

Federal Court



Cour fédérale

Date: 20151027

Docket: T-423-15

Citation: 2015 FC 1214

Toronto, Ontario, October 27, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

PRABAGARAN CHINNAPPAN

Respondent

JUDGMENT AND REASONS

(Reasons delivered orally in Toronto on October 26, 2015)

[1] As I explained to Mr. Chinnappan during the hearing, it is not my role when sitting in review of a decision of a Citizenship Judge to decide whether or not Mr. Chinnappan would make a good citizen of Canada. My role is limited to deciding whether or not the Citizenship Judge's decision was reasonable in light of the evidence that was before him.

[2] In approving Mr. Chinnappan's application for Canadian citizenship, the Citizenship Judge found that he had provided a satisfactory explanation as to why he had only been able to produce a limited amount of documentary evidence confirming his presence in Canada during the relevant period. The Citizenship Judge was also satisfied by Mr. Chinnappan's explanation with respect to his lost passports, with respect to an undeclared absence from Canada in February of 2007, and with respect to his use of a different name on his LinkedIn profile. These findings were reasonably open to the Citizenship Judge on the basis of the record before him, and no basis has been shown for the Court's intervention in this regard.

[3] There was, however, other evidence before the Citizenship Judge that called into question Mr. Chinnappan's evidence with respect to his physical presence in Canada during the period between March of 2006 and March of 2010 which was not mentioned or analyzed by the Citizenship Judge. In particular, the record shows Mr. Chinnappan held an Indian passport that had been issued in Singapore in October of 2009. Mr. Chinnappan had not, however, declared a trip to Singapore in 2009, or indeed at any time during the relevant period.

[4] In addition, Mr. Chinnappan's Indian passport had been examined by a CIC official in 2008 as part of Mr. Chinnappan's daughter's sponsorship application. CIC's FOSS notes of this examination note that Mr. Chinnappan's Indian passport contained "multiple stamps for séjours in New Zealand, United States, China, Malaysia, Singapore, Brazil, India, the Netherlands, etc." Mr. Chinnappan did not, however, declare trips to New Zealand, China, Malaysia, Singapore or Brazil during the period in issue in his citizenship application. No mention was made of this

evidence by the Citizenship Judge, nor has Mr. Chinnappan denied that he visited these countries during the period under consideration.

[5] It is true that a tribunal is not required to refer to every piece of evidence in the record and will be presumed to have considered all of the evidence that is before it: *Hassan v. Canada (Minister of Citizenship and Immigration)*, [1992] F.C.J. No. 946, 147 N.R. 317 (F.C.A.). That said, the more important the evidence that is not specifically mentioned and analyzed in the tribunal's reasons, the more willing the Court may be to infer that the tribunal made an erroneous finding of fact without regards to the evidence: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 at paras.14-17, 157 F.T.R. 35.

[6] In this case there was significant evidence before the Citizenship Judge that directly contradicted Mr. Chinnappan's claim to have been physically present in Canada for 1282 days during the period under consideration in his citizenship application. The failure of the Citizenship Judge to come to grips with this evidence means the decision approving Mr. Chinnappan's application for Canadian citizenship lacks the transparency, justification and intelligibility required of a reasonable decision.

[7] Consequently, the Minister's application is granted, the Citizenship Judge's decision is set aside, and Mr. Chinnappan's citizenship application will be remitted to a different citizenship judge for redetermination.

[8] Both sides were given the opportunity to propose a question that is suitable for certification, and neither side has identified a question that meets the test for certification established by the Federal Court of Appeal in cases such as *Kanhasamy v. Canada (Citizenship and Immigration)*, 2014 FCA 113, at para. 23. I am, moreover, satisfied that this case turns entirely on its own facts. As a result no question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The decision of the Citizenship Judge is set aside and the Applicant's citizenship application will be remitted to a different citizenship judge for redetermination.

“Anne L. Mactavish”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-423-15

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP v PRABAGARAN
CHINNAPPAN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 26, 2015

JUDGMENT AND REASONS: MACTAVISH J.

DATED: OCTOBER 27, 2015

APPEARANCES:

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FOR THE APPLICANT

Self-Represented

FOR THE RESPONDENT

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FOR THE APPLICANT

N/A

FOR THE RESPONDENT