Date: 20091119

Docket: T-1327-08

Citation: 2009 FC 1168

Ottawa, Ontario, November 19, 2009

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

OUEIDA KARIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal by Karim Oueida (the applicant) pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the Act), from a decision by the citizenship judge dated December 5, 2007, denying the applicant's citizenship application.

[2] The applicant is a citizen of Lebanon. He was admitted to Canada as a permanent resident in November 1998. He registered at Dawson College in August 2001 and then at Concordia University.

[3] He submitted his citizenship application on November 8, 2004, alleging that he had been absent from Canada for a total of 262 days during the reference period (November 8, 2000, to November 8, 2004). He therefore stated that he had more than enough days of residence to obtain his citizenship.

[4] The citizenship judge found that the applicant had not demonstrated to his satisfaction that he was actually in Canada from November 2000 to August 2001, and denied his application.

[5] The citizenship judge noted that the applicant had stated that he had done absolutely nothing during this period. The applicant also did not present any document demonstrating that he was in Canada during this time—no bank or credit card statements, no records of employment (in fact, the applicant had never worked), no bills (those that he had submitted started in September 2001), no lease.

[6] The citizenship judge also put great weight on the applicant's statement, which he did not find plausible, that he had lived in an apartment with three and a half rooms (one bedroom) with his parents. According to the citizenship judge, this was unthinkable, all the more so since the applicant had stated that his family was not without financial means.

[7] In short, the citizenship judge found that the applicant had not submitted sufficient evidence to demonstrate that he had lived in Canada for the 1,095 days required by the Act, and therefore denied his application.

[8] The applicant contends mainly that the citizenship judge failed to take into consideration certain evidence that demonstrated his presence in Canada during the period in question. It is established in the case law that the citizenship judge does not have to mention all of the evidence (*Cheng v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 614 (QL). However, when the evidence is relevant and supports an applicant's submissions, the fact of not mentioning important evidence can taint a citizenship judge's decision.

[9] In this proceeding, the applicant's passports as well as his 2000 tax return are, in my opinion, such elements. The citizenship judge did not refer to them in his reasons, but the visas in the applicant's passports corresponded exactly to the periods of absence he declared, which constitutes *prima facie* physical evidence of his presence in Canada from November 2000 to August 2001.

[10] Furthermore, the citizenship judge's emphasis on the applicant's statement that he lived in a small apartment with his parents, which appears to suggest to him that the applicant was perhaps not in Canada during all of the reference period, seems difficult to understand.

[11] What is more, the citizenship judge accepted that the applicant was in Canada from September 2001 to November 2004, as well as afterwards, during which time he still lived in that same small apartment. The citizenship judge's doubts concerning the period of November 2000 to August 2001 are therefore difficult to understand in that they are based on this situation. Once again,

the passports as well as the 2000 tax return were there in evidence and supported the applicant's statements. The citizenship judge was silent regarding the weight he gave to this evidence. As a result, I am of the opinion that his decision lacks justification, transparency and intelligibility (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47) and is therefore unreasonable.

[12] Consequently, the appeal is allowed and the matter is referred back to another citizenship judge for redetermination.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

The appeal is allowed. The matter is referred back to another citizenship judge for redetermination.

"Danièle Tremblay-Lamer"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1327-08
STYLE OF CAUSE:	OUEIDA KARIM v. MCI
PLACE OF HEARING:	Montréal, Quebec
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APPEARANCES:

Anthony Karkar	FOR THE APPLICANT
Suzanne Trudel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Anthony Karkar Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT