

Federal Court



Cour fédérale

**Date: 20151130**

**Docket: T-455-15**

**Citation: 2015 FC 1327**

**Ottawa, Ontario, November 30, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**TABUSSUM NASIM**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Minister of Citizenship and Immigration seeks judicial review of the decision of a Citizenship Judge approving Tabussum Nasim's application for Canadian citizenship. The Minister alleges that the Citizenship Judge erred in his application of the physical presence test for residency in Canada. Although Ms. Nasim did not respond to the Minister's application, she did appear at the hearing. The Minister consented to her making submissions opposing the application, and Ms. Nasim's husband spoke on her behalf.

[2] For the reasons that follow, I have concluded that the Citizenship Judge's decision was unreasonable as the Judge's reasons do not allow me to understand how he came to the conclusion that Ms. Nasim had satisfied the residency requirement of the *Citizenship Act*, R.S.C. 1985, c. C-29. The application will therefore be granted.

### **I. Background**

[3] In reviewing Ms. Nasim's application for Canadian citizenship, a citizenship officer noted a number of concerns with respect to the sufficiency of the evidence that Ms. Nasim had provided to establish her physical presence in Canada during the period under consideration.

[4] Amongst other things, the citizenship officer noted that although Ms. Nasim claimed to have been employed at Subway and Pizza Pizza restaurants during the relevant period, she did not provide any letters of employment from her employers, and the T-4 tax forms that she did provide identified her employers as various numbered companies. The officer also noted that the banking and credit card records provided by Ms. Nasim were incomplete. There was, moreover, information in the record suggesting that Ms. Nasim may have been a resident of the United States, and that her immigration status in that country was unclear. Because of these concerns, Ms. Nasim's citizenship application was referred to a Citizenship Judge for consideration.

[5] After interviewing Ms. Nasim, the Citizenship Judge approved her application for citizenship. The Citizenship Judge's decision is brief, and his analysis consists of the following two paragraphs:

[9] The statement of the applicant about her physical presence in Canada of 1,192 days is confirmed by her relevant passport and the ICES report, and cannot be disputed according to the documentation available. After a long and in-depth interview during the hearing, I can conclude that, on the balance of

probabilities, the applicant complies with the residence requirements of the Citizenship Act.

[10] Given the foregoing, and referring to the residency test set by Muldoon J. in *Pourghasemi (Re)*: [1993] F.C.J. No. 232, I find that, on a balance of probabilities, the Applicant has demonstrated that [s]he resided in Canada for the number of days [s]he claimed to reside in Canada and has therefore met the residence requirement under s.5 (1) (c) of the Act.

[6] In my view, these reasons are insufficient.

## **II. Analysis**

[7] It is true that adequacy of reasons is no longer a “stand-alone” basis for judicial review: *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 12, [2011] 3 S.C.R. 708. That said, the direction in *Newfoundland Nurses* that courts pay respectful attention to the reasons “which could be offered in support of a decision” is not “carte blanche to reformulate a tribunal’s decision in a way that casts aside an unreasonable chain of analysis in favour of the court’s own rationale for the result”: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61 at para. 54, [2011] 3 S.C.R. 654.

[8] Indeed, as Justice Rennie noted in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11, [2013] F.C.J. No. 449, *Newfoundland Nurses* “is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue”.

[9] At the end of the day, the reasons provided by a Citizenship Judge must allow the reviewing court to understand why the Judge made the decision that he or she did. They must,

moreover, permit the Court to determine whether the Judge's conclusion was one "within the range of acceptable outcomes" as contemplated by *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.

[10] In this case, there were American income tax returns for years during the period under review for both Ms. Nasim and her husband, which listed an American address for the couple. There was also information indicating that Ms. Nasim held an American "Green Card", giving her permanent residency in the United States. This information suggested that Ms. Nasim may have been resident in the United States during the relevant period.

[11] The Citizenship Judge noted in his reasons that he had conducted a "long and in-depth interview" with Ms. Nasim, following which he was satisfied that she had met the *Re Pourghasemi* physical presence test. It may well be that Ms. Nasim was able to provide the Citizenship Judge with additional information regarding her whereabouts during the period under consideration that was sufficient to allay any concerns in that regard. Unfortunately, we have no way of knowing whether that was in fact the case, as the Citizenship Judge makes no mention of any such additional information in his reasons, there is no transcript or notes of what was said, and Ms. Nasim did not provide an affidavit explaining what was discussed during her interview with the Citizenship Judge.

[12] The Citizenship Judge did note that Ms. Nasim had held a Green Card at the time that she had applied for Canadian citizenship, but that she had since given it up. We have no way of knowing from the Judge's reasons, however, when that occurred, or how, in the Judge's view, it affected the residency calculation.

[13] Similarly, there were inconsistencies in the evidence that Ms. Nasim had provided with respect to her employment in Canada. The T-4 tax forms provided by Ms. Nasim were inconsistent with the periods of employment that she had declared in her Residence Questionnaire, and a Record of Employment that she produced indicated that she had ceased working for a Subway restaurant in 2007, whereas her Residence Questionnaire indicated that she was still working for Subway in 2011.

[14] Once again, Ms. Nasim may have been able to clarify the situation in the course of her interview with the Citizenship Judge, but as the reasons are silent on this issue, I have no way of knowing whether this was in fact the case, nor can I determine whether the Judge's assessment of any explanation that had been provided by Ms. Nasim was reasonable.

[15] This is thus a case where the reasons provided by the Citizenship Judge do not permit the Court to understand how the Judge arrived at his conclusion that Ms. Nasim had satisfied the residency requirement of the *Citizenship Act*. As a result I cannot determine whether that decision was reasonable: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167.

[16] Consequently, the application for judicial review will be granted. I agree with the parties that the case is fact-specific, and does not raise a question for certification.

### **III. Remedy**

[17] Recent amendments to the legislation affect the remedy that is appropriate in a case such as this: *Canada (Minister of Citizenship and Immigration) v. Vijayan*, 2015 FC 289 at paras. 90-95, [2015] F.C.J. No. 263. I will therefore order that the matter be returned to the Minister for redetermination. The Minister shall determine whether Ms. Nasim meets the

residence requirements of the Act. If the Minister is satisfied that this is the case, he shall grant her citizenship. If the Minister is not satisfied that Ms. Nasim meets the requirements of the Act, he shall once again refer the matter to a Citizenship Judge for decision.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted.

The matter will be returned to the Minister for redetermination. In accordance with these reasons, the Minister shall either grant the citizenship to Ms. Nasim or shall refer the matter to a Citizenship Judge for decision.

"Anne L. Mactavish"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-455-15

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v TABUSSUM NASIM

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 25, 2015

**JUDGMENT AND REASONS:** MACTAVISH J.

**DATED:** NOVEMBER 30, 2015

**APPEARANCES:**

Ms. Nadine Silverman

FOR THE APPLICANT

Ms. Tabussum Nasim

FOR THE RESPONDENT  
(ON HER OWN BEHALF)

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