Federal Court  Cour fédérale

Date: 20130301

Docket: T-1288-12

Citation: 2013 FC 212

Ottawa, Ontario, March 1, 2013

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MOHAMED RICHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR ORDER AND ORDER

IF ONLY

[1] If only the first citizenship judge had got it right. Mr. Richi would be a Canadian citizen today. The mobility rights guaranteed by section 6 of our *Canadian Charter of Rights and Freedoms* would have allowed him to come and go as he pleases. As it is, by the time he came before the second citizenship judge, a removal order had been issued against him for failing to

maintain his permanent resident status. That citizenship judge said that were it not for that fact, she would have reported to the Minister that he had fulfilled all the requirements of citizenship. However, the removal order prevented her from so doing. This is the appeal of that decision.

[2] Mr. Richi, who was self-represented, but who acquitted himself very well, is understandably very mystified and frustrated by the bureaucracy and red tape that he has encountered. No doubt he will be even more upset when I tell him in these reasons that I am part of the system and cannot help him.

THE FACTS

[3] Mr. Richi landed in Canada on September 19, 2003, and was granted permanent resident status the same day. He applied for Canadian citizenship in June 2007. In May 2010, a citizenship judge dismissed his application on the grounds that he had failed to meet the residency requirement, which is at least three years residence in Canada in the four years immediately prior to his application. The decision was only delivered to him in August 2010.

[4] He appealed to this Court. To his surprise, counsel for the Minister informed him that she intended to file a motion to set aside the decision of the citizenship judge, which was "rendered without proper consideration of the materials filed before him", and have the matter referred to another citizenship judge. Accordingly, a consent order was entered in docket number T-1519-10 in December 2010.

[5] Mr. Richi came up before another citizenship judge in November 2011. That judge determined that he did not meet the requirements of the Act only because he was then under a removal order. Indeed, an immigration official had issued a departure order against him pursuant to subsection 41(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for failing to comply with the residency requirements applicable to permanent residents, which require a physical presence in Canada for at least two of the previous five years.

THE LAW

[6] Section 5 of the *Citizenship Act*, RSC, 1985, c C-29, provides that the Minister is to grant citizenship to applicants who are at least 18 years of age, who are permanent residents, who have accumulated at least three years of residence in Canada in the four years immediately prior to the application, who have an adequate knowledge of one of our official languages, and who have an adequate knowledge of Canada and of the responsibilities and privileges of citizenship. Mr. Richi met all those requirements.

[7] However, subsection 5(1)(f) of the Act goes on to say:

5. (1) The Minister shall grant citizenship to any person who	5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :
[…]	…
(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.

[8] Mr. Richi is contesting the departure order, which is a removal order, but understands that the matter will not come up for another year. His position is that he was working for a Canadian company abroad. Under IRPA, days of employment abroad for a Canadian company count as days of Canadian residence. He was working for Cansult Ltd. The officer's notes indicate that that was indeed a Canadian company registered in Ontario, but that it then became established in the United Arab Emirates and was bought by an American company. I had to point out to Mr. Richi that the merits of the removal order were not before the citizenship judge, and cannot be considered by me. Furthermore, the citizenship judge was required to render her decision within 60 days. Although the proceedings may be suspended under subsection 14(1.1) of the Act, such interruption only applies to a permanent resident who is the subject of an admissibility hearing (*Hadaydoun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 995 at paras 27-28). Mr. Richi is not the subject of such a hearing.

MR. RICHI'S CASE

[9] Mr. Richi submitted a constitutional question. I explained to him that Parliament could pass any legislation it saw fit, no matter how unreasonable, subject only to the legislative division of powers between Parliament and the provincial legislatures, as set out in sections 91 and 92 of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK), and the Charter. His concern is really with delays and how the law has been interpreted, not with the constitutionality of the law itself. Consequently, there is no constitutional question to answer.

[10] Mr. Richi's second point is that his legitimate expectations were not met. This concept relates to procedural fairness. It may well be that a decision-maker gets it wrong. This has nothing to do with fairness. The Minister put it right by consenting to Mr. Richi's appeal. All that could be done was to send the matter back to another citizenship judge for reconsideration. They are delays inherent in the system. That is a fact of life. Although there have been lengthy delays, such delays are not unusual. Mr. Richi's expectations were unrealistic.

[11] His third argument is based on his interpretation of subsection 5(1)(f) of the *Citizenship Act*. In his view, the "and" therein is conjunctive. Since he was under a removal order, but not the subject of a declaration by the Governor in Council made pursuant to section 20 of the Act, the citizenship judge was wrong in deciding that he had not met the requirements thereof.

DISCUSSION

[12] Although subsection 5(1)(f) could be read literally as proposed by Mr. Richi, such an interpretation would be unreasonable. The Supreme Court of Canada has held many times that Elmer Driedger said it all in his *Construction of Statutes*, 2nd edition, 1983, at page 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

See, for instance, the decision of the Supreme Court in *Bell ExpressVu v Rex*, 2002 SCC 42, [2002] 2 SCR 559, at paragraphs 26 and following.

[13] As stated therein, where the text in question is found in an act which is part of a larger statutory scheme, it should be interpreted so as to be in harmony, coherent and consistent with the other statutes. In that sense, the residence provisions of IRPA and the *Citizenship Act* should be considered harmoniously.

[14] In my opinion, the "and" in the provision should be read in the disjunctive, or should be read as subdividing subsection (f) into two separate parts. One may become the subject of a removal order for all sorts of reasons which have nothing to do with criminality, such as allegedly failing to maintain a residency requirement, as in this case. However, section 20, which in turn refers to section 19, applies when the Governor in Council declares that there are reasonable grounds to believe that a person is a threat to Canada's security or part of organized crime. It simply makes no sense to lump removal orders and section 20 declarations together.

[15] This interpretation is borne out by section 11 of the Act which deals with applications for resumption of citizenship. In that section, section 20 declarations and removal orders are distinct and addressed in subsections (b) and (c), respectively.

[16] There are two recent cases that touch upon this point. In *Canada (Minister of Citizenship and Immigration) v El Bousserghini*, 2012 FC 88, I mentioned in passing that the existence of a removal order precluded the granting of citizenship. However, Mr. Richi's point of interpretation was not raised before me.

[17] Mr. Justice De Montigny came to the same conclusion in *Hadaydoun*, above. However, there is nothing in his reasons to indicate that Mr. Richi's point was raised before him.

[18] Finally, there is no reason to believe that Mr. Richi would not make a fine Canadian citizen.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The appeal is dismissed.

2. There shall be no order as to costs.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1288-12
STYLE OF CAUSE:	MOHAMED RICHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Mohamed Richi	FOR THE APPLICANT (ON HIS OWN BEHALF)
Daniel Baum	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT