

Date: 20080711

Docket: T-2064-07

Citation: 2008 FC 864

Ottawa, Ontario, July 11, 2008

PRESENT: THE CHIEF JUSTICE

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ISAAK FRIESEN

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Isaak Friesen, the respondent in this proceeding, was born in Mexico on July 2, 1977. He was a Canadian at birth because his mother was a citizen of Canada when he was born.

[2] However, according to section 8 of the *Citizenship Act*, R.S., 1985, c. C-29, Mr. Friesen was required to apply for the retention of his Canadian citizenship prior to attaining the age of twenty-eight years on July 2, 2005. He failed to do so. As of that date, he was no longer a Canadian citizen.

[3] It was only ten days later that he applied to retain his citizenship.

[4] In response to Mr. Friesen's application to retain his Canadian citizenship ten days after he had lost it, the senior citizenship judge determined that he should nonetheless be interviewed by a citizenship judge to decide whether the exercise of discretion under subsection 5(4) of the Act should be recommended:

5(4) In order to alleviate cases of special and unusual hardship ... and notwithstanding any other provision of this Act, the Governor in Council may, in his discretion, direct the Minister to grant citizenship to any person and, where such a direction is made, the Minister shall forthwith grant citizenship to the person named in the direction.	5(4) Afin de remédier à une situation particulière et inhabituelle de détresse ... le gouverneur en conseil a le pouvoir discrétionnaire, malgré les autres dispositions de la présente loi, d'ordonner au ministre d'attribuer la citoyenneté à toute personne qu'il désigne; le ministre procède alors sans délai à l'attribution.
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[5] Mr. Friesen lived most of his life in Mexico. In May 2004, he moved to Canada. The interview would also allow the citizenship judge to verify that Mr. Friesen had resided in Canada for at least one year preceding the date of his application to retain citizenship, a second requirement under section 8 of the Act.

[6] The citizenship judge appears to have been favourably impressed with Mr. Friesen. Indeed, he approved his application "to retain and register as a Canadian citizen". In other words, the citizenship judge purported to grant Mr. Friesen anew his status as a Canadian citizen, one which he lost on July 2, 2005.

[7] However, in so doing, the citizenship judge acted beyond his jurisdiction. Because Mr. Friesen's application was filed late, the only remedy the citizenship judge could provide was to recommend the exercise of discretion by the Governor in Council under subsection 5(4).

[8] Accordingly, the Minister's appeal from the decision of the citizenship judge must be allowed.

[9] This proceeding is an appeal which is treated as an application according to Rule 300(a) of the *Federal Courts Rules*. It is not an application for judicial review under Rule 300(b).

[10] Counsel for the Minister argued that in allowing this appeal, I do not have the jurisdiction to recommend the exercise of discretion under subsection 5(4) which is the order the citizenship judge should have made, even though the record discloses clearly what the decision-maker intended to do. For the Minister, the matter must be referred back for another interview by a citizenship judge.

[11] As Mr. Friesen had no counsel in this proceeding, I did not have the benefit of contrary argument on this issue. I note that the Minister's counsel, without wishing to fetter the discretion of the citizenship judge or the Governor in Council, agreed that Mr. Friesen was acting in good faith and that his case should receive compassionate consideration. However, as this proceeding is not subject to appellate review pursuant to subsection 14(6) of the Act, I have chosen to act with more caution than may be warranted and will not direct an outcome formally.

[12] Accordingly, without acknowledging that the Minister's submission is correct, I will refer the matter back to the same citizenship judge who first interviewed Mr. Friesen so that he may dispose of the application for retention in a manner consistent with these reasons. In referring the matter to the same citizenship judge, I do so in the exercise of my own discretion and after explaining the situation to Mr. Friesen who did not object.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal from the decision dated October 18, 2007 of Citizenship Judge Raymond Lee is allowed. The matter is referred for redetermination by Citizenship Judge Raymond Lee in a manner consistent with these reasons.

"Allan Lutfy"
Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2064-07

STYLE OF CAUSE: MCI v. Isaak Friesen

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: June 18, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Chief Justice Lutfy

DATED: July 11, 2008

APPEARANCES:

Mr. Rick Garvin FOR THE APPLICANT

Mr. Isaak Friesen FOR THE RESPONDENT

SOLICITORS OF RECORD:

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