

**Date: 20080115**

**Docket: T-1171-07**

**Citation: 2008 FC 54**

**Toronto, Ontario, January 15, 2008**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**GHOLAM HASSAN AKBAR POUR**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Minister appeals from the decision of a Citizenship Judge granting citizenship to Gholam Hassan Akbar Pour. The Minister asserts that the judge erred in counting the period of time that Mr. Akbar Pour was on probation, in determining that he met the residency requirements of the *Citizenship Act*, R.S., 1985, c. C-29.

[2] For the reasons that follow, I agree that the Citizenship Judge erred in this regard. As a consequence, the appeal will be allowed.

## Background

[3] Mr. Akbar Pour is a citizen of Iran, who came to Canada as a permanent resident in 1991. On June 8, 2006, he signed his application for Canadian citizenship. It is not disputed that Mr. Akbar Pour was physically present in Canada for the four years immediately preceding his application for citizenship.

[4] On December 11, 2002, Mr. Akbar Pour was convicted of causing a disturbance, contrary to paragraph 175(1)(a) of the *Criminal Code*. He was given a suspended sentence of 18 months, and was put on probation.

[5] Notwithstanding that Mr. Akbar Pour failed to disclose the fact that he had been on probation during the four year period preceding his application for citizenship, it is apparent from the decision under review that the Citizenship Judge was aware that Mr. Akbar Pour had been on probation for 18 months during this period.

[6] On May 1, 2007, the Citizenship Judge rendered her decision in which she stated that:

Mr. Akbar Pour is missing 172 days to meet the basic requirement of residence in Canada due to his 18 months probation. His application for citizenship is approved. I believe that he centralized his life in Canada.

## Analysis

[7] This appeal involves the interpretation of the *Citizenship Act*, and its application to the facts of Mr. Akbar Pour's situation. I need not decide whether the appropriate standard of review to be

applied to the decision of the Citizenship Judge is that of reasonableness or correctness, however, as I am satisfied that the decision was unreasonable.

[8] The statutory provisions relevant to this case include section 5 of the *Citizenship Act*, R.S., 1985, c. C-29, which provides that to be eligible for citizenship, an applicant must be a permanent resident, and must accumulate three years of residence in Canada in the four years immediately preceding the application.

[9] Also of relevance is section 21 of the *Citizenship Act* which states:

<p><b>21.</b> Notwithstanding anything in this Act, no period may be counted as a period of residence for the purpose of this Act during which a person has been, pursuant to any enactment in force in Canada,</p> <p>(a) under a probation order ...</p>	<p><b>21.</b> Malgré les autres dispositions de la présente loi, ne sont pas prises en compte pour la durée de résidence les périodes où, en application d'une disposition législative en vigueur au Canada, l'intéressé:</p> <p>a) a été sous le coup d'une ordonnance de probation ...</p>
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[10] As to how the residency requirement in the *Citizenship Act* is to be interpreted, different judges in this Court have taken different approaches to this question. A Citizenship Judge is entitled to adopt any of these various approaches in determining whether a particular applicant has satisfied the residency requirements of the Act.

[11] In this case, the Citizenship Judge chose to apply the “centralized mode of existence” test first articulated in *Re Koo*, [1992] F.C.J. No. 1107, where Justice Reed held that physical presence

in Canada was not required in order to be able to satisfy the residency test set out in the *Citizenship Act*. Rather, the test should be formulated as whether the applicant “regularly, ordinarily, or customarily lives” in Canada.

[12] Put another way, the question is whether the applicant has centralized his or her mode of existence in Canada.

[13] The use of this test allows applicants for citizenship who may not have had 1085 days of physical presence in Canada to obtain citizenship, if they can demonstrate that they have nevertheless centralized their mode of existence in Canada during the four years preceding their application.

[14] In other words, the *Re Koo* approach allows for a person to be deemed to be resident in Canada at times that they were not actually physically present in this country.

[15] The reasons of the Citizenship Judge are sparse, to say the least. However, it appears that the Judge purported to apply the “centralized mode of existence” test to find that Mr. Akbar Pour satisfied the residency requirement of section 5 of the Act, notwithstanding the fact that he had been on probation for 18 months of the four years immediately preceding his application for citizenship.

[16] This was unreasonable, as section 21 of the *Citizenship Act* clearly prohibits time spent on probation from being counted as a period of residence for the purpose of the Act.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this appeal is allowed, and the decision of the Citizenship Judge dated May 1, 2007 is quashed.

“Anne Mactavish”

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Judge

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

**DOCKET:** T-1171-07

**STYLE OF CAUSE:** MINISTER OF CITIZENSHIP AND IMMIGRATION  
v. GHOLAM HASSAN AKBAR POUR

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** January 10, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Mactavish J.

**DATED:** January 15, 2008

**APPEARANCES:**

W. Brad Hardstaff	FOR THE APPLICANT
No appearance	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

<b>JOHN H. SIMS, Q.C.</b> The Attorney General of Canada	FOR THE APPLICANT
Nil	FOR THE RESPONDENT