Federal Court  Cour fédérale

**Date: 20100222**

**Docket: T-459-09**

**Citation: 2010 FC 189**

**BETWEEN:**

**RASLAN, Nasoh**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA**

**Respondent**

## REASONS FOR JUDGMENT

LEMIEUX J.

Introduction and Background

[1] These reasons support the decision I rendered from the Bench following a hearing held in Montreal on January 21, 2010.

[2] The underlying matter is a judicial review application by Nasoh Raslan, a permanent resident of Canada and a citizen of Syria, challenging the January 26, 2009 decision of Citizenship Judge, Renata Brum Bozzi (the Judge) who dismissed his application for Canadian Citizenship filed

on October 24, 2006. The Judge was of the view he did not meet the residence requirement set out in paragraph 5(1)(c) of the Act. She wrote:

> My conclusion is based on the absence of evidence indicating that Mr. Raslan established and maintained residence during the relevant period for the number of days required in the Act and due to the lack of credibility of the Applicant. [My Emphasis.]

[3] The principal issue in this application is whether this Court, in the exercise of its discretion, should dismiss this judicial review application without deciding it on the merits because Mr. Raslan did not have clean hands when he came to this Court, having knowingly provided false information in his application for Canadian Citizenship, in his Residence Questionnaire and to the Judge at his hearing before her. The Applicant, in his affidavit in support of this judicial review application acknowledged he lied about being a resident of Ontario when he filed his third citizenship application with Citizenship and Immigration Canada on November 6, 2006.

[4] In his affidavit, Mr. Raslan states: (1) He landed in Canada with his family on August 16, 1999; (2) He made his first application for Canadian Citizenship, filing his application with Citizenship and Immigration Canada (CIC) in Montreal but voluntarily withdrew it after he realised he did not have sufficient days of presence in Canada; and, (3) He made his second citizenship application on January 25, 2005, also filing it with CIC Montreal. He was asked to complete a Residence Questionnaire which according to him meant “a delay of years” in Montreal because he would be required to appear before a Citizenship Judge. An immigration consultant advised him to withdraw, what he claims to be a perfectly good application meeting all of the residence requirements, in order to apply through the CIC Mississauga where a special citizenship school

"made the treatment of files much faster." He was advised by the immigration consultant all he had to do is to say: "I have lived in Mississauga and get Ontario ID cards. He [the immigration consultant] had an address for me to claim as my residence".

[5] As a preliminary matter, the parties agreed this judicial review application should be based on the documentation contained in the Certified Tribunal Record (CTR) and not on the information appended to Mr. Raslan's affidavit because of the well-settled rule judicial review must, except in extraordinary circumstances, be based on the record before the decision-maker and cannot be supplemented by fresh evidence (see *Canada (Minister of Citizenship and Immigration) v. Mahmoud*, 2009 FC 57 and *Abderrahim v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1486).

The deception

[6] Mr. Raslan's deception centered on his place of residence within Canada.

[7] In his third citizenship application, he stated his home address was 305 – 30 Elm Drive East, Mississauga, Ontario and he had resided there since July 2006. On his application form, he signed the following printed declaration: "The information provided is true, correct and complete." He understood: "That if I make a false declaration, or fail to disclose all information material in my application, I could lose my Canadian citizenship and be charged under the *Citizenship Act*."

[8] Mr. Raslan was asked to fill a Residence Questionnaire which he completed on August 1, 2008 also declaring the information provided was true, correct and complete. The declaration on his

Residence Questionnaire contained a similar warning concerning the making of a false declaration. In that questionnaire he stated between July 7, 2006 and October 2006 he lived at 811 – 30 Elm Street in Mississauga (CTR, page 29).

[9] A citizenship officer at CIC Mississauga noticed the discrepancy in the residence information and in a note to the Citizenship Judge recommended his residency be verified. The officer pointed out this address had been used by nine (9) other people, the telephone number he gave had been used by 62 people and at ten (10) other addresses and the mailing address he provided had been used by 127 people. She also noted the different address he provided in his Residency Questionnaire had been used by 33 people. The CIC officer remarked Mr. Raslan provided a copy of a lease for Unit 2003 – 30 Elm Street, Mississauga (CTR, page 25).

[10] Mr. Raslan was convened to a hearing before a Citizenship Judge on October 21, 2008: "because the Citizenship Judge needs more information to make a decision about your citizenship application" (CTR, page 84). He appeared before the judge. Her hearing notes are contained at CTR, pages 13 to 17.

[11] My reading of the Judge's hearing notes tells me Mr. Raslan maintained his deception before her. He was asked why he came to Ontario – he provided an answer for himself and also in respect of his family. He provided false information to the Judge on how he obtained the address mentioned in his Citizenship application.

[12] To be fair, Mr. Raslan admitted to the Judge he had never lived at either 305-30 Elm Street or at 811 – 30 Elm Street; but he was asked about Unit 2003 – 30 Elm Street. In her reasons for decision (CTR, page 20), the Judge observes he indicated to her his current address was that apartment. Because of the contradictory information about his residence, the Judge concluded she was not persuaded he met the residency requirement and "a determinative factor in reaching this decision was the lack of credibility of the Applicant."

His recognition of his deception

[13] I reproduce the following paragraphs of Mr. Raslan's affidavit on this point:

> 64. I felt uncomfortable with the idea, but he assured me the process was simple and that I wouldn't be the first to apply through Mississauga even though my residence and domicile was truly Montreal.
>
> 65. I admit to this Honourable court that I was not previously truthful in declaring my residence as Ontario. I was, however, completely truthful in all other respects. If any other information I have provided is erroneous, it can only be an error made in good faith.
>
> 66. I now know that I definitely did not do the right thing, but at the time, I thought that applying through Mississauga was simply a common and small stretch to the rules, and I was exhausted by all the applications and the complications so far.
>
> […]
>
> 76. This is when I met with Citizenship Judge Renata BRUM BOZZI. Throughout the hearing I became more and more nervous as I realised that I should not have applied in Mississauga but rather simply pursued the Montreal application. I was very uncomfortable and did not quite know what to do.
>
> 77. I was now afraid to get in trouble for the place of residence issue and was afraid to admit it. I realised the scale of my mistake, I felt trapped and put in this delicate situation, by an immigration consultant whom I trusted. Had I fully realised the consequences

> before, I definitely would not have pursued an application in Mississauga and I definitely would have pursued my Montreal application.
>
> 78. After my hearing with Judge Renata BRUM BOZZI, I was thinking that all this could have and should have been avoided and I was angry. I felt misled and caught in a situation I did not want to be in, led there under false promises and mostly false statements which downplayed the importance of respecting the jurisdictions of the different Citizenship offices. [My emphasis.]

The Law

[14] The law is clear that the grant of judicial review is a discretionary remedy which may be refused on grounds of equity – the lack of clean hands.

[15] The Federal Court of Appeal recently discussed this issue in *Thanabalasingham v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 14 (*Thanabalasingham*), a case where the respondent admitted in a proceeding before the Immigration Appeal Division, he had made false representations in earlier proceedings to review his detention.

[16] I cite paragraphs 8, 9, 10 and 11 of Justice Evans' decision:

> **8** The Judge certified the following question for appeal:
>
> When an applicant comes to the Court without clean hands on an application for judicial review, should the Court in determining whether to consider the merits of the application, consider the consequences that might befall the applicant if the application is not considered on its merits?
>
> **9** In my view, the jurisprudence cited by the Minister does not support the proposition advanced in paragraph 23 of counsel's memorandum of fact and law that, "where it appears that an applicant has not come to the Court with clean hands, the Court must initially determine whether in fact the party has unclean hands, and if that is proven, the Court must refuse to hear or grant the application on its

> merits." Rather, the case law suggests that, if satisfied that an applicant has lied, or is otherwise guilty of misconduct, a reviewing court may dismiss the application without proceeding to determine the merits or, even though having found reviewable error, decline to grant relief.
>
> **10** In exercising its discretion, the Court should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights. The factors to be taken into account in this exercise include: the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.
>
> **11** These factors are not intended to be exhaustive, nor are all necessarily relevant in every case. While this discretion must be exercised on a judicial basis, an appellate court should not lightly interfere with a judge's exercise of the broad discretion afforded by public law proceedings and remedies. Nonetheless, I have concluded in this case that the Judge erred in the exercise of his discretion by failing to take account of the remedy provided to Mr. Thanabalasingham by his right to appeal to the IAD against his removal and the relevance of that appeal to an assessment of the consequences if the Minister's opinion stands. [Emphasis mine.]

Analysis and Conclusions

[17] In his submission in an effort to persuade me to hear his client’s appeal on the merits, counsel for Mr. Raslan emphasized the deception was not material because the required residency is a Canada-wide presence not confined to any particular province. In his submission, Mr. Raslan’s deception was a technical transgression of the Act citing *Canada (Minister of Multiculturalism and Citizenship) v. Minhas*, 66 F.T.R. 155. Moreover, Mr. Raslan did not deceive anyone about his physical presence in Canada during the relevant period – his information on that point was accurate and truthful, he submits. He argued the *Citizenship Act* itself contained provisions for the transfer of

files between Citizenship Courts. I note, however, that at the time Mr. Raslan filed his Citizenship application with CIC Mississauga, the *Citizenship Regulations* provided in section 3 such application is to be filed "with a Citizenship Officer of the Citizenship Court that is the closest to the place where the applicant resides". Finally, he submitted his client had suffered enough – he had been deceived and was ill advised. To make him re-file his application would be unfair, he had waited long enough to become a Canadian citizen.

[18] As guided by the Federal Court of Appeal's decision in *Thanabalasingham*, the Court is required to balance relevant factors. This is not a case of a minor transgression; Mr. Raslan knowingly and wilfully embarked on a course of conduct to deceive the Citizenship Court concerning his true residence in Canada and this for the purpose of jumping the queue. He falsified his citizenship application to obtain an advantage which was not his in order thus to obtain a fundamental right – Canadian citizenship. As was pointed out in *Canada (Minister of Citizenship and Immigration) v. Wysocki*, 2003 FC 1172, [2003] F.C.J. No. 1505 a misrepresentation of a material fact includes an untruth, the withholding of the truthful information or a misleading answer. Sanction for such behavior is appropriate and necessary in my view and is reflected in Parliament's intention by enabling the revocation of Canadian citizenship obtained by false representation. The need to deter others from this course of conduct is evident. Not to sanction such behavior will encourage others. The sanction – dismissing his citizenship application – is not disproportionate – he retains his permanent residence with the substantial rights and benefits it confers.

[19] In my view the bottom line is this: one never obtains Canadian citizenship by trickery. For these reasons, I dismissed his appeal.

"François Lemieux"

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Judge

Ottawa, Ontario
February 22, 2010

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-459-09 |
| **STYLE OF CAUSE:** | RASLAN, Nasoh v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Montreal, Quebec |
| **DATE OF HEARING:** | January 21, 2010 |
| **REASONS FOR JUDGMENT:** | Lemieux J. |
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