

Federal Court



Cour fédérale

**Date: 20151126**

**Docket: T-446-15**

**Citation: 2015 FC 1318**

**Toronto, Ontario, November 26, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Applicant**

**and**

**ABDUL-SATTAR Q MAHDI**

**Respondent**

**JUDGMENT AND REASONS**

**(Reasons delivered orally in Toronto on November 25, 2015)**

[1] The Minister seeks judicial review of the decision of a Citizenship Judge granting Canadian citizenship to Abdul-Sattar Q Mahdi. I agree with the Minister that the Citizenship Judge failed to meaningfully engage with significant evidence in the record that was before her that called into question Mr. Mahdi's claim to have been physically present in Canada for 1138 days during the relevant period, with the result that the decision was unreasonable.

**I. Preliminary Issue**

[2] Before turning to consider the reasonableness of the Judge's decision, I would note that Mr. Mahdi has filed an affidavit in support of his application for judicial review that addresses a number of the concerns that have been raised by the Minister.

[3] Judicial review is, however, to be conducted on the basis of the evidence that was before the decision-maker at the time that the decision under review was made. While there are exceptions to this principle – where, for example, the case raises a question of procedural fairness or jurisdiction - Mr. Mahdi has not established that his new evidence is admissible under one of the recognized exceptions to the general rule and it will thus not be considered in relation to this application.

**II. The Reasonableness of the Citizenship Judge's Decision**

[4] In finding that the Citizenship Judge's decision was unreasonable, I would first note that there were irregularities in the copies of the passports that Mr. Mahdi provided in support of his citizenship application. While the documents purported to be notarized copies of the originals, there were blank pages included in the copies that had not been notarized, raising concerns as to the completeness of the copies and the possibility of undisclosed travel.

[5] As counsel for the Minister noted, undisclosed travel is a particular concern in this case, given that Mr. Mahdi was only slightly over the minimum requirement for physical presence in Canada.

[6] Equally troubling was the fact that Mr. Mahdi was issued a visa at the Canadian embassy in Jordan in July of 2010 allowing him to re-enter Canada. Neither of Mr. Mahdi's disclosed passports reflected this visa, which strongly suggests that he may have had an additional passport that had not been disclosed to Canadian citizenship authorities, further heightening the concern with respect to undisclosed travel.

[7] In these circumstances, it was incumbent on the Citizenship Judge to make further inquiries, but no such inquiries were made. There was, moreover, no attempt whatsoever to engage with this evidence or to address this concern.

[8] Another concern with respect to the accuracy of Mr. Mahdi's reported travel history related to the fact that he had close family members (including his mother, three brothers and a woman that he had described as his daughter) who had been living in the United States since 2008, yet he claimed never to have visited them. The Citizenship Judge failed to question this assertion in light of its inherent implausibility, and, more importantly, the missing passport information.

[9] Equally problematic is the fact that Mr. Mahdi did not disclose the existence of his daughter living in the United States, and he claimed that his mother was living in Iraq, when in fact she was living in the United States.

[10] There were additional problems with Mr. Mahdi's identification documents, including different names appearing on different documents, and inconsistencies in his date of birth. There

were also inconsistencies in the evidence that Mr. Mahdi had provided as to where he was living during the period under review, and unaddressed, lengthy absences in the school attendance of Mr. Mahdi's two children in 2007 and 2009. It is noteworthy that these periods of absence corresponded to periods in the children's medical records where their previous history of regular attendance at the doctor suddenly disappeared, a fact that was never addressed by the Citizenship Judge. There was, moreover, a complete lack of banking information for the 2007 year, another fact that was never addressed by the Citizenship Judge.

### **III. Conclusion**

[11] In this case, then, there were numerous inconsistencies and gaps in the evidence, the effect of which was to raise serious concerns with respect to Mr. Mahdi's evidence regarding his physical presence in Canada, his travel history, and the sufficiency of the evidence documenting his presence in Canada.

[12] The Citizenship Judge utterly failed to come to grips with any of this evidence, with the result that the decision to grant citizenship to Mr. Mahdi lacked the transparency, justification and intelligibility required of a reasonable decision: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.

[13] Consequently, the application for judicial review will be granted. I agree with the parties that the case is fact-specific and that there is no question suitable for certification.

**IV. Remedy**

[14] As Mr. Justice Mosley noted in *Canada (Minister of Citizenship and Immigration) v Vijayan*, [2015] F.C.J. No. 263 at paras. 90-95, the issue of remedy in cases such as this is complicated by the fact that there have been intervening legislative changes. I agree with Justice Mosley that, in the circumstances, the appropriate remedy is to return this matter for redetermination by the Minister, who will determine whether or not Mr. Mahdi meets the residence requirements under the *Act*. If the Minister is satisfied that this is the case, he shall grant Mr. Mahdi citizenship. If the Minister is not satisfied, he shall once more refer the matter to a different Citizenship Judge for redetermination.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted. The matter shall be returned to the Minister for redetermination. The Minister shall either grant citizenship to Mr. Mahdi or refer the matter to a Citizenship Judge, for redetermination in accordance with these reasons.

“Anne L. Mactavish”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-446-15

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v ABDUL-SATTAR Q MAHDI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 25, 2015

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