



Date: 19991103

Docket: T-2635-97

**IN THE MATTER OF the *Citizenship Act*,
R.S.C., 1985, c. C-29**

**AND IN THE MATTER OF an appeal from the decision
of a citizenship judge**

AND IN THE MATTER OF

Maurice Baran

Appellant

REASONS FOR JUDGMENT

PINARD J.:

[1] This is an appeal *de novo* by the appellant Maurice Baran under subsection 14(5) of the *Citizenship Act*, R.S.C., 1985, c. C-29 (the Act), from the decision of Citizenship Judge Nicole Caron dated January 21, 1998. The appellant maintains that he met the residency requirements under paragraph 5(1)(c) of the Act.

[2] This court held that a correct interpretation of paragraph 5(1)(c) of the Act does not require a person to be physically present in Canada for the entire 1,095 days prescribed where

there are special and exceptional circumstances. However, I consider that actual presence in Canada remains the most relevant and important factor when establishing whether or not an individual maintained his or her “residence” in Canada within the meaning of the provision. As I have repeatedly stated, an overly lengthy absence, albeit temporary, during this minimum period defeats the intent of the Act, which already allows anyone who has been lawfully admitted to Canada for permanent residence to reside outside Canada during one of the four years immediately preceding the date of his or her application for citizenship.

[3] On June 11, 1994, the appellant arrived in Canada and was granted landing. At the time of his application for citizenship three years later, around June 11, 1997, the appellant had been out of Canada for 153 days altogether. Though considerable, the length of those absences was not inordinate; therefore, it is important to consider whether or not the appellant intended to reside in Canada throughout this whole time. As the appellant himself admitted, almost all of his absences were due to the fact that he wanted to live away from Canada, particularly in Israel where he went in search of work. Since he failed to find employment, he decided to reside in Canada. I therefore agree with the *amicus curiae* that during the required 1,095 days of residence in Canada, the appellant did not intend to reside in Canada at all times.

[4] It may very well be that the appellant is now in the position to meet the residency requirements of the Act. However, his appeal relates to a specific period that I cannot ignore.

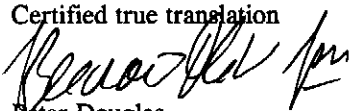
Without prejudice of course to any other application for Canadian citizenship that he might make in future, this appeal is accordingly dismissed.

YVON PINARD

JUDGE

OTTAWA, ONTARIO
November 3, 1999

Certified true translation


Peter Douglas