

Date: 20070927

Docket: T-587-07

Citation: 2007 FC 958

Ottawa, Ontario, September 27, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

HAROON AHMED KHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On December 8, 2006, Mr. Haroon Ahmed Khan attended a hearing before a judge who was reviewing Mr. Khan's application for Canadian citizenship. Luckily for Mr. Khan, he had arrived the night before from Pakistan, opened his mail, and learned that his hearing was to take place the next day. He knew that he had to bring with him documents showing that he met the minimum residency requirement for Canadian citizenship. He cobbled together what he could on short notice, such as his current and expired passports, some duplicate rent cheques, his driver's license, taxi license and business license, letters from employers, tax returns, and his children's report cards.

[2] When he presented these papers to the citizenship judge, she informed him that she needed more in order to be satisfied that he fulfilled the residency requirement. Mr. Khan agreed to supply further documentation and the required residency questionnaire, but asked for three or four weeks' time in which to do so. On February 6, 2007, not having received any further documents or a residency questionnaire from Mr. Khan, the judge rejected his application for citizenship.

[3] Mr. Khan appeals that decision. He argues that the judge erred by not making a decision based on the documents he had already presented. Mr. Khan submits that the documents he gave the judge at the hearing were sufficient.

[4] I can find no error in the judge's decision and must, therefore, dismiss Mr. Khan's appeal.

I. Issue

[5] Did the citizenship judge err by failing to base her decision on the documents Mr. Khan submitted?

II. Analysis

[6] To obtain Canadian citizenship, an applicant must prove, among other things, that he or she was resident in Canada for at least three out of the four years preceding the date of the application (*Citizenship Act*, R.S. 1985, C-29, s. 5(1) – relevant provisions are set out in an Annex). Mr. Khan

applied for citizenship in April 2005. He says that he was a resident of Canada from January 2002 until March 2005 and, therefore, satisfied the residency requirement. He submits that the documents he gave the citizenship judge established his residency, and that the judge should have either found in his favour or explained why those documents were deficient.

[7] As I view the circumstances, the judge cannot be faulted for the manner in which she proceeded or for her decision. At the hearing, as Mr. Khan concedes, the judge explained why his passport was not adequate proof of residency in Canada for the necessary duration. Equally, the other documents did not prove residency throughout the relevant period. The judge asked for, and Mr. Khan undertook in writing to provide, more complete records. The judge waited until a day before the judge's 60-day deadline for deciding the matter (s. 14(1)), before writing to Mr. Khan expressing her conclusion.

[8] Mr. Khan also argues that the judge misunderstood his application. In her notes of the hearing, the judge appeared to have evaluated the extent of Mr. Khan's attachment to Canada, which would have been necessary only if Mr. Khan had failed to prove his physical presence for the required duration. And, as already mentioned, Mr. Khan asserts that this had already been proved. As I interpret the judge's notes, she may have been considering an alternative basis for granting Mr. Khan's application, in the absence of adequate proof of actual residence, in keeping with the case of *Re Koo*, [1993] 1 F.C. 286 (T.D.) (QL). I would not infer from the judge's notes that she failed to appreciate the basis of Mr. Khan's application.

[9] As I view the judge's conduct, she reasonably concluded that Mr. Khan's evidence was deficient, accorded him ample time to supplement his application, waited until almost the last possible moment before rendering her decision, and then, ultimately, found that Mr. Khan had failed, based on the documents filed, to meet the statutory residency requirement. In these circumstances, I must dismiss Mr. Khan's appeal.

JUDGMENT

THIS COURT JUDGMENT IS that

1. The appeal is dismissed.

“James W. O’Reilly”

Judge

Annex "A"

Citizenship Act, R.S. 1985, c-29

Loi sur la citoyenneté, L.R.1985, ch. 29

Grant of citizenship

Attribution de la citoyenneté

5. (1) The Minister shall grant citizenship to any person who

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

(a) makes application for citizenship;

a) en fait la demande;

(b) is eighteen years of age or over;

b) est âgée d'au moins dix-huit ans;

(c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

c) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

(d) has an adequate knowledge of one of the official languages of Canada;

d) a une connaissance suffisante de l'une des langues officielles du Canada;

(e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

(f) is not under a removal order and is not

f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.

the subject of a declaration by the Governor in Council made pursuant to section 20.

Consideration by citizenship judge

14. (1) An application for

(a) a grant of citizenship under subsection 5(1),

(b) a retention of citizenship under section 8,

(c) a renunciation of citizenship under subsection 9(1), or

(d) a resumption of citizenship under subsection 11(1)

shall be considered by a citizenship judge who shall, within sixty days of the day the application was referred to the judge, determine whether or not the person who made the application meets the requirements of this Act and the regulations with respect to the application.

Examen par un juge de la citoyenneté

14. (1) Dans les soixante jours de sa saisine, le juge de la citoyenneté statue sur la conformité — avec les dispositions applicables en l'espèce de la présente loi et de ses règlements — des demandes déposées en vue de :

a) l'attribution de la citoyenneté, au titre du paragraphe 5(1);

b) la conservation de la citoyenneté, au titre de l'article 8;

c) la répudiation de la citoyenneté, au titre du paragraphe 9(1);

d) la réintégration dans la citoyenneté, au titre du paragraphe 11(1).

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-587-07

STYLE OF CAUSE: HAROON AHMED KHAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: September 18, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 27, 2007

APPEARANCES:

Jeremiah A. Eastman

FOR THE APPLICANT

Kristina Dragaitis

FOR THE RESPONDENT

SOLICITORS OF RECORD:

CARTERS PROFESSIONAL
CORPORATION
Orangeville, On.

FOR THE APPLICANT

JOHN H. SIMS, Q.C.
Deputy Attorney General of Canada
Toronto, ON

FOR THE RESPONDENT