

Federal Court



Cour fédérale

Date: 20130226

Docket: T-762-12

Citation: 2013 FC 194

Ottawa, Ontario, February 26, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ALKABEN JAYANTKUMAR DESAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a citizenship appeal pursuant to section 21 of the *Federal Courts Act*, RSC, 1985, c F-7 and subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [the Act].

I. Background

[2] The applicant is a citizen of the Republic of India, who became a permanent resident of Canada on May 12, 2006. On May 28, 2009, the applicant applied for Canadian citizenship and wrote her citizenship test on December 10, 2010.

[3] On February 14, 2012, the applicant attended a hearing before the Citizenship Judge, and on October 31, 2011, the Citizenship Judge issued his decision in which he did not approve the applicant's citizenship application.

[4] The Citizenship Judge found that the applicant did not meet the requirements of paragraph 5(1)(d) of the Act in order to obtain Canadian Citizenship, in that she did not have an adequate knowledge of either French or English. The Citizenship Judge found that the applicant could not convey basic information or simply provide answers to questions.

[5] The Citizenship Judge also declined to recommend a favourable exercise of discretion on the basis of compassionate grounds pursuant to subsection 5(3) of the Act, or as a case of special or unusual hardship or to reward services of exceptional value to Canada (subsection 5(4)). He noted that the applicant "did not present sufficient evidence to me of special circumstances that would justify me in making such a recommendation."

II. Issue

[6] The issue raised in the present application is as follows:

- A. Did the Citizenship Judge improperly apply paragraph 5(1)(d) of the Act by finding that the applicant did not possess an adequate understanding of English?

III. Standard of review

[7] The applicable standard of review for a decision of a Citizenship Judge, including discretionary determinations is reasonableness (*Chen v Canada (Minister of Citizenship and*

Immigration), 2012 FC 874 at paras 10-11; *Amoah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 775 at para 14).

[8] Citizenship appeals are not trials de novo and are to be based on the record before the Citizenship Judge (*Lama v Canada (Minister of Citizenship and Immigration)*, 2005 FC 461 at para 21; *Hassan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 755 at para 10).

[9] Therefore, the Court will only intervene where there is a lack of justification, transparency and intelligibility or an unacceptable outcome in light of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

[10] The applicant argues that the adequacy of the basic language requirement is not well defined under paragraph 5(1)(d) of the Act or section 14 of the *Citizenship Regulations*, SOR/93-246 [Regulations]. While the applicant answered questions put to her, it was nevertheless reasonable for the Citizenship Judge to find the answers did not meet the basic level required by section 14 of the Regulations. The Citizenship Judge provided a proper contextual basis for his reasons and I find the Judge's decision both reasonable and acceptable.

ORDER

THIS COURT ORDERS that:

1. The applicant's appeal is dismissed;
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-762-12

STYLE OF CAUSE: Desai v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 25, 2013

**REASONS FOR ORDER
AND ORDER BY:** MANSON J.

DATED: February 26, 2013

APPEARANCES:

Max Chaudhary

FOR THE APPLICANT

Leila Jawando

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chaudhary Law Office
North York, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT