Federal Court  Cour fédérale

Date: 20090923

Docket: T-434-09

Citation: 2009 FC 959

Ottawa, Ontario, September 23, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

HICHAM ZAMZAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Before granting citizenship, the Citizenship Judge must be satisfied that the applicant has resided in Canada for at least three of the four years immediately preceding the application. Although Mr. Zamzam stated that he was only absent from Canada for 56 days during those four years, the Citizenship Judge was not satisfied that he had resided at least three years here. It is with

regret that I am compelled to grant Mr. Zamzam's appeal and send the matter back to another Citizenship Judge for reconsideration.

[2] During the processing of Mr. Zamzam's application, Citizenship and Immigration Canada became so concerned that they sent him a resident questionnaire and then served him with a notice to appear at a hearing before the Citizenship Judge.

[3] The Citizenship Officer had every reason to be concerned. The work telephone number provided by Mr. Zamzam had been used by sixty-two people at the address he gave, and was used by applicants who gave ten other addresses. The mailing address he provided had been used by 127 other applicants.

[4] The dates are what really matters here. Mr. Zamzam's application form was signed in June 2007. The residence questionnaire was sent to him in July 2008, and filled in the following month.

[5] The residency questionnaire on the one hand states in bold print: **"THE DOCUMENTS YOU PROVIDE SHOULD COVER THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF YOUR CITIZENSHIP APPLICATION."** However question 11 required him to list all trips outside the country since his arrival in Canada starting with the most recent. He limited himself to the four years preceding his citizenship application. I can well understand why he did so. On my first reading of the form I would have done exactly the same thing. At the hearing, however, he was asked to produce his passports covering the period from when he obtained permanent residency in Canada in 1999, up to the present. He did. The documents

showed several trips before the four years in issue began to run in July 2003 and, as the Citizenship Judge said: “His passport shows a re-entry stamp into Canada on August 11, 2008, which he did not declare in question 11 of the residence questionnaire”

[6] The Citizenship Judge was not satisfied, based on the totality of the evidence before her, that the applicant had maintained residence in Canada for the required number of days. Mr. Zamzam is a Palestinian national, with residence status in Saudi Arabia, and a Lebanese passport. During the four years in question he was either unemployed or self-employed. Although he stated that he had worked for a year, he had no documentation to support that claim, and he even says that he was never paid. Apparently he does not have to work because he is a rich man’s son. He claims to have lived for a while with his sister, and also with an aunt. Those allegations were not corroborated. His bank accounts and other documents are somewhat sketchy. He shared a bank account with a consultant.

[7] However, the Citizenship Judge also said: “…another determinative factor in reaching this decision was the lack of credibility of the applicant.” I am unable to segregate her statement that he failed to mention the August 2008 trip, from the other factors which put his credibility in doubt. As a matter of law, the four years in question ended in June 2007. The most that can be said is that Mr. Zamzam may have misread the questionnaire. When requested he readily produced evidence of his 2008 trip outside Canada.

[8] I cannot escape the notion that the Citizenship Judge erred in law by taking into account the wrong four years. The standard of review on this point is correctness. The Citizenship Judge does

not specifically state which four years she took into account. The reference to the 2008 trip gives the impression that she started the count from the date that form was filled in rather than the date of the citizenship application form which was filed the year before. I find myself in exactly the same position Mr Justice O'Keefe found himself in in *Shakoor v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 776 where he said:

> [39] From a perusal of the reasons, it cannot be determined whether the citizenship judge was referring to the extensive absences from Canada after February 14, 2003, the date of the applicant's application, or just the absences prior to the date of his application. I cannot tell whether the citizenship judge took into account the absences after the date of the application in arriving at a conclusion on the applicant's application. If she did, it would constitute a reviewable error.
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> [40] Accordingly, the appeal of the citizenship judge's decision must be allowed, as there is a live issue as to the actual number of days the applicant was absent from Canada. I will refer the matter back to a different citizenship judge for redetermination.

[9] Counsel for the applicant raised another point which was that the Citizenship Judge erred in relying upon bank account and credit card statements and the like. He submitted that these documents are only relevant in considering whether an applicant has established himself in Canada in the first place, and are not relevant when counting up the days. I do not agree. In today's world, most people leave a paper trail. The Citizenship judge's analysis was an effort to ascertain whether he had been here at all, not whether he had established himself. This was a legitimate inquiry.

[10] Unfortunately, as Parliament has not seen fit to grant an appeal from the Federal Court to the Federal Court of Appeal under the *Citizenship Act*, not even in circumstances where the Court certifies a serious question of general importance, as may be done under the *Immigration and Refugee Protection Act*, three interpretations of "residence" have developed in this Court. One is

that the applicant be physically here. The others are less stringent. If one has established oneself here then thereafter, even if away, his residence may be where his heart is.

[11] The distinction was well explained by Madam Justice Tremblay-Lamer in *Mizani v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 698, [2007] F.C.J. No. 947 at paragraph 10 where she said:

> This Court's interpretation of "residence" can be grouped into three categories. The first views it as actual, physical presence in Canada for a total of three years, calculated on the basis of a strict counting of days (*Pourghasemi (Re)*, [1993] F.C.J. No. 232 (QL) (T.D.)). A less stringent reading of the residence requirement recognizes that a person can be resident in Canada, even while temporarily absent, so long as he or she maintains a strong attachment to Canada (*Antonios E. Papadogiorgakis (Re)*, [1978] 2 F.C. 208 (T.D.). A third interpretation, similar to the second, defines residence as the place where one "regularly, normally or customarily lives" or has "centralized his or her mode of existence" (*Koo (Re)*, [1993] 1 F.C. 286 (T.D.) at para. 10).

[12] Given that the applicant stated he was only absent 56 days out of the four years, I am satisfied that the Citizenship Judge followed the strict counting of the days test set out by Mr. Justice Muldoon in *Pourghasemi (Re)*, [1993] F.C.J. No. 232, 62 F.T.R. 122.

[13] As the Citizenship Judge pointed out at the hearing, citizenship is a privilege, not a right. It should not a piece of paper left in a sock drawer and only brought out on a rainy day. Since the Citizenship Judge followed *Pourghasemi*, let us recall what Mr. Justice Muldoon said:

> [6] So those who would throw in their lot with Canadians by becoming citizens must first throw in their lot with Canadians by residing among Canadians, in Canada, during three of the preceding four years, in order to Canadianize themselves. It is not something one can do while abroad, for Canadian life and society exist only in Canada and nowhere else.

> [7] Many immigrants come to Canada from theocratic and/or autocratic countries in which Canada's Constitution, including the Canadian Charter of Rights and Freedoms with its guaranteed freedoms of expression, speech and religion, would never be tolerated by their tyrannical rulers. Understanding and living comfortably with Canada's beautiful freedoms and their minor limitations takes some getting used to - at least three years of getting used to pursuant to paragraph 5(1)(c) of the Citizenship Act.

[14] Having been put on notice that were it not for this lack of clarity with respect to the four-year count this appeal would be dismissed, it would well behoove Mr. Zamzam to provide much better evidence of his physical presence in Canada for the four years immediately preceding his application which is dated 18 June 2007, for instance, from his aunt with whom he claims to have lived, his sister with whom he shared an apartment for a short while and the employer for whom he worked without pay for a year.

ORDER

THIS COURT ORDERS that:

1. The appeal is granted.

2. The matter is referred back to another Citizenship Judge for redetermination.

3. There shall be no order as to costs.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-434-09
STYLE OF CAUSE:	Hicham Zamzam v. MCI
PLACE OF HEARING:	Montréal, Quebec
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