

Federal Court



Cour fédérale

Date: 20100628

Docket: T-1205-09

Citation: 2010 FC 700

Ottawa, Ontario, June 28, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

KAM YUET LEE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Minister, pursuant to s. 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 and s. 21 of the *Federal Courts Act*, appeals the decision of a Citizenship Judge, dated May 29, 2009, approving the grant of citizenship to the respondent under s. 5(1) of the *Citizenship Act*. In approving the grant of citizenship the Citizenship Judge's reasons, beyond the standard check-box form, were as

follows: “English weak – but enough (+knowledge).” For the reasons that follow this appeal must be allowed.

I. Background

[2] The respondent, Kam Yuet Lee, became a permanent resident of Canada on November 20, 2001. On July 9, 2008 he applied for Canadian citizenship.

[3] Mr. Yuet Lee was interviewed by a citizenship and immigration officer on December 15, 2008. It became readily apparent to the officer that the respondent did not understand basic questions in English and that he did not have an adequate knowledge of the English language. He did not understand or respond to such questions as “what is your name?” Nonetheless, the officer permitted the respondent to write the knowledge test. The respondent failed, answering six questions correctly out of twenty.

[4] The officer referred the applicant to a Citizenship Judge with the following notation:

FAILED TEST. Client did not understand any question I asked him. Did not understand what is your name, how did you get to the office or any question I asked him. LANGUAGE AND KNOWLEDGE TO BE ASSESSED.

[5] The Citizenship Judge invited the respondent to an interview on February 13, 2009, but the respondent did not come. His daughter spoke with the officer and informed her that her father did not speak English and would require the use of an interpreter for the hearing. A second interview

was held on May 29, 2009 by the Citizenship Judge. The applicant's affiant makes a number of hearsay statements about what transpired in this interview, principally that the respondent's daughter attended to interpret for him, that the Citizenship Judge told her the respondent barely passed, and that the respondent was instructed to practice his English at home because he was “pretty close”.

[6] The Citizenship Judge approved the respondent's grant of citizenship.

II. Issues

[7] The Minister raises the following issues on this appeal:

1. Did the Citizenship Judge provide adequate reasons for his decision?
2. Did the Citizenship Judge err by finding that the Respondent met the requirements under paragraphs 5(1)(d)-(e) of the *Citizenship Act*?

III. Analysis

[8] The respondent filed no materials and, although he appeared at the hearing and made brief submissions, he did so through his daughter who interpreted for him. It was evident to me that the respondent has minimal ability in the English language.

[9] The applicant submits that the Citizenship Judge breached procedural fairness by failing to provide adequate reasons for his decision. The applicant submits that the Citizenship Judge was

obligated to explain how the respondent met the language criteria of the *Citizenship Act*, in light of the evidence that he required an interpreter at the interview.

[10] The question of whether adequate reasons were provided is a question of procedural fairness. The standard of review on questions of procedural fairness is correctness: *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[11] “The duty to provide reasons is a salutary one”: *Via Rail Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 at p. 35 (C.A.). As the Court of Appeal has instructed, reasons must set out the decision-maker’s “findings of fact and the principal evidence upon which those findings were based...[t]he reasoning process followed...[and] consideration of the main relevant factors”: *Via Rail*, *supra* at 36.

[12] The content of the duty to give reasons varies with the circumstances of a given case: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. In assessing the content of the duty to give reasons, one of the principal considerations is whether the reasons give the parties the ability to assess and “effectuate any right of appeal or judicial review that they might have”: *Via Rail*, *supra* at p. 35.

[13] In my view, the reasons in this case, while extremely truncated, were adequate. The check box form used by the Citizenship Judge suggests that he considered each requirement for a grant of citizenship and made a factual finding that each requirement was satisfied. His additional written

reasons explain why he thought the respondent met the test for a grant of citizenship. The reasons allowed the applicant to effectuate this appeal. The reasons provided did not breach procedural fairness, but that is not to say that they evidenced a reasonable decision.

[14] The applicant submits that “[i]t is completely illogical for the Judge to find that on May 29, 2009, the Respondent had adequate language skills when it is evident from the Record that in December 2008, the Applicant did not speak English.” The applicant submits that the Citizenship Judge’s reasons do not support the finding that the respondent had the official language ability and knowledge necessary for a grant of citizenship.

[15] Subsections 5(1) (d) and (e) of the *Citizenship Act* read:

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

[16] These provisions require that an applicant must have an adequate knowledge of either French or English *and* an adequate knowledge of Canada in order to be granted Canadian citizenship.

[17] The *Citizenship Regulations*, S.O.R./93-246 provide for more detailed guidance on how adequate official language ability and adequate knowledge of Canada are to be determined.

Sections 14 and 15 of the Regulations read:

14. The criteria for determining whether a person has an adequate knowledge of one of the official languages of Canada are, based on questions prepared by the Minister,

- (a) that the person comprehends, in that language, basic spoken statements and questions; and
- (b) that the person can convey orally or in writing, in that language, basic information or answers to questions.

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

14. Une personne possède une connaissance suffisante de l'une des langues officielles au Canada si, à l'aide de questions rédigées par le ministre, il est établi à la fois :

- a) qu'elle comprend, dans cette langue, des déclarations et des questions élémentaires;
- b) que son expression orale ou écrite dans cette langue lui permet de communiquer des renseignements élémentaires ou de répondre à des questions.

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

Canadian social and cultural history,	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).

[18] While it is possible in certain communities in Canada to conduct one’s life in a language other than French or English, and without any substantial knowledge of Canada, the citizens of Canada, through Parliament, have chosen to make a certain level of language and knowledge abilities a requirement to obtain a grant of Canadian citizenship. Thus, the *Citizenship Act* requires an adequate knowledge of French or English and an adequate knowledge of Canada *before* a grant of Canadian citizenship will be given.

[19] In this case, the Citizenship Judge determined that the respondent possessed an adequate knowledge of English and an adequate knowledge of Canada to entitle him to a grant of citizenship. The Citizenship Judge’s additional reasons beyond the check-box form are comprised of the single sentence: “English weak – but enough (+knowledge).” In the circumstances of this case, the Citizenship Judge’s determination was insufficiently justified and is therefore unreasonable.

[20] Less than six months before the Citizenship Judge interviewed the respondent the respondent was unable to answer the most basic of questions in English, such as “what is your name?” The respondent was only able to answer correctly thirty percent of the questions on the knowledge of Canada test. He was referred to the Citizenship Judge precisely because his English language ability and knowledge of Canada were so poor, with the express instruction of why he was being referred.

[21] In this context, the Citizenship Judge was required to provide some explanation of how an applicant, who less than six months earlier, had barely a basic knowledge of English and Canada, let alone an “adequate” knowledge of either, had suddenly obtained the levels necessary for a grant of citizenship. The Citizenship Judge provided no such explanation. It is not enough to implore applicants for citizenship to practice their official language abilities, and/or to gain further knowledge of Canada, *after* they have obtained citizenship; the *Citizenship Act* requires the possession of adequate knowledge *before* a grant of citizenship is given.

[22] In this case, the Citizenship Judge provided no reasons to support his determination that the respondent had an adequate knowledge of English (or French) or an adequate knowledge of Canada. The decision is therefore unreasonable and must be set aside.

[23] Mr. Yuet Lee is to be commended for wishing to become a citizen of this country and I have no doubt that he would be a credit to Canada; however, he must improve his English language

skills. As difficult as he may find that given his work schedule, there are resources, aside from his daughter, who can assist him in that effort. The Court wishes him success.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this appeal is allowed and the decision of the Citizenship Judge is quashed. No costs are awarded.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1205-09

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIRGRATION v. KAM YUET LEE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 23, 2010

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

DATED: June 28, 2010

APPEARANCES:

Leanne Briscoe FOR THE APPLICANT

Kam Yuet Lee ON HIS OWN BEHALF

SOLICITORS OF RECORD:

MYLES J. KIRVAN FOR THE APPLICANT
Deputy Attorney General of Canada
Toronto, Ontario

NIL SELF-REPRESENTED RESPONDENT