

Date: 20091118

Docket: T-843-02

Citation: 2009 FC 1178

Toronto, Ontario, November 18, 2009

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

MUSHTAQ ALI KHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This judgment concerns an appeal pursuant to subsection 14(5) of the *Citizenship Act* (the “Act”) by which the Applicant challenges the decision of citizenship judge R. Cruden dated May 2nd, 2002 under which his application for citizenship was not approved.

Background

[2] Mr. Mushtaq Ali Khan (the “Applicant”) submitted an application for Canadian citizenship on May 22, 2001. In his application he states that he is a citizen of Pakistan born on March 1, 1951 and that he has been a permanent resident of Canada since May 11, 1989.

[3] The Applicant failed the required written knowledge test and was therefore called to appear before a citizenship judge to determine if he could meet the requirements of the Act and of the *Citizenship Regulations* (the “Regulations”).

[4] The Applicant appeared before the citizenship judge on March 27, 2002 and failed the oral knowledge test. The Applicant did not answer correctly some of the questions, and particularly had difficulties identifying the rights and privileges attached to citizenship as well as the responsibilities of a Canadian citizen. The citizenship judge notified accordingly the respondent Minister, and on May 2, 2002 sent a letter to the Applicant explaining the decision not to approve the citizenship application in the following terms:

I have found, at that time [March 27, 2002], that you did not have an adequate knowledge of Canada and of the responsibilities and privileges of citizenship. Subsection 5(1)(e) of the *Citizenship Act* provides that an applicant for citizenship must have adequate knowledge of Canada and of the responsibilities and privileges of Canadian citizenship in order to qualify for citizenship. At your hearing, you did not demonstrate sufficient understanding of rights and responsibilities of citizenship. All questions relating to Canada were translated by your brother Mansab Ali Khan.

According to Section 15 of the *Citizenship Regulations*, which prescribes the criteria for determining whether or not an applicant has adequate knowledge of Canada and of the responsibilities and privileges of citizenship, you must be able to correctly answer questions prepared by the Minister based on information contained in self-instructional material approved by the Minister and presented to applicants for the grant of citizenship.

Pursuant to subsection 15(1) of the *Citizenship Act*, I have considered whether or not to make a recommendation for an exercise of discretion under 5(3) and 5(4) of the Act. Subsection 5(3) of the Act confers discretion on the Minister to, among other things, waive on compassionate grounds, in the case of any person, the knowledge requirements you failed to meet. As to subsection 5(4) of the Act, it

empowers the Governor in Council to direct the Minister to grant citizenship to any person in cases of special and unusual hardship or to reward services of an exceptional value to Canada.

There was no evidence presented to me at the hearing of special circumstances that would justify me in making such a recommendation under either subsections 5(3) or 5(4).

Pursuant to the provisions of subsection 14(3) of the *Citizenship Act*, you are, therefore, advised that, for the above reasons, your application for citizenship is not approved.

[5] This appeal was first initiated by the Applicant on May 30, 2002, and was originally scheduled for a hearing on May 28, 2003. However, that initial hearing was adjourned *sine die* by Justice Rouleau at the request of the parties. Following a request made in December of 2005 by the Applicant for a new hearing date, a hearing was scheduled for March 14, 2006. Again that hearing was adjourned *sine die* by Justice Barnes at the request of the Applicant who was unable to attend because he was in Pakistan. This case was finally rescheduled at the request of the Respondent, and a hearing was finally held before me in Ottawa on November 9, 2009.

[6] However, since these proceedings were first initiated, the Minister's policy has been modified. Indeed, prior to April 18, 2005, the language and knowledge requirements were automatically waived for applicants 60 years of age and over pursuant to ministerial policy. As of April 18, 2008, this automatic waiver of the language and knowledge requirements was extended by ministerial policy to those applicants 55 years of age and over.

Position of the parties

[7] In his Memorandum of Fact and Law dated October 18, 2002, the Applicant argued that the citizenship judge had erred in assessing the facts since he had answered correctly the questions asked of him concerning the rights and privileges attached to citizenship as well as the responsibilities of a Canadian citizen.

[8] At the hearing before me, the Applicant took another approach. He rather argued that he is now 58 years of age and that consequently the new policy waiver of the language and knowledge requirements should now apply to him and, as a result, this Court should grant him citizenship *ipso facto*.

[9] The Applicant further noted that he was not seeking any waiver on compassionate grounds, but rather application of the new policy to his circumstances. The Applicant specifically indicated at the hearing that he was not challenging the refusal of the citizenship judge not to recommend the exercise of discretion on compassionate grounds under the Act.

[10] The attorney representing the Minister argued that the May 2, 2002 decision of the citizenship judge was clear and based on an assessment of the facts before that judge, and no evidence had been presented to justify why it should be overturned. It was further argued for the Minister that though the policy had changed in 2005, this policy change did not have a retroactive effect. The attorney representing the Minister further noted that the Applicant was and still is always free to apply again for citizenship, and in light of his age, he could be granted the waiver of the

language and knowledge requirements within the context of a new application. If the Applicant meets the other criteria of the Act, and particularly the residence requirements, then he could be granted citizenship within the context of a new application.

[11] The issue of whether the Minister has the authority to waive regulatory requirements for the grant of citizenship was neither raised nor argued before me.

Legislation

[12] Paragraphs 5(1)(d) and (e) of the Act provide for the following:

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 :
[...]	[...]
<i>(d)</i> has an adequate knowledge of one of the official languages of Canada;	<i>d)</i> a une connaissance suffisante de l'une des langues officielles du Canada;
<i>(e)</i> has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship;	<i>e)</i> a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

[13] Section 15 of the Regulations, adopted pursuant to paragraph 27(d) of the Act, provides for the following:

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	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
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on questions prepared by the Minister, the person has a general understanding of	ministre, elle comprend de façon générale, à la fois :
(a) the right to vote in federal, provincial and municipal elections and the right to run for elected office;	a) le droit de vote aux élections fédérales, provinciales et municipales et le droit de se porter candidat à une charge électorale;
(b) enumerating and voting procedures related to elections; and	b) les formalités liées au recensement électoral et au vote;
(c) one of the following topics, to be included at random in the questions prepared by the Minister, namely,	c) l'un des sujets suivants, choisi au hasard parmi des questions rédigées par le ministre :
(i) the chief characteristics of Canadian social and cultural history,	(i) les principales caractéristiques de l'histoire sociale et culturelle du Canada,
(ii) the chief characteristics of Canadian political history,	(ii) les principales caractéristiques de l'histoire politique du Canada,
(iii) the chief characteristics of Canadian physical and political geography, or	(iii) les principales caractéristiques de la géographie physique et politique du Canada,
(iv) the responsibilities and privileges of citizenship, other than those referred to in paragraphs (a) and (b).	(iv) les responsabilités et privilèges attachés à la citoyenneté autres que ceux visés aux alinéas a) et b).

Standard of review

[14] In the recent decision of *Minister of Citizenship and Immigration v. Takla*, 2009 FC 1120, I proceeded with an extensive review of the standard of review applicable to appeals pursuant to

paragraph 14(5) of the Act. I concluded that the standard of review in such appeals concerning residence requirements was that of reasonableness, being understood that this standard is itself flexible and adapts to the particular context in which it is being applied. Thus, though deference is owed in appeal to decisions of citizenship judges, this is qualified deference. I apply the same approach as used in the *Takla* decision to this appeal which concerns language and knowledge requirements under the Act.

Analysis

[15] Though at the hearing of this appeal the Applicant did not insist in pursuing the arguments he had set out in his Memorandum of Fact and Law dated October 18, 2002, I deem it appropriate to nevertheless address these arguments.

[16] Paragraphs 5(1)(d) and (e) of the Act provide that in order for the Minister to grant citizenship, the concerned person must have an adequate knowledge of one of the official languages of Canada and of the responsibilities and privileges of citizenship. Pursuant to paragraph 27(d) of the Act, the Governor in Council may provide the criteria that may be applied to determine these matters. These criteria are set out in sections 14 and 15 of the Regulations which authorize the Minister to prepare questions for applicants on certain issues in order to make a proper determination on the knowledge issues.

[17] The Minister has prepared such questions and these were submitted to the Applicant. Pursuant to paragraphs 14(1) (2) and (3) of the Act, the citizenship judge in this case determined

that the Applicant had not adequately answered many of the questions, including those particularly related to the responsibilities and privileges of citizenship, and consequently refused the application for citizenship.

[18] The Applicant seeks to overturn the decision of the citizenship judge on the basis that he correctly answered the questions put to him by the judge. Unfortunately, neither the sworn affidavit of the Applicant nor the notice of application signed by the Applicant support this assertion. Indeed, in his affidavit dated June 29, 2002, the Applicant admits he answered partly or incorrectly four of the questions put to him. Moreover, in the application for judicial review which he signed on May 30, 2002, the Applicant states that he did not answer two of the three parts of the question related to the responsibilities of citizenship.

[19] The Applicant has thus failed to establish that the citizenship judge made a reviewable error in his decision refusing to approve his application for citizenship. I thus find that the decision of the citizenship judge in this case was reasonable. Consequently the appeal of this decision shall be dismissed.

[20] The Applicant however asks that this Court acknowledge the new policy of the minister waiving the language and knowledge requirements for applicants 55 years of age or more, and consequently grant him citizenship now on this basis. This the Court cannot do. Indeed, this is not an appeal *de novo* from the decision of the citizenship judge. Though such *de novo* appeals from citizenship judges' decisions existed in the past, the legislation has long been changed, see: *Lam v.*

Canada (Minister of Citizenship and Immigration), (1999) 164 F.T.R. 177, [1999] F.C.J. No. 410 at para. 9. An appeal pursuant to paragraph 14(5) of the Act must normally proceed on the basis of the legislative and regulatory provisions and the policy considerations which existed at the time the citizenship judge made his decision.

[21] The Applicant is free to submit at any time a new application for citizenship to attempt to benefit from the new policy waiving the language and knowledge requirements. However this is a matter which is outside the ambit of this appeal and on which this Court will make no further comment.

JUDGMENT

THIS COURT ORDERS AND DECIDES that this appeal is dismissed.

"Robert M. Mainville"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-843-02

STYLE OF CAUSE: MUSHTAQ ALI KHAN v. MCI

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 9, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mainville J.

DATED: November 18, 2009

APPEARANCES:

Mushtaq Ali Khan SELF-REPRESENTED APPLICANT

Hélène Robertson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nil FOR THE APPLICANT

JOHN H.SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada