

Federal Court



Cour fédérale

Date: 20130225

Docket: T-1899-11

Citation: 2013 FC 191

Ottawa, Ontario, February 25, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KIM PHUNG TRAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a citizenship appeal pursuant to section 21 of the *Federal Courts Act*, RSC, 1985, c F-7 and subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [the Act].

[2] Kim Phung Tran [the applicant] is appealing a decision by the Citizenship Judge issued on October 31, 2011, in which the applicant's citizenship application was rejected on the ground that she did not demonstrate adequate knowledge of either official language of Canada, pursuant to subsection 5(1)(d) of the Act.

I. Background

[3] The applicant is a citizen of Vietnam. On December 27, 2006, the applicant became a permanent resident of Canada. On July 7, 2010, the Applicant applied for Canadian citizenship.

[4] On October 25, 2011, the applicant attended a hearing before the Citizenship Judge and on October 31, 2011, the Citizenship Judge issued his decision in which he did not approve the applicant's citizenship application on the basis that the applicant did not meet the requirements of paragraph 5(1)(d) of the Citizenship Act in not having an adequate knowledge of English or French.

[5] The decision notes that the Citizenship Judge asked the applicant questions to determine if she met the necessary criteria under paragraph 5(1)(d) of the Act, and decided that she was unable to convey orally basic information or provide simple answers to questions.

[6] The Citizenship Judge also declined to recommend a favourable exercise of discretion on the basis of compassionate grounds under subsection 5(3) of the Act or as a case of special or unusual hardship or to reward services of exceptional value to Canada pursuant to subsection 5(4) of the Act. He noted that the applicant "did not present sufficient evidence to me of special circumstances that would justify me in making such a recommendation."

II. Issues

[7] The issue raised in the present application are as follows:

- A. Did the Citizenship Judge err in finding the applicant did not meet the language requirement under subsection 5(1)(d) of the Act?

III. Standard of review

[8] The applicable standard of review for a decision of a Citizenship Judge, including discretionary determinations, is reasonableness (*Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 874 at paras 10-11 [*Chen*]; *Amoah v Canada (Minister of Citizenship and Immigration)*, 2009 FC 775 at para 14).

[9] Citizenship appeals are not trials de novo and proceed based solely on the record before the Citizenship Judge (*Lama v Canada (Minister of Citizenship and Immigration)*, 2005 FC 461 at para 21; *Hassan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 755 at para 10).

[10] Therefore, the Court will only intervene where there is a lack of justification, transparency and intelligibility or an unacceptable outcome in light of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

IV. Analysis

[11] The statutory framework for assessing citizenship application in terms of language requirements is clear, in that the applicant must demonstrate adequate knowledge of either official language by (a) comprehending basic spoken statements and questions, and (b) conveying orally or in writing basic information or answers to questions (section 14 of the Regulations). The applicant failed to demonstrate the required level of language proficiency.

[12] While the applicant may disagree with the Citizenship Judge's findings, the Court is not to reweigh the evidence, but rather to assess if there was a material error in the decision. I find no

reviewable error in the Citizenship Judge's decision, given the decision is sufficiently justified, transparent and intelligible.

ORDER

THIS COURT ORDERS that the applicant's appeal is dismissed.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1899-11

STYLE OF CAUSE: Tran v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 25, 2013

**REASONS FOR ORDER
AND ORDER BY:** MANSON J.

DATED: February 25, 2013

APPEARANCES:

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Laoura Christodoulides

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