

Federal Court



Cour fédérale

Date: 20110412

Docket: T-1538-10

Citation: 2011 FC 450

Toronto, Ontario, April 12, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

MARTIN CHRISTOPHER NOEL BRITTON

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal taken by the Minister of Citizenship and Immigration from a decision of a Citizenship Judge, R. Gill, dated July 28, 2010, approving the application of the Respondent Martin Christopher Noel Britton for Canadian citizenship. The Minister has appeared in this appeal and filed the affidavit of Cheryl Sleep which included, as an exhibit, a certified copy of the record before the Citizenship Judge. The Respondent Britton did appear at the hearing, however he did not file an Appearance, nor did he file any evidence or written submissions prior to the hearing.

[2] The record shows that Britton spent a total of only 600 days in Canada in the four years preceding his application and the rest outside Canada. He was short 495 days of the required 1,095 days. Clearly the Citizenship Judge was required to reject the application or, at the very least, require clear and convincing evidence on the record before the Citizenship Judge as to the justification for the substantial absence from Canada.

[3] The Citizenship Judge's notes made on the standard form "Approval Synopsis" make reference to the applicant's (Britton's) wife and children all being Canadian citizens, that he owns a home in Canada (the only evidence is a document reflecting a mortgage on an unidentified parcel of land taken by Margaret Ann Britton and guaranteed by the applicant), that the applicant works on constructions projects in the Bahamas to provide for his family and returns every chance he gets. Except for a connection to a mortgage as guarantor, none of these findings is substantiated by anything in the record. The record contains a copy of Britton's passport showing lengthy sojourns to Bermuda and the Bahamas. There are, for instance, no tax returns or other documents evidencing a real and substantial connection to Canada in the record before the Citizenship Judge.

[4] Given the lack of evidence, the determination made by the Citizenship Judge that Britton had established residence in Canada was clearly unreasonable.

[5] The appeal is allowed, the decision of the Citizenship Judge is quashed and the matter is returned for redetermination by a different Judge. No costs were requested.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT ADJUDGES that:

1. The appeal is allowed;
2. The decision of the Citizenship Judge dated July 28, 2010 allowing the Respondent's application for Canadian citizenship is quashed;
3. The matter is sent back for redetermination by a different Citizenship Judge.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1538-10

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v. MARTIN CHRISTOPHER NOEL
BRITTON

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 12, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** HUGHES J.

DATED: APRIL 12, 2011

APPEARANCES:

NEAL SAMSON FOR THE APPLICANT

MARTIN CHRISTOPHER NOEL BRITTON FOR THE RESPONDENT
(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

MYLES J. KIRVAN FOR THE APPLICANT
DEPUTY ATTORNEY GENERAL OF CANADA
TORONTO, ONTARIO

N/A FOR THE RESPONDENT