

Federal Court



Cour fédérale

**Date: 20140620**

**Docket: T-1874-13**

**Citation: 2014 FC 592**

**Ottawa, Ontario, June 20, 2014**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**MOHAMMAD HASSAN ASKARI**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an appeal of the decision of Angelo Persichilli, a Citizenship Judge with the Citizenship Commission, Immigration Canada [the Judge], pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [the Act]. The Judge allowed the Respondent's application for Canadian citizenship.

I. Issue

[2] Did the Citizenship Judge err when he concluded that the Respondent had satisfied the residency requirement under paragraph 5(1)(c) of the Act?

II. Background

[3] The Respondent is an Iranian citizen. He arrived in Canada on April 2, 1997, and became a permanent resident on January 12, 2001. On October 1, 2008, he applied for Canadian citizenship. For the purpose of meeting the residency requirement for Canadian citizenship in 5(1)(c) of the Act, the relevant time period is October 1, 2004, to October 1, 2008 [the Relevant Period].

[4] In his citizenship application, the Respondent reported that during the Relevant Period he had been physically present in Canada for 1137 days and absent for 323 days. These absences were accumulated through four absences to the Middle East. Three out of the four absences are corroborated by dates listed on his Integrated Customs Enforcement System History [ICES History]. However, the fourth absence listed in his ICES History is inconsistent with the fourth absence listed in his citizenship application. His ICES History states that on one occasion he returned to Canada on August 3, 2005, while the corresponding absence on his citizenship application states that he returned to Canada on November 29, 2005.

[5] The Respondent submitted a passport issued April 8, 2008. He did not submit a passport covering the remainder of the Relevant Period.

[6] The Respondent had a hearing before the Judge on April 16, 2013. The Judge issued a written decision on September 19, 2013.

[7] The Judge notes various background facts about the Respondent. His analysis is as follows:

The ICES report confirms that the applicant had 4 entries into Canada during the relevant period. There is, however, a discrepancy with one of them. The applicant writes that he left Canada for 69 days from 22 Sept. 2005 and back on Nov. 29, 2005. There is no report on ICES of this entry; there is an entry stamp on Aug. 3rd 2005 instead. There is no doubt that there is a mistake but I am still convinced that the applicant has enough days of physical presence in Canada during the relevant period.

Considering all the above, and based on my careful assessment of the applicant's testimony, as well as my consideration of the information and evidence before me, I am satisfied that the applicant was actually living and was physically present in Canada on the number of days sufficient to comply with the Citizenship Act.

### III. Standard of Review

[8] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Jeizan*, 2010 FC 323, at para 12; *Dunsmuir v New Brunswick*, 2008 SCC 9).

### IV. Analysis

[9] The Applicant acknowledges that the Judge applied the strict physical presence test from (*Re Pourghasemi*, [1993] FCJ No 232 (TD)), and that the Judge found that the Respondent had accumulated the number of days required to satisfy 5(1)(c) of the Act.

[10] However, the Applicant argues that given the Respondent's evidentiary burden to provide sufficient objective evidence to satisfy 5(1)(c) of the Act, the evidence before the Judge was not sufficient for him to conclude that 5(1)(c) of the Act was met. The Applicant notes that the passport provided by the Respondent in support of his application only covered a small part of the Relevant Period and contained illegible stamps that were not referred to by the Judge. Given that there was no other evidence submitted to establish his physical presence in Canada, the Applicant argues that the decision was unreasonable.

[11] The Applicant also argues that the inadequacy of the Judge's reasons contribute to the unreasonableness of his decision. The Applicant argues that the reasons provided do not sufficiently explain how the Judge's decision was arrived at, particularly in light of the dearth of evidence submitted by the Respondent and the discrepancy between the Respondent's citizenship application and his ICES History.

[12] The Respondent did not make submissions or appear at the hearing.

[13] The substance of the Applicant's argument is that it was unreasonable for the Judge to find that the Respondent met the residency requirement in the absence of corroborative evidence. However, there is nothing in the record before me which shows that the Judge's decision was unreasonable within the meaning described in *Dunsmuir*. The Applicant's argument amounts to a request of this Court to re-weigh the evidence that was before the Judge.

[14] There is nothing in the Act or the case law referenced by the Applicant which suggests that the Respondent failed to submit a required form of evidence. Cases cited by the Applicant refer to the fact that the Respondent bore the evidentiary onus of proving his case to the satisfaction of the Judge, not that he bore the onus of adducing specific evidence. The Judge's reasons indicate that he was satisfied the Applicant had met that evidentiary onus. The Applicant makes only unsupported assertions that the Judge's conclusions on the evidence were erroneous.

[15] It is clear how the Judge decided the Respondent had satisfied the residency requirement under 5(1)(c) of the Act. He considered the discrepancy between the Respondent's stated absences and his ICES History, concluded that the date was written in error, and found that the Applicant had been physically present in Canada for the requisite number of days during the Relevant Period. In doing so, he relied on the Respondent's testimony and the information before him, which included both the Respondent's ICES History and his citizenship application. His reasons are intelligible and transparent.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The appeal is dismissed.

"Michael D. Manson"

---

Judge

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

**DOCKET:** T-1874-13

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v MOHAMMAD HASSAN ASKARI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 19, 2014

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** JUNE 20, 2014

**APPEARANCES:**

Kevin Doyle

FOR THE APPLICANT,  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**SOLICITORS OF RECORD:**

William F. Pentney  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE APPLICANT,  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

Mohammad Hassan Askari  
Toronto, Ontario

FOR THE RESPONDENT,  
ON HIS OWN BEHALF