

**Date: 20080414**

**Docket: T-1350-07**

**Citation: 2008 FC 476**

**Vancouver, British Columbia, April 14, 2008**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**HENRY RIZKY MAGKUSASONO**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Henry Rizky Mangkusasono applied for Canadian citizenship in October 2006. In 2007, a citizenship judge concluded that Mr. Mangkusasono had satisfied the residency requirement of s. 5(1)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (see Annex "A" attached) and granted his application. The Minister of Citizenship and Immigration appeals on the basis that the judge's decision was unreasonable and his reasons were inadequate. The Minister asks me to quash the decision. I agree with the Minister and must, therefore, allow this appeal.

I. Issues

1. Were the judge's reasons inadequate?
2. Was the judge's decision unreasonable?

II. Analysis

1. *Were the judge's reasons inadequate?*

(a) The Residency Requirement

[2] Applicants for Canadian citizenship must show that they were resident in Canada for three out of the four years preceding their applications (*Citizenship Act*, s. 5(1)(c)). They can meet this requirement by proving physical presence in Canada for at least three years, or by showing that they have established and maintained such strong ties to Canada that their absences can still be counted in their favour, even though they have not been physically present in Canada for the required three years: *Canada (Minister of Citizenship and Immigration) v. Nandre*, 2003 FCT 650.

(b) Factual Background

[3] Mr. Mangkusasono was born in Jakarta, Indonesia in 1977. He came to Canada as a high-school student in 1992 and later studied engineering at the University of Toronto. His application for citizenship was filed on November 19, 2006. Therefore, to meet the residency requirement, he had to show that he was physically present for three out of the four years beginning on November 19, 2002, or that he should be credited for his absences because he had established and maintained a strong connection with Canada.

[4] Mr. Mangkusasono was absent from Canada for various periods of time during the relevant period. He visited friends and family outside Canada for fairly short periods in 2003 and 2004, but was absent for long stretches in 2005 and 2006 when he was studying in Germany. He was physically present in Canada for only 736 days and was absent for 713 days. This put him 359 days short of the three-year requirement (being 1095 days).

[5] To show that he had established his residence in Canada, Mr. Mangkusasono submitted copies of his current and previous passports, a statement of his investments in mutual funds, and a letter from Epilepsy Canada thanking him for helping with a charity drive in 2004. An officer who screened his citizenship application noted that there were pages missing from the copies of Mr. Mangkusasono's passports and that he had failed to provide any documentation showing his residential or work history in Canada. The officer recommended that the file be reviewed by a citizenship judge.

(c) The Decision under Appeal

[6] The citizenship judge interviewed Mr. Mangkusasono and then concluded:

After personal interview and receiving backup data, I am satisfied that client meets the residency requirement. In Canada since 1992, went to Germany to study Masters of Engineering in Petroleum Engineering. Good knowledge about Canada.

[7] It appears, therefore, that Mr. Mangkusasono supplemented his application with further “data”. However, there is nothing in the record indicating what information Mr. Mangkusasono had provided.

[8] The Minister argues that the judge’s reasons were inadequate.

(d) The Duty to Give Reasons

[9] The delivery of reasons is inherent in the decision-maker’s role. There are numerous purposes that reasons serve. They help ensure that decisions are carefully thought out. They explain to the parties why they won or lost, as the case may be. They also assist the parties in deciding whether to pursue other remedies, such as an appeal or judicial review, and in framing the grounds on which they might rely in doing so: *R. v. Sheppard*, [2002] 1 S.C.R. 869; *Via Rail Canada Inc. v. National Transportation Agency (C.A.)*, [2001] 2 F.C. 25 (F.C.A.).

(e) Discussion and Conclusion

[10] In *Sheppard*, above, Justice Binnie found the trial judge’s reasons to be inadequate.

There, the judge had simply stated:

Having considered all the testimony in this case, and reminding myself of the burden on the Crown and the credibility of witnesses, and how this is to be assessed, I find the defendant guilty as charged.

[11] In my view, the reasons of the citizenship judge in this case are similarly inadequate. One does not know what evidence led the judge to conclude that Mr. Mangkusasono had satisfied the residency requirement or what reasoning the judge applied in arriving at that conclusion. The reasons simply do not disclose the basis for the decision or permit a meaningful review of its merits. Accordingly, they do not serve the purposes for which they were intended and, therefore, are inadequate.

2. *Was the judge's decision unreasonable?*

[12] As explained, it is impossible to determine whether the judge's decision was reasonable given the inadequacy of the reasons and the absence of information in the record supporting it. As Justice Binnie noted in *Sheppard*, it will sometimes be possible to discern the decision-maker's analysis and, therefore, to assess its reasonableness based on the record, even if the written reasons are themselves deficient. The Federal Court of Appeal also acknowledged this possibility in *Doucette v. Canada (Minister of Human Resources Development)*, 2004 FCA 292. There, Justice Marc Nadon found that the "laconic" reasons of the Pension Appeal Board were adequate in the circumstances given that they relied on a medical report that was included in the record. However, this is not possible in the circumstances before me.

[13] Accordingly, I must quash the decision of the citizenship judge. Counsel for Mr. Mangkusasono asked me to send the matter back to the citizenship judge to prepare proper reasons, if I were to conclude that the decision could not stand. However, given the absence of a complete record in this case, I do not believe that would be an appropriate outcome.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that**

1. The appeal is allowed. The decision of the citizenship judge is quashed.

“James W. O’Reilly”

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Judge

## Annex "A"

*Citizenship Act*, R.S.C. 1985, c. C-29

*Loi sur la citoyenneté*, L.R., 1985, ch. C-29

Grant of citizenship

Attribution de la citoyenneté

5. (1) The Minister shall grant citizenship to any person who

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

(a) makes application for citizenship;

a) en fait la demande;

(b) is eighteen years of age or over;

b) est âgée d'au moins dix-huit ans;

(c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

c) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1350-07

**STYLE OF CAUSE:** MCI v. MANGKUSASONO

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 1, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** April 14, 2008

**APPEARANCES:**

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