

Federal Court



Cour fédérale

Date: 20131016

Docket: T-529-13

Citation: 2013 FC 1062

Edmonton, Alberta, October 16, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

HARPREET SINGH TUNG

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT
(Delivered from the Bench at Edmonton, Alberta)

[1] The record discloses that Harpreet Singh Tung is a 34 year old citizen of India who arrived in Canada on March 23, 2004, and became a permanent resident on the same date, having been sponsored by his wife, who is a Canadian citizen. Mr. Tung has two Canadian born children. His 77 year old father and 67 year old mother live with him and have been sponsored as permanent residents by him and the record shows that they are totally dependent upon him.

[2] Mr. Tung is employed as a Class 1 Truck Driver. He owns a single family home in Edmonton.

[3] On May 4, 2011, Mr. Tung wrote a citizenship test and received a score of 13 out of 20, but a score of 15 is required to pass. On March 4, 2013, Mr. Tung met with a Citizenship Judge who administered an oral knowledge test and Mr. Tung scored 9 out of 20 on this test.

[4] Based on that score, the Citizenship Judge decided that Mr. Tung did not meet the knowledge requirements set out in the *Citizenship Act*, RSC 1985, c C-29, and denied his application for citizenship. The Citizenship Judge also considered but declined to exercise her discretion to make a recommendation to the Minister to waive the knowledge requirement on compassionate grounds under subsection 5(3), or to direct the Minister to grant citizenship in cases of special or unusual hardship, or to reward services of an exceptional value to Canada under subsection 5(4) of the *Act*.

[5] It appears to the Court that there are really only two issues in this appeal. The first is whether the Citizenship Judge's determination with respect to Mr. Tung's knowledge of Canada was reasonable, and the second is whether the Citizenship Judge's decision not to exercise her discretion under subsections 5(3) and (4) of the *Act* was reasonable.

[6] Turning to the first question: the adequacy of Mr. Tung's knowledge of Canada. There is nothing unreasonable about the Citizenship Judge's conclusion that Mr. Tung did not have adequate

knowledge of Canada. In fact, Mr. Tung did not seriously argue that point. He scored 9 out of 20 on the test. I have reviewed the responses to the test questions which are contained in the Respondent's Record, and the evaluation of them was reasonable. The fact that Mr. Tung had previously written another test in May, 2011 and scored 13 out of 20, bolsters the conclusion that he does not have adequate knowledge of Canada. I pause to observe that it also bolsters the submission made today that he does not do well when under stress in recalling facts and figures. This is supported by the fact that his test result before the Citizenship Judge was lower than the test taken two years previously.

[7] The second issue and one that was advanced today before the Court was the Citizenship Judge's failure to exercise her discretion under subsections 5(3) and (4) of the *Citizenship Act* and the question for the Court is whether the refusal to exercise that discretion is reasonable or not.

[8] Mr. Tung sets out a number of factors in his Memoranda which he says the Judge failed to consider. These include his permanent residency card, his sponsorship by his wife, the fact that he has been present in Canada without break for nine years, his age, the fact that he has two children, his senior parents who are sponsored by him and residing with him, the fact that he has filed tax returns throughout his period in Canada, the fact that he owns a single family house, the fact that he can speak, write and read English more than average, and the fact of his employment as a truck driver. On the basis of these, he submits that he meets all of the requirements for a grant of Canadian citizenship.

[9] There is no question Mr. Tung that you have been a productive and valuable member of Canadian society during your time here, and I commend you for that. However, the discretion given to a Citizenship Judge to exercise discretion on compassionate grounds, although broad, is not unlimited and is something that this Court can only interfere with where it was refused to be exercised or was exercised unreasonably. Unfortunately, Mr. Tung, there is nothing in the record that convinces me that it was unreasonable for the Citizenship Judge to refuse to recommend citizenship to you on compassionate grounds. Your circumstances in Canada, your work, your family, as admirable as they are, frankly don't set you apart from many others in our society.

[10] You told me today that you studied and have an adequate knowledge of Canada but that when you are under stress you forget facts and figures. Unfortunately, this "special need" to be accommodated was not indicated on your application form. There was no way for the Citizenship Judge or anyone to know that you had such a difficulty. It is open to you to apply again for Canadian citizenship at any time. In fact, one can apply an unlimited number of times for citizenship. I think there is a monetary fee attached to it, but other than that there is no impediment to applying for citizenship again. The only area in the citizenship criteria that you have failed to meet is knowledge of Canada. Every other criterion you have met and that is the area where you say a special need ought to be accommodated or must be accommodated.

[11] I suggest that after some more study you reapply and indicate on the application this special need. It will be taken into consideration by the Department of Citizenship and Immigration and by the Citizenship Judge. I hope that you will be successful next time for you appear to be exactly the sort of honest, hard-working person Canadians want as citizens of the country.

[12] Unfortunately, for the reasons that I have indicated, this appeal must be dismissed with no prejudice to your right to apply for citizenship again and no costs are awarded.

[13] I thank you very much for your very able submissions today and I trust that you will reapply for citizenship in the near future.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no costs are awarded.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-529-13

STYLE OF CAUSE: HARPREET SINGH TUNG AND
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: OCTOBER 16, 2013

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

**DELIVERED FROM THE
BENCH:** October 16, 2013

APPEARANCES:

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(ON HIS OWN BEHALF)

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SOLICITORS OF RECORD:

NIL SELF-REPRESENTED APPLICANT

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