

Federal Court



Cour fédérale

Date: 20130124

Docket: T-167-12

Citation: 2013 FC 70

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, January 24, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

**WALID SALAMEH
RITA BOU-SADER**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] A citizenship officer prepared a document describing the contradictions, irregularities and omissions in the citizenship applicants' record, demonstrating the following:

- a. The absence of stamps indicating a return to Canada for the applicants;

- b. One full year was missing with respect to the tax assessment period. That was part of the applicants' period of "physical presence";
- c. The outline of the banking transactions for the reference period shows very few transactions, other than bank transfers, except for the period from September to November 2008, in Montréal; that period shows bank account statements with Mississauga addresses (account statements from the HSBC Bank, which, incidentally, were part of a list of common addresses for 45 other people);
- d. The Mississauga address did not even appear in the applicants' citizenship application; but, instead, in a questionnaire for the period between 2007 and 2008.

II. Overview

[2] A citizenship judge can choose between three methods for determining the citizenship issue; the citizenship judge can choose one of the three to determine whether or not the person has one of the three criteria for the purposes of citizenship; but, the judge cannot "blend" the three together (*Mizani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 698). That would not be logical.

III. Introduction

[3] The applicant appealed the citizenship judge's decision pursuant to subsection 14(5) of the *Citizenship Act*, RSC (1985), c C-29 and section 21 of the *Federal Courts Act*, RSC (1985), c F-7 and according to the *Federal Courts Rules*, SOR/98-106.

IV. Judicial procedure

[4] The notice of application was not served on the respondents because they could not be reached at the address that was submitted as current; also, they did not leave where they could be reached at the previous address according to the bailiffs' report on the service attempts dated, respectively, January 18 and January 25, 2012.

[5] Further to an order issued by Prothonotary Richard Morneau to serve the notice of application at the Federal Court in Montréal, the respondents were not in attendance.

V. Facts

[6] The applicants arrived in Canada on June 22, 2005, and the reference period is between June 22, 2006, and March 30, 2009 (with permanent resident visas). In their citizenship applications dated March 30, 2009, the applicants stated that the principal applicant, Walid Salameh, was absent from Canada for a period of 255 days, that Rita Bou-Sader was absent from Canada for 263 days, that Mr. Salameh was physically present in Canada for 1123 days and that Ms. Bou-Sader was physically present in Canada for 1115 days.

[7] As the Canadian authorities were not able as such to ascertain the presence of the applicants as having been registered, their case was referred to a citizenship judge to establish whether or not they were eligible for citizenship pursuant to paragraph 5(1)(c) of the *Citizenship Act*.

VI. Analysis

[8] In analyzing the citizenship judge's decision, the Court, after analyzing two paragraphs, was unable to understand, even with the support of the evidence in the record, how the citizenship judge determined each of the two cases.

[9] The period of physical presence for the two applicants was not calculated logically in the record; the reasons referred to a trip to Lebanon in 2011, which is completely outside the reference period.

[10] Therefore, the citizenship judge's decision is not adequately reasoned to enable one to understand from where the citizenship judge took his numbers or even how he calculated those numbers (*Canada (Minister of Citizenship and Immigration) v Al-Showaiter*, 2012 FC 12 at paragraph 12 and 14). Because this decision with respect to the applicants is incomprehensible, an error of law was committed by an erroneous comprehension of paragraph 5(1)(c) of the *Citizenship Act*.

[11] The case law has established three methods by which "residence" can be determined; that is: (i) "actual, physical presence in Canada for a total of three years, calculated on the basis of a strict counting of days"; (ii) "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 FC 208 (TD); or (iii) the place where one "regularly, normally or customarily lives" or has "centralized his or her mode of existence" (*Koo (Re)*, [1993] 1 FC 286 (TD) at paragraph 10).

[12] A citizenship judge can choose between three methods for determining the citizenship issue; the citizenship judge can choose one of the three to determine whether or not the person has one of the three criteria for the purposes of citizenship; but, the judge cannot “blend” the three together (*Mizani*, above). That would not be logical.

[13] A citizenship officer prepared a document describing the contradictions, irregularities and omissions in the citizenship applicants’ record, demonstrating the following:

- a. The absence of stamps indicating a return to Canada for the applicants;
- b. One full year was missing with respect to the tax assessment period. That was part of the applicants’ period of “physical presence”;
- c. The outline of the banking transactions for the reference period shows very few transactions, other than bank transfers, except for the period from September to November 2008, in Montréal; that period shows bank account statements with Mississauga addresses (account statements from the HSBC Bank, which, incidentally, were part of a list of common addresses for 45 other people);
- d. The Mississauga address did not even appear in the applicants’ citizenship application; but, instead, in a questionnaire for the period between 2007 and 2008;
- e. There was also confusion with respect to whether Ms. Bou-Sader was a homemaker or worked. The evidence remains contradictory;
- f. According to an interview, the child, Paloma, was a student in Lebanon for the 2009-2010 school year; and, according to a residence questionnaire, she was registered in a school in Montréal.

[14] Therefore, because of omissions, contradictions and implausibilities, the citizenship judge's analysis is neither reasonable nor correct.

VII. Conclusion

[15] For all of the above-mentioned reasons, this Court finds that the appeal is allowed.

JUDGMENT

THE COURT ORDERS that the appeal be allowed and the matter be referred back to a different citizenship judge for redetermination.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-167-12

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v
WALID SALAMEH
RITA BOU-SADER

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 24, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: January 24, 2013

APPEARANCES:

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No representative

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FOR THE RESPONDENTS