

Federal Court



Cour fédérale

**Date: 20161109**

**Docket: T-797-16**

**Citation: 2016 FC 1251**

**Vancouver, British Columbia, November 9, 2016**

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

**BETWEEN:**

**MOHAMMAD REZA BADIEI**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application concerns the March 30, 2016 decision of a Citizenship Judge in which the Applicant's application for citizenship was not approved. The issue for determination by the Citizenship Judge was whether the Applicant met the residence requirement of 1095 days of physical presence in Canada during the period August 31, 2007 to August 31, 2011 pursuant to s. 5(1)(c) of the *Citizenship Act* RSC 1985, C-29.

[2] Counsel for the Applicant argues that the decision under review is unreasonable because the Citizenship Judge failed to conduct his own assessment of the evidence of the Applicant's physical presence. I agree with this argument.

[3] The Applicant had the evidentiary burden to provide evidence to establish his physical presence in Canada on a balance of probabilities, and attempted to do so. Only four paragraphs of the decision under review provide the Citizenship Judge's findings:

[28] Having reviewed all of the documentation submitted by the Applicant, after having personally interviewed the Applicant, I am not satisfied that, on a balance of probabilities, that the declarations on either the original declaration or residence questionnaire or later submitted dates of absences accurately reflected the number of days that the Applicant was physically present in Canada in the relevant period.

[...]

[30] I am unable to determine the exact number of days the Applicant was absent from Canada in the relevant period because the Applicant was not able to provide accurate dates of absences indicated by all the undeclared absences of the ICES report. I agree with legal counsel that the entries on March 22, 2008 and October 21, 2010 were within declared absences and Applicant's presence in Canada increased; however, I am unable to determine the exact number of days that the Applicant was in Canada.

[...]

[33] Based on the citizenship officer's calculation, the Applicant was at least 419 days absent from Canada in the relevant period. The Applicant was 1,041 days in Canada in the relevant period, 54 days short of the required 1,095 days of presence in Canada under the *Citizenship Act*.

[34] Based on a preponderance of proof of the information in the file and the evidence at the hearing, I find the Applicant was not sufficiently in Canada in the relevant period for at least 1,095 days under the required *Citizenship Act*.

[Emphasis added]

[4] In my opinion, the passages quoted exhibit a fundamental failure in decision-making. To meet the standard of intelligibility and transparency, the Citizenship Judge was required to clearly articulate findings supported by evidence to substantiate any conclusion reached. With respect to paragraph 30, I find that the Citizenship Judge failed to meet the requirement to make findings supported by evidence to substantiate the apparent conclusion that the Applicant had not met his evidentiary burden.

[5] Reached prior to the application being sent to the Citizenship Judge for decision, the opinion quoted in paragraph 33 is that of the Officer who considered the Applicant's declared absences in the filed Residence Questionnaire. I find that the Citizenship Judge's deferral to the opinion constitutes an abdication of the responsibility to decide, which only the Citizenship Judge could discharge. Therefore, the Officer's opinion cannot form the conclusion to the Applicant's application.

[6] And as to the global conclusion at paragraph 34, it only has relevance and weight if the necessary analytical fact-finding had been conducted. As stated, it was not conducted.

[7] For the reasons provided, I find the decision under review is unreasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted without costs. The matter will be returned to the Minister for reconsideration. The Minister shall either grant the Applicant citizenship or refer the matter to a different Citizenship Judge, in accordance with these reasons. There is no question to certify.

"Douglas R. Campbell"

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Judge

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

**DOCKET:** T-797-16

**STYLE OF CAUSE:** MOHAMMAD REZA BADIEI v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** NOVEMBER 7, 2016

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** NOVEMBER 9, 2016

**APPEARANCES:**

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