Federal Court  Cour fédérale

Date: 20130314

Docket: T-1413-12

Citation: 2013 FC 270

Ottawa, Ontario, March 14, 2013

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

SUSAN CECILIA LEE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by the Minister of Citizenship and Immigration (Applicant) brought pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29, and section 21 of the *Federal Courts Act*, RSC 1985, c F-7, appealing the May 23, 2012 decision of a citizenship judge (Citizenship Judge) which approved the citizenship application of Susan Cecilia Lee (Respondent) pursuant to subsection 5 (1) of the *Citizenship Act*.

Background

[2] The Respondent is a citizen of Trinidad and Tobago and a permanent resident of Canada. She arrived in Canada as a landed immigrant on August 17, 1975, at the age of 19. She has been in a common-law relationship with a Canadian citizen since 1982 and they have four children born in Canada, three of which are biological.

[3] The Respondent applied for Canadian citizenship on May 8, 2010 and reported no absences from Canada during the relevant four-year period, being May 8, 2006 to May 8, 2010.

[4] Attached to the Respondent's citizenship application was a letter explaining why she was unable to provide photo identification:

- She did not have a driver's licence because she did not need one. Her partner drove and she lived in downtown Toronto where public transportation was ample;
- She had not left Canada in over 34 years and therefore had not acquired a passport;
- She had the 'old' Ontario health card which does not need to be renewed every five years;
- She was a stay-at-home mom for approximately 25 years.

[5] Given this situation, the Respondent instead provided sworn true copies of her record of landing, expired passport from Trinidad & Tobago, birth certificate, Ontario health card and social insurance (SIN) card.

[6] She took and passed the citizenship test on July 7, 2011 and was then asked to meet with an immigration officer because she did not have any photo identification. At this meeting she was asked for and provided information concerning her travel, employment and medical history.

[7] At the end of that meeting the Respondent was given a letter requesting that she provide additional information:

- Two pieces of valid provincial identification, at least one with a photograph (e.g. a valid Ontario driver's license, Ontario Health Card);
- All pages of any passport, valid or expired for 2006 to date;
- Income tax returns (Notices of Assessment) for 2006 to date;
- An Integrated Customs Enforcement System (ICES) traveller history;
- A residence questionnaire;
- Birth certificates for all of her children; and
- A medical visit summary for 2006 to date.

[8] With the exception of the medical visits summary (which was noted to follow and did on September 20, 2011) and the Notices of Assessment for 2009 and 2010, these documents were provided with an accompanying letter from the Respondent's immigration consultant dated August 20, 2011. The provincial identification was comprised of a SIN card, Ontario Health card, Ontario photo identification card and Canadian Immigrant ID Record.

[9] Following her hearing before the Citizenship Judge on February 10, 2012, the Respondent was asked to provide further additional documents as follows:

- ICES traveller history 08 / May / 2006 to 08 / May / 2010;
- Record of exit/entry Trinidad & Tobago;

OR
- Letter confirming no other passports issued to you after PPT# 348884 from Trinidad & Tobago embassy or relevant authority;
- NOA's for 2006, 2007, 2008, 2009, 2010

[10] In response to this request, the Respondent provided her ICES traveller history, which confirms that "no records were found" for the period of May 8, 2006 to May 8, 2010 (i.e. there was no record of the Respondent crossing the Canadian border during that period).

[11] The Respondent's application for citizenship was approved on May 23, 2012 (the Decision), that Decision is under review in the present case.

[12] The Decision is contained in a standard form document entitled "Notice to the Minister of the Decision of the Citizenship Judge". The "reasons" section of that form is completed as follows:

> After very careful consideration of all of the documentary evidence along with the verbal evidence presented at the hearing, I am satisfied that [the] applicant, on the balance of probabilities, meets the requirements of 5 (1)(c) [of the *Citizenship Act*]. I based my decision mostly on the strength of the ICES report that shows no entries into Canada during [the] review period.

[13] In the "Required Documents Seen" section of the form is entered "HC, Ont photo card, IMM1000", under the CSIS section the date 06 February 2012 is entered, and under the RCMP section the date 14 February 2012 is entered.

Issues

[14] I would phrase the issues as follows:

(a) What is the applicable standard of review?
(b) Were the Citizenship Judge's reasons inadequate?
(c) Was the Citizenship Judge's decision to approve Ms. Lee's citizenship application reasonable?

Analysis

(a) *What is the Applicable Standard of Review?*

[15] The Supreme Court of Canada in *Dunsmuir v New Brunswick* 2008 SCC 9, [2008] 1 SCR 190 at para 57 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where the search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis (*Dunsmuir*, above; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2009] FCJ no 713 at para 18).

[16] As this Court has previously held that the standard of review applicable to a citizenship judge's determination of whether an applicant has satisfied the residency requirement is reasonableness (*Dunsmuir*, above, at para 57; *Canada (Minister of Citizenship and Immigration) v Salim*, 2010 FC 975, [2010] FCJ No 1219, at para 21 [*Salim*]; *Canada (Minister of Citizenship and Immigration) v Elzubair*, 2010 FC 298, [2010] FCJ No 330 at para 12 [*Elzubair*]; *Paez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 204, [2008] FCJ No 292 at para 11), a standard of review analysis is not required in this case.

[17] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility of the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (see *Dunsmuir*, above, at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59 [*Khosa*]). Put otherwise, the Court should only intervene if the decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, above, at para 47).

(b) *Were the Citizenship Judge's Reasons Inadequate?*

[18] The Applicant submits that the Citizenship Judge's reasons are "sparse, and inadequate" because they do not demonstrate that the Judge addressed the statutory requirements set out in paragraph 5(1)(c) of the *Citizenship Act*, or that he understood and applied the relevant legal principles. The reasons do not reveal the grounds upon which the application was approved, nor do they demonstrate a meaningful analysis of the evidence. The Applicant notes that in *Lai v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1361, 188 FTR 113 at paras 11-12 [*Lai*], it was held that merely listing the evidence that had been considered was insufficient and submits that the Citizenship Judge in the present case did not even do that.

[19] The Respondent points to the Supreme Court's decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at paras 13-14 [*Newfoundland Nurses*] and *Baig v Canada (Minister of Citizenship and Immigration)*, 2012 FC 855, [2012] FCJ No 963 at para 10 [*Baig*] and submits that adequacy of

reasons is no longer a stand-alone ground for allowing judicial review. Further, the Respondent stresses that the ICES traveller history showed that the Respondent did not leave Canada during the relevant period. Residency having been established, the Citizenship Judge was only required to articulate the evidence relied upon in reaching his decision, which he did. As such, the Decision falls within the range of possible, acceptable outcomes and should not be disturbed.

[20] In my view, 'adequacy of reasons' is not a stand-alone ground of review. Rather, as noted by Justice Rennie in *Baig*, above, at para 10, 'adequacy of reasons' forms part of the broader reasonableness analysis.

[21] The cases cited by the Applicant (*Eltom v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1555, [2005] FCJ No 1979, *Abdollahi-Ghane v Canada (Minister of Citizenship and Immigration)*, 2004 FC 741, [2004] FCJ No 930, and *Lai*, above) all pre-date the Supreme Court of Canada's 2011 decision in *Newfoundland Nurses*, above. There the Supreme Court referenced its decision in *Dunsmuir* and stressed the notion of deference to administrative decision-makers, even in cases where the reasons given for a decision may not seem entirely adequate. The Court added that review of such decisions was an "organic exercise" in which "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses*, above, at paras 12-14).

[22] The adequacy of reasons of the Citizenship Judge is therefore considered in the context of the reasonableness of the Decision as a whole.

(c) *Was the Citizenship Judge's Decision to Approve Ms. Lee's Citizenship Application Reasonable?*

Position of the Parties

[23] The Applicant submits that the Citizenship Judge committed a reviewable error by failing to indicate which residency test he used to assess the Respondent's residency and, regardless of the test used, that he failed to apply it correctly. The Applicant submits that physical presence in Canada is a crucial factor in determining residency, and that "passive indicia" (such as depositing money into a bank account) are insufficient.

[24] The Applicant also stresses that the onus is on applicants to establish that they meet the residency requirements, adding that the mandatory Residence Questionnaire provides clear instructions on the type of documentary evidence required. The documentation provided by the Respondent contained deficiencies and was insufficient to discharge that onus. As to the ICES record, the Applicant submits that this does not, on its own, establish the Respondent's residency in Canada. Accordingly, the Citizenship Judge's decision to approve her citizenship application was unreasonable.

[25] The Respondent submits that the language of section 5 of the *Citizenship Act* is mandatory and unambiguous: "The Minister shall grant citizenship" to anyone who meets all of the requirements set out in that provision. The residency requirement is contained in paragraph 5(1)(c). It requires an applicant to have been resident in Canada for at least three of the past four years. In this case the Citizenship Judge reviewed the ICES record and was satisfied that the Respondent had not left Canada during the relevant period of May 8, 2006 to May 8, 2010. Given this, the Citizenship Judge had no reason to apply one of the three residency tests that have been developed

by this Court. And, as the Respondent met all of the subsection 5(1) requirements for Canadian citizenship, her application was properly approved.

[26] Further, that the jurisprudence confirms that a citizenship judge need only proceed to apply of one of the residency tests if he or she is not convinced that the applicant was physically present in Canada for the requisite 1,095 days (*Elzubair*, above, at paras 13-14; *Canada (Minister of Citizenship and Immigration) v El Boussergh*ini, 2012 FC 88, [2012] FCJ No 106 at para 17 [*El Boussergh*ini]; *Salim*, above, at para 21; *Koo (Re)*, [1993] 1 FC 286, [1992] FCJ No 1107 (TD)).

[27] In the alternative, the Respondent submits that even if the Citizenship Judge was required to apply one of the residency tests, then it can be inferred that he applied the most stringent physical presence, or, "strict counting of days" test which, in the absence of analysis of other forms of attachment to Canada, simply requires the applicant to prove that he or she has been physically present in Canada for 1,095 of the past 1,460 days (*Pourghasemi (Re*), [1993] FCJ No 232, 62 FTR 122 (TD). Moreover, the Citizenship Judge was not required to explicitly reference the applicable test, rather, the reasons must be read as a whole (*Newfoundland Nurses*, above; *Canada (Minister of Citizenship and Immigration) v Hannoush*, 2012 FC 945, [2012] FCJ No 1040 para 13 [*Hannoush*]; *El-Khader v Canada (Minister of Citizenship and Immigration)*, 2011 FC 328, [2011] FCJ No 426 at para 24). Here the Citizenship Judge applied the strict physical presence test, set out the evidence on which he relied and properly determined that the Respondent me the test.

[28] The Respondent also points to this Court's decision in *Tanveer v Canada (Minister of Citizenship and Immigration)*, 2010 FC 565, [2010] FCJ No 677 [*Tanveer*], where Justice Zinn held

that even if certain evidence does not conclusively prove that an applicant was present in Canada, it can serve to corroborate their statements to that effect. In the present case, the ICES report constitutes such corroborative evidence, it does not cast doubt on the Respondent's physical presence in Canada and it was both reasonable and appropriate for the Citizenship Judge to rely upon it (*Tanveer*, above, at para 11). The Respondent also submits that any inconsistencies in the evidence are easily explained and are not relevant.

Reasons

[29] For the reasons that follow, it is my view that the Citizenship Judge's decision to approve the Respondent's citizenship application was reasonable and that this appeal should be dismissed.

i) Residency Test

[30] The Citizenship Judge was not required to expressly apply one of the residency tests. In *Hannoush*, above, at paras 11-13, Justice Harrington acknowledged this Court's past jurisprudence to the effect that a citizenship judge must identify the test applied. However, referring to the Supreme Court of Canada's more recent decision in *Newfoundland Nurses*, the Federal Court of Appeal's decision in *SRI Homes Inc v Her Majesty the Queen*, 2012 FCA 208, [2012] FCJ No 1000 [*SRI Homes*], as well as the Federal Court's decisions in *Elzubair, Salim* and *Imran v Canada (Minister of Citizenship and Immigration)*, 2012 FC 756, [2012] FJ No 994, Justice Harrington concluded, at para 13, that:

> … if the record shows that the applicant claims to have been present here at least 1,095 days, and no analysis has been done along the lines of the applicant's heart being here although his body was elsewhere, it is reasonable to infer that the physical presence test, the most stringent one, was applied. It has been held now on a number of occasions that once it is established that an applicant has been here for 1,095 days, it is not necessary to consider the other tests.

[31] Also see this Court's decision in *El Bousserghini*, above, at para 17, where Justice Harrington held that "[a]lthough it is possible to analyze the residency conditions in light of *Re Koo*, this analysis is unnecessary when the applicant is present in Canada for 1,095 days".

[32] This reasoning is also consistent with the wording of section 5 of the *Citizenship Act*, which states that "[t]he Minister shall grant citizenship" to persons who meet the requisite criteria. A plain reading of the *Citizenship Act* suggests that if a determination has been made that an individual has satisfied the residency requirement under paragraph 5 (1)(c), then there is no reason to apply a further 'test' as developed by the courts.

[33] In the present case, there was no qualitative analysis of the Respondent's attachment to Canada. Rather, in concluding that the Respondent satisfied the residency requirements under paragraph 5 (1)(c) of the *Act*, the Citizenship Judge states that he relied upon the documentary and verbal evidence, and "mostly on the strength of the ICES report that shows no entries into Canada" during the relevant period. In my view, in these circumstances it was not necessary for him go further and apply one of the Court-developed residency tests and, even if it were, it can reasonably be inferred that he applied the physical presence test.

ii) Adequacy of Reasons

[34] In his reasons, the Citizenship Judge stated that "after very careful consideration of all of the documentary evidence along with the verbal evidence presented at the hearing", he was "satisfied that [the] applicant, on the balance of probabilities, meets the requirements of 5(1)(c)" of the

Citizenship Act. The Citizenship Judge also stated that he based his decision "mostly on the strength of the ICES report that shows no entries into Canada during [the] review period." Taken together, the extent and nature of this evidence satisfied him that the Respondent met the residency requirements.

[35] The fact that the Citizenship Judge's reasons are brief does not suffice to impugn the Decision. As stated in *Newfoundland Nurses*, above, at para 16, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, then the *Dunsmuir* criteria are met. Put otherwise, when reasons are required, they must, in the context of the record, show why the judge decided as he or she did (*SRI Homes*; *El Bousserghini*).

[36] Thus, this case can be distinguished from *Hannoush*, where the Minister's appeal of the citizenship judge's decision was allowed because no reasons were given (at para 15); *Elzubair* due to the "complete failure to explain how he reached his conclusion regarding the respondent's physical presence in Canada" (at para 16); and *Salim*, where the reasons were "far from clear" and did not enable the Minister to know the basis of the decision (at para 23).

[37] The Citizenship Judge's reasons in the present case do explain, albeit briefly, the basis for his Decision. He was not required to set out in his reasons the whole of the analysis behind the Decision; he was only required to provide sufficient grounds that allow this Court, sitting in review, to understand why he reached that decision and to assess its reasonableness.

[38] Here, the ICES report appears to have formed the main basis for the Decision. The Applicant asserts that in and of itself the ICES report does not establish the Respondent's residency during the relevant four-year period. Although this may be correct, the report at least corroborates the Respondent's statement that she has not left Canada during the relevant period. Further, it does not cast doubt on any of her evidence or declarations (*Tanveer*, above, at para 11). As this Court stated in *El Bousserghini*, above, at para 19, the *Citizenship Act* "does not require corroboration. It is the responsibility of the original decision-maker, taking the context into consideration, to determine the extent and nature of the evidence required".

[39] In that regard, the Applicant asserts that the Citizenship Judge ignored or failed to analyze apparent evidentiary deficiencies as to the Respondent's presence in Canada, i.e. the extent and nature of the evidence required, and because there is no explanation as to how he dealt with that evidence, the Decision was unreasonable.

[40] The alleged deficiencies in the Respondent's evidence identified by the Applicant include that:

- she failed to provide satisfactory identification documents, specifically, photo identity documents as she submitted only her old passport from Trinidad & Tobago, which expired in 1985;

- the signature on her passport differs from that in her citizenship application;

- she only obtained a health card and driver's licence with photo in July 2011, i.e. after the relevant residency period, May 8, 2006 to May 8, 2010 (in this regard I note that although the Applicant refers to a driver's license being issued to the Respondent by the Province of Ontario, what was actually issued was a photo identification card);

- her evidence was inconsistent. For example:
    - She claimed to have visited medical clinics, but there were no records of these visits in her OHIP summary;
    - She claimed to take public transit but provided no proof of a monthly pass;

    - She claimed to be working at times when she would have been pregnant and giving birth to her children;

- her tax assessments for 2006-08 show no income;

- her name did not appear on some of the bills provided, or the bills post-dated the relevant residency period.

[41] It must be noted that in her letter that accompanied her May 8, 2010 citizenship application, the Respondent explained why she was unable to provide photo identification at that time, she had been a home maker who had not left Canada for many years and had no need to acquire such identification. The File Referral Sheet prepared by the citizenship officer who interviewed the Respondent on July 7, 2011 notes that she was asked why she was applying for citizenship now. Her response was recorded as "no money, not intending to travel therefore no need for photo I.D. Now may wish to travel." Subsequent to that interview, the Respondent was again asked to provide two pieces of valid provincial identification, one to have photo identification such as a valid Ontario driver's licence and OHIP card. She was also asked to provide "[a]ll pages of all passports… (both valid, expired and cancelled passports)" for 2006 to date.

[42] Faced with this request, the Respondent obtained and submitted an Ontario photo identification card and a new Ontario Health card. While it is true that these were issued after the relevant residency period, these documents were primarily aimed at establishing her identity, not her residency. Further, she cannot be faulted for providing an expired passport, as requested, but not having obtained a new one. As to the difference between the Respondent's signature as a 19-year-old in her 1975 passport and her signature as a 56-year-old in her citizenship application, it is unsurprising that in a thirty-five year time span her signature changed. It is also of note that the Decision indicates that the Respondent passed both the RCMP and CSIS reviews.

[43] The February 10, 2012 letter of the Citizenship Judge issued after he met with the Respondent and requesting additional documents "[i]n order to assess your residence information", stated that she should send her ICES record, a record of exit/entry from Trinidad "OR" a letter confirming that no other passports had been issued to her. The Respondent provided the ICES report. Even if it is accepted that the request was somewhat ambiguous (due to the placement of the word "OR" on the page), and that the Respondent was actually being asked to provide more documentation, it was the Citizenship Judge who requested that information and who determined that the ICES report was satisfactory evidence of the Respondent's residence in Canada.

[44] As to the inconsistent evidence, the record before the Citizenship Judge contained a December 29, 2011 email from the citizenship officer who interviewed the Respondent on July 7, 2010 because of her lack of photo identification. In that email, the officer states that she is sending the Respondent to a hearing before a citizenship judge with a recommendation that the judge request further documentation. One of her stated concerns was that the Respondent "Takes TTc everyday, yet, never purchased a TTC pass". However, the officer's December 29, 2011 FOSS notes state that she "suggested if subj takes TTC, perhaps she could give us a copy of her previous TTC monthly pass photo; subj then said "I don't travel by TTC every day, never purchased any TTC passes". And, in the officer's hand written File Referral Sheet for the July 7, 2011 meeting, she records "Don't travel TTC everyday, never purchased TTC pass". Given this, in my view, there was no inconsistency in the Respondent's evidence on this point and it was not unreasonable for the Citizenship Judge to accept the explanation which the Respondent had previously given to the citizenship officer.

[45] Similarly, the fact that she reported no income for 2006-08 does not necessarily undermine her credibility as to her identity or residency, particularly as she was a homemaker and had no income to report. The Applicant takes issue with the fact that the Respondent's 2006, 2007 and 2008 income tax returns are all dated January 18, 2010. The fact remains that they were provided as requested and are dated within the relevant residency period.

[46] In submissions by her counsel before me and in her supporting Affidavit, the Respondent acknowledged that her evidence concerning the dates of her prior work history was in error. She attributes this to her faulty memory given that the events referred to occurred in the 1980s and early 1990s. She also acknowledged that she was in error in her statement that she had remained in Canada since she first arrived 34 years ago. While she reported two absences there were actually four which occurred in 1978, 1979, 1981 and 1984, being short trips to the United States and two trips to Trinidad & Tobago in November. These are outside the relevant residency period and the error is again attributed to the impact of the passage of time on the Respondent's memory. In any event, the error does not undermine the reasonableness of the Citizenship Judge's Decision, which was concerned with the May 2006 - May 2010 residency period.

[47] As to the lack of OHIP medical records or the fact that her name does not appear on certain bills, the role of the Citizenship Judge was to determine the extent and nature of the evidence required and to assess and weigh this evidence in the context of the entire application. He had been alerted to the citizenship officer's concerns, yet having met with the Respondent and having requested and received further documentation, he was satisfied that the Respondent's identity was not at issue.

[48] In my view, to quash the Decision on the grounds that the Citizenship Judge gave too much weight to the ICES report and not enough weight to the inconsistencies in the evidence would not align with the Supreme Court of Canada's decision in *Khosa*, which held that reviewing courts are not to reweigh the evidence that was before a decision-maker (at para 61) and that deference is owed to administrative decision-makers (at para 25).

Conclusion

[49] Although the Citizenship Judge's reasons could certainly have been more detailed, that alone is not a sufficient basis to allow the appeal. Rather, the question is whether his reasons allow this Court to understand why he made the Decision and permit a determination of whether his conclusion falls within the range of acceptable outcomes.

[50] The Citizenship Judge stated that based on his review of the verbal and documentary evidence, in particular the ICES report, the Respondent met the residency requirements. Thus he explained why the residency requirement had been met and why the citizenship application was granted. The evidence on the record before him as to the Respondent's residency during the relevant period was supported by the ICES record. The Respondent's evidence in that regard did not require corroboration and it was not contradicted by any other evidence. As to her identity, the Citizenship Judge interviewed the Respondent and reviewed the identity documentation that she provided. Given this, and considering the CSIS and RCMP reviews, it was not unreasonable to accept the sufficiency of this evidence.

[51] While in this case the existence of justification of the decision-making process is relatively limited, it is transparent and intelligible and, based on the record before him, the Citizenship Judge's Decision does fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. For that reason the citizenship appeal is denied.

JUDGMENT

THIS COURT'S JUDGMENT is that the appeal is dismissed. No question of general importance for certification has been proposed and none arises. There is no order as to costs.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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