

Federal Court



Cour fédérale

Date: 20180404

Docket: T-1410-17

Citation: 2018 FC 361

Ottawa, Ontario, April 4, 2018

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

MOHD RABI MORELLY

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review brought by Mohd Rabi Morelly challenging a decision of a Citizenship Judge which denied his application for Canadian citizenship. The impugned decision turned on a finding that Mr. Morelly had failed to establish a physical presence in Canada for three years as required by subsection 5(1) of the *Citizenship Act*, RSC, 1985, c C-29.

[2] The Citizenship Judge had serious reservations about Mr. Morelly's credibility. It was of particular concern that Mr. Morelly had been complicit in an earlier immigration fraud orchestrated by a dishonest immigration consultant. This, along with a number of largely unspecified testimonial lapses, led the Citizenship Judge to the following conclusion:

Given the foregoing, it is impossible to determine, on a balance of probabilities, how many days the Applicant was actually present in Canada, because there is insufficient credible evidence of his continued physical presence during the periods that he claims to have been in Canada. Therefore, bearing in mind the reasoning set out in *Pourghasemi*, I find that the Applicant does not meet the residence requirement in the *Act*.

[3] Mr. Morelly contends that the Citizenship Judge made several evidentiary errors thereby rendering the decision unreasonable. Those asserted errors are described in general terms in his Memorandum of Fact and Law at paragraph 2:

Citizenship Judge Veronica Johnson (the "Judge") erred in determining that the Applicant did not meet the residency requirements of the *Citizenship Act* ("the Act"). The Judge failed either to consider the Applicant's preliminary establishment in Canada or to apply the *Pourghasemi* test. Moreover, the Judge made credibility findings that were opaque, rested on facts irrelevant to her inquiry, and which completely ignored evidence of the Applicant's physical presence in Canada. Her decision is therefore unreasonable and should be quashed.

[4] I am satisfied that the decision under review is legally deficient and unreasonable. The decision suffers from at least one fundamental evidentiary error requiring a redetermination of Mr. Morelly's application. The applicable standard of review is, of course, reasonableness.

[5] The Citizenship Judge was justifiably concerned with Mr. Morelly's credibility and, therefore, with the reliability of his reported periods of Canadian residency. Because of

Mr. Morelly's history, he was required to attend a lengthy interview. No recording of that interview was made, although some notes were prepared along with a summary of the credibility concerns that remained. It is, of course, open to this Court to consider the Citizenship Judge's file notes to attempt to understand her conclusions and I have done that. Her stated credibility concerns were the following:

1. He was a client of Hassan Al-Awaid who was charged under the Citizenship Act as well as IRPA. Mr. Al-Awaid was found guilty and sentenced.
2. It appears that the applicant was complicit with Mr. Al-Awaid as he accepted cheques of \$1,000 per month from Al-Awaid's company, Canadian Commercial Group, although he never worked for this company. Asked about this, the applicant said he worked for them "fictitiously". He further explained that Al-Awaid told him he would make him an employee because it would support his citizenship application in the future. In exchange for the cheques, the applicant said that he gave Mr. Al-Awaid \$1,000 in cash for each cheque he received.
3. Asked if he felt that he cooperated in the misrepresentation with Al-Awaid, the applicant said "I agree with you".
4. There were many questions about the applicant's addresses which he was unable, or 'unwilling, to explain. For example, his statements from East Link (telephone company in NS) were sent to 301-1160 Bedford Hwy – the address of Canadian Commercial Group - Mr. Al-Awaid's company.
5. And, the applicant's address at 6 Royal Masts is an address used by many other applicants in our system and it appears that the applicant allowed Al-Awaid to use his address during his absence from Canada.
6. The applicant said that he did quality control for a company in Cape Breton, yet he was able to do this remotely from Kuwait. I found this to be implausible.

Based on the above, I found that the applicant was lacking in credibility. And, based on the applicant's own admission of accepting cheques from Hassan Al-Awaid in exchange for cash

which he gave to the latter, I suggest that there is probable cause for a case of misrepresentation.

[6] Most of the above-noted findings relate to Mr. Morelly's conduct prior to the relevant residency period when he had been involved with a fraudulent immigration consultant. By the time Mr. Morelly submitted his citizenship application, he had acknowledged his complicity and had cooperated with the prosecution of the consultant. From the Citizenship Judge's interview notes, it is clear that Mr. Morelly owned up to his misconduct, but he was still found to lack credibility. On its own, this ongoing scepticism cannot be criticized. A person involved in serious immigration fraud is not automatically redeemed by later accepting responsibility or by assisting with the prosecution of the ringleader. It was thus not an error for the Citizenship Judge to reflect on Mr. Morelly's earlier participation in this fraud in the assessment of his overall credibility.

[7] Nevertheless, the Citizenship Judge was not conducting an admissibility hearing or a criminal prosecution. Her role also did not include making, as she did, a recommendation for a misrepresentation inquiry. In Mr. Morelly's case, the Citizenship Judge was, however, required to carefully examine the evidence of residency to determine if it was sufficiently probative to displace her ongoing credibility concerns.

[8] I would add that reservations about an applicant's general credibility can be relevant to the determination of the weight to be applied to other evidence; but that other evidence must still be examined. If it is deemed reliable, probative, and sufficient, the residency requirement will be satisfied. It is with respect to this review exercise that the Citizenship Judge erred.

[9] In this case, the Citizenship Judge erred by failing to assess the sufficiency of the third-party records submitted in proof of the number of days Mr. Morelly was present in Canada. Included in that material was evidence of his Canadian exits and entries and of numerous attendances in Canada for medical reasons and to donate blood. Letters from his Canadian employer also vouched for the periods of his claimed Canadian residency and for his absences from Canada.

[10] Taken at face value, those records disclosed the following detailed history of Mr. Morelly's Canadian residency:

Chronological Documentary Evidence of Mr. Morelly's Physical Presence in Canada

Date	Location	Days absent / present	Documentary Evidence
February 21, 2008 – March 1, 2008	Syria and Kuwait	6	Passport Stamps: Exited Kuwait on February 21, 2008; Entered Syria on February 21, 2008; Entered Kuwait on February 26, 2008; and Exited Kuwait on March 1, 2008.
March 2, 2008 – August 22, 2008	Canada	173	CBSA Travel History: Entered Canada on March 2, 2008. MSI Records: March 19, 2008; March 27, 2008; April 10, 2008; May 6, 2008; May 21, 2008; June 4, 2008; June 18, 2008; July 8, 2008; and August 20, 2008.

August 24, 2008 – September 8, 2008	Kuwait and Syria	18	<p>Passport Stamps: Entered Kuwait on August 24, 2008; Exited Kuwait on August 30, 2008; Entered Syria on August 30, 2008; and Exited Syria on September 8, 2008.</p>
September 9, 2008 – January 23, 2009	Canada	136	<p>Passport Stamps: Entered Canada on September 9, 2008.</p> <p>MSI Records: September 16, 2008; September 23, 2008; October 16, 2008; October 21, 2008; November 17, 2008; December 8, 2008; and January 22, 2009.</p>
January 25, 2009 – January 31, 2009	Kuwait	9	<p>Passport Stamps: Entered Kuwait on January 25, 2009; and Exited Kuwait on January 31, 2009.</p>
February 1, 2009 – April 2, 2010	Canada	425	<p>CBSA Travel History: Entered Canada on February 1, 2009.</p> <p>MSI Records: February 24, 2009; March 26, 2009; April 1, 2009; April 2, 2009; April 25, 2009; and June 1, 2009.</p> <p>Canadian Blood Services Donations: June 17, 2009.</p> <p>MSI Records: June 30, 2009; July 17, 2009; and October 5, 2009.</p> <p>Canadian Blood Services Donations: November 19, 2009.</p> <p>MSI Records: November 22, 2009.</p>

			<p>Canadian Blood Services Donations: November 24, 2009.</p> <p>MSI Records: December 14, 2009; December 24, 2009; January 18, 2010; January 22, 2010; January 27, 2010; February 23, 2010; and March 15, 2010.</p>
April 3, 2010 – April 11, 2010	Kuwait	10	<p>Passport Stamps: Entered Kuwait on April 3, 2010. Exited Kuwait on April 11, 2010.</p> <p>Letter from Stantec confirming absence (April 2, 2010 – April 12, 2010) – dated November 24, 2011.</p>
April 12, 2010 – November 25, 2010	Canada	227	<p>CBSA Travel History: Entered Canada on April 12, 2010.</p> <p>Canadian Blood Services Donations: April 21, 2010.</p> <p>MSI Records: April 21, 2010; and May 21, 2010.</p> <p>Canadian Blood Services Donations: June 16, 2010.</p> <p>MSI Records: June 18, 2010; July 8, 2010; August 20, 2010; and October 8, 2010.</p> <p>Canadian Blood Services Donations: November 11, 2010.</p> <p>MSI Records: November 25, 2010.</p>
November 27, 2010 – December 22, 2010	Kuwait	28	<p>Passport Stamps: Entered Kuwait on November 27, 2010; and</p>

			<p>Exited Kuwait on December 22, 2010.</p> <p>Letter from Stantec confirming absence (November 26, 2010 – December 23, 2010) – dated November 24, 2011.</p>
December 23, 2010 – February 1, 2011	Canada	40	<p>Passport Stamps: No Stamp – Qatar Airways Boarding Pass.</p> <p>CBSA Travel History: December 23, 2010.</p> <p>MSI Records: December 25, 2010.</p> <p>Canadian Blood Services Donations: December 29, 2010.</p> <p>MSI Records: January 19, 2011; January 27, 2011; and February 1, 2011.</p>
February 3, 2011 – May 18, 2011	Kuwait	107	<p>Passport Stamps: Entered Kuwait on February 3, 2011; and Exited Kuwait on May 18, 2011.</p> <p>Letter from Stantec confirming absence (February 2, 2011 - May 19, 2011) – dated November 24, 2011.</p>
May 19, 2011 – July 8, 2011	Canada	49	<p>Passport Stamps: Entered Canada on May 19, 2011.</p> <p>Canadian Blood Services Donations: May 26, 2011.</p> <p>MSI Records: June 12, 2011; June 15, 2011; and July 5, 2011.</p> <p>Letter from Stantec confirming absence (July 8, 2011) – dated November 24, 2011.</p>
July 9, 2011 – August 27, 2011	Kuwait	52	<p>Passport Stamps: Entered Kuwait on July 11, 2011; and</p>

			Exited Kuwait on August 27, 2011.
August 28, 2011 – September 30, 2011	Canada	33	<p>Passport Stamps: Entered Canada on August 28, 2011.</p> <p>MSI Records: August 29, 2011; and August 30, 2011.</p> <p>Canadian Blood Services Donations: September 9, 2010.</p> <p>MSI Records: September 21, 2011; and September 30, 2011.</p>
October 1, 2011 – November 1, 2011	Kuwait	32	<p>Passport Stamps: Entered Kuwait on October 1, 2011; and Exited Kuwait on November 1, 2011.</p>
November 1, 2011 – November 25, 2011	Canada	24	<p>CBSA Travel History: Entered Canada on November 1, 2011.</p> <p>MSI Records: November 2, 2011.</p> <p>Canadian Blood Services Donations: November 15, 2011.</p> <p>MSI Records: November 16, 2011; November 18, 2011; and November 23, 2011.</p>
November 26, 2011 – January 26, 2012	Kuwait	61	<p>Passport Stamps: Entered Kuwait on November 26, 2011; and Exited Kuwait on January 26, 2012.</p>
January 25, 2012 – February 25, 2012	Canada	31	<p>Passport Stamps: Entered Canada on January 25, 2012 – Boarding pass and luggage tickets attached.</p> <p>CBSA Travel History: Entered Canada on January 25, 2012.</p> <p>MSI Records: January 26, 2012;</p>

			<p>January 31, 2012; and February 1, 2012.</p> <p>Canadian Blood Services Donations: February 8, 2012.</p> <p>MSI Records: February 23, 2012.</p>
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[11] Except for a reference to Mr. Morelly's passport not providing "incontrovertible evidence of physical presence", neither the decision nor the file notes mention the potential significance of the CBSA travel history or of Mr. Morelly's apparent attendances for medical and blood donation purposes. The employer's letters also offered corroboration of Mr. Morelly's evidence of his time working in Cape Breton. Nevertheless, the Citizenship Judge's references in the decision to Mr. Morelly's Canadian employment failed to mention the employer's letters. Indeed, the Judge's stated plausibility concern about Mr. Morelly working remotely is flatly contradicted by the employer's letter of November 24, 2011. This letter confirmed that Stantec consented to Mr. Morelly working remotely in Kuwait during his leave of absence. If the employer was satisfied with this arrangement, there was no basis to conclude that it was implausible.

[12] In the face of all of the tendered evidence, it was legally insufficient for the Citizenship Judge to conclude that it was impossible to know how many days Mr. Morelly was actually present in Canada. It is only an impossibility if the Court elects not to engage with all of the evidence in a meaningful way.

[13] The clear impression that is left from the comparison of the impugned decision to the evidentiary record is that the Citizenship Judge allowed herself to be overwhelmed by Mr. Morelly's earlier misconduct. This caused her to ignore much of the relevant and potentially material evidence that supported his residency case. Much of that record was facially reliable and, if accepted, likely sufficient to meet Mr. Morelly's onus of proof. In the absence of reasons for not accepting of that evidence, the decision fails to satisfy the requirements in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47 of justification, transparency, and intelligibility within the decision-making process. The decision is, therefore, unreasonable.

[14] For the foregoing reasons, this application is allowed and the decision is set aside. The matter is to be redetermined on the merits and in accordance with these reasons by a different decision-maker.

JUDGMENT IN T-1410-17

THIS COURT'S JUDGMENT is that this application is allowed with the matter to be redetermined on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1410-17

STYLE OF CAUSE: MOHD RABI MORELLY v THE MINISTER OF
CITIZENSHIP & IMMIGRATION

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

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JUDGMENT AND REASONS: BARNES J.

DATED: APRIL 4, 2018

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