Federal Court  Cour fédérale

Date: 20141027

Docket: T-2031-13

Citation: 2014 FC 1018

Ottawa, Ontario, October 27, 2014

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

EFAT SALLAHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Proceeding

[1] The Applicant applied for Canadian citizenship in April, 2010, but her application was refused by a Citizenship Judge in a letter dated November 14, 2013. She now appeals that decision pursuant to section 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [the Act], by way of an application in this Court under Rule 300(c) (*Federal Courts Rules*, SOR/98-106).

[2] By virtue of section 39 of the *Strengthening Canadian Citizenship Act*, SC 2014, c 22, an appeal such as this one, which was initiated before recent changes to the Act were enacted, must be decided under the Act as it was on June 18, 2014.

[3] The Applicant requests that the decision of the Citizenship Judge be set aside and the matter referred to a different decision-maker for re-determination.

II. Background

[4] The Applicant is an Iranian citizen who was born in the Town of Sanadaj, Iran, on December 22, 1965. The Applicant became a permanent resident of Canada on June 27, 2005.

[5] On November 13, 2013, the Applicant appeared before a Citizenship Judge in Toronto. Although the Applicant met all the other requirements of what was then section 5 of the Act, she did not satisfy paragraph 5(1)(e), in that she correctly answered only 12 out of 20 questions on the knowledge test administered pursuant to section 15 of the *Citizenship Regulations*, SOR/93-246 [the Regulations]. Since the passing grade was 75%, or 15 out of 20 questions, she failed the test and the Citizenship Judge denied her application for citizenship. The Citizenship Judge explained this to the Applicant in the decision letter dated November 14, 2013.

[6] That letter also advised the Applicant that, before deciding not to approve the Applicant's citizenship application, the Citizenship Judge, in accordance with section 15(1) of the Act (as it appeared on June 18, 2014), had considered whether to make a favourable recommendation

under sections 5(3) or 5(4) of the Act. The Citizenship Judge declined to make such a recommendation and advised the Applicant as follows:

> After careful consideration of all the material before me, including all of the information you filed in support of your application, I have decided not to make a favourable recommendation for a waiver under subsection 5(3) or for a discretionary grant of citizenship under subsection 5(4) as you did not present evidence to me of special circumstances that would justify me in making such a recommendation.

III. Issues

[7] The Applicant submits that there are two issues to be decided by the Court:

a. Whether the Citizenship Judge unduly fettered his discretion under section 5(3) of the Act and thereby rendered a decision that was unreasonable.

b. Whether the Citizenship Judge erred in refusing to recommend an exercise of discretion by the Minister or by the Governor in Council by ignoring relevant evidence submitted at the hearing by the Applicant.

[8] In my view, however, the issues before the Court should be rephrased as follows:

a. What is the standard of review?

b. Was the decision of the Citizenship Judge unreasonable?

IV. The Parties' Submissions

[9] The substance of the Applicant's argument is that there was a lot of evidence or factors in her favour by which the Citizenship Judge should have made a recommendation for a waiver by the Minister of Citizenship and Immigration [the Minister] under section 5(3) of the Act, including the following:

a. her first language is Farsi;

b. she is working hard to improve her English;

c. she is the primary caregiver for two minor children; and

d. she is an artist who is pre-occupied with exhibiting her artworks.

The Applicant submits that the Citizenship Judge should have considered the combined challenges of these factors faced by the Applicant, but he did not do so. The Applicant argued that these were "special circumstances", such that the Citizenship Judge should have recommended an exercise of discretion by the Minister to waive the knowledge requirement under paragraph 5(1)(e) of the Act.

[10] The Respondent submits that the Citizenship Judge made no error. The onus was upon the Applicant to convince the Citizenship Judge that she met the requirements of the Act,

something which she did not do by failing the knowledge test. The Respondent further contends that the Citizenship Judge considered all of the Applicant's circumstances, including her language ability, and that his decision and determination not to make a recommendation under section 15(1) of the Act was reasonable.

[11] The Respondent also takes issue with some of the exhibits to the Applicant's affidavit since they were not in the Certified Tribunal Record. I agree with the Respondent on this issue. For the purposes of an appeal pursuant to section 14(5) of the Act, this Court, as Strickland J. stated in *Chaudhary v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1003 at para 14, [2013] FCJ No 1250 (QL) [*Chaudhary*], "can only consider the information contained in the Certified Tribunal Record that was before the Citizenship Judge when making the Decision (*Zhao v Canada (Minister of Citizenship and Immigration),* 2006 FC 1536 at paras 35-36 [*Zhao*]); *Navid Bhatti v Canada (Minister of Citizenship and Immigration),* 2010 FC 25 at para 20 [*Bhatti*]; *Woldemariam v Canada (Minister of Citizenship and Immigration),* 2012 FC 621 at para 14 [*Woldemariam*])."

V. Analysis

A. *What is the standard of review?*

[12] I agree with the parties' submissions that the jurisprudence has satisfactorily established that the standard of review in respect of the Citizenship Judge's decision is one of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 53, 62, [2008] 1 SCR 190, [*Dunsmuir*]; *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 313 at para 10, [2013] FCJ No 350 (QL)

[*Zhou*]; *Arif v Canada (Citizenship and Immigration)*, 2007 FC 557 at paras 7-8, [2007] FCJ No 750 (QL).

[13] This being so, the Citizenship Judge's decision should not be disturbed by this Court so long as it is justifiable, transparent, intelligible, and defensible in respect of the facts and the law (*Dunsmuir* at para 47). These criteria are satisfied whenever "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" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708 [*Newfoundland Nurses*]).

B. *Was the decision unreasonable?*

[14] I agree with the Respondent that the Citizenship Judge's decision was reasonable and should be upheld.

[15] I see no merit in the Applicant's argument that, even though she failed the knowledge test, she was still able to demonstrate a "general understanding" of the chief characteristics of Canadian political and military history, Canadian social and cultural history and Canadian physical and political geography.

[16] An applicant's "general understanding" is not assessed abstractly. Rather, under section 15(1) of the Regulations, applicants are tested "based on their responses to questions prepared by the Minister". Although section 15(1) of the Regulations does not specify that the

passing grade for the test is 75%, that threshold has not been challenged by the Applicant here and, indeed, it has been respected by this Court (see e.g.: *Abrar v Canada (Citizenship and Immigration)*, 2014 FC 550 at paras 6, 21, [2014] FCJ No 585 (QL) [*Abrar*]; *Zhou* at paras 3, 28-29). The Citizenship Judge found that the Applicant failed the knowledge test. As noted above, she (like the applicant in *Abrar*) correctly answered only 12 out of 20 questions on the knowledge test. It was reasonable for the Citizenship Judge to deny the Applicant's application for citizenship on this basis.

[17] The Applicant also argued that the Citizenship Judge "fettered his discretion" under section 5(3) of the Act. I see no merit in this argument either.

[18] Firstly, it is the Minister who has the discretion under section 5(3) of the Act, not citizenship judges. The only discretion the Citizenship Judge had in relation to that is found in section 15(1) of the Act, which authorizes a recommendation by a citizenship judge that the Minister waive the requirements of paragraph 5(1)(e) of the Act "on compassionate grounds".

[19] Secondly, the onus was on the Applicant to bring any special circumstances or "compassionate grounds" to the Citizenship Judge's attention (*Abrar*, at para 17). Although the Applicant offered evidence about her special circumstances in her affidavit, the Respondent correctly pointed out that she does not say that she told the Citizenship Judge about those circumstances, and there is no other evidence that she did so.

[20] The fact of the matter is that the Applicant's alleged "special or extenuating circumstances" are not compelling. Even if the Applicant had told the Citizenship Judge about such circumstances, her evidence amounts to little more than that she was too busy in her roles as a mother and an artist to learn enough about Canada and the responsibilities and privileges of citizenship to pass the knowledge test. The Citizenship Judge's decision not to make a recommendation under section 15(1) of the Act was reasonable.

[21] The Applicant's situation is not at all like that of the applicant in *Abdule v Canada (Minister of Citizenship and Immigration)*, 176 FTR 282 at para 10, 3 Imm LR (3d) 85, where McGillis J. determined that the citizenship judge should have made a recommendation under section 15(1) of the Act since the citizenship judge had failed to consider or misapprehended the medical evidence concerning the applicant's inability to learn. Nor is the Applicant's situation like that of the applicants in *Bhatti* and *Chaudhary*. As Gagné J. recently said about those cases in *Abrar* at para 16:

> [16]… in both of those cases a specific request was made to the Citizenship Judge to consider special or extenuating circumstances for which evidence was adduced by the applicant. In addition, it should be noted that Justice Mandamin's decision in *Bhatti* is essentially based on the inadequacy of the Citizenship Judge's reasons, and that, as it was rendered before the Supreme Court's decision in *Newfoundland Nurses*, it may no longer stand as a precedent.

[22] In the result, therefore, the Court finds that the Citizenship Judge's decision in respect of the Applicant's citizenship application was reasonable and should be upheld.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's appeal be dismissed and that no costs are granted.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Adetayo Akinyemi	FOR THE APPLICANT
Neeta Logsetty	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Adetayo Akinyemi Barrister and Solicitor North York, ON	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, ON	FOR THE RESPONDENT