

Federal Court



Cour fédérale

Date: 20120731

Docket: T-75-12

Citation: 2012 FC 946

Ottawa, Ontario, July 31, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

IONELA FULGA-TUZLUCHI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Fulga-Tuzluchi's application for citizenship was rejected because the citizenship judge was not satisfied that she met the residency requirement of the *Citizenship Act*. This is her appeal from that decision.

[2] Section 5(1)(c) of the Act requires that an applicant for citizenship must, among other things, have resided in Canada for three of the four years immediately preceding the application, in

other words for 1,095 days. Ms. Fulga-Tuzluchi submitted that she was here for the entire four years, save for one one-week vacation.

[3] The citizenship agent who vetted the application wrote to the citizenship judge to express her concerns with respect to Ms. Fulga-Tuzluchi's presence in Canada during the four years preceding her application, which was filed in August 2008. She was concerned that she had not provided copy of her passports for the entire period in question, that her allegations were not supported by the family and professional ties she claimed she had and that:

[...] les séjours à l'extérieur du Canada ne peuvent donc être entièrement corroborés par rapport à ce qu'ils déclarent.

[4] When Ms. Fulga-Tuzluchi appeared before the citizenship judge she says that in addition to the documents in her application file, she had other documents in hand. The citizenship judge looked at them but did not take copy. He said he needed more evidence, and gave her a questionnaire to fill out.

[5] According to Ms. Fulga-Tuzluchi, she was given several months to provide this information. However, while she was amassing evidence, the citizenship judge rejected her application, giving rise to the submission that procedural fairness was not observed, more particularly in that the citizenship judge reached his decision on an incomplete record.

[6] There is no transcript of the hearing before the citizenship judge. We have two documents emanating from him. On 14 November 2011, he wrote to the applicant to say that her application was not approved because she did not meet the residency requirements, in that she had not

accumulated at least three years of residence in Canada within the four years immediately preceding her application.

[7] He said:

In order to determine whether you meet the residence requirements, additional documentation was requested from you. At your hearing, I also requested additional documents from you since I was not satisfied with those already submitted, but none was received. Unfortunately, the documents that you submitted were, in my opinion, not satisfactory proof of residence in Canada. I have come therefore to the conclusion that you did not meet the residence requirement as defined in paragraph 5(1)(c) of the *Citizenship Act*.

[8] In addition, he gave a notice to the Minister which essentially is to the same effect, except therein he stated that he had heard the matter 9 August 2011 and had given her until 30 August 2011 to provide further documentation.

GROUND OF APPEAL

[9] In addition to an allegation of procedural unfairness, Ms. Fulga-Tuzluchi submits that the decision is unreasonable:

- a. based on the material in the record prior to the hearing before the citizenship judge;
- b. if not, then based on the material shown to the citizenship judge at the hearing; or
- c. if not, then based on the material now before this Court, which was not before the citizenship judge when he made his determination.

DECISION

[10] It is not necessary for me to reach a decision on the reasonableness or fairness issues, as I shall be granting this appeal because the citizenship judge failed to provide reasons. Section 14(3) of the Act requires the citizenship judge who does not approve an application to notify the applicant “of his decision, of the reasons therefore and of the right to appeal.”

[11] In this case, the citizenship judge made his determination, but gave no reasons to support that determination. As stated in *Canada (Minister of Citizenship and Immigration) v Jeizan*, 2010 FC 323, 386 FTR 1, [2010] FCJ No 373 (QL), at paragraph 17:

Reasons for decisions are adequate when they are clear, precise and intelligible and when they state why the decision was reached. Adequate reasons show a grasp of the issues raised by the evidence, allow the individual to understand why the decision was made and allow the reviewing court to assess the validity of the decision: see *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] S.C.J. No. 23 at para. 46; *Mehterian v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 545 (F.C.A.); *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (F.C.A.), [2001] 2 F.C. 25 (C.A.), at para. 22; *Arastu*, above, at paras. 35-36.

[12] In my opinion no reasons were given at all. Even if the paragraph I quoted from the citizenship judge’s decision constitutes reasons, then they are clearly inadequate.

[13] The application shall be referred back to another citizenship judge for re-determination *de novo*. Ms. Fulga-Tuzluchi should certainly provide that citizenship judge with the material filed in this court but not with the first citizenship judge.

[14] There shall be no order as to costs.

[15] This appeal was heard the same day as the appeal in *Canada (Minister of Citizenship and Immigration) v Hannoush*, 2012 FC 945. In *Hannoush*, the Minister's appeal succeeded because the citizenship judge did not provide reasons as required by the Act. The same holds true in this case. There can be no double standard based on whether the appellant is the Minister or the citizenship applicant.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that

1. The appeal of Ms. Fulga-Tuzluchi is allowed.
2. The application for citizenship is referred back to another citizenship judge for re-determination *de novo*.
3. The whole without costs.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-75-12

STYLE OF CAUSE: FULGA-TUZLUCHI v MCI

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: JULY 26, 2012

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: JULY 31, 2012

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