Federal Court  Cour fédérale

Date: 20151104

Docket: T-348-15

Citation: 2015 FC 1247

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 4, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RACHID DJEDDOU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary

[1] The Court finds that while the applicant may disagree with the citizenship judge's assessment of the evidence, including the determinative documentary evidence in this case, this does not make the citizenship judge's decision unreasonable (*Al-Askari v Canada (Minister of Citizenship and Immigration)*, 2015 FC 623 at para 24 [*Al-Askari*]).

II. Introduction

[2] This is an application for judicial review of a decision dated February 2, 2015, in which a citizenship judge rejected the applicant's application for citizenship on the ground that the applicant did not satisfy the requirements under subsection 5(1) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

III. Facts

[3] The applicant, 49-year-old Rachid Djeddou, arrived in Canada on May 4, 2006, landing as a permanent resident. In his application for Canadian citizenship, he stated that he was not a citizen or permanent resident of any other country than Canada.

[4] The applicant filed an application for citizenship on August 3, 2009 [Application], for a reference period spanning May 4, 2006, to August 3, 2009. The Application was first rejected by a citizenship judge in a decision dated April 5, 2013. Following an appeal from this decision (T-924-13), the Application was re-examined by a different judge. In a decision dated April 4, 2014, the Application was rejected again. This decision was also successfully appealed, since the second citizenship judge failed to review the new documents presented at the hearing. Finally, in a decision dated February 2, 2015, the citizenship judge rejected the applicant's Application. This is the judicial review of that decision.

IV. Impugned decision

[5] In her decision dated February 2, 2015, the citizenship judge denied the applicant's application for citizenship, concluding that, on a balance of probabilities, he did not satisfy the residency requirement set out in paragraph 5(1)(*c*) of the Act. The judge applied the test described in *Pourghasemi (Re)*, [1993] FCJ No 232, [*Pourghasemi*], which is that of physical presence.

[6] The citizenship judge found that the applicant had provided little active evidence, making it difficult to establish his physical presence in Canada. The citizenship judge noted that, during the reference period, [TRANSLATION] "the applicant did not have a job, did not undergo any training, was not involved in any community, sports or social activities, and described himself as a homemaker; it is impossible to verify how he spent his time" (para 21 of the decision). The citizenship judge found, among other things, that she could not consider the bank statements because they were from joint accounts and that it was not credible that the applicant stayed at home to take care of his children during the reference period given that his wife was also at home. Moreover, the applicant testified that he only travelled to take care of his mother, yet the evidence showed that he travelled a number of times after his mother's death on July 24, 2011.

[7] The citizenship judge further found that the passive evidence, such as the passport and the Canada Border Services Agency [CBSA] report, could not support the applicant's arguments since the passport alone was not irrefutable evidence of presence in Canada. For these reasons, the citizenship judge rejected the Application and concluded that, on a balance of probabilities, it

was impossible to determine for how many days the applicant had been physically present in Canada.

V. Issue

[8] The Court finds that there is only one issue:

Did the citizenship judge err in concluding that the applicant did not satisfy the requirements regarding physical presence in Canada under paragraph 5(1)(*c*) of the Act?

VI. Statutory provisions

[9] The following statutory provisions apply:

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 :
. . .	[…]
(*c*) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident and has, since becoming a permanent resident,	*c*) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés, a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi et, après être devenue résident permanent :
(i) been physically present in Canada for at least 1,460 days during the six years immediately before the date of his or her application,	(i) a été effectivement présent au Canada pendant au moins mille quatre cent soixante jours au cours des six ans qui ont précédé la date de

	sa demande,
(ii) been physically present in Canada for at least 183 days during each of four calendar years that are fully or partially within the six years immediately before the date of his or her application, and	(ii) a été effectivement présent au Canada pendant au moins cent quatre-vingt-trois jours par année civile au cours de quatre des années complètement ou partiellement comprises dans les six ans qui ont précédé la date de sa demande,

VII. Positions of the parties

[10] The applicant submits that he filed extensive documentary evidence to corroborate his residence in Canada, such as bank statements, financial activities, his medical history, his dealings involving educational institutions and various personal and community activities, but that the citizenship judge did not review and analyze this evidence, and misinterpreted it. The applicant submits that the citizenship judge misapplied the residency test as it is described in *Koo (Re)*, [1993] 1 FCR 286, [1992] FCJ No 1107 (QL) [*Koo*]. Moreover, in light of the extensive evidence supplied by the applicant, the citizenship judge should have explained why she rejected the evidence (*Muhanna v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1289).

[11] The applicant submits that the judge erred in concluding that the applicant's passport did not constitute persuasive (determinative) evidence of his presence in Canada and could not serve as *prima facie* evidence of his presence in Canada (*Saad v Canada (Minister of Citizenship and Immigration)*, 2013 FC 570; *Oueida v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1168). Moreover, the applicant submits that the citizenship judge misassessed other evidence, such as the applicant's airline tickets, his dealings with Emploi Québec and his

enrolment in a sports club, and that she held the fact that he was receiving last-resort financial assistance against him. The citizenship judge also drew negative inferences on the applicant's credibility by relying on trips made outside the reference period and by concluding that it was impossible for him to be a homemaker. In short, in light of the extensive evidence on the record, it was unreasonable for the citizenship judge to conclude that the applicant did not meet the requirements under paragraph 5(1)(*c*) of the Act.

[12] For his part, the respondent submits that the citizenship judge's decision was reasonable since the applicant did not establish that he had resided in Canada for 1,095 days during the relevant period. The respondent notes that the citizenship judge could apply one of three approaches to interpret paragraph 5(1)(*c*) of the Act and that she chose the approach used in *Pourghasemi*. The applicant is therefore making an error in submitting that the citizenship judge misapplied the test set out in *Koo*.

[13] The respondent argues that the applicant had the burden of establishing, on a balance of probabilities, his presence in Canada (*Dachan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 538) with the help of clear and compelling evidence (*Knezevic v Canada (Minister of Citizenship and Immigration)*, 2014 FC 181 [*Knezevic*]; *El Falah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 736). Since the applicant alleges that he spent 1,096 days in Canada, it is possible that if he made a mistake when calculating the date of his departure or arrival, be it in bad faith or inadvertently, he did not met the 1,095-day threshold under the Act. Among other things, the CBSA report merely confirms the applicant's entries into Canada, but not his exits, and his airline ticket for May 15, 2009, containing a handwritten note

indicating that the travel date was changed to April 24, 2009, is not clear and compelling evidence of his return on this date.

[14] In short, the evidence provided by the applicant does not establish his physical presence during the reference period. It was therefore reasonable for the citizenship judge to conclude as she did.

VIII. Standard of review

[15] A citizenship judge's findings of fact and of mixed fact and law should be reviewed on the standard of reasonableness (*El-Husseini v Canada (Minister of Citizenship and Immigration)*, 2015 FC 116; *Ukaobasi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 561; *Sallam v Canada (Minister of Citizenship and Immigration)*, 2015 FC 427).

IX. Analysis

[16] In the matter at bar, the applicant disagrees with the citizenship judge's assessment of the evidence. It is not within this Court's mandate to substitute its assessment of the evidence on the record for that of the citizenship judge, and the Court owes deference to the citizenship judge's findings (*Qureshi v Canada (Minister of Citizenship and Immigration)*, [2010] 4 FCR 256, 2009 FC 1081; *Al-Askari*, above). Moreover, the burden is on the applicant to establish clear and compelling evidence as to his presence in Canada (*Knezevic*, above).

[17] In her decision, the citizenship judge decided to apply the approach set out in *Pourghasemi*, that of actual physical presence in Canada. The case law is clear that citizenship judges may apply the test of their choice, but may not blend tests (*Saad v Canada (Minister of Citizenship and Immigration)*, 2013 FC 570 at para 19; *Mizani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 698). The applicant's argument that the citizenship judge misapplied the residency test set out in *Koo* must therefore be rejected.

[18] The other grounds raised by the applicant concern the citizenship judge's assessment of the evidence. The Court finds that the applicant may disagree with the citizenship judge's assessment of the evidence, including the determinative documentary evidence in this case, but this does not make her decision unreasonable (*Al-Askari*, above at para 24).

[19] It appears from the citizenship judge's decision, and from her handwritten notes on the interview with the applicant, that the citizenship judge considered all of the evidence on the record. Her decision is therefore reasonable.

X. Conclusion

[20] The Court finds that the citizenship judge's decision is reasonable. Consequently, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. There is no question of importance to be certified.

"Michel M.J. Shore"

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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