

Federal Court



Cour fédérale

Date: 20121024

Docket: T-74-12

Citation: 2012 FC 1241

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, October 24, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

VICTORIA NASR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal by Victoria Nasr [the applicant] under subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [the Act], from a decision of a citizenship officer issued November 9, 2001, rejecting the request to reopen the applicant's file.

[2] The applicant, a citizen of Jordan, submitted her application for Canadian citizenship on July 7, 2008. On February 11, 2009, Citizenship and Immigration Canada [CIC] sent acknowledgment of receipt of the application to her home address.

[3] On March 9, 2009, the applicant submitted to CIC form No. IMM-5476 entitled *Use of a Representative*, in which she appointed Sleiman Bou Shakra to act on her behalf in the context of her citizenship application.

[4] Mr. Bou Shakra's office address changed on June 30, 2010.

[5] On September 21, 2010, CIC sent a notice to appear for an interview with a citizenship judge to the address of Mr. Bou Shakra provided on form IMM-5476. Counsel submits that he did not receive the notice, which was sent to his former address. The applicant did not appear for her interview on October 4, 2010.

[6] On January 5, 2011, CIC sent a final notice to appear for an interview with a citizenship judge, again to the former address. The applicant did not appear for this interview, scheduled for January 25, 2011.

[7] On February 5, 2011, that is, 30 days after the second notice to appear, CIC considered the applicant's file as having been abandoned, and the file was tagged for archiving.

[8] In his affidavit, Mr. Bou Shakra, submits that it was not until April 10, 2011, when he checked the status of the file on the Internet, that he learnt that CIC had sent two notices to appear to his former address. On the very same day, he informed the respondent of his change of address by facsimile.

[9] The applicant's file was archived on May 3, 2011.

[10] On May 25, 2011, Mr. Bou Shakra submitted a request to have the applicant's file reopened. This request was refused on November 9, 2011. On January 10, 2012, Alain Vallières, the applicant's new counsel, filed the present application.

[11] In her decision, the officer noted that section 6.7 of the *CP 13: Administration* manual [the CP 13 Manual], a policy manual published by CIC, indicates that a citizenship application is deemed abandoned when, 30 days after the second notice, the applicant has not provided a reasonable explanation for his or her absence on the second scheduled interview date, as was the case here. She therefore refused to reopen the file.

[12] Did the officer err in refusing the request to reopen the file?

[13] The applicant submits that, under subsection 11(9) of the *Citizenship Regulations*, SOR/93-246 [the Regulations], it was still possible for the Minister to continue processing her application after her lawyer provided his new address on April 10, 2011, and before CIC declared that her application was considered to have been abandoned on May 3, 2011.

[14] The applicant submits that, in the present case, the citizenship officer did not analyze the applicant's reasons for her absence from the interviews and did not take into consideration that the circumstances that led to the notices not being received were beyond her control. I disagree.

[15] It is clear from reading the affidavit of Mr. Bou Shakra that there is no mention of his informing CIC of his change of address or taking any measures to make sure that he would receive the communications that were relevant to the applicant's file. Furthermore, the applicant cannot claim to have been diligent since she did nothing, and neither she nor her representative verified the status of her file electronically or otherwise over a period of two whole years.

[16] The officer therefore did not err in refusing to reopen the applicant's application. Subsection 11(9) of the Regulations did not oblige her to do so. She considered the explanation that the lawyer moved on June 30, 2010, and that it was not until April 10, 2011, that he became aware of the notices when checking his client's file online. The officer noted that CIC Web site clearly informs applicants that they must notify CIC if the contact information of their representatives changes, which both the applicant and her representative failed to do in a timely manner.

[17] I have found no basis for concluding that the decision was unreasonable, particularly when I consider the absence of an explanation by the applicant to the officer justifying why neither the applicant nor her lawyer informed CIC of the new address of the lawyer in question before April 10, 2011, that is, nine months after the address change.

[18] For these reasons, the appeal is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal be dismissed.

“Danièle Tremblay-Lamer”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-74-12

STYLE OF CAUSE: VICTORIA NASR and MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 24, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** TREMBLAY-LAMER J.

DATED: October 24, 2012

APPEARANCES:

Alain Vallières

FOR THE APPLICANT

Catherine Brisebois

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alain Vallières
Montréal, Quebec

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT