

Federal Court



Cour fédérale

Date: 20141215

Docket: T-1188-14

Citation: 2014 FC 1212

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 15, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

TAHAR OSMANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Osmani is appealing a citizenship court judge's decision not to approve his application for citizenship on the ground that [TRANSLATION] "the applicant has not discharged his burden of proof concerning his residency obligations" under the *Citizenship Act*.

[2] The case was commenced before the recent amendments to the Act, so the applicant was required to have accumulated three years (1,095 days) of residence within the four years immediately preceding his application for citizenship.

[3] Mr. Osmani applied for Canadian citizenship on May 25, 2010. He stated that he had been present in Canada for 1,204 days during the preceding four years.

[4] Prior to the amendments to the Act, there were three lines of authority on the meaning of “residence”. One view was that of Justice Muldoon in *Re Pourghasem*, 62 FTR 122, 19 Imm LR (2d) 259, [1993] FCJ No 232 (QL). He used a simple day count, that is, the physical presence test, rather than taking a more philosophical approach (“my heart is here even if my body is somewhere else”).

[5] In *Lam v Canada (Minister of Citizenship and Immigration)*, 164 FTR 177, [1999] FCJ No 410 (QL), Justice Lutfy, as he then was, held that it was appropriate for a citizenship judge to adopt any of the three conflicting lines of authority. In fact, *Lam* foreshadowed the Supreme Court’s decisions providing for deference to decision makers in the interpretation of their own statute (*Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 SCR 654).

[6] In the instant case, the citizenship judge expressly applied the physical presence test as enunciated in *Re Pourghasemi*.

[7] The citizenship judge was not satisfied with the evidence submitted. A crucial question was the birth of a daughter to Mr. Osmani, an Algerian citizen, at a time when he claimed to have been in Canada. The birth certificate issued by the Republic of Algeria states that Sarah Osmani, daughter of Tahar and Zadi Nassima, was born on July 26, 2007. The certificate was issued [TRANSLATION] “on a declaration made by the father”.

[8] According to the footnote on the form, the declaration must be made [TRANSLATION] “[b]y the father, the physician, the midwife or any other person present at the birth”.

[9] The certificate is also stamped [TRANSLATION] “valid only outside the country”.

[10] Mr. Osmani, who was interviewed by the citizenship judge, said that he had declared the birth with the Algerian consulate in Montréal.

[11] The citizenship judge asked him to prove this and to provide other evidence of his presence in Canada. He was given 30 days to do so. Within that time, Mr. Osmani provided a document in Arabic and a few other documents related to his presence in Canada.

[12] The citizenship judge rightly found that he could not consider the document in Arabic because it was not accompanied by an English or French translation. All the instructions given to applicants for citizenship are very specific:

Any document that is not in English or French must be accompanied by

- the English or French translation; and
- an affidavit from the person who completed the translation.

The citizenship judge was also not satisfied with the other evidence provided in support of Mr. Osmani's presence in Canada. Some of the documentation did not even concern the four years in question.

[13] Since the standard of review to be applied on a citizenship appeal is reasonableness, the following questions are raised:

1. Was it reasonable for the citizenship judge to request additional documents?
2. Was it reasonable to reject the document in Arabic, which, according to what Mr. Osmani told this Court, is the declaration filed at the Algerian consulate?
3. Was it reasonable to conclude that the evidence submitted was not sufficient to establish Mr. Osmani's presence in Canada during at least three of the four years immediately preceding his application?

[14] Although the birth certificate can be read in more than one way, it was not unreasonable for the citizenship judge to require Mr. Osmani to prove that he had declared his paternity by going to the Algerian consulate in Montréal.

[15] Nor was it unreasonable for the citizenship judge to find that the other evidence submitted was not sufficiently persuasive.

[16] Although the citizenship judge engaged in speculation, the fact remains that the onus was on Mr. Osmani to show on a balance of probabilities that he was present in Canada for the required period, and it was not unreasonable for the citizenship judge to find that he had not discharged that burden of proof.

[17] In fact, Mr. Osmani believed that he had filed enough evidence, since, as he states in his affidavit in support of this appeal:

[TRANSLATION]

11. because I study full time at a Canadian institution, and I work at a public establishment, I did not make an effort to find other evidence.

[18] On appeal, Mr. Osmani testified about the other documents he could have filed. He even filed a French translation of the declaration he had made at the Algerian consulate.

[19] However, this appeal is not a new hearing; it is a review based on the material that was before the citizenship judge. Although Mr. Osmani now argues that 30 days was not enough to obtain a translation (despite the fact that the document is only a few lines long), he did not request an extension of the deadline.

[20] Mr. Osmani is not the judge of his own case. It was for the citizenship judge to decide whether he had enough information, and it is for the Court to determine whether the conclusion that the information was not sufficient was unreasonable.

[21] For all these reasons, the appeal must be dismissed. Mr. Osmani is, of course, entitled to reapply for Canadian citizenship.

JUDGMENT

FOR THESE REASONS,

THE COURT'S ORDERS AND ADJUDGES that the appeal is dismissed.

“Sean Harrington”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1188-14

STYLE OF CAUSE: TAHAR OSMANI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 3, 2014

**JUDGMENT AND REASONS
BY:** HARRINGTON J.

DATED: DECEMBER 15, 2014

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