Federal Court  Cour fédérale

Date: 20151116

Docket: T-522-15

Citation: 2015 FC 1275

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 16, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

FLORIAN MICHEL MAURICE VILLAUMÉ

Respondent

JUDGMENT AND REASONS

[1] A Citizenship Judge recommended to the Minister of Citizenship and Immigration that Canadian citizenship be granted to Mr. Villaumé despite his very limited physical presence in Canada. Mr. Villaumé's application had been submitted in 2010 under the *Citizenship Act*, RSC, 1985, c C-29 (since amended). The judge had to determine whether Mr. Villaumé had "within the four years immediately preceding the date of his . . . application, accumulated at least three

years of residence in Canada . . . ", as section 5(1)(c) of the Act then required. Because the Citizenship Judge was of the opinion that Mr. Villaumé was physically absent but mentally present, she approved his application. She relied on one of the three schools of thought that existed at the time, *Re Koo*, [1993] 1 FC 286, a decision of Madam Justice Reed. The Minister is challenging that decision in this application for judicial review that is before me.

[2] Although he was personally served with the Minister's application for leave and application for judicial review, Mr. Villaumé did not file a notice of appearance. The Minister's application for leave was approved by Mr. Justice LeBlanc. Counsel for the Minister had a copy of the applicant's record sent to Mr. Villaumé, but he did not respond to it.

[3] Nonetheless, Mr. Villaumé appeared at the hearing. Using my discretion under rule 55 of the *Federal Courts Rules*, I allowed him to be heard.

[4] He explained to me that he had not filed a notice of appearance because he could not afford to hire a lawyer and did not seriously think he would succeed in defending himself. However, since then he had reviewed the case more carefully and noticed that in *Re Koo* Justice Reed referred to events that were outside the reference period of Mr. Koo's application for citizenship.

[5] Mr. Villaumé became a permanent resident in January 2007 and submitted an application for citizenship on June 19, 2010. The reference period for the purposes of the Act was from

June 19, 2006, to June 18, 2010. He reported only 218 days of presence over the required period of 1,095 days.

[6] He explained that his lack of presence in Canada was due to the fact that he works internationally for Engineers Without Borders.

[7] In September 2012, he married a citizen of Burkina Faso, who was the mother of a child. In June 2013, a son was born in France of this union. In April 2014, Mr. Villaumé returned to settle in Canada with his wife, her son and their young son.

[8] I share the following words of counsel for the Minister in his memorandum of fact and law:

> [TRANSLATION]
>
> 2. This conclusion is erroneous because it was based on facts that did not exist during the reference period. In addition, if the judge had considered the facts as they were during the reference period, she should have found that the respondent did not meet the requirements of the Act.
>
> 3. Because it is impossible to say that the decision would have been the same despite the judge's errors, the applicant believes he has shown that there is a serious question that justifies granting the application for leave. . . .

[9] Mr. Villaumé points out that in *Re Koo* Justice Reed referred to events outside the reference period. Mr. Villaumé's statement is accurate. It should be noted that Mr. Koo had appealed a decision of a Citizenship Judge that had dismissed his application because he had not been sufficiently present in Canada. Although Madam Justice Reed was of the view that physical

presence was not necessary, she nonetheless dismissed Mr. Koo's appeal, while pointing out that that Mr. Koo's wife had lived in Canada during the reference period and that they had bought a new house here following Mr. Koo's return to Canada. She also noted the fact that Mr. Koo's absences were the result of business obligations but held that his statements about his intention to move his business to Canada were irrelevant and speculative.

[10] Although it is possible to refer to events subsequent to the reference period to confirm establishment in Canada that has been demonstrated otherwise (*Sotade v Canada (Citizenship and Immigration)* 2011 FC 301), the events that the judge referred to in this case do not assist Mr. Villaumé.

[11] In the circumstances, I find that the decision was unreasonable and that I must allow this application for judicial review.

[12] Mr. Villaumé also raised the possibility of recommending that he be granted citizenship for extraordinary services in Canada. The Citizenship Judge did not need to make such a recommendation, and the record does not contain sufficient information to allow me to give my opinion on this subject.

JUDGMENT

THE COURT ORDERS AND ADJUDGES as follows:

1. The application for judicial review of a decision of the Citizenship Judge made on March 17, 2015, granting citizenship to the respondent, is allowed.

2. The impugned decision is set aside, and the matter is remitted to another decision-maker for reconsideration.

3. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-522-15
STYLE OF CAUSE:	MCI v FLORIAN MICHEL MAURICE VILLAUMÉ
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 12, 2015
JUDGMENT AND REASONS:	HARRINGTON J.
DATED:	NOVEMBER 16, 2015

APPEARANCES:

Leila Jawando	FOR THE APPLICANT
Florian Michel Maurice Villaumé	FOR THE RESPONDENT (ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT