challenging a decision of a citizenship judge rendered October 11, 2017 [Decision]. Mr. Yildirim is a citizen of Turkey who applied for Canadian citizenship on January 11, 2015 claiming to have been in Canada for 1,110 days during the relevant period of January 11, 2011 to January 11, 2015.

[2] The Citizenship Judge refused the application for citizenship because she found that Mr. Yildirim could not demonstrate that he was a resident in Canada for three of the four years (1,095 days) immediately preceding his application, as required by s 5(1)(c) of the *Citizenship Act*, RSC 1985, c 29 [Act].

[3] The Citizenship Judge reviewed a File Preparation and Analysis Template [FPAT] and note to file prepared by a citizenship agent indicating that the evidence on file did not allow the agent to conclude that Mr. Yildirim was physically present in Canada and/or had established Canada as his home and that credibility was at issue. She also conducted a 45 minute interview with Mr. Yildirim.

[4] In reaching the Decision, the Citizenship Judge chose to adopt the analytical approach used by the Honourable Mr. Justice Francis Muldoon in *Re Pourghasemi*, [1993] FCJ No 232 (QL) (TD). [*Pourghasemi*]. The quantitative residency test set out in *Pourghasemi* requires that an applicant have 1,095 days of actual physical residency in Canada in the relevant four-year period.

[5] The Citizenship Judge found that it was impossible to determine, on a balance of probabilities, how many days Mr. Yildirim was actually present in Canada because there was insufficient credible evidence of his continued physical presence during the periods that he claimed to have been in Canada.

[6] The case turned on credibility. The Citizenship Judge drew negative inferences about Mr. Yildirim's credibility on the basis of inconsistencies or lack of explanation regarding three banking and credit card transactions made during periods that he claimed to be either present or absent from Canada. She then went on to find that Mr. Yildirim was not truthful about other information contained in his citizenship application, such as his income, his employment, the extent of his role in a company in Turkey and his property ownership in Turkey. Given that she did not find Mr. Yildirim credible, she concluded that he did not meet the burden of proof that he satisfied the residence requirement set out in the Act.

[7] At the hearing of the application, counsel for the Respondent, the Minister of Citizenship and Immigration (the Minister), conceded that the Citizenship Judge erred in drawing negative inferences relating to the three financial transactions. Counsel submitted that, notwithstanding the error by the Citizenship Judge and her misapprehension of the evidence, the Decision is reasonable and supported by the evidence. I disagree.

[8] It is clear from the Decision that the Citizenship Judge relied on unsubstantiated facts in making her overall assessment of Mr. Yildirim's credibility and the reliability of his evidence.

[9] In his application for citizenship and the Residence Questionnaire, Mr. Yildirim declared absences from Canada for a total of 350 days. The citizenship agent calculated the same absences with the same totals as indicated by Mr. Yildirim in the Residence Questionnaire, leaving him with 1,110 days of physical presence during the relevant period. Mr. Yildirim submitted corroborating documentation in support of his application. The Citizenship Judge notes at

paragraph 26 of the Decision that there are some “undeclared absences”, but no further mention is made or analysis conducted by the Citizenship Judge of the alleged absences.

[10] In the circumstances, it is unclear whether Mr. Yildirim’s application for citizenship would have been denied were it not for the negative inferences regarding the financial transactions, which went to the heart of the quantitative residency test being applied by the Citizenship Judge.

[11] It is well established that the standard of reasonableness applies to a review of a citizenship judge’s decision in determining whether the residency requirement has been met. When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process. Findings involving questions of facts or mixed fact and law should not be disturbed provided that 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 (CanLII) at para 47 [*Dunsmuir*]; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 (CanLII) at para 59).

[12] The factual errors made by the Citizenship Judge taint her finding of credibility. It follows that the credibility finding taints the Decision, rendering it unreasonable within the meaning of *Dunsmuir*. The Decision therefore cannot stand.

[13] I therefore propose to allow the application for judicial review and remit the matter back for redetermination before a different citizenship judge. Counsel for the Minister agreed to contact his client in the event the application was granted to request that the redetermination be conducted as soon as reasonably possible.

JUDGMENT in T-2097-17

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The decision of the Citizenship Judge dated October 11, 2017 is quashed and set aside.
3. The matter is remitted for redetermination by a different citizenship judge.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2097-17

STYLE OF CAUSE: ONUR YILDIRIM v. MCI

PLACE OF HEARING: MONTRÉAL, QUÉBEC

DATE OF HEARING: MAY 24, 2018

JUDGMENT AND REASONS: J. LAFRENIÈRE

DATED: MAY 25, 2018

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