

Montreal  
 1968  
 May 7

## CITIZENSHIP APPEAL COURT

IN THE MATTER OF Teodora Albrecht . . . APPELLANT.

*Citizenship—Appeal from rejection of application—Intention to have permanent domicile in Canada—Relevant time of intention, whether date of application or hearing—Citizenship Act, s. 10(1)(g).*

*Citizenship—Appeal—Necessity of proof of requirements of s. 10(1) to satisfaction of appeal court.*

An intention to have one's place of domicile permanently in Canada, which is required of an applicant for citizenship under s. 10(1)(g) of the *Citizenship Act*, must exist to the satisfaction of the court dealing with the matter at the time of the court's decision, not at the time of the application for citizenship.

*Semble.* An appeal from a decision of a citizenship court is a new trial and before reversing that decision the appellate court must be satisfied that the applicant has fulfilled *all* the requirements of s. 10(1) of the *Citizenship Act* and not merely the particular requirement or requirements as to which the court below was not satisfied.

APPEAL from decision of Citizenship Court, Montreal.

A. H. J. Zaitlin, Q.C. for appellant.

JACKETT J. (orally):—This is an appeal from a decision of the Court of Canadian Citizenship, Montreal, deciding that the appellant is not a fit and proper person to be granted Canadian citizenship.

The appellant satisfied the Court from whose decision the appeal was taken concerning all the requirements of subsection (1) of section 10 of the *Citizenship Act*, except the requirement contained in paragraph (g) thereof which is that an applicant for Canadian citizenship "intends to have his place of domicile permanently in Canada".

The appellant has been represented in this Court by counsel who submitted, in effect, that all that this Court has to do in such a case is make a finding with regard to the requirement concerning which the appellant failed before the Court of first instance. I am inclined to the view that, if this Court reverses the decision of the Court of first instance, it must also give a judgment that it is satisfied, in effect, as to all the matters detailed in section 10(1), as such a decision by a court is a condition precedent to the granting

to the appellant of a certificate of citizenship by the Minister. In this case, however, I am satisfied by the evidence given before me concerning all the requirements of section 10(1) upon which the Court of first instance appears to have been satisfied, so that it is not necessary for me to come to a final conclusion on the question whether an appeal to this Court is a "new trial" of the whole of the application. I must say, however, that, as I presently view the matter, an appeal to this Court is such a new trial.

Turning to the question on which the Court of first instance rejected the application, I refer first to the reasons given by that Court, which read as follows:

The petitioner, Teodora Albreht, (*sic*) made on September 29, 1967, an application under Section 10(1) of the *Canadian Citizenship Act*.

When filing her application, she answered to question 14: "Yes, but I would like to travel".

At the hearing of the petition before the Court on December 29, 1967, the petitioner said: "I intend to go to my country to visit and if I have possibility to live there all the time, I would stay".

The Court tried to ask her if she wanted to stay in her mother country for six months or one year, she did not answer.

Considering that the applicant does not intend to have her place of domicile in Canada;

Under the circumstances, the Court has to reject the petition under Section 10(1)(g) of the *Canadian Citizenship Act*.

The Court rejects the petition.

The requirement in section 10(1)(g) is, as I have already indicated, that the applicant "intends to have her place of domicile permanently in Canada". Counsel submitted that this intention must relate to the time of the application. In my view, it must be an intention that exists to the satisfaction of the Court dealing with the matter at the time that it gives its decision.

If the only evidence before me were the statement of the appellant contained in the judgment appealed from that, if she had a possibility of staying in her country, by which she meant Yugoslavia, she would stay there, I doubt that I could render a decision that I am satisfied that she intends to have her place of domicile permanently in Canada.

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I would find it hard to be satisfied that a person who said that had presently an intention to make his or her home permanently in Canada.

Unfortunately, we have no record in this case of what other evidence was before the Court of first instance or of the reasons why her application for naturalization in 1963 was rejected.

On the other hand, I have had the advantage of hearing the appellant testify before me under oath and I am of opinion that she was an honest witness.

She testified before me, in effect, that she regards Canada as her permanent home and has no thought of going anywhere else to live. She says that her mother is in Yugoslavia and that she would like, if it were ever possible, to visit her mother there. She explains the statement that she made before the Court of first instance as having been given when she was very nervous. She tells me, in effect, and I believe her, that regardless of what she said in her nervousness she has, since 1951, made her home in Montreal and has no plan or desire to go and live somewhere else.

In the circumstances, I am satisfied although I have no difficulty in appreciating why the Court of first instance was not, that the appellant intends to have her place of domicile permanently in Canada.

The decision appealed from is reversed and it is declared that the Court is satisfied that the appellant is a fit and proper person to be granted Canadian citizenship under section 10(1) of the *Citizenship Act*.