Federal Court  Cour fédérale

Date: 20190114

Docket: T-1072-18

Citation: 2019 FC 44

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 14, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

MOHAMED OUSAID DEGHEB

Respondent

JUDGMENT AND REASONS

[1] The Minister of Citizenship and Immigration [applicant] seeks judicial review of a decision of a citizenship judge, dated May 9, 2018, approving the citizenship application of Mohamed Ousaid Degheb [respondent]. In her decision, the citizenship judge declared herself satisfied with the evidence adduced by the respondent to establish his physical presence in Canada during the applicable reference period and found that the respondent met the

requirements set out in subparagraphs 5(1)(c)(i) and (ii) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

[2] The applicant argues that the decision was unreasonable. He criticizes the citizenship judge for having erred in her assessment of the respondent's physical presence in Canada, relying on his testimony rather than on the documentary evidence which, according to the applicant, contained numerous deficiencies and inconsistencies which were not addressed by the citizenship judge. The applicant argues in particular that:

(1) the respondents's explanations concerning the lack of passports covering the entire reference period were insufficient;

(2) the citizenship judge should have sought additional information from the respondent on his failure to obtain from the Directorate General of National Security in Algeria a report of his entry into and exit from Algeria, as had been requested by the citizenship officer who reviewed his application;

(3) the citizenship judge erred in finding that the respondent had accumulated two thousand and fourteen (2,014) days of physical presence in Canada and more than one hundred and eighty-three (183) days per calendar year in the six (6) years preceding his application based solely on the respondent's claims, electronic travel tickets and the report of entries into Canada; and

(4) the evidence adduced by the respondent did not establish the history of his activities in Canada during the relevant period, and the citizenship judge should have questioned the respondent more about his job searches, since he was unemployed until 2015.

[3] For the reasons that follow, the Court cannot agree with the applicant's arguments.

[4] It is well established that the standard of review applicable to decisions made by citizenship judges on compliance with residency requirements under paragraph 5(1)(c) of the Act is that of reasonableness (*Li v Canada (Citizenship and Immigration)*, 2018 FC 639 at para 12;

Semhat v Canada (Citizenship and Immigration), 2017 FC 217 at para 2 [*Semhat*]; *Canada (Citizenship and Immigration) v Baccouche*, 2016 FC 97 at para 9; *Canada (Citizenship and Immigration) v Lin*, 2016 FC 58 at para 9; *Canada (Citizenship and Immigration) v Pereira*, 2014 FC 574 at para 18 [*Pereira*]).

[5] When the reasonableness standard applies, the role of the Court is to determine whether the decision falls within the range of *"*possible, acceptable outcomes which are defensible in respect of the facts and law*"*. When *"*justification, transparency and intelligibility within the decision-making process*"* exist, it is not open to the Court to substitute its own preferred outcome (*Dunsmuir v Nouveau-Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[6] First, as regards the absence of passports for the entire reference period from October 10, 2010, to October 10, 2016, it is trite law that the absence of passports is not fatal to an application for citizenship if the applicant for citizenship provides a reasonable explanation as to the unavailability of the passport (*Pereira*, para 25; *Canada (Citizenship and Immigration) v El Boussergh*i, 2012 FC 88 para 19). In this case, the Court considers that it was reasonable for the citizenship judge to accept the respondent's explanations for the destruction of his passports since they were supported by credible documentary evidence. Indeed, the respondent produced two (2) certificates signed by the Deputy Consul General of the Consulate General of Algeria in Montréal [Consulate] in which it is stated that the Algerian passports of the respondent were destroyed by the Consulate in accordance with the regulations in force. The certificates, which are specific to each passport, mention the passport number, the date of issue and renewal and the period during which the passport was valid.

[7] The applicant submits that the citizenship judge's reasons were insufficient to explain how she came to accept the respondent's explanations for the absence of passports. However, it is well established that the Court may, if it deems it necessary, examine the record in order to assess the reasonableness of the result (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15-16, 18 [*Newfoundland Nurses*]). Contrary to the applicant's claims, the citizenship judge's reasons, read in conjunction with the record, including the Consulate's certificates, allow the Court to understand the finding of the citizenship judge regarding the destruction of the passports.

[8] Second, with respect to the report of entries into and exits from Algeria requested by the citizenship officer because of the absence of passports for the entire reference period, it was not unreasonable for the citizenship judge to rely on the Algerian Consulate's reply indicating that such a document did not appear in the nomenclature of Algerian administrative documents. The citizenship judge is presumed to have considered all of the evidence on file, including the citizenship officer's statement about the existence of such a document (*Canada (Citizenship and Immigration) v Abidi*, 2017 FC 821 at para 42). The citizenship judge took into account the evidence before her, a document signed by the Vice Consul of the Algerian Consulate. The citizenship judge reasonably considered this documentary evidence to be credible and made a favorable finding based on the respondent's efforts to obtain a record of his travels to Algeria.

[9] Third, the Court is also of the opinion that the citizenship judge could reasonably conclude that, on a balance of probabilities, the respondent had accumulated two thousand and fourteen (2,014) days of physical presence in Canada during the relevant reference period based

on the fact that the seven (7) entries into Canada reported by the respondent were in the report of entries to Canada and that five (5) of the seven (7) exits from Canada were verifiable using electronic travel tickets. Only two (2) trips could not be verified. Although it was desirable for the respondent to be able to demonstrate with objective evidence the two (2) exits from Canada, the citizenship judge correctly pointed out that the standard of proof required for citizenship is that of a balance of probabilities, which means that the person seeking citizenship must demonstrate that it is more likely than not that he or she will meet his residency obligation. In accordance with this standard of proof, certainty is not required (*Canada (Citizenship and Immigration) v Purvis*, 2015 FC 368 at para 42; *Pereira* at para. 21; *Malevsky v Canada (Minister of Citizenship and Immigration)* [2002] FCJ No. 1554 (QL) at para 7).

[10] Finally, the Court finds that the applicant's argument that the evidence submitted by the respondent in support of his application for citizenship did not support the history of his activities in Canada during the relevant reference period is unfounded. On the contrary, the respondent provided the citizenship judge with personal credit card statements from August 2011 to the end of the reporting period. The statements show consistent financial transactions and allowed the citizenship judge to conclude that it was more likely than not that the respondent had established a physical presence of at least one thousand four hundred and sixty (1,460) days in the course of the six (6) years preceding the date of the application for citizenship and at least one hundred and eighty-three (183) days in at least four (4) of the six (6) calendar years preceding the date of the request, in accordance with subparagraphs 5(1)(c)(i) and (ii) of the Act. Although the respondent's credit card statements in the certified court record do not include the backs of these documents—all of pages two (2) of three (3)—the evidence on record

demonstrates that the citizenship judge actually had consulted them in making her decision. By looking at the credit card statements in the respondent's file, although not covering the entire reference period, they allow the Court to note that the citizenship judge's finding that the statements demonstrate consistent financial transactions is reasonable. Moreover, even though the citizenship judge did not mention it, the Court notes that the respondent's file also includes a letter from the management company of the building where he lives indicating that the respondent has resided there since November 1, 2009.

[11] This is not a case where the citizenship judge relied solely on the respondent's testimony to conclude that he meets the citizenship requirements, as claimed by the applicant. Her reasons also do not demonstrate that she ignored the concerns raised by the citizenship officer. The finding of the citizenship judge is based on the respondent's testimony that she found [TRANSLATION] "sincere, detailed, plausible, and persuasive", as well as on objective, credible and convincing evidence. The applicant did not demonstrate that the citizenship judge's findings did not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[12] As noted by this Court in *Semhat*, the decision of the citizenship judge must be considered "as an organic whole, without a line-by-line treasure hunt for error" (*Semhat* at para 14, *Newfoundland Nurses* at para 14). In this context, and taking into account the fact that the Court must show deference to the findings of the citizenship judge, the Court emphasizes that, although the applicant disagrees with the assessment of the evidence made by the

citizenship judge, it is not the mandate of this Court to substitute its assessment of the evidence on the record (*Djeddou v Canada (Citizenship and Immigration)*, 2015 FC 1247 at para 16).

[13] For these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court is of the opinion that this case does not give rise to any.

JUGEMENT in Docket T-1072-18

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
This 23rd day of January, 2019.

Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1072-18
SYTLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v MOHAMED OUSAID DEGHEB
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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APPEARANCES:

Simone Truong	FOR THE APPLICANT
Mohamed Ousaid Degheb	FOR THE RESPONDENT (ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

Attorney General of Canada Montréal, Québec	FOR THE APPLICANT