

Date: 20090211

Docket: T-1102-08

Citation: 2009 FC 132

Ottawa, Ontario, February 11, 2009

PRESENT: The Honourable Mr. Justice Orville Frenette

BETWEEN:

**Kaddour LABIOUI
Fatna DAOUDI
Nour El Houda LABIOUI
Younes LABIOUI
Najlaa LABIOUI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal under subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the Act), from five decisions made on May 27, 2008, by a citizenship judge, denying the applicants' applications for Canadian citizenship because the applicants did not meet the requirements of paragraphs 5(1)(c) and (e) of the Act.

Facts

[2] The applicants are Moroccan citizens. On the day they applied for citizenship, the father had one minor child, whom he included in his application, and four other adult children. The Labioui family arrived in Canada on March 22, 2001.

[3] On October 25, 2004, the applicants all applied for Canadian citizenship.

[4] On January 30, 2008, the applicants were summoned to appear before the citizenship judge. They were notified that the judge needed more information to make his decision and assess whether their applications met all the prescribed conditions. On February 13, 2008, the applicants each appeared before the judge in turn.

[5] The five decisions dated May 27, 2008, found that the applicants had not met the requirements established by paragraph 5(1)(e) of the Act with regard to knowledge of Canada. Specifically, the applicants were unable to correctly answer questions 45 and 47 and, in one case, 39, 45 and 47.

Impugned decisions

[6] In five similar decisions, the citizenship judge found that the applicants had not met the requirements of paragraph 5(1)(e) of the Act because they did not have an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.

Issue

[7] Did the citizenship judge err in finding that the applicants did not have an adequate knowledge of Canada and of the responsibilities and privileges of Canadian citizenship?

Legislation

[8] Paragraph 5(1)(e) of the Act reads as follows:

5. (1) The Minister shall grant citizenship to any person who
 ...
 (e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois:
 [...]
 e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

[9] Additional information is found in section 15 of the *Citizenship Regulations, 1993*,

SOR/93-246:

15. The criteria for determining whether a person has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship are that, based on questions prepared by the Minister, the person has a general understanding of

- (a) the right to vote in federal, provincial and municipal elections and the right to run for elected office;
- (b) enumerating and voting procedures related to elections; and
- (c) one of the following topics, to be included at random in the questions prepared by the Minister, namely,
 - (i) the chief characteristics of Canadian social and cultural history,
 - (ii) the chief characteristics of Canadian political history,

15. Une personne possède une connaissance suffisante du Canada et des responsabilités et privilèges attachés à la citoyenneté si, à l'aide de questions rédigées par le ministre, elle comprend de façon générale, à la fois:

- a) le droit de vote aux élections fédérales, provinciales et municipales et le droit de se porter candidat à une charge électorale;
- b) les formalités liées au recensement électoral et au vote;
- c) l'un des sujets suivants, choisi au hasard parmi des questions rédigées par le ministre:
 - (i) les principales caractéristiques de l'histoire sociale et culturelle du Canada,
 - (ii) les principales caractéristiques de l'histoire politique du Canada,

(iii) the chief characteristics of Canadian physical and political geography, or
 (iv) the responsibilities and privileges of citizenship, other than those referred to in paragraphs (a) and (b).

(iii) les principales caractéristiques de la géographie physique et politique du Canada,
 (iv) les responsabilités et privilèges attachés à la citoyenneté autres que ceux visés aux alinéas a) et b).

Analysis

A. *Standard of review*

[10] The applicable standard of review is reasonableness (see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190; *Haddad v. Minister of Citizenship and Immigration*, 2003 FCT 692; *Wang v. Minister of Citizenship and Immigration*, 2008 FC 391; *Arif v. Minister of Citizenship and Immigration*, 2007 FC 557). It has repeatedly been held that the citizenship judge's assessment is a question of fact that should be afforded a high level of deference.

B. *Is the decision reasonable?*

[11] Based on a careful reading of the reasons for decision, I find that, during the interviews on February 13, 2008, the citizenship judge asked:

- 15 questions of Kaddour Labioui, 6 of which were answered correctly. He gave incorrect answers to questions 39, 45 and 47, which the judge identified as mandatory in assessing his knowledge of Canada and of the responsibilities and privileges of citizenship;
- 13 questions of Nour El Houda Labioui, 7 of which were answered correctly. She gave incorrect answers to questions 45 and 47, which the judge identified as mandatory in assessing her knowledge of Canada and of the responsibilities and privileges of citizenship;
- 14 questions of Fatna Daoudi, 5 of which were answered correctly. She gave incorrect answers to questions 45 and 47, which the judge identified as mandatory in assessing her

- knowledge of Canada and of the responsibilities and privileges of citizenship;
- 13 questions of Younes Labioui, 9 of which were answered correctly. He gave incorrect answers to questions 45 and 47, which the judge identified as mandatory in assessing his knowledge of Canada and of the responsibilities and privileges of citizenship;
 - 15 questions of Najlaa Labioui, 6 of which were answered correctly. She gave incorrect answers to questions 45 and 47, which the judge identified as mandatory in assessing her knowledge of Canada and of the responsibilities and privileges of citizenship.

[12] In *El Fihri v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1106, 147 A.C.W.S. (3d) 745, the applicant answered two mandatory questions incorrectly during her hearing. As a result, her citizenship application was denied by Mr. Justice Pierre Blais, who noted the following:

[16] It is therefore clear that the applicant was not able to correctly answer two mandatory questions asked by the Judge. Even though the applicant alleges that she should have been given the test in writing, nothing in the Act or in the Regulations would indicate that that is the case. Quite to the contrary, *Hussain v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1130, Lemieux J. states:

From the material before me, it is clear that a citizenship judge's questions (when the written test option is not given) are based on the information contained in self-instructional material approved by the Minister and presented to applicants for grant of citizenship. Applicants for Canadian citizenship who are to be interviewed receive notice of the purpose of the interview so that they can review the self-instructional material prescribed by the Minister in preparation for the interview. On the record available to me, I am satisfied the applicant did not receive the standard notice letter; the February 2, 1998 letter, which he did receive, did not identify the purpose of the interview. I also find that the applicant had reasonable grounds to think the February 20, 1998 interview would be about his absences.

[17] In this case, the applicant received all of the documents necessary to prepare for the interview and the Judge even indicates this in the second page of his decision. Further, in a letter sent to the applicant on July 28, 2004, it stated:

[TRANSLATION]

The Citizenship Judge requires more information to be able to make a decision on your citizenship application. You are therefore summoned to an interview so that the Judge may determine if your application meets all of the prescribed conditions. The Judge may ask you questions in order to determine if you have sufficient knowledge of French or English and sufficient knowledge of Canada.

[13] Moreover, in *Wang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 391, 166 A.C.W.S. (3d) 219, Mr. Justice James Russell stated the following:

[22] Like section 5 of the Act, the criteria listed in paragraph 15 of the Regulations are cumulative. Thus, a person must demonstrate that they have a general understanding of each topic listed in paragraphs 15(a) and (b) and one of the topics, as selected by the Minister, in paragraph 15(c). In my view, the effect of this is that a failure to correctly answer questions on the topics covered in any of the three areas results in a fail, even if the Applicant has demonstrated an adequate knowledge in other areas.

[14] In light of these facts, and given the applicable standard of review, I am of the opinion that the citizenship judge's decision that the applicants did not have an adequate knowledge of Canada was reasonable.

Applicants' submissions

[15] The applicants supported their memorandum with affidavits in which they stated that they had correctly answered the questions asked by the citizenship judge.

[16] At this stage, this Court cannot accept this type of evidence to circumvent the citizenship judge's decision.

[17] The applicants allege that their fundamental rights were violated because they were not given the same opportunity as other candidates to answer multiple-choice questions. This argument cannot be accepted, since the judge, under the Act, had the choice and discretion to question the applicants directly on their general knowledge of Canada (*Wang, supra*, at paragraph 22).

Conclusion

[18] For the above reasons, the applicants' appeals cannot be allowed.

Costs

[19] Counsel for the respondent made a motion to the Court to vary the relief sought in the respondent's memorandum in order to seek costs against the applicants if their appeals were dismissed. The applicants contested the motion.

[20] In the specific circumstances of this case, I do not consider it fair to award such costs against the applicants.

JUDGMENT

The appeal under subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29, from five decisions made by a citizenship judge on May 27, 2008, is dismissed without costs.

"Orville Frenette"

Deputy Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1102-08

STYLE OF CAUSE: Kaddour LABIOUI, Fatna DAOUDI, Nour El Houda LABIOUI, Younes LABIOUI, Najlaa LABIOUI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Kaddour Labioui
Fatna Daoudi
Nour El Houda Labioui
Younes Labioui
Najlaa Labioui

THE APPLICANTS THEMSELVES

Émilie Tremblay

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT