

Federal Court



Cour fédérale

**Date: 20160826**

**Docket: T-63-16**

**Citation: 2016 FC 974**

**Ottawa, Ontario, August 26, 2016**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**OLUPASEAYO ANUPO RUNSEWE**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Minister appeals the decision of a Citizenship Judge rendered on December 10, 2015, granting Mr. Runsewe Canadian citizenship upon applying the residence test set out in *Re Papadogiorgakis*, [1978] 2 FC 208, 88 DLR (3d) 243 (FCTD) [*Papadogiorgakis*]. For the reasons that follow, this appeal is dismissed.

[2] There is no dispute on the material facts. Mr. Runsewe is a citizen of Nigeria. He made an application for Canadian citizenship on February 22, 2012, and thus the relevant four-year period under the *Citizenship Act*, RSC 1985, c C-29 is from February 22, 2008 to February 22, 2012.

[3] He entered Canada with his family as a permanent resident on July 8, 2007. Fifteen days later they returned to Nigeria. The entire family returned to Canada on June 13, 2008. The information provided by Canada Border Services Agency shows that Mr. Runsewe did enter Canada after leaving in 2007 and prior to the relevant period; namely on November 28, 2007 and February 11, 2008.

[4] In his application he declared 832 days of absence from Canada. He declared 828 days of absence in his residency questionnaire. He went to Holland for 3 days on a vacation without his family on his way back from work. Except for a few days of vacation in the United States with his family and Holland, all of his absences from Canada were occasions when he was in Nigeria working on an off-shore oil rig.

[5] The first submission of the Minister is that the Citizenship Judge failed to reasonably determine the threshold question of whether Mr. Runsewe had established residence in Canada at the beginning of the four-year relevant period.

[6] It is appropriately conceded that the Citizenship Judge did find as a fact that Mr. Runsewe had established Canadian residence. He writes: "It is clear that the applicant and his

family established their home in Ottawa in June 2008 and have maintained it in all the days since, whether in an apartment in Ottawa or the family's purchased residence in Nepean, Ontario." The Minister submits that even if it is accepted that Mr. Runsewe established residence in June 2008, this is unreasonable as it was some five months after the relevant commencement date of the qualifying four-year period.

[7] I am not persuaded that an applicant's date of establishing residence must coincide with the first day of the relevant four-year period. The requirement in the *Citizenship Act*, as it read then was merely that the applicant has three years of residence in the previous four year period. Accordingly, it is sufficient if the applicant has established residence at any time in the last three years of the qualifying period. A similar conclusion was stated by Justice Phelan in *Faria v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1385 at para 11, [2004] FCJ No 1849 [*Faria*], relied on for other purposes by the Minister.

[8] When a Citizenship Judge applies the *Papadogiorgakis* test the judge is assessing whether having established the applicant's Canadian residence, the residence is continued notwithstanding the applicant's additional absences. The *Papadogiorgakis* test establishes a "constructive residence" in the circumstances, such that the applicant maintains his residence notwithstanding absences.

[9] The decision of the Citizenship Judge that Mr. Runsewe and his family established residence in June 2008 is a reasonable finding. The record shows that they all permanently moved from Nigeria to Ottawa on that date, with the intention of taking up permanent residence

here. Mr. Runsewe first rented and then purchased a home for his family. His wife was pregnant with twins when they arrived and they were born in Canada. His expertise is in the oil industry, and he said that he attempted to find employment in Canada, but was not able to do so. Because his wife was pregnant and had given up her employment in Nigeria to come to Canada, he maintained his employment there.

[10] The Minister next submits that the Citizenship Judge unreasonably determined that Mr. Runsewe maintained his residence in Canada after June 2008, because he was absent for more than a year beyond the one-year exemption provided for in the *Citizenship Act*. I find nothing unreasonable in the judge's determination.

[11] It is clear from the record that Mr. Runsewe leaves Canada only for work purposes. He travels to Nigeria and works as an employee on an oil rig for approximately 28 days and then has approximately 28 days off. Each and every occasion when he is not working he returns to his family in Canada. He has no assets in Nigeria; they are all in Canada. The Minister notes that he pays taxes in Nigeria and pays little Canadian taxes, suggesting that this shows his lack of residence in Canada. This is not evidence of anything in my view. He is an employee in Nigeria and pays tax there. His taxation falls under the *Agreement Between the Government of Canada and the Government of the Federal Republic of Nigeria For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains*.

[12] I prefer the view expressed by counsel for Mr. Runsewe that he is not visiting Canada, he is returning home.

[13] Lastly, the Minister submits that Mr. Runsewe has only passive indicia of having maintained residence in Canada and is attempting to “bootstrap” himself into residency using his family’s circumstances. I do not share the view that he is bootstrapping himself into residency as that term was used in *Faria*. As noted there at paragraph 12, “Each individual is considered on his own merits and on his own conduct.” I see nothing to suggest that the Citizenship Judge did otherwise. He found on the evidence before him that “At no point since June 2008 has the Applicant ceased to reside in Canada.” In my view, that was reasonably open to him to find when one weighs the evidence of Mr. Runsewe’s ties in Nigeria, which were only his work, and those in Canada.

[14] Neither party sought costs and none are awarded.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this appeal is dismissed without costs.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-63-16

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v OLUPASEAYO ANUPO RUNSEWE

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** AUGUST 23, 2016

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** AUGUST 26, 2016

**APPEARANCES:**

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