Federal Court of Appeal | Cour d'appel fédérale

Date: 20150915

Docket: A-124-15

Citation: 2015 FCA 194

CORAM: **TRUDEL J.A.**
WEBB J.A.
GLEASON J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

ZUNERA ISHAQ

Respondent

and

ATTORNEY GENERAL OF ONTARIO

Intervener

Heard at Ottawa, Ontario, on September 15, 2015.
Judgment delivered from the Bench at Ottawa, Ontario, on September 15, 2015.

REASONS FOR JUDGMENT OF THE COURT BY: GLEASON J.A.

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REASONS FOR JUDGMENT OF THE COURT
Delivered from the Bench at Ottawa, Ontario, on September 15, 2015.

[1] In the judgment under appeal, the Federal Court declared that the change in policy applicable to women who wear the niqab, that requires them to unveil to take the oath of citizenship, was unlawful. This policy change first came into effect on December 12, 2011 and

was initially enshrined in Citizenship and Immigration Canada's [CIC's] Operational Bulletin 359. The policy change was shortly thereafter incorporated into section 6.5 of CIC's policy manual, *CP 15:Guide to Citizenship Ceremonies.*

[2] One of the reasons given by the Federal Court for its judgment was the determination that this policy change was mandatory. The Federal Court also found that the policy change conflicted with the requirements of the *Citizenship Act*, R.S.C. 1985, c. C-29 and with the regulations made under that Act.

[3] The appellant has conceded that if we do not interfere with the Federal Court's finding as to the mandatory nature of the policy change, this appeal must be dismissed in part because paragraph 27(1)(*h*) of the *Citizenship Act* delegates authority to make regulations regarding the taking of the oath of citizenship to the Governor in Council and this policy change was not adopted by the Governor in Council.

[4] While we do not necessarily agree with all the reasons given by the Federal Court, we see no basis to interfere with the Federal Court's finding as to the mandatory nature of the impugned change in policy as this finding is overwhelmingly supported by the evidence. It follows that this appeal must be dismissed.

[5] We decline to address the issues concerning the legality of the impugned policy change under the *Canadian Charter of Rights and Freedoms* as a determination on this point is unnecessary for the disposition of this case and the record before us is fairly scant as concerns

the *Charter* challenge. Moreover, we believe that it is in the interests of justice that we not delay in issuing our decision through the examination of an unnecessary issue so as to hopefully leave open the possibility for the respondent to obtain citizenship in time to vote in the upcoming federal election.

[6] As a result, the appeal will be dismissed with costs.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-124-15
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. ZUNERA ISHAQ
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	SEPTEMBER 15, 2015
REASONS FOR JUDGMENT OF THE COURT BY:	TRUDEL J.A. WEBB J.A. GLEASON J.A.
DELIVERED FROM THE BENCH BY:	GLEASON J.A.

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