Federal Court  Cour fédérale

Date: 20151127

Docket: T-838-15

Citation: 2015 FC 1322

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 27, 2015

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ABDELLATIF GOUZA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to section 22.1 of the *Citizenship Act*, RSC (1985), c C-29 [the Act], of a decision dated April 21, 2015, by which a citizenship judge approved the citizenship application of Abdellatif Gouza [Mr. Gouza].

II. Background and alleged facts

[2] Mr. Gouza stated that he first arrived in Canada in 2001. From 2001 to 2004 he pursued studies in St-Hubert, Québec, to obtain his pilot's license. He claimed to have obtained his private pilot's license on September 20, 2002, but this was a first stage in the process of becoming a commercial pilot. In 2005, he interrupted his studies to return to Morocco, after he had married. He stated that he did not resume his studies upon his return to Canada in 2007.

[3] Mr. Gouza filed a citizenship application on May 11, 2010. The reference period for this was between March 17, 2007, and May 11, 2010. In the citizenship application, he declared 1,108 days of presence and 42 days of absence, for a total of 1,150 days during the period in question.

[4] He stated that he had returned to Morocco in January 2010 for a duration of 42 days. He affirmed that this was the only trip he had taken during the reference period and that upon his return to Canada he resumed his studies to become a pilot. He completed those studies in 2012. Because he had not completed the required number of flying hours to pilot a commercial airplane, he had to settle for jobs that were outside of his field of study.

[5] Mr. Gouza attended an interview with an officer on September 17, 2012, the date on which he also successfully completed the knowledge of Canada test. In addition to this, he completed a residence questionnaire which he returned, along with supporting documents, on March 15, 2013. He attended a hearing before the citizenship judge on February 23, 2015.

III. Impugned decision

[6] On April 21, 2015, Mr. Gouza's Canadian citizenship application was approved by the citizenship judge. She found that, on a balance of probabilities and in accordance with the residence test used by Justice Muldoon in *Pourghasemi (Re)*, [1993] FCJ No 232, 62 FTR 122 [*Pourghasemi*], Mr. Gouza had demonstrated that he satisfied the residency requirement under paragraph 5(1)(*c*) of the Act.

[7] The citizenship judge first addressed the citizenship officer's concern about Mr. Gouza's trip during the reference period. The citizenship judge concluded that there was no inconsistency in that regard given that Mr. Gouza had declared the 42-day trip. This information was consistent with that which was on both his residency application and questionnaire, and with the calculations made by the citizenship officer and the information in the Integrated Customs Enforcement System report [ICES report].

[8] Prior to the hearing, the citizenship judge had asked Mr. Gouza to provide certain documents such as notices of assessment, bank statements and information regarding his studies. In her decision, the citizenship judge indicated that the documents submitted had confirmed Mr. Gouza's verbal statements. She had asked him about the absence of a notice of assessment for the 2007 taxation year and accepted his explanations.

[9] The citizenship judge also noted that Mr. Gouza recounted his story in a clear and forthright manner, and that he provided precise answers to all of the questions he was asked. The

citizenship judge found no contradictions or inconsistencies in his explanations. Mr. Gouza's credibility is therefore not in question here.

IV. Issue

[10] Having reviewed the parties' arguments and their respective records, I propose the following question: Was the citizenship judge's decision, in which she found that Mr. Gouza had satisfied the physical presence requirement, reasonable?

V. Standard of review

[11] The standard of review applicable to the decision of a citizenship judge on residence requirements is that of reasonableness, given that such decisions involve questions of fact and of law (*Canada (Minister of Citizenship and Immigration) v Matar*, 2015 FC 669, [2015] FCJ No 683 at para 11; *Kohestani v Canada (Minister of Citizenship and Immigration)*, 2012 FC 373, [2012] FCJ No 443 at para 12). A decision is reasonable if it contains sufficient reasons to allow the Court to understand the decision-making process that was used (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 16 [*Newfoundland Nurses'*]) and if the decision falls within "the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

VI. Statutory provisions

[12] Under paragraph 5(1)(*c*) of the Act (reproduced in Appendix A), as it read at the time of this application for judicial review, a person applying for citizenship must prove that he or she resided in Canada for at least three of the four years that preceded the date of his or her application, that is, for 1,095 days.

VII. Analysis

[13] The citizenship judge assessed Mr. Gouza's application in accordance with paragraph 5(1)(*c*) of the Act and the physical presence test, as was developed by this Court in *Pourghasemi*, above. Mr. Gouza had to show, on a balance of probabilities, that he met the physical presence requirement (*Taleb v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1147, [2015] FCJ No 1181 at para 18 [*Taleb*]).

[14] First of all, I reject the Minister's argument that the decision of the citizenship judge was not reasonable because she relied solely on Mr. Gouza's verbal explanations to fill in the gaps in his record. On the contrary, the case law indicates that not only is such an approach permissible, but that asking questions in order to solicit answers may even be required as a matter of procedural fairness (*Taleb*, above, at paras 17 and 21).

[15] According to the Minister, the decision in *El Falah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 736, [2009] FCJ No 1402 [*El Falah*] shows that a citizenship judge cannot fill in the gaps of an application with the applicant's statements. In my view, this is an erroneous interpretation that does not apply here. The facts in *El Falah* involved an applicant who was seeking judicial review of a decision *refusing* to grant him citizenship, arguing that the

citizenship judge had not given sufficient consideration to his oral statements. The *El Falah* ruling demonstrates that judges are under no obligation to assign any probative value to an applicant's statements or to rely solely on such statements. Citizenship judges are therefore free to assess statements in light of all of the evidence in the record.

[16] This interpretation is consistent with the burden of proof placed on applicants as part of the citizenship application process. The opposite conclusion proposed by the Minister, namely, that verbal statements without corroboration are insufficient, is untenable and the Act does not require such corroboration (*Canada (Minister of Citizenship and Immigration) v Lee*, 2013 FC 270, [2013] FCJ No 311 at para 38 [*Lee*]).

[17] In this case, the citizenship judge assessed Mr. Gouza's credibility. It should be recalled that findings based on the assessment of credibility are owed a significant degree of deference (*Canada (Minister of Citizenship and Immigration) v Vijayan*, 2015 FC 289, [2015] FCJ No 263 at para 64). Moreover, the Minister did not actually challenge the decision on this point, preferring instead to attack the sufficiency and quality of the evidence adduced.

[18] The Minister further contends that the decision is unreasonable because the citizenship judge ought to have conducted a specific analysis of each one of the gaps identified in the officer's template and indicated [TRANSLATION] "how the doubts had been dispelled and which pieces of evidence had led her to grant the applicant citizenship" (Minister's memorandum at para 47). I do not agree with this assertion. A judicial review is not an occasion to

microscopically examine and scrutinize the impugned decision. In this case, the citizenship judge stated that she had relied on Mr. Gouza's explanations in order to fill in the gaps in his record.

[19] In any event, it should be noted that in *Newfoundland Nurses*', above, adequacy of reasons is not a stand-alone basis for quashing a decision on judicial review. Rather, the question is whether the reasons allow the reviewing court to understand the reasoning behind the decision in order to assess its reasonableness (*Newfoundland Nurses'*, above, at para 17). I agree that it would have been preferable for the citizenship judge to have provided a more in-depth explanation of her reasons; nonetheless, her decision clearly sets out the basis on which she decided to grant citizenship to Mr. Gouza.

[20] Unlike cases in which the reviewing court declares itself incapable of determining how the citizenship judge arrived at his or her decision, as was the case in *Canada (Minister of Citizenship and Immigration) v Safi*, 2014 FC 947, [2014] FCJ No 1020, the citizenship judge in this case provides the following conclusion at paragraph 27 of her decision:

> [TRANSLATION]
>
> Having carefully listened to the applicant during our meeting, which lasted nearly an hour, and having subsequently reviewed all of the documents in the record, I find, on a balance of probabilities, that the applicant has met his burden of proof, as required under the Act.

I am of the view that this conclusion is more in line with that of the citizenship judge in *Lee*, in which Justice Strickland determined that the reasons indicating that the decision was based largely on the ICES report were sufficient in order to understand the reasoning of the citizenship judge (*Lee*, above, at para 50).

[21] The same conclusion must be applied analogously in this case: as long as the decision of the citizenship judge clearly states that she has relied on additional documents and Mr. Gouza's explanations to fill in the gaps in the record, it is not the role of a judge sitting in review to re-weigh that evidence (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113, [2014] FCJ No 472 at para 99; *Canada (Minister of Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020, [2015] FCJ No 1017 at para 16; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 61). From this I conclude that the decision-making process of the citizenship judge is justified, transparent and intelligible, and that her decision falls within "the range of possible, acceptable outcomes which are defensible in respect of the facts and law". (*Dunsmuir*, above, at para 47).

VIII. Conclusion

[22] The decision of the citizenship judge in finding that Mr. Gouza had met the requirement under paragraph 5(1)(*c*) of the Act, as per the physical presence in Canada requirement, is reasonable. This Court's intervention is therefore not required.

JUDGMENT

THE COURT:

DISMISSES the application for judicial review without costs, and no question is certified.

"B. Richard Bell"
Judge

Certified true translation
Sebastian Desbarats, Translator

APPENDIX A

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*, 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 to have accumulated one-half of a day of residence, and	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
(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;

FEDERAL COURT

SOLICITORS OF RECORD

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