



**Date: 20110519**

**Docket: T-1828-10**

**Citation: 2011 FC 574**

**Calgary, Alberta, May 19, 2011**

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

**BETWEEN:**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Applicant**

**and**

**Sadia GUETTOUCHE**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Minister appeals the decision of Citizenship Judge May Way approving the respondent's application for Canadian citizenship.

[2] Ms. Guettouche is a citizen of Algeria. She arrived in Canada as a permanent resident on August 29, 2000. Her husband, Mohamed Said Mahiout, also Algerian, had been living in Canada since 1998. The respondent and her husband are both geophysical engineers. They have three Canadian born children; Riane, aged 8, and Samy and Sophia, twins aged 6.

[3] Soon after arriving in Canada, the respondent's husband accepted employment that required him to travel and work abroad for extended periods of time, and Ms. Guettouche often accompanied him, along with their children. During the period of time relevant to this case, the family lived in Oman and Iran as well as Canada.

[4] On October 2, 2003, the respondent and her husband made their first applications for citizenship. The applications were denied by Citizenship Judge P.M. Gleason on April 11, 2005 because the respondent and her husband had not met the residency requirement of the *Citizenship Act*. An appeal to this Court was dismissed: *Mahiout v Canada (Minister of Citizenship and Immigration)*, 2006 FC 32.

[5] On October 18, 2006 the respondent and her husband submitted their second applications for citizenship. Citizenship Judge Bitar refused the applications on June 2, 2009. They again appealed to this Court. Justice Campbell allowed their appeal and ordered that the application for citizenship be reconsidered by a different citizenship judge: *Mahiout v Canada (Citizenship and Immigration)*, 2010 FC 143.

[6] The applications were reconsidered by Citizenship Judge Way. Judge Way allowed the Ms. Guettouche's application but denied her husband's application. Ms. Guettouche's husband has not appealed the decision on his application, but the Minister appealed the decision to grant Ms. Guettouche citizenship.

[7] Judge Way noted that the relevant period under consideration was October 18, 2002 to October 18, 2006 and that during this period Ms. Guettouche had been physically present in Canada for 963 days of the required 1095 days, leaving a shortfall of 132. In fact, Ms. Guettouche was not physically present in Canada from the beginning of the relevant period until January 10, 2003.

[8] The judge proceeded to consider the six factors set out by Justice Reed in *Koo (Re)*, [1993] 1 F.C. (TD), noting that the case provided that physical presence in Canada for the entire 1095 days is not required and that the residency test can be articulated as whether the applicant “regularly, normally, or customarily lives” in Canada or whether Canada is the country in which the applicant has centralized his or her mode of existence.

[9] The judge noted that the pattern of Ms. Guettouche’s absences from Canada ceased when she returned to Canada to give birth to her twins in 2004 and stated; “I believe that during this latter two and a quarter years (approximately) of the relevant period, the applicant began to establish residence in Canada” (emphasis added). The judge also found that “Her ties to Canada were stronger than to any other country in the relevant period, as she had her children in Canada, worked only in Canada, filed income taxes only in Canada, has investments only in Canada, does not own property outside of Canada, and spent more time in Canada (approximately 963 days) than outside Canada (approximately 497 days).”

[10] The judge was satisfied that the respondent had centralized her mode of living in Canada and that she satisfied the residency requirement under the *Citizenship Act*, and accordingly approved her application for citizenship.

[11] The Minister raises two issues: (1) Whether the citizenship judge erred in law by failing to determine that the respondent had initially established residence in Canada; and (2) Whether the citizenship judge erred by finding the respondent had met the *Koo* test while also clearly stating the she did not meet some portions of the test.

[12] In my view the second issue may be quickly rejected as there is no merit to the submission that an applicant for citizenship is required to meet all of the factors identified in *Koo* in order to be found to “regularly, normally or customarily” live in Canada. In *Koo*, Justice Reed described the six questions as “Questions that can be asked which assist in such a determination” (emphasis added). The questions do not constitute a rigid test of conjunctive requirements. Further I do not accept the Minister’s submission that the judge effectively created a new test. She was entitled to weigh the factors and I cannot say that her weighing was unreasonable.

[13] Most troubling is the first issue raised by the Minister – whether the judge erred in failing to determine that Ms. Guettouche had initially established residence in Canada, before embarking on a consideration of the *Koo* factors to determine whether that residency had continued, notwithstanding her absences from Canada. This is of particular concern as the record before the judge indicates although Ms. Guettouche entered Canada on August 29, 2000, she left Canada with her husband five months later, on February 3, 2001, and was continually absent from Canada from that date until January 10, 2003, which was within the relevant period for determining residency for citizenship purposes.

[14] The law relating to the residency requirements of s. 5(1)(c) of the *Citizenship Act*, RSC 1985, c C-29 is a two-step process, as was articulated by Justice Layden-Stevenson, as she then was, in *Goudimenko v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 447, at para. 13:

At the first stage, the threshold determination is made as to whether or not, and when, residence in Canada has been established. If residence has not been established, the matter ends there. If the threshold has been met, the second stage of the inquiry requires a determination of whether or not the particular applicant's residency satisfies the required total days of residence. It is with respect to the second stage of the inquiry, and particularly with regard to whether absences can be deemed residence, that the divergence of opinion in the Federal Court exists.

[15] The citizenship judge in this case did not explicitly answer the threshold question of whether residence was established by Ms. Guettouche. I may have been prepared to infer that the first stage of the test had been met from the fact that the judge turned to the *Koo* test for residency and determined that the respondent had centralized her mode of living in Canada. However, the judge's statement that "I believe that during this latter two and a quarter years (approximately) of the relevant period, the applicant began to establish residence in Canada" makes such an inference impossible. It begs the question: "If she only began to establish residence in the latter two and one-quarter years, when, if ever, did Ms. Guettouche actually establish residency in Canada?"

[16] In order to apply the *Koo* factors to examine absences in excess of the statutory minimum, a citizenship judge must make an initial determination that the applicant for citizenship has established residence in Canada. In this case, I am unable to conclude that such a finding was made and therefore I must allow this appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the appeal is allowed and the decision of  
Citizenship Judge May Way is set aside, without costs

“Russel W. Zinn”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1828-10

**STYLE OF CAUSE:** MINISTER OF CITIZENSHIP AND IMMIGRATION  
v. Sadia GUETTOUCHE

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** May 18, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN, J.

**DATED:** May 19, 2011

**APPEARANCES:**

Mr. Rick Garvin FOR THE APPLICANT

Ms. Sadia Guettouche FOR THE RESPONDENT  
(Self-Represented)

**SOLICITORS OF RECORD:**

Myles J. Kirvan FOR THE APPLICANT  
Deputy Attorney General of Canada

N/A FOR THE RESPONDENT  
(Self-Represented)