Federal Court  Cour fédérale

Date: 20141015

Docket: T-493-14

Citation: 2014 FC 977

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 15, 2014

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

GEORGES HADDAH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant appeals from a decision dated December 19, 2013, by a Citizenship Judge (the judge), who did not approve his application for citizenship. This case was heard at the same time as that of the applicant's father (docket T-492-14) and mother (docket T-494-14). For the following reasons, the appeal is dismissed.

I. Background

[2] The applicant is a Lebanese citizen. He arrived in Canada with his parents on June 27, 2007, as a permanent resident. He applied for citizenship on September 2, 2010.

[3] Subsection 5(1) of the *Citizenship Act*, RSC 1985, c C-29 [the 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 permanent residence the person shall be deemed	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

to have accumulated one-half of a day of residence, and	
(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 application for citizenship, the applicant declared 1104 days of presence in Canada and 58 days of absence (attributable to a trip to Lebanon) during the review period, which ran from June 27, 2007, to September 2, 2010.

[5] On November 8, 2011, the applicant was advised by a citizenship officer that he had to file his passport or passports, complete the residence questionnaire and provide supporting documentation. The applicant completed the questionnaire in which he indicated that he had

attended three educational institutions and worked at two jobs since his arrival in Canada. He attached to the questionnaire all the pages of his Lebanese passport as well as copies of certain identification documents, confirmation of his permanent residence, an invoice from the University of Montréal for the fall 2011 session and a notice of assessment from Revenu Québec for the year 2010.

[6] The applicant was called to a hearing before the judge on October 31, 2013. At the hearing, the judge explained to the applicant that he had to submit [TRANSLATION] "active" evidence of his presence in Canada. She also asked him to prepare a history of his presence. He relied on the following history:

- From August 2007 to June 2008, he worked at NCO Financial;
- From December 2007 to February 2008, he attended Duval high school;
- From August 2008 to December 2009, he attended Collège Ahuntsic;
- From May 2010 to January 2011, he worked at AIC;
- From September 2010 to June 2013, he attended the University of Montréal;

[7] At the hearing, the applicant undertook to send the appropriate documentation to corroborate his statements, and the judge gave him 20 days to submit his documents. He subsequently sent a letter to the judge along with the following documents:

- A transcript from Duval high school covering five terms for the 2007-2008 year;
- A transcript from Collège Ahuntsic for the fall 2008, winter 2009 and fall 2009 sessions;

- A transcript from the University of Montréal for the fall 2010, winter 2011, fall 2011, winter 2012 and summer 2012 sessions.

[8] In his letter, the applicant stated that because of circumstances beyond his control he had been unable to obtain proof of his employment to send it within the time limit imposed by the judge. He also said that he would send it as soon as he received it if she still [TRANSLATION] "wished" to have it. The record does not indicate whether the applicant finally obtained and sent proof of the two jobs he claims he had during the relevant period.

II. Impugned decision

[9] It is clear from the decision that the judge applied the residency test set out at paragraph 5(1)(*c*) of the Act, which requires physical presence, developed in *Pourghasemi (Re)* (1993) 62 FTR 122, [1993] FCJ No 232. In her view, 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 1095 days during the four years immediately preceding his application for citizenship.

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

[11] She also found that the other documents submitted by the applicant were insufficient to establish his physical presence and noted that the applicant's fresh documentation (the transcripts) was not conclusive to confirm his presence in Canada during the review period.

[12] Dealing with the transcripts submitted by the applicant, the judge noted that the Collège Ahuntsic's transcripts showed failed or incomplete sessions with the exception of a two-credit course that was completed successfully in the fall of 2008. With respect to the University of Montréal transcript, she noted that it showed four courses completed successfully and one failed course for the fall 2010 session.

[13] She added that even for the period subsequent to the review period (thus, after September 2, 2010) it was also difficult to establish his physical presence in Canada because the applicant had failed two courses in the winter 2011 session, two courses in the fall 2011 session and had abandoned or failed all his courses at the 2012 winter session.

[14] The judge also noted that at the hearing the applicant had stated that he would be able to provide supplementary documentation for the periods included during the school interruptions and that bank statements or records of employment had been considered. She stated that she was dissatisfied with the explanations provided by the applicant in the letter he sent to her in which he stated that he had been unable to provide the documents requested because of circumstances beyond his control. In this regard, she stated that the onus was on the applicant and that he had not discharged it because the documents he sent did not corroborate his testimony and were not a satisfactory answer.

[15] She therefore found that it was impossible to determine, on a balance of probabilities, how many days the applicant had been present in Canada during the review period.

III. Issue

[16] As stated previously, the judge chose to apply the objective test of physical presence to determine whether the applicant had satisfied his residency obligation as required by paragraph 5(1)(*c*) of the Act. The applicant does not contend 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 para 9, [2012] FCJ No 1711 [*Tawfiq*]; *Balta v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1509 at para 9-11, [2011] FCJ No 1830 [*Balta*]; *Canada (Minister of Citizenship and Immigration) v Saad*, 2011 FC 1508 at para 14, [2011] FCJ No 1801.

[17] Accordingly, the only issue in this appeal is whether the Citizenship Judge's decision is reasonable.

IV. Standard of review

[18] The parties submit, and I agree, that the decision of a citizenship judge who must determine whether a person meets the residency conditions 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, para 18 [*Saad*]; *Tawfiq*, above, at para 8); *Canada (Minister of Citizenship and Immigration) v Al-Showaiter*, 2012 F C12 at para 13, [2012] FCJ No 7; *Balta*, above, at para 5).

[19] 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 verifying whether the decision has the qualities that make it reasonable. As the Supreme Court stated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 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".

[20] 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

[21] The applicant is essentially invoking a disagreement with the judge's assessment of the evidence adduced.

[22] Furthermore, he submits that the judge erred by finding that his passport was not valid evidence of when he entered and left Canada. He emphasizes the fact that a passport is an official legal document that should attest to its contents and that, in addition, he provided his passport at the express request of the citizenship officer. In the circumstances and relying on *Saad*, above, the applicant submits that what the judge said is speculative and that if the judge had doubts about the information in the applicant's passport it was up to her to verify it with the Canada Border Services Agency (CBSA).

[23] The applicant also maintains that the other documents he submitted, specifically his transcripts, 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. In his opinion, nothing in the evidence casts doubt on the accuracy of the information he provided. The applicant also contends that the judge should have granted him more time to submit evidence of his employment. He also believes that the Citizenship Judge was much too demanding with respect to the elements required to establish his physical presence.

[24] With respect, I consider that the Citizenship Judge's decision falls within a range of possible, reasonable outcomes, having regard to the evidence adduced by the applicant.

[25] It is important to bear in mind that the burden of proof is on the applicant.

[26] First, and contrary to the applicant's submission, the Citizenship Judge did not reject his passport. She indicated that, in her view, passports do not constitute irrefutable evidence of presence in Canada. Her finding in this regard 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. She stated in the decision that she had informed the applicant of her position with respect to passports at the hearing. She also told him that he had to provide [TRANSLATION] "active" evidence of his presence and gave him a deadline to submit additional documents.

[27] A passport is certainly a document that contains pertinent information for the purposes of analyzing a person's application for citizenship. Moreover, it was 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 a passport does not constitute a document that irrefutably attests to a person's presence in Canada. The reasons given by the judge as the basis for her conclusion 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* deals with stamping and with monitoring entries into and exits from the country at p 20 (p 27 of the respondent's record) and contains the following statement:

> 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.

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

[29] In view of the evidence, it was therefore reasonable to find that a passport does not constitute irrefutable confirmation of its holder's physical presence in Canada. As for the applicant's argument that the Citizenship Judge should have verified the information with the Canada Border Services Agency, I would just like to point out that the onus is on the applicant to submit sufficient and satisfactory evidence of his presence in Canada.

[30] With respect to the *Saad* case cited above, which the applicant relied on, the context that led to the Court's judgment was completely different, and Judge Gagné's comments cannot be transposed to this case. First, in *Saad*, the Citizenship Judge did not reject the application for citizenship on the basis that she was assigning no 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.

[31] 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. Moreover, this allegation by the respondent was not supported by any evidence. Judge Gagné found that the respondent's argument was speculative and noted that the respondent could have checked with the CBSA whether the applicant's entrances and exits matched the information in his passport. I understand that in this context Judge Gagné could have found that the allegation was speculative.

[32] In this case, the judge 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. In addition, the judge advised the applicant of her position with respect to the probative value of passports, and he had the opportunity to submit additional documents to establish his physical presence.

[33] With regard to the other elements and documents submitted by the applicant, I am of the view that it was reasonable to find that they were insufficient to conclude that he had met his burden of establishing, on a balance of probabilities, his physical presence for the minimum number of days required. This conclusion is all the more reasonable considering that the judge clearly indicated to the applicant that he had to submit [TRANSLATION] "active" evidence of his presence and gave him a deadline to do so.

[34] I agree that the applicant submitted transcripts of marks and that the failures in a number of courses do not support the inference that the applicant was not present and did not attend his courses. Moreover, considering the lack of any other significant evidence, I believe that it was not unreasonable for the judge to find that the transcripts submitted by the applicant were not sufficient evidence. The applicant stated that he had worked for two different employers during the review period, and he did not submit any document corroborating these allegations despite undertaking to do so. It appears to me to be quite insufficient to indicate briefly in a letter that he had been unable to obtain proof of employment for reasons beyond his control. I find that the applicant would have been better to identify the nature of these circumstances and to indicate the steps he had taken to try to obtain the documents. The applicant submits that the judge should

have given him additional time, or at the very least, followed up on the applicant's letter. I do not agree. The onus was on the applicant to explain the steps he had taken and to clearly ask for more time if he thought he could obtain the documents within a reasonable time period.

[35] I would also like to note that the residence questionnaire that the applicant completed at the request of the citizenship officer provides a large number of examples of documents that may be submitted (page 47 of the respondent's record). The documents submitted by the applicant were quite limited, and it was reasonable to conclude that the evidence he submitted was insufficient to establish his physical presence for the minimum number of days required.

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

[37] With respect to the judge's reasons, I find that they explain the reasoning on which the judge based her conclusion, which falls within a range of possible, acceptable outcomes having regard to the evidence.

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

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal is dismissed. No costs.

"Marie-Josée Bédard"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Anthony Karkar	FOR THE APPLICANT
Soury Phommachakr	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Anthony Karkar Counsel Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT