Federal Court  Cour fédérale

Date: 20140116

Docket: T-1737-12

Citation: 2014 FC 46

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Montréal, Quebec, January 16, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

AICHA OUZKRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Ms. Ouzkri, the applicant, relying on subsection 14(5) of the *Citizenship Act*, RSC (1985), c C-29 [the Act], is challenging the refusal to grant her Canadian citizenship in a decision rendered by a citizenship judge on July 25, 2012, on the grounds that she did not satisfy the residence requirements set out in paragraph 5(1)(*c*).

[2] For the reasons that follow, I am dismissing the application for judicial review.

II. Facts

[3] Ms. Ouzkri, a citizen of Morocco, became a permanent resident of Canada on December 15, 2001. The 66-year-old widow was sponsored by her son as a member of the family class. She has five children, two of whom are Canadian citizens, but during the relevant period, all of her children resided outside of Canada.

[4] She maintained her permanent resident status, but she never worked in Canada and understands neither French nor English (given her age, she was exempted from the language requirements). In 2004, she applied for citizenship, but her application was denied because she had not accumulated the required number of days of residence in Canada, having accumulated only 828 days.

[5] Four years later, on September 30, 2008, stating that she had accumulated 1,290 days of physical presence in Canada since September 30, 2004, she again submitted an application for citizenship along with two Moroccan passports. The applicant claimed that she had only been absent from Canada for a period of approximately 170 days, and that she had therefore accumulated 1,290 days of presence in Canada during the four years in question. However, she has unable to confirm her presence in Canada because some of the inscriptions in her passport were unclear.

[6] Citizenship and Immigration Canada [CIC] asked her to appear for an interview with a citizenship officer on September 24, 2009. The officer noted that Ms. Ouzkri had arrived from overseas only a few days before the date of her interview and that it was impossible to establish her history clearly.

[7] On March 20, 2012, she was instructed to attend an interview with a citizenship judge, Veronica Johnson. No interpreter was provided by the Department, so she relied on a friend. The applicant had already submitted her residence questionnaire along with photocopies of all of her valid and expired passports, and she presented the original passports at the hearing. The citizenship judge nevertheless requested additional evidence.

III. Impugned decision

[8] The citizenship judge explained in her decision that the applicant claimed to have accumulated the required number of days of residence, but that a careful review of her documents and testimony did not convincingly establish, on the balance of probabilities, the total number of days claimed.

[9] The citizenship judge noted that none of the applicant's family members lived in Canada and wondered whether she had really "centralized her mode of existence" here. She added that it was not possible to determine whether Canada was the country where the applicant "regularly, normally or customarily lives". The burden of proof rested with the applicant, and she failed to demonstrate that she met the requirements.

IV. Issue

[10] The issue is whether the citizenship judge's decision was reasonable.

V. Standard of review

[11] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Takla*, 2009 FC 1120 at para 39; *Canada (Minister of Citizenship and Immigration) v Naveen*, 2013 FC 972 [*Naveen*], at paras 13-14).

VI. Analysis

[12] In my view, the citizenship judge did not err in the result, even though she misapplied the appropriate residence test. However, as I noted in my decision in *Naveen*, above, it seems that these tests have been causing confusion for a long time.

[13] The confusion stems from *Koo (Re)*, [1993] 1 FC 286 (TD) [*Koo*], in which the Court misinterpreted the number of days of the applicant's physical presence in an earlier case, *Papadogiorgakis (Re)*, [1978] 2 FC 208 (TD) [*Papadogiorgakis*], underestimating it by nearly 840 days. In other words, the Court in *Koo*, above, inadvertently attributed 79 days of physical presence to the applicant in *Papadogiorgaki*s, above, while the correct number seems to have been at least 921 days.

[14] Justice Thurlow never intended to make major changes to the strict principle that a long period of residence in Canada is required for the acquisition of Canadian citizenship. He was careful

to state that his new test was only to be applied in "a close case", as indicated at paragraph 15 of his decision:

> **15** . . . It seems to me that the words "residence" and "resident" in paragraph 5(1)(*b*) of the new Citizenship Act are not as strictly limited to actual presence in Canada throughout the period as they were in the former statute but can include, as well, situations in which the person concerned has a place in Canada which is used by him during the period as a place of abode to a sufficient extent to demonstrate the reality of his residing there during the material period even though he is away from it part of the time. This may not differ much from what is embraced by the exception referred to by the words "(at least usually)" in the reasons of Pratte J. but in a close case it may be enough to make the difference between success and failure for an applicant.
>
> [Emphasis added.]

[15] The consequences of the incorrect count of the number of days of residence in Canada in *Papadogiorgakis*, above, gave rise to two types of errors. First, *Papadogiorgakis* is cited as the decision on which the "centralized mode of living" test was based, which allows for a very broad interpretation of physical presence. Second, *Koo*, above, developed its own very liberal test, giving rise to a long string of cases in which Canadian citizenship was granted on the basis of very limited physical presence in Canada.

[16] I summarized the conclusions to be drawn from *Papadogiorgakis*, above, as follows at paragraph 47 of my decision in *Naveen:*

> [47] In summary therefore, in *Papadogiorgakis* the Court stated that: (1) it was a modest change to the previous strict interpretation of residency; (2) the applicant had physically resided in Canada during five-sixths, or more than 80 percent, of the three year period required; (3) the applicant had in "reality" resided in Canada for an additional three years before the commencement of his citizenship determination period and had already undergone extensive *de facto* Canadianization; and (4) as well, the applicant led other probative evidence demonstrating what the Court meant by centralizing his

> ordinary mode of living in Canada, including his total integration into our most Canadian of institutions - those of family and education - before he left for university in the United States.

[17] In this case, there is not enough information to calculate the applicant's presence in Canada. Because of the illegibility of the dates in her passport and the period not documented by a passport, the citizenship judge had to ask that her presence be verified through additional means. Unfortunately, the applicant was unable to provide documents or other information demonstrating that she had lived in Canada during the period in question.

[18] After reviewing the file, I conclude that it was reasonable for the citizenship judge to conclude in light of the facts before her that the applicant in this case had failed to demonstrate that she had accumulated the required number of days of presence in Canada. The appropriate level of deference requires that her decision be upheld (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 48).

VII. Conclusion

[19] The application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Peter Annis"
Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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