

Federal Court



Cour fédérale

Date: 20160322

Docket: T-1195-15

Citation: 2016 FC 280

Ottawa, Ontario, March 22, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

ZENGQI ZHOU

Respondent

JUDGMENT AND REASONS

[1] The Minister [the Applicant] brings this application to set aside the decision of the Citizenship Judge on the narrow but contestable point that the Judge indicated she was applying the strict physical residency presence test to approve the application, when the Respondent could not meet the test because of a shortfall of seven days physical residence in Canada.

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

I. Background

[3] The Respondent is a citizen of China who came to Canada as a student in 2001 and became a permanent resident in 2007. On December 3, 2009, he applied for Canadian citizenship. The relevant four year period under the *Citizenship Act* RSC 1985, C-29 [the *Act*] is from December 3, 2005 to his application date of December 3, 2009.

[4] The Respondent declared 1088 days of presence, leaving him a shortfall of seven days from the minimum 1095 days as required by the Act.

I. Analysis

[5] Several issues were raised by the Citizenship Officer and resolved to the satisfaction of the Citizen Judge. Ultimately, the issue in question arose out of the Judge's reasons at paragraphs 22 and 23 of her decision in respect of the Respondent's shortfall of seven days of physical residence:

[22] With respect to the shortfall of seven days, I am ready to grant him citizenship in spite of this. It is cruel to make him wait again from 2009 during which he filed his application. By now, he had already waited 6 ½ years. He is ready to become Canadian.

[23] Given the foregoing, in referring to the residency test set by Muldoon J. in *Pourghasemi, (Re)*: [1993] F.C.J. No. 232, I find that, on a balance of probabilities, the Applicant has demonstrated that he resided in Canada for the number of days he claimed to reside in Canada and therefore met the residence requirement under s. 5(1)(c) of the Act.

[6] Despite sharing the Judge's view that the Respondent is ready to become a Canadian, the jurisprudence in this Court is very clear that whatever the residency test chosen by the Citizenship Judge, it is vital that the test be applied, and if not, the decision must be rejected as being neither transparent nor intelligible.

[7] In this case the Judge clearly cited the strict physical presence test from the case of *Pourghasemi, (Re)*: [1993] F.C.J. No. 232. However, the Respondent, without dispute, did not meet that test by a shortfall of seven days. In *Canada (Minister of Citizenship and Immigration) v Demurova*, 2015 FC 872, where the applicant fell short of the 1095 day requirement by two days, this Court found that the Citizenship Judge's decision to disregard the shortfall and grant the application was unreasonable.

II. Conclusion

[8] In the circumstances, the appeal must be allowed, the decision set aside and the matter remitted to a different Citizenship Judge for re-determination.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1195-15

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v ZENGQI ZHOU

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 15, 2016

JUDGMENT AND REASONS: ANNIS J.

DATED: MARCH 22, 2016

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