

Federal Court



Cour fédérale

**Date: 20140606**

**Docket: T-1690-13**

**Citation: 2014 FC 528**

**Ottawa, Ontario, June 6, 2014**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**SULEEQO SHEIKH ABUKAR**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an appeal of the August 16, 2013 decision (the Decision) of Citizenship Judge Harjit S. Dhaliwal (the Judge) refusing the applicant's application for Canadian citizenship. The appeal is made pursuant to section 14(5) of the *Citizenship Act*, RSC 1985, c C-29 (the Act).

**I. BACKGROUND**

[2] The applicant is Suleeqo Skeikh Abukar, a Canadian permanent resident.

[3] On August 14, 2013, she attended an interview before the Judge who found that she failed the language requirement under section 5(1)(d) of the Act and the knowledge of Canada requirement under section 5(1)(e) of the Act and consequently refused her citizenship application.

## II. RELEVANT LEGISLATION

[4] The following provisions of the Act are relevant to the present case:

Grant of citizenship	Attribution de la citoyenneté
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,

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|--|---|
| (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) <u>has an adequate knowledge of one of the official languages of Canada;</u>   | d) <u>a une connaissance suffisante de l'une des langues officielles du Canada;</u>   |
| (e) <u>has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and</u>  | e) <u>a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;</u>  |
| (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.  |
| [...]  | [...]   |
| Waiver by Minister on compassionate grounds  | Dispenses   |
| (3) The Minister may, in his discretion, waive on compassionate grounds,   | (3) Pour des raisons d'ordre humanitaire, le ministre a le pouvoir discrétionnaire d'exempter :   |
| (a) in the case of any person, the requirements of paragraph (1)(d) or (e);  | a) dans tous les cas, des conditions prévues aux alinéas (1)d) ou e);   |
| (b) in the case of a minor, the requirement respecting age set out in paragraph (1)(b), the requirement respecting length of residence in Canada set out in paragraph (1)(c) or the requirement to take the oath of citizenship; and | b) dans le cas d'un mineur, des conditions relatives soit à l'âge ou à la durée de résidence au Canada respectivement énoncées aux alinéas (1)b) et c), soit à la prestation du serment de citoyenneté; |

(c) in the case of any person who is prevented from understanding the significance of taking the oath of citizenship by reason of a mental disability, the requirement to take the oath.

c) dans le cas d'une personne incapable de saisir la portée du serment de citoyenneté en raison d'une déficience mentale, de l'exigence de prêter ce serment.

Special cases

Cas particuliers

(4) In order to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada, and notwithstanding any other provision of this Act, the Governor in Council may, in his discretion, direct the Minister to grant citizenship to any person and, where such a direction is made, the Minister shall forthwith grant citizenship to the person named in the direction

(4) Afin de remédier à une situation particulière et inhabituelle de détresse ou de récompenser des services exceptionnels rendus au Canada, le gouverneur en conseil a le pouvoir discrétionnaire, malgré les autres dispositions de la présente loi, d'ordonner au ministre d'attribuer la citoyenneté à toute personne qu'il désigne; le ministre procède alors sans délai à l'attribution.

[Emphasis added]

[Je souligne]

In addition, the following provisions of the *Citizenship Regulations*, SOR/93-246 [Regulations] are relevant:

OFFICIAL LANGUAGES  
CRITERIA

CONNAISSANCE DES  
LANGUES OFFICIELLES

14. A person is considered to have an adequate knowledge of one of the official languages of Canada if they demonstrate that they have competence in basic communication in that language such that they are able to

14. Une personne possède une connaissance suffisante de l'une des langues officielles du Canada si elle démontre une capacité élémentaire à communiquer dans cette langue, de manière à pouvoir :

(a) take part in short, routine conversations about everyday

a) prendre part à de brèves conversations sur des sujets de

topics;	la vie courante;
(b) understand simple instructions and directions;	b) comprendre des instructions et des directives simples;
(c) use basic grammar, including simple structures and tenses, in oral communication; and	c) utiliser, dans la communication orale, les règles de base de la grammaire, notamment pour ce qui est de la syntaxe et de la conjugaison;
(d) use vocabulary that is adequate for routine oral communication	d) utiliser un vocabulaire adéquat pour communiquer oralement au quotidien.
<b>KNOWLEDGE OF CANADA AND CITIZENSHIP CRITERIA</b>	<b>CONNAISSANCES DU CANADA ET DE LA CITOYENNETÉ</b>
15. (1) A person is considered to have an adequate knowledge of Canada if they demonstrate, based on their responses to questions prepared by the Minister, that they know the national symbols of Canada and have a general understanding of the following subjects	15. (1) Une personne possède une connaissance suffisante du Canada si les réponses qu'elle donne aux questions rédigées par le ministre montrent qu'elle connaît les symboles nationaux du Canada et comprend d'une manière générale les sujets suivants :
(a) the chief characteristics of Canadian political and military history;	a) les principales caractéristiques de l'histoire politique et militaire du Canada;
(b) the chief characteristics of Canadian social and cultural history;	b) les principales caractéristiques de l'histoire sociale et culturelle du Canada;
(c) the chief characteristics of Canadian physical and political geography;	c) les principales caractéristiques de la géographie physique et politique du Canada;
(d) the chief characteristics of the Canadian system of government as a constitutional	d) les principales caractéristiques du système politique canadien en tant que

monarchy; and	monarchie constitutionnelle;
(e) characteristics of Canada other than those referred to in paragraphs (a) to (d).	e) toutes autres caractéristiques du Canada.
(2) A person is considered to have an adequate knowledge of the responsibilities and privileges of citizenship if they demonstrate, based on their responses to questions prepared by the Minister, that they have a general understanding of the following subjects:	(2) Une personne possède une connaissance suffisante des responsabilités et privilèges attachés à la citoyenneté si les réponses qu'elle donne aux questions rédigées par le ministre montrent qu'elle comprend d'une manière générale les sujets suivants :
(a) participation in the Canadian democratic process;	a) la participation au processus démocratique canadien;
(b) participation in Canadian society, including volunteerism, respect for the environment and the protection of Canada's natural, cultural and architectural heritage;	b) la participation à la société canadienne, notamment, l'entraide sociale, le respect de l'environnement et la protection du patrimoine naturel, culturel et architectural du Canada;
(c) respect for the rights, freedoms and obligations set out in the laws of Canada; and	c) le respect des droits, des libertés et des obligations énoncés dans les lois du Canada;
(d) the responsibilities and privileges of citizenship other than those referred to in paragraphs (a) to (c).	d) tous autres responsabilités et privilèges attachés à la citoyenneté.

### III. THE IMPUGNED DECISION

[5] By way of his decision dated August 16, 2013, the Judge found that the applicant did not meet the requirements set forth in sections 5(1)(d) and 5(1)(e) of the Act as she did not have an adequate knowledge of one of the official languages of Canada nor an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.

[6] The Judge found she did not have an adequate knowledge of Canada's language requirement because she was unable to:

- answer simple questions on familiar topics using a variety of short sentences with connecting words;
- speak about something she did in the past using proper verb tenses;
- give simple everyday instructions and directions;
- demonstrate an adequate vocabulary for basic everyday communication; and
- tell a simple story about everyday activities.

[7] He further found that the applicant did not meet the knowledge of Canada requirement because she obtained a score of 9 out of 20 on the test, while the pass mark is set at 15 out of 20.

[8] Finally, the Judge decided not to recommend waiver under section 5(3) of the Act or grant citizenship on a discretionary basis under section 5(4) of the Act, as the applicant did not demonstrate special circumstances in her situation.

#### **IV. ISSUES**

[9] The issues in this judicial review are:

1. Did the Judge err in finding that the applicant did not meet the language and knowledge requirements?
2. Did the Judge err in finding that there were no special circumstances to justify a recommendation of waiver or discretionary grant of citizenship?

## V. STANDARD OF REVIEW

[10] While a citizenship appeal under the Act is not a judicial review under s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], it proceeds by way of application pursuant to Rule 300(c) of the *Federal Courts Rules*, SOR/98-106. As such, citizenship appeals are no longer trials *de novo*, but must be determined on the record before the citizenship judge, and no new evidence may be submitted (*Canada (Minister of Citizenship & Immigration) v Hung* (1998), 47 Imm LR (2d) 182 at para 8; *Korolove v Canada (Minister of Citizenship and Immigration)*, 2013 FC 370 at paras 50-51).

[11] This Court has consistently held that it should not overturn a citizenship judge's findings on questions of mixed fact and law unless they are unreasonable (see e.g. *Lam v Canada (Minister of Citizenship & Immigration)* (1999), 164 FTR 177 at paras 9-10; *Akan v Canada (Minister of Citizenship & Immigration)* (1999), 170 FTR 158 at para 7; *Canada (Minister of Citizenship & Immigration) v Fu*, 2004 FC 60 at para 7; *Khan v Canada (Minister of Citizenship & Immigration)*, 2012 FC 593 at para 6 [*Khan*]).

[12] Further, the Court should not overturn findings of pure fact unless it was an erroneous finding made in a perverse or capricious manner or without regard to the evidence (*Federal Courts Act*, section 18.1(4)(d); *Khan* at para 7).

## VI. SUBMISSIONS AND ANALYSIS

### Preliminary Issue



[13] The respondent notes that the correct respondent in this case should be the Minister of Citizenship and Immigration, not the Attorney General of Canada. It asks that the Court allow the style of cause to be amended to reflect the correct respondent. The Court will grant the requested amendment.

**Issue 1: Did the Judge err in finding that the applicant did not meet the language and knowledge requirements?**

*a. Applicant's submissions*

[14] The applicant does not contest the tests results. She argues that the Judge did not clarify the distinction between the Act and the Regulations. She also submits that the Judge misapplied the law by not reading sections 5(1)(a) to (e) of the Act together in a liberal way “to achieve the remedial purpose of granting Canadian citizenship to the applicant”. She also bemoans the Act’s alleged lack of plain language, which she says the Judge should have clarified, and attacked the decision on the basis that the Judge did not cite any case law.

*b. Respondent's submissions*

[15] The respondent submits that the Judge’s findings that the applicant failed the language and knowledge requirements were findings of facts, and thus warrant great deference. The applicant’s scores on the tests simply did not meet the statutory requirements of the Act. Therefore, the Judge’s findings were reasonable.

*c. Analysis*

[16] I agree with the respondent. The Judge’s findings are clearly reasonable.

**Issue 2: Did the Judge err in finding that there were no special circumstances to justify a recommendation of waiver or discretionary grant of citizenship?**

*a. Applicant's submissions*

[17] The applicant submits that the Judge did not take into account her personal circumstances, such as the fact that she is from Somalia, that English is her second language, that she has resided in Canada for five years, and that she has no criminal record.

*b. Respondent's submissions*

[18] The respondent notes that the Applicant did not produce any evidence to support a waiver of use of discretion as set forth in sections 5(3) or 5(4). The Judge expressly stated that he found no evidence of special circumstances that would justify a recommendation to waive or discretionary grant of citizenship.

*c. Analysis*

[19] I agree with the respondent. The Judge indeed indicates that he carefully considered all the material before him and found no evidence of special circumstances. Based on the evidence, that conclusion is reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The style of case is amended to name the Minister of Citizenship and Immigration as the respondent;
2. The appeal is dismissed and there shall be no order as to costs.

"Martine St-Louis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1690-13

**STYLE OF CAUSE:** SULEEQO SHEIKH ABUKAR v ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 21, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** JUSTICE MARTINE ST-LOUIS

**DATED:** JUNE 6, 2014

**APPEARANCES:**

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Ms. Negar Hashemi FOR THE RESPONDENT

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