

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

Jose Johnny Galindez-Diaz

Appellant

REASONS FOR ORDER

(Delivered orally from the Bench
at Toronto, Ontario on March 11, 1997, as edited)

McKEOWN J.

This matter came for hearing before me at Toronto on March 11, 1997.

The appellant appeals the decision of a Citizenship Judge dated May 20, 1996, refusing his application for Canadian citizenship on the basis that he did not meet the requirement of residence for a Canadian citizen under paragraph 5(1)(c) of the *Citizenship Act* (the Act).

The issue is whether or not the appellant satisfied the residence requirements enunciated in paragraph 5(1)(c) of the Act. The Citizenship Judge based her decision on the following three paragraphs:

According to your file you were granted landed immigrant status in Canada, on September 10, 1993. Your application for Citizenship, was signed on October 21, 1995. Thus, you have not accumulated the required 1,095 days stay in Canada.

While, it is a fact that you entered Canada on August 03, 1990, a check with immigration reveals that not only did you fail to obtain authorization prior to leaving Canada, but further, that your permit to stay in Canada, expired on April 30, 1993.

As during the period between April 30, 1993, and your being granted landed immigrant status, you had no legal status in Canada, your stay in Canada prior to landing cannot be considered.

Unfortunately, the employment authorization visa which had been issued by

Employment and Immigration Canada was not before the Citizenship Judge. The employment authorization visa was signed April 17, 1993 and was valid until October 16, 1993.

When the appellant became a landed immigrant on September 10, 1993, the visa was deleted from the appellant's passport. However, the visa exists and did exist and there was no gap in the appellant's lawful stay in Canada, which commenced August 3, 1990. The appellant clearly had centralized his mode of living in Canada and the error of the Citizenship Judge has been rectified. I am satisfied that the appellant has met the residence requirements of paragraph 5(1)(c) of the Act in Canada, as required thereunder. Accordingly, the appeal is allowed.

OTTAWA, ONTARIO
April 16, 1997

Judge