

Federal Court



Cour fédérale

**Date: 20120315**

**Docket: T-1186-11**

**Citation: 2012 FC 308**

**Ottawa, Ontario, March 15, 2012**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**YOUSEF M S ABU-LOHA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Minister of Citizenship and Immigration appeals from a decision of a Citizenship Judge made under the *Citizenship Act*, RSC 1985, c C-29 granting the respondent's application for Canadian citizenship.

[2] For the reasons that follow, the appeal is allowed.

[3] Mr. Yousef Abu-Loha was born in Saudi Arabia and is a citizen of Jordan. On August 28, 2004, he, his wife, and his two young sons became permanent residents of Canada. On April 1, 2009, Mr. Abu-Loha and his wife applied for Canadian citizenship. On May 18, 2011, the Citizenship Judge in a very brief decision approved the respondent's application.

[4] The decision, a one-page form, indicates that the respondent satisfied all the requirements under the Act. It states that he has been physically present in Canada for a total of 1,231 days out of 1,460. In the reasons, the Judge wrote:

After reviewing the applicant[']s documents on file plus the information shared with me at the hearing on April 4<sup>th</sup>/11. Based on the balance of probabilities I am satisfied that the applicant meets the residency criteria.

[5] The Citizenship Judge found the respondent was away from Canada 229 days out of 1,460; that information corresponds with the respondent's written submissions before the Citizenship Judge found at page 6 of the Certified Tribunal Record. However, it does not correspond with other evidence in the Certified Tribunal Record. Specifically, six exit and entry stamps in the respondent's passport that were not listed in his written submissions are disclosed in the Certified Tribunal Record and if any one of these is accurate, then the respondent was away from Canada more than 229 days.

[6] There is no way for this Court to determine the time-period corresponding to those six trips (there is only one Canadian entry stamp on the passport and it does not align with any relevant time-periods). It is possible that the time-periods associated with those stamps resulted in the respondent being physically outside Canada for more than the time allowed.

[7] It is impossible to determine from the reasons and the record whether the Citizenship Judge failed to consider the evidence of these additional six periods of absence from Canada; whether he did consider these absences but found that even with them the respondent physically resided in Canada more than the minimum of 1,095 days; or whether he did consider these absences and found that the respondent was not physically present in Canada at least the minimum of 1,095 days but was nonetheless eligible for citizenship through one of the other residency tests accepted in this Court's jurisprudence. In short, the decision is unintelligible and the appeal must be allowed.

[8] The Minister, acknowledging that it may be that the respondent was physically present in Canada at least 1,095 days, asked that the application be sent back to be determined by another Citizenship Judge, based on a complete examination of the record and the evidence of the respondent. In these unique circumstances, that is an appropriate order.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this appeal is allowed, the decision of the Citizenship Judge is quashed and the respondent's application for Canadian citizenship is referred back to be determined by a different Citizenship Judge based on the evidence in the application and the evidence of the respondent.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-1186-11

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION V. YOUSEF M S ABU-LOHA

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 29, 2012

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

**DATED:** March 15, 2012

**APPEARANCES:**

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