

JOEL BLEAH, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 STATE-OPERATED SCHOOL DISTRICT :
 OF THE CITY OF NEWARK, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner appealed the non-renewal of his employment as a teacher of mathematics in respondent's school district, contending that he was employed under tenure and therefore could not be summarily terminated through non-renewal. Petitioner was initially employed by the district in September 2001 under a Provisional Certificate. His employment continued in August 2002 with the issuance of a Standard Certificate for Teacher of Mathematics, subtitled "Non-Citizen" at the bottom of the certificate, which expired in August 2007. Petitioner's standard certificate was renewed in September 2007. In May 2008, petitioner became a naturalized American citizen, and continued teaching in Newark schools. In May 2011, the Board informed the petitioner that his contract would not be renewed "based on performance." The Board asserted that petitioner had never achieved tenure in the district.

The ALJ found, *inter alia*, that: the petitioner achieved tenure when he became a naturalized citizen, since a Standard Certificate for Non-Citizens – when held by a citizen – is an appropriate certificate; the time the respondent employed the petitioner while a non-citizen may be tacked on to time the respondent employed the petitioner after he became a citizen; since respondent employed the petitioner continually from September 2001 through May 2011, petitioner was employed considerably longer than is required for the conferring of tenure under *N.J.S.A. 18A:28-5(b)*; petitioner therefore acquired tenure before respondent notified him of the non-renewal. The ALJ concluded that petitioner was tenured in respondent's district when he was improperly non-renewed in May of 2011.

Upon independent review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, with further explanation. The Commissioner found, *inter alia*, that the petitioner, as a citizen, served the statutorily-required period of time for tenure in respondent's district, even *without* tacking on his pre-citizenship service. Accordingly, the Commissioner granted the petition and ordered the Board to restore petitioner's employment, together with back pay, benefits and emoluments to which he would have been entitled had he not been terminated in May of 2011.

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| <p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
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OAL DKT. NO. EDU 10432-11
AGENCY DKT. NO. 226-8/11

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Petitioner in the instant controversy requests reversal of the non-renewal of his employment, on the grounds that he had earned tenure prior to respondent's non-renewal decision. After consideration of the record, Initial Decision of the Office of Administrative Law, respondent's exceptions and petitioner's replies to same, the Commissioner adopts the Initial Decision with the following further explanation.

There is no disagreement between the parties as to the underlying facts of this matter. Respondent hired petitioner in September 2001, at which time petitioner received a provisional teaching certificate. While petitioner was not at that time a United States citizen, he had submitted to the Department of Education (the Department) an affidavit of intent to become a citizen. In August 2002, after a year of teaching mathematics in respondent's district, petitioner received a "Standard Certificate" for "Teacher of Mathematics," subtitled "Non-Citizen Certificate." (Joint Exhibit 5) That Certificate expired in August 2007, but was renewed. (See Joint Exhibit 7) Both certificates included the following provision:

Has met all of the requirements established by the State Board of Education and is authorized to serve in the public schools of New Jersey

Examination of petitioner's performance observation reports and evaluations from the end of his fourth year of teaching forward reveals that each report and evaluation designated petitioner as tenured.¹ On May 5, 2008 petitioner became a United States citizen. However, three years and five days after petitioner attained citizenship, *i.e.*, on May 10, 2011, respondent's interim State District Superintendent wrote to petitioner stating that his employment contract would not be renewed for the 2011-2012 school year due to performance issues. (Joint Exhibit 9)

No reference was made in the May 10, 2011 letter to petitioner's citizenship status, but respondent now appears to contend that because – upon attaining citizenship on May 5, 2008 – petitioner had not immediately applied to replace his Non-Citizen Standard Certificate with a Standard Certificate for Citizens, he was somehow ineligible for tenure privileges.² In the Initial Decision, the Administrative Law Judge (ALJ) disagreed. Reminding the parties that tenure is bestowed by statute, *see, e.g., Spiewak v. Bd. of Educ. of Rutherford, 90 N.J. 63, 72 (1982)*, and that the Tenure Act should be liberally construed to achieve its beneficent ends, the ALJ found that the statutory requirements for tenure had been satisfied by petitioner.

Crucial to an understanding of this controversy is the text of *N.J.S.A. 18A:28-5(a)*, which is applicable to petitioner because his employment began before 2012. It provides as follows:

The services of all teaching staff members employed prior to the effective date of *P.L.2012, c.26 (C.18A:6-117 et al.)* in the positions of teacher . . . and such other employees as are in positions which require them to hold **appropriate certificates issued by the board of examiners**, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect . . . , shall be under

¹ *See*, Joint Exhibit 7, wherein reports and evaluations dated June 16, 2005, January 12, 2006, June 20, 2006, December 19, 2006, June 15, 2007, June 25, 2008, June 25, 2009, October 15, 2009, April 15, 2010, June 22, 2010, November 16, 2010, January 14, 2011, February 24, 2011, April 15, 2011 and June 7, 2011, list petitioner as a tenured employee.

² Petitioner applied for a 'regular' Standard Certificate on August 2011, well before his non-citizen standard certificate was to expire, but after receipt of the non-renewal letter.

tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

(1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or

(2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(3) The equivalent of more than three academic years within a period of any four consecutive academic years.

[Emphasis added.]

The ALJ found that petitioner held an “appropriate certificate issued by the board of examiners” throughout his employment. (Initial Decision at 4) More specifically, the ALJ referred to the undisputed facts that petitioner had held a provisional certificate during his first year of service with petitioner and a Standard Certificate (for Non-Citizens) for his next nine years of service. Respondent argues that petitioner’s Standard Certificate for Non-Citizens was not an “appropriate” certificate. In so doing, it ignores the express language of petitioner’s certificate and also misconstrues statutory requirements.

As mentioned above, and as explained by the ALJ, petitioner’s Standard Certificate expressly stated that he had met all of the requirements established by the State Board of Education and was authorized to serve in the public schools of New Jersey. There is nothing in statute or regulation that deems such a clear credential to be less than the “appropriate certificate” called for in *N.J.S.A. 18A:28-5(a)*. Further, as pointed out by the ALJ, it cannot be disputed that, as of the date of petitioner’s citizenship, his eligibility for a regular Standard Certificate was not in doubt. (Initial Decision at 10) Thus, the Commissioner turns to

consideration of 1) petitioner's achievement of citizenship and 2) petitioner's length of service in his position.

As to citizenship, petitioner achieved that on May 5, 2008. The precise wording of the statute (and regulation) which addresses the citizen requirement for tenure is "no teaching staff member shall acquire tenure unless he or she is, or until he or she shall become, a citizen of the United States." *N.J.S.A. 18A:28-3; N.J.A.C. 6A:9-5.7(a)(5)*. It is notable that the statute and regulation simply mandate citizenship. They do not require – as a precondition to tenure – the replacement of a Standard Certificate for Non-Citizens with a regular Standard Certificate.³ As petitioner became a citizen over three years before respondent's notice of nonrenewal, citizenship posed no bar to petitioner's tenure.⁴

The remaining consideration regarding petitioner's claim to tenure is his length of service. Petitioner worked in respondent's district under a Standard Certificate (for Non-Citizens) for nine years. Further, petitioner worked in respondent's district as a citizen for the equivalent of more than three academic years within a period of four consecutive academic years (*i.e.* three academic years plus five days within the academic years of 2007-2008, 2008-2009, 2009-2010 and 2010-2011). Thus, petitioner had met the tenure requirement for length of service – set forth in *N.J.S.A. 18A:28-5(a)(3)* – before the issuance of the non-renewal letter.

³ Nonetheless, petitioner did apply for a standard certificate well before the expiration of his valid and "proper" Standard Certificate for Non-Citizens.

⁴ The Commissioner is not persuaded by respondent's assertion that a ruling in favor of petitioner would create chaos. If a district wishes to ascertain whether an employee has become a citizen, it can simply ask for a copy of the employee's naturalization certificate.

Finally, the Commissioner approves of the ALJ's analogizing of petitioner's situation to those of the petitioners in *Ruiz v. Bd. of Educ. of Fort Lee*, Commissioner Decision No. 322-11, decided August 17, 2011, *aff'd* Appellate Division (July 8, 2013) and *Anson v. Bd. of Educ. of Bridgeton*, 1972 S.L.D. 638. In those cases the Commissioner held that, notwithstanding the fact that the petitioners only held provisional certificates, if they had actually satisfied the conditions imposed by the provisional certification, their service could count toward tenure.⁵ The ALJ in this case reasoned that, similarly, notwithstanding the fact that the instant petitioner held a Standard Certificate for Non-Citizens, his actual satisfaction of the citizen requirement for tenure entitled him to tenure credit for his post-May 5, 2008 service.

Accordingly, the petition is granted, petitioner's employment in respondent's district shall be restored, and respondent shall provide petitioner with the back pay, benefits and emoluments to which he would have been entitled had he not been terminated.

IT IS SO ORDERED.⁶

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2014

Date of Mailing: March 25, 2014

⁵ The respondent in the instant case misapplies the holding of the Appellate Division in *Ruiz*. The fact that petitioner Ruiz was ultimately denied tenure as a result of a determination that he had failed to satisfy the requirements of provisional certification does not negate the Commissioner's and Appellate Division's conclusions that individuals who have, in fact, satisfied the conditions of provisional certification may count their service toward tenure, regardless of whether they have received their Standard Certificates in a timely manner. Indeed, respondent's legal analysis throughout its exceptions fails to acknowledge the distinctions in the cited cases between earning standard certification and acquiring the document which evidences same.

⁶ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).