

Federal Court



Cour fédérale

Date: 20180206

Docket: T-1363-17

Citation: 2018 FC 137

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 6, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

AMAL HADDAD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Amal Haddad, native of Lebanon, arrived in Canada as a permanent resident in 2007. On March 11, 2013, she filed an application for Canadian citizenship in which she declared 278 days of absence and 1,182 days of being physically present in Canada throughout the previous four (4) years. The reference period for her citizenship application is from March 11, 2009, to March 11, 2013.

[2] On September 11, 2014, the applicant met with a citizenship officer and passed the knowledge test.

[3] On August 26, 2016, the citizenship officer prepared a template for preparation and analysis of the file for the Citizenship Judge. She indicated having concerns about the applicant's credibility. As she was not satisfied that the applicant met the requirements of paragraph 5(1)(c) of *the Citizenship Act*, RSC 1985, c. C-29 [Act], she recommended conducting an interview. On March 29, 2017, the applicant appeared before the Citizenship Judge.

[4] On June 22, 2017, the Citizenship Judge denied the applicant's citizenship application. She deemed some of the applicant's explanations not credible and found that she could not determine, on a balance of probabilities, the exact number of days during which the applicant was in fact in Canada throughout the reference period. She therefore found that the applicant did not respect the requirements of paragraph 5(1)(c) of the Act, i.e. 1,095 days of being physically present in Canada, according to the approach taken in *Re Pourghasemi* [1993] FCJ No. 232 (QL).

[5] The applicant argues the Citizenship Judge failed in her duty of procedural fairness, notably by denying her the possibility of filing additional evidence during and after the hearing, which, according to the applicant, could have answered the Citizenship Judge's concerns and corroborated her physical presence in Canada. The applicant also argues that the decision is unreasonable on the ground that the Citizenship Judge erred in her assessment of the documentary evidence and in her assessment of the applicant's credibility.

[6] The parties agree that the decisions concerning citizenship are subject to review according to the standard of reasonableness, since they raise questions of fact and law (*Ajwad v. Canada (Citizenship and Immigration)*, 2017 FC 217 at para 2; *Fotros v. Canada (Citizenship and Immigration)*, 2016 FC 842 at para 16 [*Fotros*]; *El-Husseini v. Canada (Citizenship and Immigration)*, 2015 FC 116 at para 17 [*El-Husseini*]).

[7] Where the reasonableness standard applies, this Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law." If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility," it is not for the Court to replace the outcome with one that would be preferable (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[8] Concerning procedural fairness, the standard for applicable review is correctness (*Khosa* at para 43; *Mission Institution v. Khela*, 2014 SCC 24 at para 79). The question therefore is not so much whether the decision was "correct," but rather, whether the process followed by the decision-maker was fair (*Majdalani v. Canada (Citizenship and Immigration)*, 2015 FC 294 at para 15; *Krishnamoorthy v. Canada (Citizenship and Immigration)*, 2011 FC 1342 at para 13).

[9] First, the applicant argues the Citizenship Judge breached the rules of procedural fairness in three (3) ways: (1) by not disclosing the concerns about her credibility that were raised by the officer in 2016 to her before the interview; (2) by denying her from filing the additional evidence that she had in her possession at the time of the interview, which the applicant claims would have

allowed her to verify her credibility; and (3) by not offering her the possibility to file this additional evidence after the interview.

[10] It is well established in case law that the burden is on citizenship applicants to establish, on a balance of probabilities, through sufficient, coherent, and credible evidence, that they satisfy the requirements set out in the *Citizenship Act* (*Fotros* at para 17; *El-Husseini* at para 19; *Canada (Citizenship and Immigration) v. Pereira*, 2014 FC 574 at para 21; *Abbas v. Canada (Citizenship and Immigration)*, 2011 FC 145 at para 8; *Zheng v. Canada (Citizenship and Immigration)*, 2007 FC 1311 at para 14 [*Zheng*]).

[11] It is also well established that the procedural fairness requires Citizenship Judges to communicate their concerns and allows citizenship applicants to respond to them during the interview (*El-Husseini* at para 21; *Johar v Canada (Citizenship and Immigration)*, 2009 FC 1015 at para 41 [*Johar*]). However, Citizenship Judges are not required to give citizenship applicants the opportunity to file additional documents (*El-Husseini* at para 19; *Johar* at para 41; *Zheng* at para 14).

[12] Taking into account these principles, the Court is not satisfied that the accusations raised by the applicant constitute a breach of procedural fairness in this case. It appears from the decision and the hearing notes that the concerns raised by the citizenship officer were discussed during the interview with the Citizenship Judge. Furthermore, the Citizenship Judge disclosed her own concerns to the applicant, notably by asking questions and allowing her to respond. The Court is of the view that the applicant was sufficiently informed during the hearing that her

credibility was in question. Unfortunately for the applicant, her answers did not persuade the Citizenship Judge.

[13] Further, the Court is not persuaded that the applicant would have been unable to forward the documents that she considered decisive to respond to the concerns raised by the Citizenship Judge within the sixty (60) days after the hearing.

[14] Lastly, the Court finds that even if the applicant had filed documents D-20 to D-26.1, these documents would not have been able to compensate for the applicant's lack of credibility. Several documents identified by the applicant as being [TRANSLATION] "available, unrequested" evidence are simply passive indicators that do not show actual presence in Canada. Moreover, it appears from the post-interview notes that this adverse finding of credibility is based, inter alia, on the applicant's behaviour during the interview. The Citizenship Judge notes that the applicant did not listen to the questions, interrupted her, and that her answers were long and off-topic.

[15] Second, the applicant argues that the Citizenship Judge's decision is unreasonable. She first criticizes the Citizenship Judge for having made an adverse finding of credibility because she is a housewife. On the contrary, the Court finds that the Citizenship Judge's finding is rather based on the fact that the applicant was unable to describe what her daily activities involved. When questioned about her daily activities, the applicant said that she took care of her children. The Judge reasonably noted that the children were old enough to attend high school in 2009 and university thereafter. The applicant could have supported her claims by filing her daughters' transcripts while they were minors and attended high school in 2009. The school documentation

filed by the applicant only covers the 2011-2012 school year. Additionally, the applicant could have filed evidence showing the social ties during this period. She did not do this. It was therefore reasonable for the Citizenship Judge to call into question the applicant's actual presence in Canada due to the vague answers given and the lack of evidence to this effect. Moreover, the Court notes that the documents identified by the applicant for her argument on procedural fairness do not further support her claims.

[16] The applicant also challenges the Citizenship Judge's findings regarding her lack of credibility for the actions of her eldest daughter, who is of majority age. She criticizes the Citizenship Judge for indicating that her eldest daughter had lost her permanent resident status because she did not respect the requirements of the Act. According to the applicant, her daughter had instead allegedly abandoned her citizenship application and her appeal before the Immigration Appeal Division (IAD). The applicant further criticizes the Citizenship Judge for making an adverse finding about her credibility. According to the information available to the Citizenship Judge, the applicant's eldest daughter had allegedly declared to the immigration officers that the applicant and her spouse had allegedly taken steps to obtain false documents in order to falsify her presence in Canada. The applicant argues that she cannot be held responsible for her daughter's actions, since her daughter is of legal age and independent in her choices and actions.

[17] The Court finds that the applicant shows an unreasonable formality concerning the citizenship application filed by her eldest daughter and the loss of her permanent resident status. If the applicant's eldest daughter abandoned her appeal with the IAD, it is because her permanent

resident status was called into question. Regarding the allegation of the use of false documents, it was reasonable for the Citizenship Judge to not be satisfied with the applicant's response, given the other concerns she had about the applicant's credibility. The applicant indicated that she was unaware of what her daughter had said or done.

[18] Lastly, the applicant alleges that the Citizenship Judge erred in linking her with a consultant who allegedly advised applicants to make false statements. The applicant indicated that she only retained his services as an accountant, and not as an immigration consultant, and she stopped doing business with him due to his high fees. She argues that she should not be penalized without justification for the actions of a consultant regarding other citizenship applicants and that there was no evidence showing that he allegedly advised her. It appears from the record that the individual in question's business card was found in the applicant's personal belongings when she returned from Lebanon in 2014. Adding this to the eldest daughter's statement about obtaining false documents, it was reasonable for the Citizenship Judge to not be satisfied with the response given by the applicant.

[19] Deeming the applicant not credible on multiple accounts, it was open to the Citizenship Judge to give little weight to the applicant's evidence. The assessment made by the Citizenship Judge of the applicant's credibility requires a high level of deference (*Fotros* at para 20). It is not up to the Court to substitute its assessment of the applicant's credibility with the Citizenship Judge's findings.

[20] In conclusion, the Court is of the view that the Citizenship Judge's decision to dismiss the applicant's citizenship application because she did not meet the criterion of being physically present in Canada is reasonable because it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47). Intervention by this Court is therefore not justified.

[21] Concerning the objection raised by the respondent relating to the documents filed by the applicant as new evidence before the Court, it is not necessary to address the admissibility of the documents, considering the Court's finding.

[22] The application for judicial review is dismissed; Neither party has suggested a question for certification, and the Court is of the view that this case does not raise any.

JUDGMENT in T-1363-17

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The style of cause has been modified to replace “The Minister of Immigration, Refugees and Citizenship” with “The Minister of Citizenship and Immigration.”
3. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

Certified true translation
This 13th day of September 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1363-17

STYLE OF CAUSE: AMAL HADDAD v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 1, 2018

JUDGMENT AND REASONS: ROUSSEL J.

DATED: FEBRUARY 6, 2018

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