

Montreal
1968

CITIZENSHIP APPEAL COURT

March 8

IN THE MATTER OF Elise Dervishian . . . APPELLANT.

Ottawa
April 5

Citizenship—Appeal from rejection of application—Whether applicant “of good character” or “de bonne vie et moeurs”—Conviction of criminal offence—Whether proof of rehabilitation—Citizenship Act, s. (10)(1)(d).

The question whether an applicant for citizenship is “of good character” or “de bonne vie et moeurs” within the meaning of s. 10(1)(d) of the *Citizenship Act* must be considered as of the time the court is considering the matter, and an applicant who has been convicted of a criminal offence is entitled to a finding that he is of good character when he has satisfied the sentence imposed and demonstrated by his subsequent conduct and way of life that he has rehabilitated himself. The matter must be considered from the point of view of the seriousness of the offence on the one hand and of the length of the period during which he has been living the life of a law-abiding and useful member of society on the other. As a general rule the applicant should bring before the court some unrelated person or persons able to testify as to the type of life he has been living since he satisfied the sentence.

APPEAL from decision of Citizenship Court, Montreal.

Jacques Bellemare amicus curiae.

THE COURT (Jackett, Dumoulin, Noël JJ.) :—This appeal was heard at the same time as three other appeals¹ because, in each case, the application for citizenship was rejected by the Citizenship Court after it came to the conclusion that the appellant did not have a “good character” within the meaning of section 10(1)(d) of the *Citizenship Act*, apparently by reason of the fact that the appellant had been convicted of one or more offences under the Criminal Code.

Having regard to the importance of establishing, as far as this Court is concerned, how such a problem should be resolved, the Court requested the appointment of an *amicus curiae* for each of the four appeals and, as a result, Mr. Jacques Bellemare of Montreal acted in that capacity and has been of great assistance to the Court.

The appellant, Elise Dervishian, was born in Nicosia, Cyprus, on January 28, 1923, and came to Canada on July 10, 1962. On October 31, 1963, she was convicted of petty

¹ Not reported.

theft and was fined \$25. The record shows that she was convicted of stealing a dressing gown, two pairs of gloves, and a bottle of toilet water from Steinberg Ltd. The appellant is married and lives in Montreal with her husband and children. The decision of the Court appealed from in this case was rendered on July 25, 1967, and reads:

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The petitioner, Elise Dervishian, made on April 12, 1967, an application under Section 10 (1) of the *Canadian Citizenship Act*.

At the hearing, the applicant admitted that she has been convicted for shoplifting on December 30, 1965, and condemned in Montreal to pay \$20.00 or \$25 00 fine.

The Court concludes that the applicant does not meet the requirements of the law, as provided under Section 10(1)(d) of the Act.

The petition is rejected.

Section 10(1) of the *Citizenship Act* authorizes the "Minister" to grant a certificate of citizenship to any person who is not a Canadian citizen and who makes application for such a certificate if that person satisfies the "Court" as to the various matters therein set out. We are here concerned with the requirement set out in the first part of paragraph (d) of section 10(1) of the English version of the statute, which is that the applicant satisfy the Court that "he is of good character". While paragraph (d) was re-enacted by chapter 4 of the Statutes of 1967, which came into force on July 7, 1967, those words remain unchanged in the revised paragraph. The corresponding words in the French version of paragraph (d) before July 7, 1967, were "qu'elle a une bonne moralité", and since that day are "qu'elle est de bonne vie et moeurs".

What the Court must keep in mind in applying the requirement that an applicant be "of good character" or "de bonne vie et moeurs" is that the question must be considered with reference to the time that the Court has the matter under consideration. While, therefore, one might be forced to conclude that a person would have been unable to show that he was of good character at the time that he was convicted of a serious criminal offence, it does not follow that such a conviction prevents him from satisfying a court as to his good character at some subsequent time.

Our view is that, after a person who has been convicted of a criminal offence has served any term of imprisonment

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that has been imposed on him or has otherwise satisfied any sentence that has been passed on him in respect of his offence, and after he has demonstrated by his subsequent course of conduct and way of life that he has rehabilitated himself in the eyes of right thinking citizens, he is entitled to a finding that he is of good character within the meaning of section 10(1)(d).

While there can be no rule of thumb for the decision of such matters, as it appears to us, the matter must be considered from the point of view of the seriousness of the offence of which he has been convicted, on the one hand, and of the length of the period during which he has been living the life of a law-abiding and useful member of society on the other hand.

As a general rule, we should have thought, in a case where an applicant has had a criminal conviction at some time in his past, he should be expected to bring before the court of first instance some unrelated person or persons able to testify as to the type of life that he has been living since the time when he finished his prison sentence or otherwise complied with the sentence imposed on him.

In this case, this was not done and this Court has, therefore, given special attention to the story told to the Court by the appellant herself and her husband, and to the manner in which the story was told. We have been impressed by the way in which the appellant has told her story and we are satisfied that the appellant has learned whatever lesson should have been learned from her brush with the law, and is endeavouring, with considerable success, to lead a good and useful life. In the sense in which the word is used in connection with penal matters, we are satisfied that the appellant has been "rehabilitated". Our view is, therefore, that we should make a finding that the appellant is of good character, or "de bonne vie et moeurs".

Before leaving the matter, there is a comment of general interest in connection with applications for citizenship under section 10(1) of the *Citizenship Act*, which should be made. Under section 5 of the Rules of this Court, upon an appeal being launched to this Court, the court of first

instance and the Minister are to forward to this Court all relevant files and information. In none of the appeals that have been launched prior to this time and that have come to our attention has there been any material to indicate that any inquiries have been made, by any person representing the public interest, concerning the accuracy of the information set out by the appellant in his application form. It would seem, therefore, that the court of first instance has been left in each case to deal with an application on the statements put before the Court by the applicant. In this case, the appellant has made honest replies to the inquiries concerning her criminal record. If the appellant had not revealed that record, we can only assume that the Court would have known nothing about it. If the granting of Canadian citizenship is a matter of such importance to the nation as we deem it to be, we should have thought that it warrants some system whereby some check is made on an applicant's statements concerning the conditions laid down by Parliament to the granting of Canadian citizenship. In the case of immigration status and criminal records at least, we should have thought that there are obvious inquiries that could be made without undue difficulty or delay. With reference to immigration status, it should be possible to obtain, and place before the court of first instance, a statement from the appropriate immigration authority as to the accuracy of the statements in the application. With reference to criminal records, it should be possible to obtain, in each case, a certificate as to whether the applicant has a criminal record or not, and, if he has one, an authentic statement as to the charges of which the applicant has been convicted. In addition we suggest that, where practicable, it would be very helpful to the court of first instance to have a recommendation from the judge who pronounced the conviction concerning the applicant's application for citizenship.

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