

Federal Court



Cour fédérale

Date: 20100309

Docket: T-1424-09

Citation: 2010 FC 271

Ottawa, Ontario, March 9, 2010

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ELIAS ANDRAOS HAWA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The citizenship judge was not satisfied that the applicant, who had the burden of proof, established his residency requirement under s. 5(1)(c) of the *Citizenship Act*. On the basis of my review of the record, it was open to the citizenship judge to make this finding.

[2] Both parties agreed that the relevant time period in this case is March 27, 2003 to March 27, 2007, as indicated in the handwritten notes of the citizenship judge. The different relevant period typed in the second paragraph of the reasons for decision is simply a lapse. The substantive portions

of the reasons disclose that the citizenship judge understood that the relevant period did not extend beyond March 2007.

[3] The principal issue raised by the applicant in this appeal is one of procedural fairness. In his view, the citizenship judge failed to confront him with what he characterizes as negative credibility findings.

[4] After noting in her reasons that she informed the applicant at the end of the hearing that his documentation was insufficient to establish his residency requirement, the citizenship judge later stated: “These inconsistencies give rise to questions regarding the credibility of the information provided by the Applicant.”

[5] In my view, the comments of the citizenship judge concerning credibility are peripheral to the finding that the applicant had not established the required number of days of residence in Canada.

[6] The applicant was told in 2001 and 2005 to withdraw his application for citizenship for reasons of insufficiency concerning the residency requirement. In this application for citizenship, which was filed in 2007, the citizenship judge provided the applicant with a further opportunity after the hearing to provide supplementary information to better his file and he failed to do so. The documents he proffered were outside the relevant period.

[7] The applicant argues that his submissions be assessed against “a fairly high standard of procedural fairness”: *Sadykbaeva v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1018 at paragraph 15 and *Qureshi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1081 at paragraph 23. The content of the duty of fairness will depend in part on the nature of the determination process stipulated in the *Citizenship Regulations*, SOR 93-246, particularly at ss. 11 and 12, which do not appear to have been canvassed by counsel in *Sadykbaeva* or *Qureshi*. Also, the applicant’s ability to re-apply for citizenship after a negative decision, and even after an unsuccessful appeal of that decision, is a factor which appears to me to be relevant in assessing the requirements of the duty of fairness in citizenship cases. In any event, I am far from satisfied that the applicant has established a breach of procedural fairness even on the standard which he argues is applicable in this case.

[8] In summary, the decision of the citizenship judge discloses no breach of procedural fairness, even taking into account the applicant’s affidavit, nor any reviewable error which would warrant the Court’s intervention in this appeal. In these circumstances, the appeal will be dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the applicant's appeal of the decision of the citizenship judge, dated July 15, 2009, is dismissed. The applicant shall pay the respondent costs in the amount of \$300.

"Allan Lutfy"
Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1424-09

STYLE OF CAUSE: ELIAS ANDRAOS HAWA v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 4, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** The Chief Justice

DATED: March 9, 2010

APPEARANCES:

Wennie Lee FOR THE APPLICANT

Alex Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEE & COMPANY FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

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