

IN: THE MATTER OF THE *CITIZENSHIP ACT*,
R.S.C. 1985, c. C-29,

AND: IN THE MATTER OF an appeal from the decision of a citizenship judge,

AND: IN THE MATTER of
ROBERTO HENRIQUEZ GOMEZ,

Appellant.

J U D G M E N T

DENAULT J.:

The appellant has appealed from a decision of a citizenship judge denying his application for citizenship on the ground that he did not meet the residence requirements set out in paragraph 5(1)(c) of the *Citizenship Act*. Under that paragraph, a person who applies for citizenship must have accumulated at least three years of residence in Canada within the four years immediately preceding the date of his application.

The appellant arrived in Canada as a permanent resident on April 23, 1991, and filed his application for citizenship on September 13, 1994. The essence of the citizenship judge's decision is found in one paragraph in which she states:

[TRANSLATION]

At the interview, I had doubts as to your residence in Canada and I asked you to provide me with additional documents. Unfortunately you were unable to provide me with satisfactory evidence of your residence in Canada.

At the hearing of this appeal, the appellant testified under oath and referred to the documents that had been filed before the citizenship judge. Although the citizenship judge said no more on the point, it appears that her doubts arose from the fact that the lease for the unit the appellant occupied with his female companion from July 1, 1993, to July 30, 1995, was signed only by his companion, although the evidence does establish that from August 1, 1992, to July 31, 1993, the appellant and his companion were cohabiting - they have three children aged 20, 19 and 16 - in a unit for which they had both signed the lease. The same is true of the lease signed for the period from July 1, 1995, to June 31, 1996. I find that the fact that the appellant had not signed the lease for the period from July 1, 1993, to July 30, 1995 is not sufficient to create any doubt as to his residence in Canada during that period, particularly since his employment income for 1993 and 1994 is further evidence to the contrary.

There is one other factor in this case which justifies the Court in intervening. It appears that from the date when the appellant obtained permanent resident status (April 23, 1991) to the date of his application for citizenship (September 13, 1994), the appellant left Canada only for a period of 67 days between February 19 and April 26, 1994. That period of absence (67 days), together with the fact that he made his

application for citizenship prematurely,¹ still adds up to only 289 days. In short, the appellant resided in Canada for more than three years before making his application for citizenship.

¹His application was 222 days premature, that is, the time between September 13, 1990 (four years before the application for citizenship on September 13, 1994) and the date when he obtained permanent resident status, on April 23, 1991.

For these reasons, the appeal is allowed.

OTTAWA, February 14, 1997

PIERRE DENAULT
J.F.C.C.

Certified true translation

C. Delon, LL.L.

**FEDERAL COURT OF CANADA
TRIAL DIVISION**

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: T-2047-95

STYLE OF CAUSE: Citizenship Act
-and-
Roberto Henriquez Gomez

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 11, 1997

JUDGMENT OF DENAULT J.

DATED: February 14, 1997

APPEARANCES:

Roberto Henriquez Gomez	For himself
Jean Caumartin	Amicus Curiae

SOLICITORS OF RECORD:

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