Federal Court  Cour fédérale

Date: 20130621

Docket: T-1693-12

Citation: 2013 FC 699

Ottawa, Ontario, June 21, 2013

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

MAVY MILIANA PAIS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The citizenship officer who vetted the applications of Mrs. Pais and her husband referred them to a citizenship judge. She was concerned as to their statements with respect to their residency in Canada, as well as their credibility and that of the documents they submitted.

[2] Notwithstanding these concerns, in his Notice to the Minister recommending citizenship to Mrs. Pais, the citizenship judge simply said in the "reasons" box of the form: "Residence confirmed".

[3] With respect to Mrs. Pais' husband, Lile Peter Pais, the citizenship judge also recommended that the Minister grant citizenship. In the "reasons" box, he noted that he had suffered a stroke in 1995 and "spouse testifies credibly that since his stroke, the claimant cannot be away long periods from family." Both applications had been treated under the same file number.

[4] The Minister appealed both decisions, which were treated separately by this Court. The decision with respect to Mr. Pais was quashed, and not sent back to another citizenship judge for reconsideration. The Minister submits that I should do the same with respect to Mrs. Pais.

[5] The Minister's appeal is multilayered:

a. The citizenship judge gave no reasons at all. He gave a conclusion, nothing more. Section 14(2) of the *Citizenship Act* requires the citizenship judge to provide the Minister with the reasons for his determination.

b. Mrs. Pais claimed that she was physically present in Canada for 1,123 days in the four years immediately preceding her application. The Act requires that one reside in Canada for at least three of the four years immediately prior to the application, *i.e.* 1,095 days. There is proof positive that she was not in Canada for 21 days claimed, which brings her quite close to the 1,095 days.

c. She lied on a number of fronts and so may well have not been physically here for 1,095 days. In such a case, a citizenship judge would have had to carry out one of the three analyses endorsed by this Court, such as "I'm here in spirit if not in body" (*Koo (Re)*, [1993] 1 FC 286, 59 FTR 27, [1992] FCJ No 1107 (QL)).

d. She lied with respect to her husband's application. She said he had suffered a stroke in 1995 and could not be away from her for any lengthy period of time. The Minister has come to learn that during all this time he was working in the United Arab Emirates, while she claimed he was in Canada. Although she has not been charged, s. 29 of the *Citizenship Act* provides that it is an offence for any of the purposes of the Act to make a false representation, to commit fraud or to knowingly conceal material circumstances.

[6] Counsel for Mr. Pais responds that we should only be focusing on her application, not her husband's. Furthermore, there is no evidence that she lied. After the citizenship officer expressed some concerns, she did a residence calculation and deducted the 21 days in question.

[7] Furthermore, the citizenship judge's notes form part of his reasons and they show he dealt with the issues at play.

[8] There are a number of reasons why this appeal should be granted.

[9] The first is that there are no reasons at all. This is not a case in which the reviewing judge can appreciate that although the reasons are not as clear as one would like, the result is justified by the record (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, [2011] SCJ No 62 (QL)). The record includes two pages of scribbles, which deal with both husband and wife, even though they were interviewed separately. One does not know if they were contemporaneous notes, or whether they were notes prepared prior

to the hearing. The decision is certainly not transparent within the meaning of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, paragraph 47, and is therefore unreasonable.

[10] In addition, there were certainly misrepresentations in Mrs. Pais' application. It is purported to be signed in Calgary 30 September 2009. She gave her Calgary home as her address. In point of fact, she had left for United Arab Emirates 9 September 2009 and did not return for some years. Although she may have subsequently filled out a questionnaire through which if one counts up all the days, might lead one to conclude that she had left Canada 9 September 2009, she never actually said so and we do not know what was said to the citizenship judge.

[11] Furthermore, there is every reason to believe she misled the citizenship judge with respect to her husband's stroke. Thus, if we were prepared to give her the benefit of the doubt that her error with respect to 9 September to 30 September 2009 was innocent, her whole course of conduct suggests otherwise. She told the citizenship judge her husband was present in Canada, while he was in fact working in the United Arab Emirates. In so doing, she prevented the citizenship judge from making further inquiries. Although the case deals with admissibility, rather than citizenship, the decision of the Supreme Court of Canada in *Canada (Minister of Manpower & Immigration) v Brooks*, [1974] SCR 850, 30 DLR (3d) 522, is most instructive.

[12] As Mr. Justice Laskin, as he then was, said at page 873:

> Lest there be any doubt on the matter as a result of the Board's reasons, I would repudiate any contention or conclusion that materiality under s. 19(1)(e)(viii) requires that the untruth or the misleading information in an answer or answers be such as to have concealed an independent ground of deportation. The untruth or misleading information may fall short of this and yet have been an

> inducing factor in admission. Evidence, as was given in the present case, that certain incorrect answers would have had no influence in the admission of a person is, of course, relevant to materiality. But also relevant is whether the untruths or the misleading answers had the effect of foreclosing or averting further inquiries, even if those inquiries might not have turned up any independent ground of deportation.

[13] Counsel for Mrs. Pais objects to the affidavit of a Canadian Embassy official in the United Arab Emirates who made inquiries and was informed by the Higher College of Technology in Abu Dhabi that Mr. Pais has been working there continuously since the 1990s. His objection was based on the fact that this evidence was not before the citizenship judge.

[14] There are exceptions to the rule that a judicial review or appeal is based on the material which was before the initial tribunal. One exception is if the decision was obtained by fraud. Although it may not apply as of its own force, rule 399 of the *Federal Courts Rules* is illustrative of the principle. It provides that an order may be set aside or varied when it was obtained by fraud.

[15] The record is simply too sketchy to determine whether Mrs. Pais's application, as opposed to her husband's, was tainted with fraud, although a *prima facie* case has certainly been made out. For that reason, although I shall grant the Minister's appeal, I am not prepared to simply quash the decision. I will refer the matter back to another citizenship judge for reconsideration. It may be that Mrs. Pais has failed to maintain her permanent resident status. If, as a result thereof, she becomes subject to a removal order she may be denied citizenship in any event (*Richi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 212, [2013] FCJ No 217 (QL); *Hadaydoun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 995, [2012] FCJ No 1091 (QL)). Citizenship is not a piece of paper to be pulled out of the drawer halfway around the world should the need arise.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT ORDERS that

1. The appeal is allowed.

2. The matter is referred back to another citizenship judge for reconsideration *de novo*.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Rick Garvin	FOR THE APPLICANT
Dalwinder Hayer	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Edmonton, Alberta	FOR THE APPLICANT
Dalwinder Hayer Barrister & Solicitor Calgary, Alberta	FOR THE RESPONDENT