

Federal Court



Cour fédérale

**Date: 20120224**

**Docket: T-785-11**

**Citation: 2012 FC 252**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, February 24, 2012**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**FATMIR BUSHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an appeal by Fatmir Bushi (Mr. Bushi), pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 (Act), of the decision by Citizenship Judge Renée Giroux denying his application for citizenship.

[2] For the following reasons, this appeal is dismissed.

## **II. Facts**

[3] Mr. Bushi is of Albanian origin.

[4] He was admitted to Canada on September 2, 1998.

[5] On November 2, 1999, he obtained his permanent resident status.

[6] Mr. Bushi worked as a landscaper for the company Les aménagements paysagers François Proulx each summer starting in 2000 and states that he received employment insurance benefits for the rest of the year.

[7] On February 26, 2008, Mr. Bushi filed his application for citizenship. His reference period is therefore from February 26, 2004, to February 26, 2008.

[8] On November 4, 2009, a citizenship officer gave Mr. Bushi a residence questionnaire asking him to provide the information required to establish his residence in Canada.

[9] On November 26, 2009, Mr. Bushi submitted the questionnaire and documents supporting his application.

[10] On January 25, 2011, the citizenship judge denied Mr. Bushi's application for citizenship on the ground that the evidence in the record was insufficient to establish Mr. Bushi's physical presence in Canada during the reference period.

### III. Legislation

[11] Subsection 5(1) of the Act reads as follows:

#### Grant of citizenship

5. (1) The Minister shall grant citizenship to any person who

(a) makes application for citizenship;

(b) is eighteen years of age or over;

(c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

(i) for every day during which the person was

#### Attribution de la citoyenneté

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

a) en fait la demande;

b) est âgée d'au moins dix-huit ans;

c) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

(i) un demi-jour pour chaque jour de

resident in Canada  
before his lawful  
admission to Canada  
for permanent  
residence the person  
shall be deemed to  
have accumulated one-  
half of a day of  
residence, and

résidence au Canada  
avant son admission à  
titre de résident  
permanent,

(ii) for every day  
during which the  
person was resident in  
Canada after his lawful  
admission to Canada  
for permanent  
residence the person  
shall be deemed to  
have accumulated one  
day of residence;

(ii) un jour pour chaque  
jour de résidence au  
Canada après son  
admission à titre de  
résident permanent;

(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; and

e) a une connaissance  
suffisante du Canada et des  
responsabilités et avantages  
conférés par la citoyenneté;

(f) is not under a removal  
order and is not the subject  
of a declaration by the  
Governor in Council made  
pursuant to section 20.

f) n'est pas sous le coup  
d'une mesure de renvoi et  
n'est pas visée par une  
déclaration du gouverneur en  
conseil faite en application  
de l'article 20.

**IV. Issue and standard of review**

**A. Issue**

- *Did the citizenship judge err by finding that the applicant did not meet the requirements set out in paragraph 5(1)(c) of the Act?*

**B. Standard of review**

[12] The review of a citizenship judge's determination of whether an applicant meets the residency requirements under the Act is a question of mixed fact and law (see *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2009 FC 709, at paragraphs 24 to 28; see also *Canada (Minister of Citizenship and Immigration) v Zhou*, 2008 FC 939 at paragraph 7).

[13] The standard of review applicable in this case is reasonableness. "A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47; see also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59).

**V. Position of the parties**

**A. Position of Mr. Bushi**

[14] Mr. Bushi maintains that the citizenship judge erred by finding that he does not meet the requirements of the Act.

[15] Mr. Bushi alleges that he has difficulty fully understanding French, which prevented him from adequately answering the citizenship judge's questions at the hearing on January 25, 2011.

[16] He also contends that the citizenship judge did not consider the following evidence in the record: his income tax returns for 2006 and 2008 and a letter from his employer, François Proulx, from Aménagements paysagers François Proulx.

[17] Mr. Bushi claims that he met all of the requirements of the Act. The citizenship judge's failure to take into account the evidence in the record constitutes, according to him, an error that warrants the intervention of the Court.

**B. Position of the respondent**

[18] The respondent emphasizes that the burden of proof rests with Mr. Bushi. He bears the onus of establishing, on a balance of probabilities, that he meets all of the requirements of the Act (see *Abbas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 145 at paragraph 8).

[19] The respondent maintains that the evidence submitted by Mr. Bushi does not establish his residence in Canada.

[20] The respondent points out that the Court has recognized, on several occasions, that income tax returns are passive indicators of residence that do not establish physical presence in the country (see *Singh v Canada (Minister of Citizenship and Immigration)*, 2011 FC 490 at paragraphs 32-33). Mr. Bushi's income tax returns do not establish a continued presence in Canada for the full period alleged.

[21] Mr. Bushi did not submit any documents to prove his residence in Canada for the years 2004, 2005 and 2007. The respondent alleges that the low probative value of the evidence in the record did not make it possible for the citizenship judge to find that Mr. Bushi meets the minimum requirement of the Act.

[22] Furthermore, Mr. Bushi did not establish how his difficulties with the French language prevented him from submitting the evidence required to establish his physical presence in the country during the reference period or explain how this difficulty put him at a disadvantage at the hearing.

[23] At the hearing, counsel for the applicant claimed that the citizenship judge was biased because she asked Mr. Bushi why he does not work in the winter. Counsel for the respondent

objected because that argument was not raised in the applicant's memorandum. The Court upheld the respondent's objection because the rules of the Court are clear on this point.

## VII. Analysis

- *Did the citizenship judge err by finding that the applicant did not meet the requirements set out in paragraph 5(1)(c) of the Act?*

[24] The Court dismisses Mr. Bushi's argument with respect to his limited knowledge of French because he did not explain precisely how that difficulty prevented him from submitting the documentation required to meet the requirements of the Act.

[25] Second, it is clear from reading the record that Mr. Bushi failed to meet the criteria set out in the Act because he did not submit sufficient evidence in support of his application for citizenship. On the basis of the evidence in the record, it is impossible to find that the applicant met the requirements of the Act.

[26] Regardless of whether the Court applies the strict physical presence test stated by Justice Muldoon in *Pourghasemi (Re)* (1993), 62 FTR 122, or the centralized residence in Canada test by responding to the six questions specified by Justice Reed in *Koo (Re)*, [1993] 1 FC 286, 59 FTR 27, in both cases, Mr. Bushi does not meet the necessary requirements.



[27] Even if the citizenship judge accepts all of the evidence submitted, Mr. Bushi still does not meet the requirements set out in paragraph 5(1)(c) of the Act. The decision by the citizenship judge is most reasonable. Canadian citizenship provides many privileges. The citizenship judge has the right to expect that an applicant will at least make an effort to establish his or her residence during the reference period. This was not the case here.

### **VIII. Conclusion**

[28] This appeal application is dismissed, without costs.

**JUDGMENT**

**THE COURT DISMISSES**

1. The appeal;
2. Without costs.

“André F.J. Scott”

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Judge

Certified true translation  
Janine Anderson, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-785-11

**STYLE OF CAUSE:** FATMIR BUSHI  
v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 12, 2012

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

**DATED:** February 24, 2012

**APPEARANCES:**

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Charles Junior Jean FOR THE RESPONDENT

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