

Federal Court



Cour fédérale

**Date: 20150204**

**Docket: T-338-14**

**Citation: 2015 FC 142**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, February 4, 2015**

**PRESENT: The Honourable Mr. Justice Locke**

**BETWEEN:**

**JEAN JACQUES MUKULA MIJI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the case

[1] This is an application for judicial review of a decision of a citizenship judge dated November 15, 2013, denying the application for Canadian citizenship by Mr. Jean Jacques Mukula Miji (the Applicant) on the ground that he had not demonstrated on a balance of

probabilities that he met the requirement stipulated in paragraph 5(1)(c) of the *Citizenship Act*, RSC 1985, c C-29 (the Act).

[2] This case demonstrates that despite the Court's recent jurisprudential clarifications with regard to the test applied in Canada for granting citizenship, as the law currently stands, individuals who are well integrated into Canada may have their application for citizenship denied on a solely quantitative basis, without clear notice that the decision will be made on that basis. It is evident from all the facts submitted that the applicant has made a considerable effort to be an active and economically independent member of Canadian society.

## II. Facts

[3] The applicant is a citizen of the Democratic Republic of the Congo (DRC). He has a very good knowledge of both official languages, has four children and has worked since January 2008 for the company PricewaterhouseCoopers (PwC) Canada. For the years 2008, 2009 and 2010, the applicant's income was \$82,645, \$89,752 and \$60,849 respectively.

[4] The applicant's spouse and three daughters have been living in Canada since 2002 and have Canadian citizenship. His son was born in May 2007 in Canada.

[5] On August 7, 2006, the applicant was granted permanent residence, and he joined his family in Canada. On his arrival in Canada, the applicant became aware that his accounting qualifications and experience were not recognized, so he decided to spend time preparing for his

equivalency examinations and job interviews. He thus learned Canadian and American accounting standards, since this was a condition for obtaining his job at PwC.

[6] Since he was not working on his arrival in Canada, he spent his time doing volunteer work, looking after his son and studying accounting.

[7] On July 25, 2010, the applicant applied for Canadian citizenship. The relevant period for determining whether he met the requirements stipulated by the Act therefore began on August 7, 2006, and ended on July 25, 2010.

[8] On March 2, 2012, further to a request from the respondent, the applicant provided additional documents and information to support his application for citizenship. On July 25, 2013, the applicant received from Citizenship and Immigration Canada (CIC) a standard letter informing him of the date of his interview with the citizenship judge and notifying him that he had to bring to this interview all original documents in support of his application for citizenship, including his passports and travel documents.

[9] The applicant's interview with the citizenship judge took place on August 28, 2013. On that date, the citizenship judge asked the applicant, using a written form, to provide him with documentary evidence regarding his presence in Canada, including the following:

1. A completed residence questionnaire;
2. A photocopy of each page of his passports and travel documents;
3. Leases signed by the applicant;

4. Proof of income, including proof of income for the applicant's spouse for 2006 to 2007;
5. The documents provided by the Minister of Health regarding the applicant;
6. The applicant's account statements and bills (hydro, Visa, telephone, bank account).

[10] On October 6, 2013, the applicant fulfilled the respondent's request for documents.

[11] On November 15, 2013, the citizenship judge denied the applicant's application for citizenship.

### III. Decision

[12] The citizenship judge's decision began with an analysis of the evidence submitted by the applicant.

[13] The judge noted the following facts in support of his decision:

1. The applicant declared six trips and a total of 254 days outside of Canada in his citizenship application and his residence questionnaire, resulting in a total of 1,193 days of physical presence in Canada from August 7, 2006 to July 25, 2010. A stay of at least 1,095 days is required. The history of entries to Canada obtained from Canada Border Services Agency supports these declarations. However, the applicant did not submit his passport covering the period from August 7, 2006, to January 17, 2008, and thus it is not possible to confirm the applicant's departure

dates for this period. (The applicant claims that he had to return this passport to the DRC authorities to obtain his new passport and that his old passport was subsequently destroyed.);

2. The applicant submitted a copy of his DRC passport delivered to him on January 25, 2008, and valid until January 24, 2011. However, this passport does not confirm the location to which it was delivered and it is stamped only once with an entry stamp for Canada;
3. The applicant forwarded a photocopy of his DRC passport delivered to him on June 3, 2010, and valid until June 2, 2015. (Although the judge noted that he could not confirm the location to which this passport was delivered, the court's certified record includes a receipt dated May 11, 2010, which appears to be a receipt for passport fees issued by the DRC Embassy in Ottawa);
4. In his application for citizenship and his residence questionnaire, the applicant declares that he lived at 3330 Robson Drive in Coquitlam, British Columbia, from September 2009 to July 25, 2010, but did not submit any lease, letter from the landlord or letter from a friend confirming that he did indeed live at that address during this period. (However, it seems that the trips indicated in the applicant's passports confirm his presence in Canada during this period.);
5. The applicant declares that he lived at 1300 Oxford Street in Coquitlam, British Columbia, from February 2008 to September 2009, and he submitted a lease to this effect. However, the applicant did not submit documentary evidence (a letter from a friend, Internet account, telephone account, etc.) to demonstrate that he

was physically present in Canada during this period. (It appears that the trips indicated in the applicant's passports confirm his presence in Canada during this period, except for the declared absences.);

6. In his application for citizenship, the applicant declared that he lived on Abbott Street in Vancouver, British Columbia, from January 2008 to February 2008. However, the applicant did not declare this address in his residence questionnaire. Moreover, the applicant did not submit any lease, letter from the landlord, letter from a friend or any bill to prove that he had lived on Abbott Street. (The applicant claims that this was a temporary residence belonging to his employer.);
7. In his application for citizenship, the applicant declared that he had lived at 2075 Banff Avenue in Ottawa from August 2006 to December 2007. However, in his residence questionnaire, the applicant declared that he lived at this address until April 2008. Moreover, the applicant did not submit any lease, letter from the landlord, letter from a friend or bills to prove that he had lived at this address. (The applicant claims that he kept two residences between January 2008 and April 2008.);
8. The applicant forwarded bank statements from the Royal Bank of Canada for the period from February 16, 2009, to June 30, 2009. However, this is a joint account that the applicant shared with his spouse, so it is difficult to determine who made the transactions;
9. The applicant submitted bank statements for the period from January 17, 2008, to July 19, 2010, indicating that the applicant lived at 700-225 Howe Street, British

Columbia. However, the applicant did not declare this address in his application for citizenship or in his residence questionnaire. Moreover, although the applicant indicated that this was his own personal bank account and not a joint account, nine transactions were made in British Columbia during the period in which he was in the Congo, according to his application for citizenship and his residence questionnaire. (The applicant claims that the address at 700-225 Howe Street was his workplace during the period from January 17, 2008, to July 19, 2010.);

10. The applicant had no bank statements for the period from August 7, 2006, to January 17, 2008;

11. The applicant declared that he has been an accountant at PwC in Canada since January 2008. However, the applicant did not submit any documents confirming that he did indeed work at PwC in Canada. The applicant submitted a letter from PwC in the DRC stating that he had worked there from December 2, 1992 to August 5, 2006. Moreover, the applicant forwarded bank statements showing that regular direct deposits were made into his account by PwC when he was in Canada, but it cannot be determined from these documents whether or not he was working in Canada. Finally, the applicant did not submit any documents to demonstrate that he had worked from August 7, 2006, to January 17, 2008. (The applicant claims that he provided a letter from PwC Canada in June 2012 and that his passports confirm his presence in Canada and his absences when he was an employee at PwC.);

12. The applicant did not submit an income tax return for the year 2006.

[14] The citizenship judge stated that he chose to apply the stringent test set out by Justice Muldoon in *Pourghasemi (Re)* (1993), 62 FTR 122, [1993] FCJ No. 232 [*Pourghasemi*]. Under this test, the citizenship judge ruled, on the basis of the above facts, that the applicant had not established on a balance of probabilities that the length of his physical presence in Canada was sufficient to meet the requirement stipulated in paragraph 5(1)(c) of the *Act*.

[15] On the basis of the applicant's claims and the evidence submitted by him, the citizenship judge also decided not to make a favourable recommendation pursuant to subsections 5(3) and 5(4) of the *Act*.

#### IV. Issues

[16] There are two issues:

1. Did the citizenship judge breach the principles of procedural fairness?
2. Did the citizenship judge err by strictly applying the test of physical presence in Canada pursuant to paragraph 5(1)(c) of the *Act* without conducting a qualitative analysis of the applicant's file?

[17] However, since I find that the applicant was subject to a lack of procedural fairness, it is not necessary for me to answer the second question.

#### V. Relevant provisions in effect on November 15, 2013

***Citizenship Act RSC, 1985, c C-29***

5. (1) The Minister shall grant citizenship to any person who

***Loi sur la citoyenneté, LRC 1985, c C-29***

5. (1) Le ministre attribue la citoyenneté à toute personne



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| <p>(a) makes application for citizenship;</p> <p>(b) is eighteen years of age or over;</p> <p>(c) is a permanent resident within the meaning of subsection 2(1) of the <i>Immigration and Refugee Protection Act</i>, 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:</p> <p>(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</p> <p>(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;</p> <p>(d) has an adequate knowledge of one of the official languages of Canada;</p> <p>(e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and</p> <p>(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.</p> <p style="text-align: center;">...</p> <p>(3) The Minister may, in his</p> | <p>qui, à la fois :</p> <p>a) en fait la demande;</p> <p>b) est âgée d'au moins dix-huit ans;</p> <p>c) est un résident permanent au sens du paragraphe 2(1) de la <i>Loi sur l'immigration et la protection des réfugiés</i> 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 :</p> <p>(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,</p> <p>(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;</p> <p>d) a une connaissance suffisante de l'une des langues officielles du Canada;</p> <p>e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;</p> <p>f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.</p> <p style="text-align: center;">[...]</p> <p>(3) Pour des raisons d'ordre</p> |
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discretion, waive on  
compassionate grounds,

(a) in the case of any person,  
the requirements of paragraph  
(1)(d) or (e);

(b) in the case of a minor, the  
requirement respecting age set  
out in paragraph (1)(b), the  
requirement respecting length  
of residence in Canada set out  
in paragraph (1)(c) or the  
requirement to take the oath of  
citizenship; and

(c) in the case of any person  
who is prevented from  
understanding the significance  
of taking the oath of  
citizenship by reason of a  
mental disability, the  
requirement to take the oath.

#### **Special cases**

(4) Despite any other provision  
of this Act, the Minister may,  
in his or her discretion, grant  
citizenship to any person to  
alleviate cases of special and  
unusual hardship or to reward  
services of an exceptional  
value to Canada.

humanitaire, le ministre a le  
pouvoir discrétionnaire  
d'exempter :

a) dans tous les cas, des  
conditions prévues aux alinéas  
(1)d) ou e);

b) dans le cas d'un mineur, des  
conditions relatives soit à l'âge  
ou à la durée de résidence au  
Canada respectivement  
énoncées aux alinéas (1)b) et  
c), soit à la prestation du  
serment de citoyenneté;

c) dans le cas d'une personne  
incapable de saisir la portée du  
serment de citoyenneté en  
raison d'une déficience  
mentale, de l'exigence de  
prêter ce serment.

#### **Cas particuliers**

(4) Malgré les autres  
dispositions de la présente loi,  
le ministre a le pouvoir  
discrétionnaire d'attribuer la  
citoyenneté à toute personne  
afin de remédier à une  
situation particulière et  
inhabituelle de détresse ou de  
récompenser des services  
exceptionnels rendus au  
Canada.

VI. Analysis

A. *Standard of Review*

[18] The issue of whether the citizenship judge breached the principles of procedural fairness must be analysed on the standard of correctness (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at para 43; *Abdou v. Canada (Citizenship and Immigration)*, 2014 FC 500, at para 4).

B. *Adherence to the principles of procedural fairness*

[19] There are three separate tests to determine whether the requirements in paragraph 5(1)(c) of the Act have been met. One of these tests is quantitative and strictly based on an applicant's physical presence in Canada: *Pourghasemi*. The other two tests are so-called qualitative ones: (i) the test of "centralized mode of existence" established in *Re Papadogiorgakis*, [1978] 2 FC 208 (T.D.); and (ii) the test of determining in which location the person applying for Canadian citizenship "regularly, normally or customarily lives" established in *Koo (Re)*, [1993] 1 FC 286 (T.D.).

[20] It is now established in recent case law that these three separate tests can be applied by a citizenship judge and that this Judge can choose to apply, at his or her discretion, any one of these three tests (*Huang v. Canada (Citizenship and Immigration)*, 2013 FC 576, at para 25; *Irani v. Canada (Citizenship and Immigration)*, 2013 FC 1273, at para 14; *Vinat v. Canada (Citizenship and Immigration)*, 2014 FC 1000, at paras 22-24).

[21] However, individuals such as the applicant in the instant case should not be put in a position of doubt as to what test a citizenship judge will be applying (*Dina v. Canada (Citizenship and Immigration)*, 2013 FC 712, at para 8 (*Dina*). In *Dina*, Justice Hughes states:

The three different tests could yield a different result on the same set of facts. It is a denial of natural justice not to reveal to the Applicant, prior to the time that the matter is to be determined, which of the three tests will be applied by the Judge. In that way, the Applicant and the Applicant's Counsel will know the case to be met.

[22] In light of the evidence, I am satisfied that it is entirely possible that the citizenship judge would have reached a different conclusion had he used one of the qualitative tests.

[23] As indicated in *Hao v. Canada (Citizenship and Immigration)*, 2011 FC 46, at para 7, the purpose of paragraph 5(1)(c) of the Act is to ensure that individuals seeking citizenship become "Canadianized". The applicant has integrated himself well following his arrival in Canada. When he became aware on his arrival that he did not have the qualifications and experience necessary to obtain a job in his field, he studied to obtain the necessary equivalencies and finally obtained a job at a prestigious company. While he was studying, the applicant did volunteer work and looked after his family. Since being employed in Canada by PwC, the applicant has been receiving a good salary, paying his taxes and supporting his family. He seems "Canadianized".

[24] The respondent argues that the request for documentary evidence that was made to the applicant at his interview with the citizenship judge on August 28, 2013, was sufficient to inform the applicant that the citizenship judge intended to apply the quantitative test. I disagree. First, this request does not contain any explicit indication to this effect. Second, this request told the

applicant that he had to provide proof of his spouse's income, which could also imply that a qualitative test would be applied, since such a document is not relevant to establish the applicant's physical presence in Canada.

VII. Conclusions

[25] In my opinion, this application for judicial review must be allowed.

**JUDGMENT**

**THE COURT'S JUDGMENT is that** this application for judicial review is allowed.

“George R. Locke”

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Judge

Certified true translation  
Michael Palles

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET :** T-338-14

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**DATED:** FEBRUARY 4, 2015

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