

Date: 20080710

Docket: T-1286-07

Citation: 2008 FC 860

Ottawa, Ontario, July 10, 2008

PRESENT: The Honourable Orville Frenette

BETWEEN:

AHMED BASEM ABDEL RAHMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Ahmed Basem Abdel Rahman (Applicant) is appealing pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the Act) and section 21 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 of a decision (the Decision) made June 8, 2007 in accordance with subsection 14(3) of the Act by a Citizenship Judge to not approve the Applicant's application for citizenship.

I. Background

[2] The Applicant is a citizen of Egypt who became a permanent resident of Canada on July 18, 2001. He applied for citizenship on August 15, 2004. Hence, the relevant period for determining his physical presence in Canada is August 15, 2000 to August 15, 2004 (the Period).

[3] However, the Applicant did not indicate in his submission to the Citizenship Judge whether he had been physically present in Canada during the portion of the Period before he became a permanent resident. His submissions only covered the 1,123 days after he had become a permanent resident. During that period, the Applicant was absent 29 days, meaning he was present 1,094 days. This is one day short of the 1,095 days required under paragraph 5(1)(c) of the Act.

[4] Unfortunately for the Applicant, he had made an arithmetic error when he had prepared his citizenship application and had erroneously believed he had had the 1,095 days of physical presence required. Had the Applicant waited one more day before making his citizenship application, he would have had the required number of days of physical presence.

[5] The application for citizenship does state that one half of “the time you resided in Canada before you became a permanent resident” during the Period does count towards meeting the residency test. Section 7 of the application asks the following two questions:

- (a) Date you became a permanent resident?
- (b) When did you first come to live in Canada if different from (a)?

[6] The Applicant was sent a Residence Questionnaire on June 28, 2006. The Residence Questionnaire instructed the Applicant to complete the questionnaire “in detail” and to “provide documentary evidence in support of your statements.” The Residence Questionnaire noted that

The concept of residence is based on the quality of your ties to Canada ... It is your responsibility to satisfy the citizenship judge that you meet all the requirements of the *Citizenship Act* and *Regulations*.

[7] The Residence Questionnaire requested details on all of the Applicant’s “trips outside the country since your arrival in Canada”. The Applicant listed his absences subsequent to the date he received his permanent residence but did not provide any information as to whether he had stayed in Canada before that date.

[8] The Applicant also provided answers to the other questions in the Residence Questionnaire and submitted documentation, including copies of his passport.

[9] On June 5, 2007, the Applicant attended a hearing before the Citizenship Judge. The Applicant asserts the Citizenship Judge asked questions which the Applicant answered but that the Applicant was not given an opportunity to provide submission or explanations on any matter other than what was solicited through questioning by the Citizenship Judge. The Applicant further alleges that the Citizenship Judge never informed him that the Applicant was short one day of physical presence or asked about the time the Applicant may have spent in Canada during the Period prior to the date the Applicant became a permanent resident.

[10] In her Decision, the Citizenship Judge found that the Applicant had only been present 1,094 days in Canada. She then applied the test set out in by Justice Barbara Reed in *Re: Koo*, [1993] 1 F.C. 286, 59 F.T.R. 27 (T.D.). After considering the six questions set out in that test, she concluded that “[o]n a balance of probabilities, I believe you have not centralized your mode of existence in Canada.”

II. Applicable Legislation

[11] The provisions of subsection 5(1) of the *Act* are as follows:

Grant of citizenship

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

- (a) makes application for citizenship;
- (b) is eighteen years of age or over;
- (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:

(i) for every day during

Attribution de la citoyenneté

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

- a) en fait la demande;
- b) est âgée d’au moins dix-huit ans;
- 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) un demi-jour pour

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

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

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.

III. Discussion

(i) *The leap-year argument*

[12] The Applicant argues that he had been present for the 1,095 required days. The Citizenship Judge, however, had calculated the number of days as 1,094 days because she did not count the leap day (February 29, 2004) towards the Applicant's physical presence.

[13] The Respondent objects to this argument on the basis it was not raised in the pleadings. Because this is a textual argument, I believe it was properly adduced.

[14] The Respondent also argues that the Applicant's reasoning is fallacious because paragraph 5(1)(c) of the Act only refers to "years". I agree. In order for the Applicant to meet the requirements of the Act, he must show that he was physically present for three years, not for 1,095 days. Three years can equal 1,095 days if and only if leap days are not included. As an example, a person present from March 1, 2001 to February 29, 2004 would be present for 1,095 days if the leap day was counted but would be one day short of being present for three years.

[15] The Respondent determines whether the three year statutory requirement has been met by calculating the number of days present other than leap days. If an applicant has 1,095 days (other than leap days) of physical presence, then the Respondent concludes that the requirements of paragraph 5(1)(c) have been met. The Respondent explains its methodology on the Citizenship and

Immigration Canada web-site. The Applicant has not presented any arguments as to why this methodology is inconsistent with the Act.

[16] It is also noteworthy that the Applicant himself had not counted the leap day in his initial calculations of physical presence. In his initial application, the Applicant declared 1,123 days of basic residence and 28 days of absences to obtain 1,095 days of physical presence. If the Applicant had included February 29, 2004 and had correctly calculated his absences, the Applicant would have declared 1,124 days of basic residence and 29 days of absences to obtain 1,095 days of physical presence. There is nothing in the record that the Applicant wanted the Citizenship Judge to include the leap day in calculating the number of days of physical presence.

(ii) *Procedural Fairness*

[17] The Applicant also argues that the Citizenship Judge breached the duty of procedural fairness by failing to inform the Applicant that he was short the required number of days and that the purpose of the hearing was to determine whether the Applicant had sufficient ties to Canada in accordance with the *Koo* test. Questions of procedural fairness are subject to a correctness standard upon review.

[18] In *Stine v. Canada (MCI)* (1999), 173 F.T.R. 298, 2 Imm. L.R. (3d) 280, Justice Pelletier at para. 8 held in a citizenship case that the citizenship judge has the duty to disclose concerns to the applicants. However, other cases uphold that the presentation of information or evidence to support an application lies upon the applicant and that the Citizenship Judge has no obligation to divulge

any concerns or ask the applicant for evidence to support the claim. A Citizenship Judge is not obliged to inquire or to interview to obtain information (see, for example, *Poon v. Canada (MCI)*, 2001 FCT 232, 202 F.T.R. 45; *So v. Canada (MCI)*, 2001 FCT 733, 107 A.C.W.S. (3d) 736).

[19] The Applicant had several opportunities to submit evidence of his physical presence in Canada prior to being granted permanent residence status, including on his application and the Residence Questionnaire. Similarly, the Applicant was given (and took advantage of) opportunities, to submit evidence and other information regarding his ties to Canada. The Applicant knew what test he had to meet and what evidence would support his application.

[20] Moreover, I am not persuaded that another opportunity would have made any difference. While the Applicant asserts in his written submissions before me that he was in Canada for “numerous occasions” during the Period prior to becoming a permanent resident, he does not mention specific dates or provide evidence to support his bald statement.

[21] Procedural fairness was satisfied in this case by the application, the Residence Questionnaire and the interview by the Citizenship Judge. The Citizenship Judge also conscientiously addressed the conditions set out in the *Koo* test. For these reasons, I conclude that there is no reviewable error in the Decision.

JUDGMENT

UPON reviewing the material filed and hearing the submissions of counsel for both parties in Toronto on Wednesday, June 11, 2008;

NOW THEREFORE THIS COURT ORDERS AND ADJUDGES that for the reasons given above the Application is hereby dismissed without costs.

"Orville Frenette"
Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1286-07

STYLE OF CAUSE: Ahmed Basem Abdel Rahman
v.
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 11, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** FRENETTE D.J.

DATED: July 10, 2008

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