

Federal Court



Cour fédérale

Date: 20141210

Docket: T-1515-14

Citation: 2014 FC 1193

Ottawa, Ontario, December 10, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MOHAMMAD WASEF ABU-TALEB

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is Mr. Abu-Taleb's appeal from the decision of a citizenship judge who was of the view that he did not meet the residency requirement under the *Citizenship Act*.

[2] The case was launched before recent amendments of the Act, so the residency requirement was for three years (1,095 days) out of the four years immediately preceding the citizenship application.

[3] Mr. Abu-Taleb applied for Canadian citizenship on 1 September 2010. During the four previous years he claimed to be present in Canada for 1,197 days.

[4] Before the Act was amended, three schools of thought had developed as to the meaning of residence in the Act. One point of view was that of Mr. Justice Muldoon in *Re Pourghasemi* [1993] FCJ No 232, 19 Imm LR (2d) 259. He took a strict counting of the days approach, *i.e.* a physical presence test, rather than a more philosophical – my heart is here even if my body is not – approach.

[5] Mr. Justice Lutfy, as he then was, held in *Lam v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 410, 164 FTR 177, that it was open to a citizenship judge to adopt any one of the three conflicting lines of jurisprudence. Indeed, *Lam* was a precursor of the decisions of the Supreme Court which have held that deference should be shown to a decision maker in interpreting his or her home statute (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654).

[6] In the present case, the citizenship judge specifically followed the physical presence test as set out in *Re Pourghasemi*.

[7] The citizenship judge was not satisfied with the evidence presented. She thought it very significant that Mr. Abu-Taleb, who is of Palestinian origin, held a Jordanian passport but, had none from 28 January 2008 to 24 March 2009, *i.e.* for more than one year out of the 1,197 days in question. Mr. Abu-Taleb was under no obligation to keep his passport current. If he was out of

the country, he was not physically present here for at least 1,095 days. If he was in Canada without a passport, for all intents and purposes he would be unable to leave. However, if he was outside the country he would not be able to get back in.

[8] The citizenship judge also referred to credit card transactions which suggested to her that Mr. Abu-Taleb was out of the country during the period under review. According to Mr. Abu-Taleb, the credit card transactions in question were for online purchases. Considering that he had received a police ticket in Canada the day before a transaction was processed in the Netherlands, that he had purchased something in Canada the day after, coupled with Canadian government records of entry, and the fact he had no passport, it was impossible for him to have been outside Canada in order to purchase something in the Netherlands.

[9] The analysis was unreasonable. Consequently, the appeal must be allowed.

[10] Counsel for the Minister pointed out that in accordance with a recent amendment to Rule 309(2)(e.1) of the *Federal Courts Rules*, the applicant's record did not include any of the material certified by the tribunal in accordance with Rule 318. The certified tribunal record ran some 1,240 pages, and reference to various parts thereof had been made in the written submissions, although not reproduced in the applicant's record. The applicant then moved that this requirement be dispensed with in accordance with Rule 55. That motion was granted.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The appeal is allowed.
2. The decision of the citizenship judge dated 16 June 2014 is set aside.
3. The applicant's citizenship application be reopened and re-examined by another citizenship judge.

"Sean Harrington"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1515-14

STYLE OF CAUSE: MOHAMMAD WASEF ABU-TALEB v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 5, 2014

JUDGMENT AND REASONS: HARRINGTON J.

DATED: DECEMBER 10, 2014

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