Federal Court  Cour fédérale

Date: 20160620

Docket: T-1891-15

Citation: 2016 FC 689

Ottawa, Ontario, June 20, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

VALMIKI DEORAJ SAMAROO

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The respondent, Mr. Valmiki Deoraj Samaroo, is a citizen of Trinidad and Tobago [Trinidad]. He became a Canadian permanent resident upon his arrival in Canada in December 2005. His wife is also a permanent resident and they have three adult children who are citizens of Canada. Mr. and Ms. Samaroo own and operate two companies: Trident Protective Services Inc.

[Trident], which offers security supplies in Canada, as well as Intercept Security Ltd., a guard service based in Trinidad. Mr. Samaroo applied for Canadian citizenship on February 1, 2012.

[2] Mr. Samaroo did not declare a shortfall of days of physical presence in Canada in his application. However, after reviewing Mr. Samaroo's file, his residence questionnaire and other documents, the citizenship officer identified some concerns with Mr. Samaroo's credibility. The matter was thus referred to a citizenship judge [the Judge] who held a hearing with Mr. Samaroo on October 6, 2015, where he questioned him and discussed issues regarding his physical presence in Canada. The Judge was satisfied that Mr. Samaroo had maintained and centralized his residence in Canada, and he therefore approved Mr. Samaroo's application for citizenship on October 15, 2015.

[3] The Minister of Citizenship and Immigration [the Minister] has applied for a judicial review of this decision. The Minister contends that the Judge erroneously granted citizenship despite a dearth of evidence on Mr. Samaroo's establishment in Canada, and that his decision is unreasonable and ignored significant gaps and discrepancies in the evidence. In response, Mr. Samaroo submits that the Judge's decision is reasonable and falls within the range of possible, acceptable outcome in light of the evidence on the record.

[4] The issues raised in this application are as follows: 1) did the Judge err in applying the selected residency test; 2) was the Judge's decision granting citizenship to Mr. Samaroo reasonable.

[5] For the reasons that follow, the Minister's application for judicial review is dismissed. I am not convinced that the Judge's decision falls outside the range of acceptable and possible outcomes, or that the limited amount of evidence supporting the decision is sufficient to justify this Court's intervention. I also find that the reasons for the decision adequately explain how the Judge found that Mr. Samaroo had met the qualitative residency requirements under paragraph 5(1)(c) of the *Citizenship Act*, SRC 1985, c C-29 [the Act].

II. Background

A. *The Judge's decision*

[6] In his decision, the Judge identified the relevant four-year period for the purposes of Mr. Samaroo's residency requirements as being from February 1, 2008 to February 1, 2012. Pursuant to paragraph 5(1)(c) of the Act (as it read at the time Mr. Samaroo submitted his citizenship application), the Minister shall grant citizenship to any person who, within the relevant four-year or 1,460-day period of reference, has accumulated at least three years (or 1,095 days) of residence in Canada. On his citizenship application, Mr. Samaroo declared 1,109 days of physical presence and 352 days of absence from Canada.

[7] In his decision, the Judge expressly adopted the analytical approach used in *Re Papadogiorgakis*, [1978] 2 FC 208 [*Papadogiorgakis*]. Pursuant to that "qualitative" test, the Judge was required to assess Mr. Samaroo's attachment to Canada in order to determine if his mode of living is centralized in Canada and reflects an intention to establish a permanent home in the country.

[8] After summarizing the procedural steps leading to his decision and referring to concerns about Mr. Samaroo's credibility, the Judge listed the facts as he understood them as well as the explanations provided by Mr. Samaroo to address the concerns presented to him. More specifically, the Judge mentioned the following:

> • After a new calculation of Mr. Samaroo's days of absence, which considered non-declared stamps in his passport, Mr. Samaroo was found to have 1,066 days of physical presence and 394 days of absence from Canada. This was 29 days short of the 1,095-day statutory requirement;
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> • There were other re-entry dates in the Integrated Customs Enforcement Services [ICES] report which were declared neither in Mr. Samaroo's application nor in his residence questionnaire. However, the Judge stated that he checked the non-declared dates identified in the ICES report and noted that all but one were already included in the non-reported stamps in Mr. Samaroo's passport. The Judge concluded, "after examining dates closer to the one that was not declared, and the travelling pattern of the applicant," that he was convinced that the potential new absences from Canada during the relevant period will not change the residency requirements established by the Act;
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> • The address of Mr. Samaroo's Trident business in Canada is the same as of his residence, while his business in Trinidad has a different address than Mr. Samaroo's Trinidadian residence. At the hearing, Mr. Samaroo explained that the activity of his Canadian company, contrary to the one in Trinidad, doesn't require a big office and can be operated from home;
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> • There was almost no activity in Mr. Samaroo's business account in Canada, as he indicated that he was mainly using his Trinidadian company credit card for his business activities in Canada;
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> • With respect to the business activities of Trident, Mr. Samaroo provided a January 2012 purchase order from Foreign Affairs Canada for security goods, as well as Trinidadian credit card statements showing purchases for his Canadian business;
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> • Mr. Samaroo admitted during the hearing that he had a Canadian Imperial Bank of Commerce [CIBC] checking account that was used mainly by his daughter;

- Mr. Samaroo and his wife had "regular" visits to their Canadian family doctor over the period of reference;

- The Judge noted that Mr. Samaroo and his wife travelled to Trinidad every two months for business purposes;

- Additional documents such as Canadian school records for Mr. Samaroo's children during the period of reference and additional details on Mr. Samaroo's work activities in both Canada and Trinidad were presented after the hearing, at the Judge's request;

- As part of his arrangements for his settlement in Canada, Mr. Samaroo indicated that he purchased a house in Belleville, Ontario between December 2005 and July 2006 and that the Samaroo family moved to Canada in August 2006. The Samaroo family also moved from Belleville to Vaughan, Ontario in August 2010. Mr. Samaroo provided proof of home ownership in Canada;

- Mr. Samaroo provided a letter from Ms. Karen McDonald, a former High Commissioner for Canada in Trinidad, avowing that Mr. Samaroo was living in Canada from 2008 to 2012 and was returning to Trinidad from time to time for business reasons.

[9] The Judge found, on a balance of probabilities, that Mr. Samaroo met the residence requirements to obtain Canadian citizenship, as outlined in *Papadogiorgakis*, since he had "maintained and centralized his residence in Canada." The Judge specifically referred to paragraph 16 of *Papadogiorgakis* in his decision.

B. *The standard of review*

[10] The question of whether or not an applicant has met the residency requirements of the Act is a question of mixed fact and law. It is well established that the standard of review applicable to such decisions made by a citizenship judge is reasonableness (*Canada (Citizenship and Immigration) v Baccouche*, 2016 FC 97 at para 8; *Canada (Citizenship and Immigration) v*

Bayani, 2015 FC 670 [*Bayani*] at para 17; *Huang v Canada (Citizenship and Immigration)*, 2013 FC 576 [*Huang*] at para 26).

[11] In her submissions, counsel for the Minister had referred to the Court decision in *Canada (Minister of Citizenship and Immigration) v Farag*, 2009 FC 299 at para 19 to claim that the standard of correctness governed whether the Judge misapplied the *Papadogiorgakis* test for residency. At the hearing, counsel for the Minister however acknowledged that this decision dates back to 2009 and is no longer good law in light of the subsequent teachings of the Supreme Court in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*] and its progeny, including most recently in *Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at para 32. In those and other cases, the Supreme Court has systematically held that, when an administrative tribunal interprets or applies its home statute, there is a presumption that the standard of review applicable to its decision is reasonableness (*Alberta Teachers* at paras 39 and 41; *Tervita Corp v Canada (Commissioner of Competition)*, 2015 SCC 3 at para 35).

[12] Indeed, this Court applied that very principle to residency cases in *Canada (Citizenship and Immigration) v Patmore*, 2015 FC 699 [*Patmore*], where Mr. Justice de Montigny explicitly wrote that questions regarding the interpretation of one of the citizenship tests are matters that "go to the interpretation of the 'home statute' of citizenship judges and the Supreme Court has made it clear in a number of recent decisions that such matters are reviewable on a standard of reasonableness" (*Patmore* at para 14).

[13] In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the immigration officer to any relevant factor (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency, and intelligibility, and that the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Canada (Minister of Citizenship and Immigration) v Safi*, 2014 FC 947 [*Safi*] at para 16). In other words, the standard of reasonableness not only commands that the decision at issue falls within a range of possible, acceptable outcomes defensible in respect of the facts and law, but it also requires the existence of justification, transparency and intelligibility within the decision-making process (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47).

[14] It is also trite law that the person applying for citizenship bears the onus of proving that the conditions set out in the Act with regard to residence have been met (*El Falah v Canada (Citizenship and Immigration)*, 2009 FC 736 [*El Falah*] at para 21). A citizenship judge cannot solely rely on the applicant's claims in that regard, especially in the face of contradictory evidence (*El Falah* at para 21). Clear and compelling evidence is required to support an application (*Atwani v Canada (Citizenship and Immigration)*, 2011 FC 1354 at para 12). This is so because Canadian citizenship is a privilege that should not be granted lightly (*Canada (Citizenship and Immigration) v Pereira*, 2014 FC 574 [*Pereira*] at para 21). This requirement applies irrespective of which residency test is applied by the citizenship judge, whether it is

quantitative or qualitative (*Abbas v Canada (Citizenship and Immigration)*, 2011 FC 145 at para 8).

[15] It is also settled law that the courts owe significant deference to credibility findings made by boards and tribunals (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) at para 4; *Canada (Minister of Citizenship and Immigration) v Vijayan*, 2015 FC 289 at para 64; *Pepaj v Canada (Minister of Citizenship and Immigration)*, 2014 FC 938 at para 13). In particular, the credibility findings of citizenship judges deserve such deference because they are better situated 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).

III. Analysis

A. *Did the Judge err in applying the Papadogiorgakis test?*

[16] The Minister claims that the Judge erred in applying the *Papadogiorgakis* test as he did not conduct the two-step analysis required by the test. The Minister submits that the test first required the Judge to decide whether Mr. Samaroo had established residence in Canada. This is a threshold question and must be satisfied before moving on to consider the second step, namely the analysis of the quality of Mr. Samaroo's attachment to Canada. The Minister contends that the Judge failed to address whether Mr. Samaroo had established residency in Canada prior to his first extensive absence from Canada, and whether Canada is the country in which he has centralized his mode of existence.

[17] More specifically, the Minister argues that no evidence demonstrates that Mr. Samaroo established residency in Canada prior to applying for citizenship. The documents provided state that a property was purchased by Mr. Samaroo and his wife in August 2010. Further, Mr. Samaroo landed in Canada in December 2005 and left for Trinidad in early January 2006, before he was able to apply and receive a permanent resident card. Mr. Samaroo re-entered Canada at the end of January 2006 and remained in Canada until mid-June 2006. There is no evidence to suggest that he re-entered Canada until the end of January 2007, almost a year after his first visit to Canada.

[18] I disagree with the Minister's assessment of the Judge's analysis on the issue of establishment and his application of the *Papadogiorgakis* test.

[19] The Act does not define the term "residence." For quite some time, there has therefore been an ongoing debate within this Court as to what the term and paragraph 5(1)(c) of the Act exactly mean. Competing jurisprudential schools have emerged from that debate with the result that three different tests are available to citizenship judges in assessing the residency requirement in any given case (*Patmore* at para 13; *Huang* at paras 17-18; *Sinanan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1347 at paras 6-8).

[20] The first test involves a strict counting of days of physical presence in Canada, which must total at least 1,095 days in the four years preceding the application. This test is often referred to as the quantitative test or the *Pourghasemi* test, as developed in *Pourghasemi (Re)* (1993), 62 FTR 122 (FCTD) [*Pourghasemi*]. The second test assesses the quality of the

applicant's attachment to Canada and recognizes that a person can be resident in Canada, even while temporarily absent, if that person's mode of living is centralized in Canada and reflects an intention to establish a permanent home in the country. This less stringent test is the *Papadogiorgakis* test, applied by the Judge in this case. Finally, the third test builds on the second one by defining residence as the place where one has centralized his or her mode of living. It is described in the jurisprudence as the *Koo* test (*Re Koo*, [1993] 1 FC 286). The last two tests are often referred to as the qualitative tests (*Huang* at para 17).

[21] The dominant view in this Court's jurisprudence is that citizenship judges are entitled to choose which test they desire to use among these three tests and that they cannot be faulted for choosing one over the other (*Canada (Citizenship and Immigration) v Lin*, 2016 FC 58 at para 12; *Bayani* at para 24; *Pourzand v Canada (Minister of Citizenship and Immigration)*, 2008 FC 395 at para 16; *Xu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 700 at para 16). The Court should therefore 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). While they can choose between the three tests, citizenship judges must however at least indicate which residency test was used and why the test was met or not. Failure to do so is a reviewable error (*Bayani* at para 30; *Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323 [*Jeizan*] at para 18). A citizenship judge's decision will be sufficiently motivated when the reasons are clear, accurate and intelligible, and when it reflects an understanding of the points raised by the evidence and indicates why the decision was rendered (*Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 46; *VIA Rail Canada Inc v Canada (National Transportation Agency)*, [2001] 2 FC 25 (FCA) at para 22; *Jeizan* at para 17).

[22] In this case, the Judge clearly chose the qualitative test set out in *Papadogiorgakis*. He cannot be faulted for that.

[23] I agree with the Minister that the analysis under the *Papadogiorgakis* test is divided into two parts, namely whether an applicant has established residency in Canada and whether an applicant has maintained that residency, and that the establishment of residency is a preliminary or threshold step (*Patmore* at para 16; *Eltom v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1555 at para 21). The analysis of Mr. Justice O'Reilly in *Canada (Minister of Citizenship & Immigration) v Nandre*, 2003 FCT 650 at paras 23 and 24, is helpful in explaining the interrelation of those two steps. It is worth reproducing it in its entirety:

> [23] [T]he periods during which [the applicant for Canadian citizenship] was absent should be counted towards the fulfilment of his residence requirement, commencing at the point in time when he could be said to have established his residence in Canada. Unfortunately, however, the Citizenship Judge did not determine when that was.
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> [24] As mentioned, the *Citizenship Act* requires that an applicant for citizenship show a period of residence in Canada amounting to a total of at least three years over the course of the previous four. In order for applicants to satisfy the residence requirement, they must first show that they have established a residence in Canada and then demonstrate that they maintained residency for the required duration. Numerous cases of this Court make this clear: see, for example, *Chan v. Canada (Minister of Citizenship & Immigration),* 2002 FCT 270, [2002] F.C.J. No. 376 (Fed. T.D.); *Canada (Minister of Citizenship & Immigration) v. Xu,* 2002 FCT 1111, [2002] F.C.J. No. 1493 (Fed. T.D.).
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> (Emphasis added)

[24] Therefore, the Judge first had to find whether Mr. Samaroo had established residence in Canada. Afterwards, the Judge was to verify whether residency had been maintained. Absences from Canada are to be tallied in the relevant period (in this case from February 1, 2008 to February 1, 2012). It would be difficult to claim to have established a residence if one is present in Canada for an extremely short period of time. In *Canada (Secretary of State) v Yu*, [1995] FCJ No 919 [*Yu*], Ms. Yu only remained in Canada for 17 days before leaving to continue her studies in the United States. Mr. Justice Rothstein was not satisfied that there was an initial residency established. He "[found] it difficult to accept that one could be said to maintain or centralize an ordinary mode of living with its accessories and social relations, interests and conveniences in a period of only 17 days with only a room at the residence of an uncle" (*Yu* at para 6).

[25] In the current case, I acknowledge that the Judge did not expressly break down his analysis into steps, which would have perhaps made the test easier to follow. However, I find it possible and reasonable to infer from reading the record, in conjunction with the reasons, that the Judge had concluded that Mr. Samaroo had indeed established his residency in Canada before the relevant period. In his reasons, the Judge refers to, notably, the fact that "the applicant has provided proof of ownership of his residence in Canada." The Judge also noted that Mr. Samaroo "has a business in Trinidad and one in Canada." In addition, the record shows that Mr. Samaroo's Belleville home was purchased in 2006 while Trident, his Canadian company, was started in 2007. Also worth noting is the letter of the former High Commissioner for Canada to Trinidad stating that "by the time I arrived in December 2008, the Samaroo family was already living in Canada."

[26] True, the evidence provided by Mr. Samaroo may not be the strongest regarding the establishment of the Samaroo family in Canada before the relevant period, and the Judge's reasons could have been more explicit and articulate. But I am not persuaded that the Judge's decision in this respect is unreasonable or lacks intelligibility. The current situation can be distinguished from the recent case of *Canada (Minister of Citizenship and Immigration) v Gentile*, 2015 FC 1029 [*Gentile*] in which the *Papadogiorgakis* test was also applied and where Madam Justice Kane granted the application for judicial review to reconsider the citizenship judge's decision. In *Gentile*, the citizenship judge had mistakenly found that some tax assessments were consistent with full-time employment although Mr. Gentile was only employed for two years of the relevant four-year period. The citizenship judge had also erroneously stated that the absences in the residence questionnaire could be verified against Mr. Gentile's passport and ICES report, which was not the case here (*Gentile* at paras 46 and 47). Furthermore, in *Gentile*, the citizenship judge did not appear to understand the test and to have mixed qualitative and quantitative assessments of the evidence (*Gentile* at para 49). In the current case, there is nothing suggesting that the Judge did not understand the test, and the Judge in fact clearly articulated that he was applying the *Papadogiorgakis* test (*Pereira* at para 16).

[27] The Minister also relies on *Naveen v Canada (Citizenship and Immigration)*, 2013 FC 972 [*Naveen*] in support of his position. In *Naveen*, Ms. Naveen became a permanent resident of Canada in September 2007, but spent only four days in Canada before returning to college in California. She returned during some (but not all) school breaks and vacations, but never worked or studied in Canada. Mr. Justice Annis commented that it is "common ground in this Court that the initial establishment of a residence is a prerequisite for a citizenship application" (*Naveen* at

para 15) and concluded that the initial requirement had not been met. Mr. Samaroo's situation is however quite different, as there is evidence that he spent close to half of his time in Canada in the period between his initial landing and the start of the relevant period of reference.

[28] In her submissions, counsel for the Minister also states that the residence must be established before the "first extensive absence." In support of this affirmation, the Minister refers to *Canada (Citizenship and Immigration) v Camorlinga-Posch*, 2009 FC 613 at para 18, where the Court stated that "extended absences from Canada will not be fatal to a citizenship request if the applicant can demonstrate that [they] had established his or her residence in Canada before leaving and if Canada is the country in which he or she has centralized his or her mode of existence." The Minister also relies on *Canada (Minister of Citizenship and Immigration) v Italia*, [1999] FCJ No 876 at para 14. However, none of these two cases stands for the proposition that the residence needs to be established before the first extensive absence. It simply has to be established before leaving the country.

[29] The Minister's arguments on the factual findings made by the Judge with respect to Mr. Samaroo's establishment in Canada invite the Court to substitute its view of the evidence for that of the citizenship judge. The Judge heard from Mr. Samaroo directly at the hearing and reviewed the evidence before reaching the conclusion that Mr. Samaroo had provided sufficient evidence that he had maintained and centralized his residence in Canada. Furthermore, there is also no basis for an inference that the citizenship judge ignored material evidence that squarely contradicted his conclusions (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FTD) at para 17).

[30] A decision-maker like a citizenship judge is deemed to have considered all the evidence on the record (*Hassan v Canada (Minister of Citizenship and Immigration)*, [1992] FCJ No 946 (FCA) at para 3; *Kanagendren v Canada (Minister of Citizenship and Immigration)*, 2015 FCA 86 at para 36). A failure to mention an element of evidence does not mean that it was ignored or that there was a reviewable error. In this case, the Judge had the benefit of a hearing with Mr. Samaroo, for which there is no transcript to contradict the evidence on the record. In view of these elements, and in light of the whole record, I am not persuaded that the Judge failed to consider the establishment of Mr. Samaroo in Canada.

[31] I pause to note that, contrary to many other cases, this is not a situation where the shortfall in Mr. Samaroo's days of presence amounted to several hundreds of days or where Mr. Samaroo only spent a handful of days in Canada before leaving. Here, Mr. Samaroo's shortfall was only 29 days, and he had spent extensive time in Canada before applying for citizenship.

[32] The Minister is right to point out that there remains at all times a positive obligation on the citizenship applicants to provide true, correct, and complete information and to refrain from making false declarations. However, it is well recognized that the Act does not require corroboration on all counts; instead, it is "the responsibility of the original decision-maker, taking the context into consideration, to determine the extent and nature of the evidence required" (*Canada (Citizenship and Immigration) v El Bousserghini*, 2012 FC 88 at para 19). The Judge may not have expressed his analysis of the residency test as clearly as the Minister would have liked to see it in his reasons, or explained in as much detail as the Minister would

have hoped how Mr. Samaroo convinced the judge about the maintenance and centralization of his residence and mode of living in Canada. However, I am satisfied that there is enough evidence to indicate that the Judge's finding on the establishment of Mr. Samaroo in Canada was not unreasonable.

[33] The Judge's decision indeed reflects that he turned his mind to the issues regarding Mr. Samaroo's credibility and residence, and addressed them. This is not a situation where, as in *Pereira*, the exercise of discretion by the citizenship judge went too far and the judge accepted unconceivable explanations on unreported absences with no further inquiries (*Pereira* at paras 23 and 30). In the present case, the citizenship judge reviewed the citizenship officer's concerns with Mr. Samaroo at the hearing and concluded that he had met his onus to establish residence through sufficient and credible evidence. The factual errors identified by the Minister are not significant enough to make the decision unreasonable and to warrant this Court's intervention.

[34] To echo what this Court stated in *Guerrero Moreno v Canada (Minister of Citizenship and Immigration)*, 2011 FC 841 at para 15, immaterial errors, even if there are several, are not sufficient to render a decision unreasonable. An imperfect decision with immaterial errors remains reasonable.

[35] The Court understands the Minister's desire to receive more detailed or more complete reasons from a citizenship judge, as the process established by the Act requires a citizenship officer to refer a matter to a citizenship judge when the officer has concerns and is not satisfied that residency requirements are met. But the test this Court has to apply is not whether the

decision satisfies the expectations of the Minister; the test is the reasonableness of the decision. In the present case, I am not persuaded that the conclusions of the Judge on the establishment of Mr. Samaroo in Canada fall outside the range of reasonableness. I instead find the ultimate result reasonable considering the totality of the evidence and the applicable legal principles. This Court should not interfere with it on judicial review.

B. ***Was the Judge's decision granting citizenship to Mr. Samaroo reasonable?***

[36] The Minister further submits that the Judge misapprehended the evidence before him. Mr. Samaroo had stated in his affidavit that he testified before the Judge that he and his wife travelled from Canada to Trinidad "for a period of approximately ten days every three months for business purposes," but the Judge stated in his decision that "[Mr. Samaroo] admits that every two months he and his wife travel to Trinidad for business purposes." Furthermore, the Minister argues that the banking records, the fact that his business in Canada was operated from Mr. Samaroo's home address, as well as the fact that Mr. Samaroo maintained a residence both in Trinidad and Canada do not support the conclusion that Mr. Samaroo had centralized his mode of living in Canada.

[37] In addition, the Minister contends that the Judge did not do "the bare minimum required of him" in terms of the sufficiency of reasons. Apart from simply concluding that Mr. Samaroo "has maintained and centralized his residence in Canada," the Judge provides no reasons for what he considered in coming to his conclusions. The gaps in the evidence in the present case, combined with the lack of clarity in the evidence, were not thoroughly probed and resolved by the Judge. The Minister claims that no mention was made of issues arising from the passport

provided by Mr. Samaroo, including the number of passport stamps, and other concerns raised by the citizenship officer in the File Preparation Analysis Template [FPAT] report.

[38] According to the Minister, the Judge did not explain how the evidence provided by Mr. Samaroo led him to the conclusion that Mr. Samaroo had centralized his residence in Canada. Citizenship judges are required to provide reasons for their decisions regardless of the test they choose to apply; and mere recitations of the facts do not constitute reasons. The Minister submits that, at the very least, reasons "should indicate which residency test was used and why the test was or was not met" (*Jeizan* at para 18).

[39] I am not convinced by the Minister's arguments. On the contrary, I am satisfied that the Judge's findings were reasonable and that the gaps identified by the Minister do not render the decision unreasonable. I am not persuaded that the Judge failed to address the concerns raised by the citizenship officer. While the Judge could perhaps have provided more fulsome reasons to support his analysis, there is no fatal flaw to his reasoning and I find that he considered the totality of the evidence. Had I been in the place of the Judge, I might have assessed the evidence differently or presented the analysis otherwise. But, on judicial review, the Court must decide whether the Judge could reasonably come to his conclusion on the basis of the record before him; I do not find that, in the circumstances of this case, the Judge's decision falls outside the realm of acceptable, possible outcomes.

[40] The thrust of the Minister's argument, namely that the evidence demonstrates that Mr. Samaroo did not establish a mode of living centralized in Canada, essentially boils down to

asking the Court to re-weigh and reassess the evidence before the Judge. It is trite law such is not the purview of a judicial review.

[41] The Minister attaches weight to the fact that Mr. Samaroo's Canadian business was run out of his home while his business in Trinidad was carried on from a warehouse facility, suggesting that this evidence weighs against the Judge's finding that Mr. Samaroo had centralized his mode of living in Canada. However, Mr. Samaroo testified it was easy to run the business out of his house, that it had taken a few years to establish his Canadian company and that the Canadian government was one of his customers. Although the CIBC banking records do not show activity in Canada for the Canadian business, Mr. Samaroo submitted Trinidadian credit card statements showing business transactions by Mr. Samaroo in Canada.

[42] The Judge also noted that Mr. Samaroo had admitted having a joint bank account (the CIBC bank account) with his daughter, which was used "mainly" but not exclusively by her. Additionally, there was other evidence establishing Mr. Samaroo's mode of living in Canada during the period of reference: proof of home ownership in Canada, the school records of his children establishing that they attended high school in Belleville, the letter from a Canadian government official, the former High Commissioner for Canada in Trinidad, vouching that Mr. Samaroo was living in Canada from 2008 to 2012, a purchase order from Foreign Affairs Canada to Trident dated from January 2012, and several appointments with Canadian physicians.

[43] The Minister argues that the Judge (and the Court) should discard the evidence on the school records of Mr. Samaroo's children, as they do not reflect the presence in Canada of

Mr. Samaroo himself, as well as the evidence on the Canadian business of Mr. Samaroo given the absence of reported income until 2012. I do not agree. Mr. Samaroo explained that the lack of income of his Canadian company during its early years of operation was a normal reflection of the start-up years of any company. I am satisfied that it was reasonable for the Judge to accept such evidence. Similarly, I do not find it unreasonable for the Judge to retain the school records of Mr. Samaroo's children when they were minor as an indicator of Mr. Samaroo's active and effective presence in Canada during those years.

[44] Although the Judge erroneously wrote "two months" instead of "three months" for the frequency of Mr. Samaroo's visits back to Trinidad, that mistake does not render the decision unreasonable. In fact, this error played against Mr. Samaroo as it extended the frequency of his stays outside of Canada, and the Judge nonetheless found in his favor despite that.

[45] The Minister also incorrectly alleges that there is no evidence that Mr. Samaroo bought and renovated a property in 2006, as a mortgage document for a property in Belleville, dated May 31 2006, and a property tax bill for 2010 are both included in the record.

[46] Furthermore, I do not retain the Minister's argument that no mention was made of issues arising from the passport provided by Mr. Samaroo, including the number of passport stamps. In his reasons, the Judge notes the new calculation of days of physical presence and "that the new calculation is considering the non-declared stamps in the passports, but there are other re-entry dates in the ICES report not declared neither in the application nor the Residence Questionnaire." The Judge acknowledges that there are problems with the application and is not blind to those

issues, but states that he is convinced "that the potential new absences from Canada during the relevant period will not change the residency requirement established by the Act."

[47] In light of this, it was open to the Judge to conclude that Mr. Samaroo had maintained and centralized his mode of living in Canada during the relevant period, and it cannot be said that his decision does not fall within a range of possible, acceptable outcomes in regards of the facts and law.

[48] Furthermore, a citizenship judge is not required to refer to every piece of evidence. The reasons are only required to provide sufficient grounds to allow the reviewing court to understand why a decision was reached and to assess its reasonableness. As I stated in *Canada (Minister of Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 [*Abdulghafoor*] at para 31, "the decision-maker is not required to refer to each and every detail supporting his or her conclusion. […] [He is not required to] set out every reason, argument or detail in the reasons, or to make an explicit finding on each element that leads to a final conclusion."

[49] Regarding the issue of sufficiency of reasons, reasonableness, not perfection is the standard (*Abdulghafoor* at para 33). In fact, "even where the reasons for the decision are brief, or poorly written, this court should defer to the decision-maker's weighing of the evidence and credibility determinations, as long as the Court is able to understand why the citizenship judge made its decisions" (*Abdulghafoor* at para 33; *Canada (Minister of Citizenship and Immigration) v Thomas*, 2015 FC 288 at para 34).

[50] I find it possible to understand the reasoning used by the Judge and the evidence which led him to be satisfied that Mr. Samaroo has been in Canada for the requisite period of time. In his reasons, the Judge lists the evidence that he relied on and enumerates his credibility concerns and how they were answered by Mr. Samaroo either at the hearing or afterwards. I am also of the view that the Judge either acknowledged or directly addressed the various comments made by the citizenship officer in the FPAT report as required (*Canada (Minister of Citizenship and Immigration) v Lin*, 2016 FC 58 at para 16; *Canada (Minister of Citizenship and Immigration) v Raphaël*, 2012 FC 1039 at paras 23-24). This is notably true for the facts that Mr. Samaroo continued operating a business in Trinidad and that he has a residence there, or that the personal chequing account is shared with his daughter as there was activity in the account when both Mr. and Ms. Samaroo were outside of Canada.

[51] At the hearing before the Court, counsel for the Minister insisted on the distinction between passive and active indicia of residence, arguing that Mr. Samaroo had not provided sufficient active indicia of residency. Passive indicia of residence "only shows registration, not attendance" (*Canada (Minister of Citizenship and Immigration) v Qarri*, 2016 FC 113 [*Qarri*] at para 7) and consists of evidence such as health cards, social insurance cards, Canadian income tax returns, bank letters confirming that an account had been opened and leases as well as notices of rent increase (*Canada (Minister of Citizenship and Immigration) v Chved*, [2000] FCJ No 1661 [*Chved*] at paras 7 and 11).

[52] I do not agree with the Minister that the evidence on residency relied on by the Judge can be qualified as being limited to passive indicia of residence and that such evidence was

inconclusive or insufficient (*Qarri* at para 48; *Ozlenir v Canada (Minister of Citizenship and Immigration)*, 2016 FC 457 at para 26; *Zhu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 5 at para 9). Active indicia provided by Mr. Samaroo included his children's school records, bank statements showing purchases in Canada, Trident's activities in Canada, letters from doctors certifying that they were the family physicians during the relevant period, and the letter from the former High Commissioner for Canada to Trinidad. Like in *Canada (Minister of Citizenship and Immigration) v Lee*, 2016 FC 67 at paras 26-27 in which Mr. Justice Southcott equated the applicant's arguments criticizing the citizenship judge's reliance on passive indicia of residence as a request to reweigh evidence, I do not consider the Judge's reliance on the factors he retained to be sufficient to render his decision unreasonable.

IV. Conclusion

[53] For the reasons set forth above, this application for judicial review is dismissed. Although the Minister might have preferred a more elaborate and explicit decision, I am satisfied that the Judge addressed the concerns that were raised by the citizenship officer and adequately explained why they did not impact his finding on Mr. Samaroo's residence in Canada. His decision was reasonable and provided sufficient reasons. It is intelligible, defensible and supported by the evidence, and I find that it meets the standard of reasonableness.

[54] Neither party has proposed a question of general importance to certify. I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;

2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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