

Federal Court



Cour fédérale

**Date: 20160111**

**Docket: T-1015-15**

**Citation: 2016 FC 22**

**Ottawa, Ontario, January 11, 2016**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**MINOU SHARMA**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] The Minister of Citizenship and Immigration [the Minister] has brought an application for judicial review pursuant to s 22.1(1) of the *Citizenship Act*, RSC 1985, c 29 [the Act]. The Minister seeks to set aside the decision of a Citizenship Judge [the Judge] to approve the application for Canadian citizenship of Minou Sharma. The Judge found that Ms. Sharma had

demonstrated that Canada is the place where she regularly and normally lives, and that she therefore met the residency requirement to obtain citizenship under s 5(1)(c) of the Act.

[2] For the reasons that follow, I have concluded that the Judge made several factual findings that were unsupported by the evidence, and failed to address numerous inconsistencies and inadequacies in Ms. Sharma's evidence. The application for judicial review is therefore allowed.

## II. Background

[3] Ms. Sharma is 79 years old and a citizen of the Islamic Republic of Iran. She arrived in Canada as a visitor in 2005 and became a permanent resident on April 8, 2007. According to Ms. Sharma, she worked as a self-employed tutor from January 2010 to June 2011.

[4] Ms. Sharma applied for Canadian citizenship on June 30, 2011. In order to meet the residency requirement under s 5(1)(c) of the Act, an applicant must have accumulated at least three years of residence in Canada, or a total of 1,095 days, within the four years immediately preceding the application for citizenship. The relevant period for determining whether Ms. Sharma met the residency requirement is from June 30, 2007 to June 30, 2011 [the relevant period].

[5] In her application for citizenship, Ms. Sharma declared that she had travelled to Iran on two occasions. Her declared absence was for a total of 68 days, which implied that she was physically present in Canada for a total of 1,392 days during the relevant period.

[6] On May 30, 2012, a citizenship officer reviewed Ms. Sharma's application and asked her to complete a residence questionnaire. She submitted the completed questionnaire to Citizenship and Immigration Canada [CIC] on August 26, 2012. This time, she declared that she had travelled to Iran on four occasions during the relevant period, and was absent from Canada for 125 days. She indicated that she did not own any property in Canada or abroad. She included the following documentation with her questionnaire: (i) a police report confirming that she had lost her Iranian passport in 2010; (ii) a "laissez-passer" from Iran dated September 23, 2009; (iii) a prescription for antibiotics dated June 6, 2008; (iv) statements from a joint bank account with her son; (v) income tax statements from 2007 to 2011; (vi) a mammogram test result from May 22, 2012; (vii) a library card; (viii) a membership card for a fitness centre in Coquitlam; and (ix) invoices for her cell phone bill from 2007 to 2010.

[7] On December 12, 2012, a citizenship officer reviewed Ms. Sharma's application and discovered that she had one additional undeclared absence from Canada in 2011, verifiable by the fact that she had renewed her Iranian passport in Iran on April 14, 2011. The officer noted that, due to the loss of her passport, Ms. Sharma's presence in Canada between 2007 and 2011 could not be verified.

[8] On March 5, 2015, Ms. Sharma was asked to provide additional information to support her application, including entry and exit records from Iran, rental agreements or mortgage documents, employment records or documentation regarding the income she earned from tutoring, and financial statements for the relevant period. In response, Ms. Sharma submitted a

letter from her son stating that they had lived together since 2007. She also provided two work references.

[9] On April 7, 2015, Ms. Sharma's application was again reviewed by a CIC citizenship officer [the Officer], who noted the following concerns: (i) Ms. Sharma had an undeclared absence from Canada in 2011; (ii) she had failed to provide any entry or exit records from Iran as requested; (iii) the letter from her son was insufficient to show that he was established in Canada; (iv) invoices from her cell phone company did not help to establish her residency because she would have continued to receive them during any absence from Canada; (v) there was no documentation relating to her employment as a tutor; (vi) her joint bank account statements were insufficient to demonstrate her physical presence in Canada because there was a low pattern of use and no transactions confirming rental payments, utilities bills, *etc.*; and (vii) accepting that she had lost her passport for the relevant period from March, 2009 to April, 2011, she had failed to provide her passport for the relevant period from June 30, 2007 to March 2, 2009, and had failed to provide any explanation for not doing so.

### III. The Judge's Decision

[10] In a decision dated May 26, 2015, the Judge found that Ms. Sharma had met the residency requirement under s 5(1)(c) of the Act. The Judge acknowledged that citizenship applicants bear the burden of proving, on a balance of probabilities, that they meet the conditions of the Act (*Saqer v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1392 at para 20). The Judge noted that the loss of Ms. Sharma's passport made it impossible to confirm, in an objective fashion, whether she was physically present in Canada for the requisite number of days

during the relevant period. The Judge therefore applied the more flexible test for determining residence found in *Re Koo*, [1993] 1 FC 286 at para 10, 59 FTR 27 [*Re Khoo*], which defines residence as the place where the applicant “regularly, normally or customarily lives” or has “centralized his or her mode of existence”.

[11] The Judge found Ms. Sharma and her son to be credible witnesses and forthcoming in providing information, even when the information was “unsupportive of Ms. Sharma’s case”. The Judge reported that he had “aggressively” questioned Ms. Sharma and her son, and that he had no “concerns that there is any attempt at deceit”.

[12] The Judge applied the six criteria found in *Re Khoo*, and made the following findings: (i) after arriving in Canada in 2004, Ms. Sharma stayed for as long as possible before returning to Iran; (ii) Ms. Sharma’s closest family members, including her son, daughter-in-law and grandson were in Canada; (iii) Ms. Sharma enthusiastically declared that Canada is her home, and that although the length of her absences could not be verified, she had entered Canada on only five occasions during the relevant period. Although she owned property in Iran, she had testified that it was worthless; (iv) with respect to Ms. Sharma’s physical absences from Canada, she either had a “significant absence or a surplus of ten days”. The Judge noted that her undeclared trip in May 2011 may have been for as long as 229 days, but she may have reported the same trips with different dates since she had completed her application from memory; (v) her travel to Iran, although of unspecified duration, was clearly temporary. The Judge noted that she had returned to Iran to try to sell her apartment, that she was fired from her job as a teacher in Iran, and that she enjoyed her life much more in Canada than in Iran. Finally, the Judge found that (vi) the

quality of her ties to Canada was substantive because she was dependent on her son and had no close ties to people in Iran. The Judge noted that she was “effusive” about her life in Canada, and that she testified that her life in Iran “was bad”.

IV. Issue

[13] The sole issue in this application for judicial review is whether the Judge reasonably found Ms. Sharma to have met the residency requirement under the Act.

V. Analysis

[14] A citizenship judge’s determination of whether the residency requirement under the Act has been met is a question of mixed fact and law, and is reviewable by this Court against the standard of reasonableness (*Kohestani v Canada (Minister of Citizenship and Immigration)*, 2012 FC 373 at para 12; *Idahosa v Canada (Minister of Citizenship and Immigration)*, 2013 FC 739 at para 9). This Court should not substitute its own view so long as the Judge’s review of the evidence was reasonable. In *Chen v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1693 at para 5, Justice Snider confirmed that deference is appropriate and required “as long as there is a demonstrated understanding of the case law and appreciation of the facts and their application to the statutory test”.

[15] In this case, I am satisfied that the Judge made several findings of fact that were unsupported by the evidence, and did not provide adequate reasons to justify his conclusion that Ms. Sharma met the residency requirement under s 5(1)(c) of the Act.

[16] The Act does not define the term “residence”. A citizenship judge may therefore apply one of the three tests approved by this Court to determine residence, including the more flexible test found in *Re Koo*. The Court should not intervene unless the chosen test was applied in an unreasonable manner (*Canada (Minister of Citizenship and Immigration) v Demurova*, 2015 FC 872 at para 21).

[17] The fundamental problem in this case was the absence of any record of Ms. Sharma’s exit from and entry to Canada due to the loss of her passport. The Judge therefore relied on the credibility of Ms. Sharma and her son to find that Canada is where she normally and regularly lives. I appreciate that this Court must show deference to the credibility findings of citizenship judges, because they are better placed to “make the factual determination as to whether the threshold question of the existence of a residence has been established” (*Martinez-Caro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 640 at para 46). Moreover, sworn testimony is presumed to be true unless there are valid reasons to question its veracity (*Indran v Canada (Minister of Citizenship and Immigration)*, 2015 FC 412 at para 19, citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1979] FCJ No 248). However, in my view it was incumbent upon the Judge to address the credibility concerns identified by the Officer who referred Ms. Sharma’s file for closer examination.

[18] For example, in her application for citizenship, Ms. Sharma said that she did not own any property outside of Canada. Yet at the hearing before the Judge, she testified that she owned property in Iran but it was worthless. In her initial application for citizenship, Ms. Sharma stated that she had been absent from Canada for a total of 89 days, yet in her residence questionnaire,

she declared an absence of 125 days. Ms. Sharma never declared her trip to Iran in 2011. These inconsistencies were noted by the Officer in his review of Ms. Sharma's file, but they were never mentioned, discussed or analyzed by the Judge. The Judge should have acknowledged the concerns expressed by the Officer, discussed them with Ms. Sharma, and explained them in his reasons (see *Canada (Citizenship and Immigration v Suleiman*, 2015 FC 891).

[19] The Judge also made several findings of fact without regard to the evidence. The Judge noted that after arriving in Canada, Ms. Sharma stayed in Canada for "as long as possible" before returning to Iran. There was no factual basis for this finding. The Judge found that Ms. Sharma had no close ties to people in Iran. Yet Ms. Sharma stated in her residence questionnaire that her sister lives in Iran and that she returned to Iran to visit family and friends. She also testified at the hearing that she owned an apartment in Iran. Together, these facts demonstrate a significant connection to Iran which should have caused the Judge to enquire further.

[20] In my view, the evidence submitted by Ms. Sharma was insufficient to permit the Judge to conclude that the requirements of s 5(1)(c) of the Act were met. I recognize that a lack of corroborating evidence may not be fatal to an application for citizenship, because the Act does not explicitly require an applicant to submit corroborating documents. The citizenship judge must therefore determine the nature and extent of the evidence that is necessary for an applicant to prove physical presence, taking the context into consideration (*Canada (Minister of Citizenship and Immigration) v El Bousserghini*, 2012 FC 88 at para 19 [*Bousserghini*], citing *Mizani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 698). However, as noted by Justice Harrington in *Bousserghini*, it would be "unusual and perhaps reckless" to rely upon



the testimony of an individual to establish her residency with no supporting documentation (see also *Canada (Citizenship and Immigration) v Pereira*, 2014 FC 574).

[21] There was very little documentary evidence to support Ms. Sharma's testimony that Canada is where she normally and regularly lives. There is no mention in the Judge's reasons of any explanation provided by Ms. Sharma for her failure to submit documentary evidence of her establishment in Canada. The Judge did not address Ms. Sharma's failure to provide her passport for the relevant period from June 30, 2007 to March 2, 2009, or any entry/exit records from Iran despite being asked to do so. Given the weaknesses in the documentary evidence, it was unreasonable for the Judge to rely almost exclusively on Ms. Sharma's testimony, and that of her son, to establish that she normally and regularly resides in Canada.

[22] The reasons provided by the Judge in this case do not permit the Court or the Minister to understand why the Judge approved Ms. Sharma's application for citizenship. The insufficiency of reasons is not a stand-alone basis for allowing an application for judicial review (*N.L.N.U. v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62). However, reasons take on added significance in the citizenship context because they are statutorily required by ss 14(2) and 14(3) of the Act, and because the Minister is required to grant citizenship if a Judge determines that an applicant has met the residency requirement (*Canada (Minister of Citizenship and Immigration) v Bayani*, 2015 FC 670 at para 31). Based on the insufficiency of the Judge's reasons, and considering the cumulative effect of several unreasonable findings of fact, the application for judicial review must be allowed.

VI. Conclusion

[23] For the foregoing reasons, the application for judicial review is allowed and the matter is remitted to a different citizenship judge for re-determination. No question is certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed and the matter is remitted to a different citizenship judge for re-determination;
2. No question is certified for appeal.

"Simon Fothergill"

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Judge

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

**DOCKET:** T-1015-15

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v MINOU SHARMA

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**DATE OF HEARING:** DECEMBER 16, 2015

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**DATED:** JANUARY 11, 2016

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