

Federal Court



Cour fédérale

Date: 20150819

Docket: T-2598-14

Citation: 2015 FC 987

Toronto, Ontario, August 19, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ABDUL R. SHAHEIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Abdul Shahein appeals from a Citizenship Judge's decision refusing his application for Canadian citizenship on the basis that he had failed to establish that he had been physically present in Canada for 1095 days during the four years preceding the filing of his citizenship application. Dr. Shahein asserts that the Citizenship Judge's decision was unreasonable, and that the Citizenship Judge was biased against him.

[2] I am satisfied that the Citizenship Judge's decision was reasonable. Dr. Shahein has also failed to provide me with reliable evidence establishing that the Citizenship Judge was biased against him. As a consequence the appeal will be dismissed.

I. The Reasonableness of the Citizenship Judge's Finding on the Issue of Physical Presence

[3] The onus was on Dr. Shahein to establish that he was in fact in Canada on the days in question. Given that he only claimed to have been in Canada for 1097 days between June 7, 2010 and July 27, 2013 (a mere two days over the 1095-day minimum), his failure to establish physical presence on just a few of the days claimed would be fatal to his application for citizenship.

[4] The Citizenship Judge identified numerous inconsistencies in, and problems with the evidence adduced by Dr. Shahein in support of his citizenship application. While Dr. Shahein attempted to address some of these concerns in the affidavit that he filed in support of his appeal, his affidavit has actually had the effect of compounding the confusion on a number of points.

[5] The respondent has identified numerous inconsistencies in the information that Dr. Shahein provided during his citizenship hearing, in his citizenship application and residence questionnaire, and in his affidavit. While I do not intend to review each of the inconsistencies in the evidence, I agree with the respondent that these inconsistencies raise very serious concerns as to the reliability of Dr. Shahein's evidence.

[6] I do, however, wish to highlight one inconsistency in the evidence which was, by itself, sufficient to defeat Dr. Shahein's claim to have been physically present in Canada for 1097 days during the relevant period, which ended on July 27, 2013, the date on which Dr. Shahein applied for Canadian citizenship.

[7] Dr. Shahein's "LinkedIn" profile states that he was a Pediatric Intern at Nationwide Children's Hospital in Columbus, Ohio from February of 2013 to May of 2014. This was inconsistent with Dr. Shahein's statement to the Citizenship Judge that he only began working at the hospital in July of 2013. When the Citizenship Judge questioned Dr. Shahein about the information in his "LinkedIn" profile, Dr. Shahein stated that he was conducting research at the hospital during that period, and was only required to travel to the United States for two or three days at a time.

[8] Dr. Shahein claimed to be living in Windsor, Ontario between February and July of 2013, with only occasional brief trips to the United States. However, when he was asked by the Citizenship Judge to provide the specific dates that he was working at the hospital in the United States, Dr. Shahein stated that he was unable to do so as he could not remember the precise dates of his trips.

[9] Dr. Shahein provides a different explanation for this discrepancy in his affidavit. He states that when the Citizenship Judge confronted him with the statement in his "LinkedIn" profile regarding the dates of his internship, Dr. Shahein explained that he was supposed to begin his internship program in July of 2012, but his start had been delayed because of difficulties he had encountered in obtaining his American visa. As a result, he did not begin the program until

the following year. According to Dr. Shahein's affidavit, he had simply failed to update his "LinkedIn" account to reflect this change, as he no longer used the account.

[10] There are two problems with this explanation.

[11] The first is that Dr. Shahein's "LinkedIn" profile did not state that he commenced his internship in July of 2012, as suggested in his affidavit. It says that he commenced his internship in February of 2013, which was shortly *after* he got his American J-1 visa allowing him to work in the United States. As a result, any delay that Dr. Shahein may have experienced in obtaining the visa would not explain how erroneous information ended up in his "LinkedIn" profile.

[12] The second problem with the explanation offered by Dr. Shahein in his affidavit is that he clearly *did* continue to use his "LinkedIn" account on an ongoing basis, as it had been updated as recently as October of 2014 to include information regarding his subsequent entry into a residency program at an American hospital.

[13] As was mentioned at the outset of these reasons, Dr. Shahein bore the onus of establishing that he was in Canada on the days in question. He provided inconsistent and unsatisfactory evidence regarding his whereabouts from February to July of 2013. In these circumstances, the Citizenship Judge's finding that Dr. Shahein had failed to provide reliable evidence to support his claim to have been physically present in Canada for 1097 days was entirely reasonable.

II. The Bias Issue

[14] Dr. Shahein's affidavit also makes very serious allegations of misconduct on the part of the Citizenship Judge. At the hearing before me, Dr. Shahein's counsel went so far as to describe the Citizenship Judge as "a monster" and "a disgrace", submitting that there was "incredibly dangerous bias here".

[15] I agree that if the allegations made by Dr. Shahein are true, they would be very troubling indeed. However, I am not prepared to find that the allegations have been proven on a balance of probabilities on the basis of the evidence before me.

[16] An allegation of actual or apprehended bias raises a question of procedural fairness. I must, therefore, determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.

[17] Dr. Shahein alleges that from the outset of the hearing the Citizenship Judge attempted to intimidate him, that he yelled at Dr. Shahein's young daughter when she started singing the Canadian national anthem at the hearing, and that he ordered that Dr. Shahein's wife and child leave the hearing room when Dr. Shahein's wife attempted to confirm one of his answers.

[18] Dr. Shahein further alleges that the Citizenship Judge asked inappropriate questions about Dr. Shahein's wife, that he screamed at Dr. Shahein throughout the hearing, that he ignored Dr. Shahein's answers to questions, and that he was dismissive and at times derisive. According to Dr. Shahein, the Judge's conduct was "an indication of racial and religious discrimination".

[19] The test for determining whether actual bias or a reasonable apprehension of bias exists in relation to a particular decision-maker is well known: the question for the Court is what an informed person, viewing the matter realistically and practically - and having thought the matter through - would conclude. That is, would he or she think it more likely than not that the decision-maker, either consciously or unconsciously, would not decide the matter fairly: see *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, at p. 394, 68 D.L.R. (3d).

[20] Dr. Shahein notes that the evidence in his affidavit regarding the conduct of the Citizenship Judge is uncontroverted, and that the respondent elected not to cross-examine him on his affidavit. As a consequence, Dr. Shahein submits that I must accept his evidence on this point. I do not agree.

[21] An allegation of bias, especially an allegation of actual, as opposed to apprehended, bias, is a serious allegation. Indeed, it challenges the very integrity of the adjudicator whose decision is in issue. As a consequence, the threshold for establishing bias is high: *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 113, 151 D.L.R. (4th) 193.

[22] In contrast to the situation that confronted the Court in *Sols R. Isabelle Inc. v. Stikeman Elliott LLP*, 2011 FC 59, 92 C.P.R. (4th) 83, a case relied upon by Dr. Shahein, there are good reasons for questioning the truthfulness of the facts adduced by Dr. Shahein in his affidavit. As was noted in the previous section of these reasons, there were numerous inconsistencies in the evidence that Dr. Shahein has provided in support of his citizenship application, including

statements in his affidavit that were inconsistent with other evidence that had been provided by him. In light of these problems, Dr. Shahein has not satisfied me that he is a reliable witness.

[23] In addition, Dr. Shahein's wife was present at the hearing, and witnessed at least some of the Citizenship Judge's alleged misconduct. Dr. Shahein did not, however, provide an affidavit from his wife in connection with his application for leave to corroborate his allegations. Further, Dr. Shahein failed to rectify this omission after leave was granted, despite the respondent having flagged this deficiency in his responding submissions at the leave stage. This is a troubling omission: *Li v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 1091, at para. 9, [2013] F.C.J. No. 1183.

[24] Finally, the law requires that an allegation of bias be raised at the earliest opportunity: *Iqbal v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1338, at para. 31, 421 F.T.R. 159. Dr. Shahein failed to do so here.

III. Conclusion

[25] For these reasons, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“Anne L. Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2598-14

STYLE OF CAUSE: ABDUL R. SHAHEIN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 17, 2015

JUDGMENT AND REASONS: MACTAVISH J.

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