Federal Court  Cour fédérale

Date: 20141015

Docket: T-492-14

Citation: 2014 FC 976

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 15, 2014

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

GABY HADDAD

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is appealing a decision dated December 10, 2013, by a citizenship judge (judge) who rejected his citizenship application. The case was heard at the same time as that of the applicant's son (docket T-493-14) and that of the applicant's spouse (docket T-494-14). For the following reasons, the appeal is dismissed.

I. Background

[2] The applicant is a citizen of Lebanon. He arrived in Canada, together with his wife and their three children, as a permanent resident, on June 27, 2007. The applicant filed a citizenship application on November 9, 2010.

[3] Subsection 5(1) of the *Citizenship Act*, RSC 1985, c C-29 (Act), which sets out the criteria for granting citizenship, reads as follows:

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	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de

permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and	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.

[4] In his citizenship application, the applicant declared that he had been present in Canada for 1,103 days and that he had been absent for 127 days (attributable to 12 trips to Lebanon) during the period under review, which was from June 27, 2007, to November 9, 2010. He also stated that he had held the position of director within his company, Haddad, Ballout Consultant, since July 2007. He added that he had also been a director for the company Lebanon Assistance Inc. from January 2010 to October 2010.

[5] On November 17, 2011, the applicant was informed by a citizenship officer that he was required to submit his passport(s), fill out the residence questionnaire and provide supporting documentation. The applicant filled out the questionnaire, in which he reiterated the information contained in his citizenship application, and added that he had [TRANSLATION] "professional ties and friendships" in Canada. He also attached a copy of all of the pages of his Lebanese passport as well as copies of certain identification documents, his confirmation of permanent residence and an invoice from the company Telus addressed to him and his company.

[6] The applicant was called to a hearing before the judge on November 19, 2013. During the hearing, he also produced a letter of confirmation of employment signed by the president and secretary of Lebanon Assistance Inc.

II. Impugned decision

[7] It is clear from the decision that the judge applied the residency test set out in paragraph 5(1)(*c*) of the Act, which requires physical presence, developed in *Pourghasemi, (Re)* (1993) 62 FTR 122, [1993] FCJ No 232. The judge found that the evidence submitted by the applicant was insufficient to establish, on a balance of probabilities, that he had been present in Canada for at least 1,095 days in the four years preceding the filing of his citizenship application.

[8] The judge stated that she did not consider the passports irrefutable evidence of presence in Canada and noted that she had advised the applicant of this at the hearing.

[9] She also found that the other documents submitted by the applicant were insufficient to establish his physical presence and noted that he had submitted few "active" documents supporting his presence in Canada.

[10] In her decision, the judge emphasized a few factors. She also noted that the applicant's company sells insurance to clients who reside in Lebanon, that he stated that he does not have clients in Canada, and that he works mainly via the Internet. She also stated that the applicant declared that his spouse worked with him, but that he was vague about her duties.

[11] The judge also pointed out that the letter of confirmation of employment from Lebanon Assistance Inc. simply confirmed that he had been employed by that company between February and September 2010, and it did not contain any condition of employment details.

[12] She also found that the applicant's declared income ($27,000/year) did not correspond to that of a taxpayer who supports a family of five and travels for business so frequently.

[13] She concluded by stating that the testimony of the applicant and the documents that he submitted were not sufficient for her to find that he had been present in Canada for the minimum number of days required by the Act.

III. Issue

[14] As previously stated, the judge chose to apply the objective test of physical presence to determine whether the applicant had satisfied his residency requirement as required by paragraph

5(1)(*c*) of the Act. The applicant does not maintain that the judge could not choose to apply this test and, for my part, I have already stated on at least three occasions that, in my view, citizenship judges can choose among the three tests traditionally recognized by the jurisprudence as being reasonable interpretations of the residency test (*Tawfiq v Canada (Minister of Citizenship and Immigration)*, 2012 FC 34 at paragraph 9, [2012] FCJ No 1711 (*Tawfiq*); *Balta v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1509 at paragraphs 9-11, [2011] FCJ No 1830 (*Balta*); *Canada (Minister of Citizenship and Immigration) v Saad*, 2011 FC 1508 at paragraph 14, [2011] FCJ No 1801.

[15] Accordingly, the only issue in this appeal is whether the citizenship judge's decision is reasonable.

IV. Standard of review

[16] The parties submit, and I agree, that the decision of a citizenship judge who must determine whether a person meets the residency conditions set out in paragraph 5(1)(*c*) of the Act raises a question of mixed fact and law that is reviewable on a reasonableness standard (*Saad v Canada (Minister of Citizenship and Immigration)*, 2013 FC 570 at paragraph 18, [2013] FCJ No 590 (*Saad*); *Tawfiq*, above, at paragraph 8; *Canada (Minister of Citizenship and Immigration) v Al-Showaiter*, 2012 FC 12 at paragraph 13, [2012] FCJ No 7; *Balta*, above, at paragraph 5).

[17] It is important to bear in mind that the Court reviewing a decision on a reasonableness standard may not substitute its own assessment of the evidence for that of the decision-maker, in

this case the citizenship judge, and that it is limited to inquiring into the qualities that make the decision reasonable. As the Supreme Court stated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190, "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[18] Regarding the adequacy of the reasons in support of an administrative tribunal's decision, the Supreme Court discussed the perspective that the reviewing court must adopt in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708:

> 12 It is important to emphasize the Court's endorsement of Professor Dyzenhaus's observation that the notion of deference to administrative tribunal decision-making requires "a respectful attention to the reasons offered or which could be offered in support of a decision". In his cited article, Professor Dyzenhaus explains how reasonableness applies to reasons as follows:
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> . . .
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> 16 Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

V. Analysis

[19] The applicant raises three main arguments in support of his application. First, he maintains that the judge erred by finding that his passport was not valid evidence of when he entered and left Canada. He pointed out that passports are official legal documents that should attest to their contents and that, in addition, he submitted his passport at the express request of the citizenship officer. In the circumstances, and relying on *Saad*, above, the applicant argues that the judge's comments are speculative and that if the judge questioned the information in his passport, the onus was on her to make inquiries with the Canada Border Services Agency (CBSA).

[20] The applicant also contends that the other documents that he submitted, in addition to his testimony, were credible and sufficient to prove that he had been physically present in Canada for the requisite number of days and that nothing in the evidence casts doubt on the accuracy of the information he submitted. The applicant believes that the citizenship judge improperly assessed the evidence and that she was too demanding with respect to the elements required to establish his physical presence.

[21] The applicant also argues that the citizenship judge considered and accepted irrelevant elements (like the size of the applicant's apartment and his declared income) and that her reasons do not really provide insight into her reasoning.

[22] With respect, I find that the citizenship judge's decision falls within the range of possible, acceptable and reasonable outcomes, having regard to the evidence adduced by the applicant.

[23] First, and contrary to the applicant's submission, the citizenship judge did not reject his passport. She stated that she did not consider passports to be irrefutable evidence of presence in Canada. Her finding in that respect was based on the existence of possible subterfuges to circumvent stamping, including the use of passes that allow simplified customs clearance, and the problem caused by candidates who use more than one travel document. In her decision, she stated that she had informed the applicant of her position with respect to passports at the hearing, and asked him at the end of the hearing whether he wanted to add information to his record.

[24] Certainly, passports are documents that contain pertinent information for the purposes of analyzing a person's citizenship application. It was also at the request of the citizenship officer that the applicant submitted a copy of his Lebanese passport. However, I find that it was not unreasonable to conclude that passports are not documents that irrefutably attest to a person's presence in Canada. The reasons cited by the judge to justify her finding are not far-fetched and can be justified in light of the evidence. The evidence shows that Canada does not routinely stamp passports. The *Citizenship Policy Manual CP-5* also addresses stamping and control of entries into and exits from the country at page 20 (page 27 of the Respondent's Record) and states the following:

> Note: Since not all countries, including Canada, routinely stamp passports at entry, a lack of entry stamps is not always indicative that no absences have occurred.

[25] The evidence also shows that Canada does not monitor exits from the country.

[26] In light of the evidence, it was therefore reasonable to find that passports do not constitute irrefutable proof of their holder's physical presence in Canada. Regarding the

applicant's argument that the citizenship judge should have made some inquiries with the CBSA, I would just like to point out that it is up to the applicant to submit sufficient and satisfactory evidence of his presence in Canada.

[27] Regarding *Saad*, above, on which the applicant relied, the context that led to the Court's judgment was completely different and Justice Gagné's comments cannot be transposed to this case. First, in *Saad*, the citizenship judge did not reject the citizenship application on the ground that she did not attach probative value to the information in the applicant's passport. Second, the Court intervened because the citizenship judge had applied two different residency obligation tests at the same time.

[28] Third, it was the respondent, not the citizenship judge, who, at the hearing before the Court, raised the possibility that the applicant's absences were in fact more numerous than those indicated in his passport because he could have left the country without his passport being stamped on his exit from or return to Canada. Furthermore, that allegation by the respondent was not supported by any evidence. Justice Gagné believed that the respondent's argument was speculative and noted that the respondent could have made inquiries with the CBSA as to whether the applicant's entries and exits corresponded to the information in his passport. I understand that, in that context, Justice Gagné could find that the allegation was speculative.

[29] In this case, it was the citizenship judge who found that passports do not constitute irrefutable evidence of entries into and exits from the country. Her finding is articulated and reasonably supported by the evidence. Furthermore, the judge advised the applicant of her

position with respect to the probative value of passports and he had the opportunity to provide his point of view. At the end of the hearing, the judge also provided him with the opportunity to add information to his record, which he did not do.

[30] With respect to the other elements and documents submitted by the applicant, I believe that it was reasonable to find that they were insufficient to conclude that he had met his burden of demonstrating, on a balance of probabilities, his physical presence for the minimum number of days required.

[31] The applicant submitted very few documents that demonstrate his physical presence in Canada. The residence questionnaire that he completed at the request of the citizenship officer provides a significant number of examples of documents that may be submitted (page 49 of the Respondent's Record). However, the documents submitted by the applicant are very limited.

[32] The applicant states that he operated a company from within Canada and notes that his clients were all in Lebanon and that he worked via the Internet. Those elements do not tend to show that the applicant works from within Canada. In those circumstances, I believe that it would have been more useful if the applicant had submitted evidence of business transactions. Declarations with the enterprise register and a copy of an invoice from Telus were not very convincing pieces of evidence and it was reasonable to find that the evidence submitted by the applicant was insufficient.

[33] The same can be said for the proof of employment from the company Lebanon Assistance Inc. It does not contain any details on the nature of the duties that the applicant apparently carried out. It also does not state whether the applicant performed his work from within Canada.

[34] Regarding the identification documents, I agree with the respondent: they are passive evidence of residency, but do not establish the applicant's physical presence.

[35] Regarding the judge's reasons, I believe that they explain the reasoning on which the judge based her conclusion, which falls within a range of possible, acceptable outcomes in respect of the evidence.

[36] The applicant disagrees with the judge's decision but, in my opinion, his arguments do not warrant the intervention of the Court. The appeal is therefore dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the appeal is dismissed. Without costs.

"Marie-Josée Bédard"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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