

Federal Court



Cour fédérale

Date: 20160229

Docket: T-1266-15

Citation: 2016 FC 254

Ottawa, Ontario, February 29, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

JACEK MAS

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated June 30, 2015, by the Citizenship Judge, Wojciech Sniegowski [the Citizenship Judge], approving the citizenship application of Jacek Mas [the Respondent] in accordance with subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [the Act].

[2] The Minister of Citizenship and Immigration [the Applicant] is seeking to have the decision set aside and maintains that the Citizenship Judge erred in fact and in law by granting the Respondent citizenship.

I. The Facts

[3] The Respondent is a Polish citizen. He came to Canada in January 2000. In February 2001, he was granted refugee status.

[4] On July 5, 2010 (not July 10, 2010 as stated in the Citizenship Judge's reasons), the Respondent filed a Canadian citizenship application. Thus, the reference period, as defined in paragraph 5(1)(c) of the Act, was from July 5, 2006 to July 5, 2010.

[5] After submitting a Residency Questionnaire [RQ] the Respondent appeared before Citizenship Judge, K. McMillan, in February 2015. After that hearing, the Respondent was asked for additional documentation. His file was subsequently transferred to Citizenship Judge Sniagowski.

[6] Prior to the hearing, the Citizenship Judge was provided with the "File Preparation and Analysis Template" [FPAT] by an Officer from Citizenship and Immigration Canada [CIC]. The document listed a number of concerns with respect to the Respondent's citizenship application:

- a) On February 21, 2011, the Respondent arrived in Toronto with a travel document and his permanent residence card. However, he had no airplane ticket, nor any travel stamps to show where he had been.
- b) The Respondent was suspected of having another passport that he used to travel to Poland.
- c) The Respondent's previous Citizenship application, dated December 7, 2006, was refused because he did not establish his residence and did not pass the knowledge test.
- d) The Respondent did not provide any travel documents to cover the period from October 25, 2009 to July 5, 2010.
- e) The Respondent provided incomplete copies of his Canada Travel Documents.
- f) The Respondent did not provide a copy of his Polish passport.
- g) The Respondent previously declared being a permanent resident of Poland when entering Canada.
- h) The Respondent had three undeclared absences from Canada.
- i) The Respondent provided no documentation for his residence in Canada and failed to provide Notices of Assessment for 2006 and 2007.

[7] At the hearing with Citizenship Judge McMillan, many of the CIC Officer's concerns were raised and recorded in the Judge's notes as follows:

- a) In 2008, the Respondent declared himself to be a resident of Poland when entering Canada (although he claims it was a misunderstanding).
- b) The Respondent provided inconsistent explanations as to why there was a nine-month gap in his travel documents: first indicating that he did not have another travel document, then suggesting that he sent the document back for an extension.
- c) The Respondent admitted that he does have a Polish passport that he failed to present to the Judge and provided no reasons for doing so.
- d) The Respondent explained first that his family has not visited him in Canada; thereafter changing his answer to explain that he thought his daughters visited him in 2008.
- e) The Respondent gave unclear answers on his travels to Germany. He did not say that he saw his family on those trips, but rather that he went for business. However, he was unable to produce any business documents from those trips.

II. Decision under appeal

[8] In his reasons, Citizenship Judge Sniegowski noted that the Respondent declared 1375 days of presence in Canada, 85 days of absence, for a total of 1460 days in the relevant period.

He reviewed the CIC Officer's observations and in addressing the concerns noted the following:

- a) The Respondent presented a Canada Travel Document at the hearing and his declaration of absences was verified.
- b) He explained his undeclared absences by stating he did not think he had to declare short trips to the USA. He also added that he did not know why his travel document was un-stamped by German authorities and that his trip there was extended because of volcanic ash from Iceland that made air travel unsafe.
- c) The Respondent had no residence documents because he lives with his brother and did not pay rent.
- d) Additional documents were provided including the missing Notices of Assessment.
- e) The Respondent rarely goes to see his doctor.
- f) He does not have ties to the community as he works long hours 6 to 7 days a week.

- g) Based on the Respondent's testimony at the hearing, which Citizenship Judge Sniegowski found logical and complete, and the additional documents presented by him, the Citizenship Judge was satisfied that he presented an accurate account of his presence in Canada.

[9] Based on the Respondent's testimony, and applying the strict counting of residency days test established by Justice Muldoon in *Pourghasemi (Re)*, [1993] F.C.J. No 232, the Citizenship Judge was satisfied that the Respondent resided in Canada for the number of days he claimed to reside in Canada and therefore met the residency requirement.

III. Issue

[10] In this case, the only issue argued was whether the Citizenship Judge provided sufficient reasons for his decision.

IV. Relevant legislation

[11] Paragraph 5(1)(c) of the *Citizenship Act*, as it existed at the date of the Respondent's application for Canadian citizenship, states the following:

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

(c) is a permanent resident within the meaning of

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

c) est un résident permanent au sens du paragraphe 2(1)

subsection 2(1) of the Immigration and Refugee Protection Act 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:

(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

(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;

[...]

de la Loi sur l'immigration et la protection des réfugiés 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:

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent.

[...]

V. Applicable standard of review

[12] The standard of review for deficient reasons is one of reasonableness:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable. Reasonableness is concerned mostly with the existence of justification, transparency

and intelligibility within the decision-making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. It is a deferential standard which requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

Dunsmuir v New Brunswick, 2008 SCC 9 [*Dunsmuir*]

VI. Analysis

[13] In light of the evidence in the record, the parties' arguments and the applicable jurisprudence, I find the Citizenship Judge's decision unreasonable because the reasons are inadequate judged on the *Dunsmuir* standard.

[14] Justice de Montigny, in *Canada (Minister of Citizenship and Immigration) v Jeizan*, 2010 FC 323 at paragraph 17, described the standard regarding reasons for decisions in the context of citizenship judges, as follows:

Reasons for decisions are adequate when they are clear, precise and intelligible and when they state why the decision was reached. Adequate reasons show a grasp of the issues raised by the evidence, allow the individual to understand why the decision was made and allow the reviewing court to assess the validity of the decision. (Citations omitted)

[15] Similarly, Justice Kane in the recent decision of *Canada (Minister of Citizenship and Immigration) v Safi*, 2014 FC 947, at paragraph 56 quotes Justice Boivin in *Canada (Minister of Citizenship and Immigration) v Raphael*, 2012 FC 1039, stating as follows:

[56] The remarks set out in the space for reasons in this case leave me in a similar position as Justice Boivin (as he then was) in *Raphaël*, as I am not able to understand the Citizenship Judge's reasons or the relevant factors that led him to be satisfied that Mr Safi met the residency test. As Justice Boivin noted at para 28:

[28] It is not up to this Court to reassess the evidence submitted by the respondent. That being the case, the Court can only note that several gaps in the evidence do not seem to have been considered or analyzed by the citizenship judge (*Canada (Citizenship and Immigration) v Abou-Zahra*, 2010 FC 1073, [2010] FCJ No 1326; *Canada (Citizenship and Immigration) v Al-Showaiter*, 2012 FC 12, [2012] FCJ No 7). Contrary to the respondent's argument, the Court is unable to understand the citizenship judge's reasoning on the mere reading of the reasons and notes and comprehend what were the relevant factors or documents that convinced him that the respondent met the residence tests (*Saad v Canada (Citizenship and Immigration)*, 2013 FC 570, [2013] FCJ No 590). In fact, the respondent is in effect asking this Court to surmise the citizenship judge's reasoning. The respondent did not convince this Court that the citizenship judge's decision falls within a range of possible, acceptable outcomes in respect of the facts and law.

[16] I find myself in the same position as Justices Kane and Boivin described above in not being able to comprehend the Citizenship Judge's reasons or the relevant factors that led him to be satisfied that the Respondent met the residency test when there is a failure to consider several significant gaps in the evidence, raised by Citizenship Judge McMillan but not addressed by Citizenship Judge Sniegowski.

[17] Paramount among these concerns is the absence of any reference to the missing Polish passport. The failure to provide this document was noted by Citizenship Judge McMillan along with the lack of any explanation supporting its absence.

[18] In my view, Citizenship Judge Sniegowski was required to address the Respondent's failure to provide his Polish passport, which he acknowledged he had, when he was a permanent resident of the country and had family living there. This is all the more so when raised by Citizenship Judge McMillan and the expectation would be that the Respondent would make best efforts either to produce the passport or provide an explanation why it was not among the additional documentation delivered to Citizenship Judge Sniegowski.

[19] Similarly, the Respondent could only provide an incomplete copy of the official Canada Travel Document leaving approximately nine months unaccounted for during the relevant four-year period. Seen against the backdrop of Citizenship Judge Sniegowski accepting the Respondent's declarations regarding his lack of ties to Canada, lack of documentation regarding residence and his undeclared absences and other inconsistencies in his testimony, the failure to address gaps in his residency evidence required consideration by the Citizenship Judge.

[20] As the Court is unable to understand the Citizenship Judge's reasoning and comprehend what were the relevant factors or documents that convinced him that the Respondent met the residency test, the Court concludes that the decision-making process lacks justification, intelligibility and transparency to permit or determine whether the conclusion is within a range of reasonable possible outcomes.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The appeal is allowed and Mr. Mas' Application for Citizenship should be re-determined.
2. No costs are ordered.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1266-15

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
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