Federal Court Cour fédérale

Date: 20130723

Docket: T-1109-12

Citation: 2013 FC 808

Ottawa, Ontario, July 23, 2013

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

NING DONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29, (the Act) of the decision of a Citizenship Judge dated February 15, 2012, rejecting the applicant's application for citizenship.

[2] The applicant seeks an order quashing the Citizenship Judge's decision and granting a writ of *mandamus* to compel the Minister to grant the applicant citizenship.

Background

[3] The applicant is a citizen of China who became a permanent resident of Canada on October 2, 2002.

[4] He applied for Canadian citizenship on March 16, 2010. He appeared before the Citizenship Judge on December 14, 2011.

The Decision

[5] The Citizenship Judge communicated his decision to the applicant in a letter dated April 13, 2012. The Citizenship Judge identified the relevant four year period for the Act's residence requirement as March 16, 2006 to March 16, 2010.

[6] The Citizenship Judge noted at that at the hearing the applicant had been requested to provide the Citizenship Judge with additional supporting documentation within 30 days, on or before January 16, 2012, and that an extension was subsequently granted to the applicant until February 22, 2012.

[7] The Citizenship Judge found that the applicant had failed to meet the requirements of paragraph 5(1)(c) of the Act, as he had not provided that critical supporting documentation and the Citizenship Judge was therefore unable to determine the applicant's residency.

[8] The documents that the applicant did submit contained inaccuracies and non-declarations. The applicant's payment summary from the Ministry of Health and Long Term Care showed only one payment during the entire review period. The applicant claimed to have not filed income tax or corporate tax returns for the period under review. His ICES traveller history showed an entry the applicant failed to report on March 12, 2009.

[9] Since the applicant did not comply with his request for evidence, the Citizenship Judge found the applicant had not met the requirements of the Act. The Citizenship Judge declined to make a favourable recommendation under subsection 5(4) of the Act.

[10] The certified tribunal record shows that the Citizenship Judge requested the following documents:

> RESIDENCE QUESTIONNAIRE
>
> ICES TRAVELLER HISTORY 02 OCTOBER 2002 TO PRESENT
>
> RECORD OF MOVEMENT FROM U.S.A. COVERING 2 OCTOBER TO PRESENT
>
> LEGIBLE COPIES OF ALL PAGES OF BOTH PASSPORTS
>
> TRAVEL RECORD FROM BOTH (CHINA) & HONG KONG COVERING 2 OCTOBER 2002 TO PRESENT
>
> T4's AND NOTICE(S) OF ASSESSMENT COVERING YEARS 2002 TO PRESENT
>
> EMPLOYMENT/CORPORATE TAX DECLARATIONS & FILINGS 2003 TO PRESENT (INCLUDING ALL INTERNATIONAL INCOME(S)
>
> MINISTRY OF HEALTH & LONG TERM CARE BILLING RECORD COVERING JAN 1, 2003 TO PRESENT

PHONE & UTILITY BILLS COVERING JAN 1, 2003 TO PRESENT

Issues

[11] The applicant's memorandum raises the following issues:

1. If the applicant has realized an error has been made in the application, what is the last chance for him to make the correction without being taken as "failed to declare"?

2. Are border control files weighed as some of the most important documents and taken seriously?

3. Should the origin of the applicant be taken into consideration due to the fact that not all passports are treated equally at borders and the fact that not all countries allow dual citizenship?

4. How often should a permanent residence visit a hospital, clinic or family doctor to be considered as physically in Canada?

5. How many days does the Citizenship Judge consider the applicant to have actually been in Canada?

[12] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the Citizenship Judge err in refusing the application?

Applicant's Written Submissions

[13] The applicant points out that his ability to travel internationally is limited by his Chinese passport and U.S. visa.

[14] The applicant concedes he made an error in his original application by omitting a one day trip to the United States on March 11 to 12, 2009. However, the applicant had communicated this error to the respondent in a letter dated January 6, 2012, meaning it had been corrected before the Citizenship Judge made a decision. This single day of absence does bring the applicant's residency below 1,095 days as the applicant has 1,121 days of physical presence. This appears to be the sole incorrect declaration as no others were identified by the Citizenship Judge. Therefore, the Citizenship Judge is questioning the integrity of the border control systems of Canada, China and Hong Kong.

[15] The applicant argues there is no legal requirement to use health services to gain citizenship and he did not need such services being a young person in good health. He did attempt to renew his OHIP card but his paperwork was rejected.

[16] The applicant argues that the Act does not require the filing of tax returns in order to be qualified as a citizen. Violations of other laws are not relevant to the residency requirement of the Act.

[17] The applicant provides additional documents in an affidavit in this proceeding to prove he has met the physical residency requirements.

Respondent's Written Submissions

[18] The respondent argues the applicant has shown no error in the Citizenship Judge's analysis. It is not open to the applicant to supplement his application with new evidence. Those portions of the affidavit which attempt to prove new evidence should be struck.

[19] The respondent argues the applicant is asking this Court to reweigh the evidence. The applicant does not deny his single use of OHIP or lack of tax returns, but merely disagrees about the weight of this evidence. The onus was on the applicant to establish his residency and he failed to do so.

Analysis and Decision

[20] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[21] This Court has previously held that reasonableness is the appropriate standard of review for appeals from the decisions of citizenship judges (see *Kohestani v Canada (Minister of Citizenship and Immigration)*, 2012 FC 373 at paragraph 12, [2012] FC No 443).

[22] In reviewing the Citizenship Judge's decision on the standard of reasonableness, the Court should not intervene unless the Citizenship Judge came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 4). As the Supreme Court held in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraph 59).

[23] **Issue 2**

Did the Citizenship Judge err in refusing the application?

The respondent has submitted that evidence contained in the applicant's affidavit that was not before the Citizenship Judge should not be considered by me. I agree with the respondent.

[24] A review of the applicant's submissions leads me to conclude that he is in effect asking me to reweigh the evidence. That is not my role on this application (appeal).

[25] My review of the Citizenship Judge's reasons do not lead me to conclude that the Citizenship Judge found that using publicly insured health services or filing tax returns were a legal

precondition to obtain Canadian citizenship. He simply noted the omission of this evidence which he is entitled to do as a Citizenship Judge when assessing proof of residency.

[26] I agree with the applicant that he corrected the omission of the single day trip to the United States. I note the Citizenship Judge assessed the other evidence of residency that was before him and the error with respect to the single day trip would not appear to be crucial to the decision that was reached. The Citizenship Judge simply found that there was insufficient evidence to satisfy the requirements of paragraph 5(1)(c) of the Act with respect to residency.

[27] The application (appeal) of the applicant is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application (appeal) of the applicant is dismissed.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

***Citizenship Act*, RSC 1985, c C-29**

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 :
(a) makes application for citizenship;	a) en fait la demande;
(b) is eighteen years of age or over;	b) est âgée d'au moins dix-huit ans;
(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:	c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :
(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;
(d) has an adequate knowledge of one of the official languages of Canada;	d) a une connaissance suffisante de l'une des langues officielles du Canada;
(e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and	e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;
(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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1109-12
STYLE OF CAUSE:	NING DONG - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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