

**Date: 20071212**

**Docket: T-807-07**

**Citation: 2007 FC 1305**

**Ottawa, Ontario, December 12, 2007**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**and**

**Applicant**

**ESAM AYED AHMAD WSHAH**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The respondent, Esam Ayed Ahmad Wshah, is a citizen of Jordan.

[2] On February 6, 2003, he became a permanent resident of Canada. He landed in this country without accompanying family.

[3] On May 1, 2003, Mr. Wshah left Calgary, Alberta to take up employment in Germany.

[4] While he was absent from Canada, Mr. Wshah states that he maintained a bank account here and paid his medicare and phone bills. There is no evidence that he paid Canadian income tax while employed in Germany.

[5] On July 25, 2005, after being away from Canada for more than two years, Mr. Wshah returned to Calgary with his spouse, whom he married abroad in 2004, and their first child. Mr. Wshah secured a job, applied to sponsor his wife and their child, purchased a home, started a business and paid Canadian income tax.

[6] On February 22, 2006, the respondent applied for Canadian citizenship. The parties agree that during the four years prior to his application, Mr. Wshah was present in Canada for 294 days and was absent for a total of 815 days. His absence represents a shortfall of 801 days with respect to the 1,095-day residency requirement prescribed under paragraph 5(1)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29.

[7] Despite this shortfall, after considering the factors in *Koo (Re)*, [1993] 1 F.C. 286 (T.D.), a citizenship judge approved Mr. Wshah's application for citizenship. This proceeding is the appeal from that decision by the Minister of Citizenship and Immigration.

[8] The parties agree that the appropriate standard of review is reasonableness: *Lam v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 410 (QL)(T.D.) at paragraphs 31 and 33; *Chen v. Canada (Minister of Citizenship and Immigration)*, 2004 FC

1693. In this proceeding, the citizenship judge was free to follow the decision in *Koo* as long as this was done with clear reasons which demonstrate an understanding of the applicable legal principles.

[9] Counsel for the respondent acknowledges, and properly so, that the principles in *Koo* apply in "... situations in which the person concerned has a place in Canada which is used by him during the period as a place of abode to a sufficient extent to demonstrate the reality of his residing there during the material period...": *Re Papadogiorgakis*, [1978] F.C.J. No. 31 (QL) (T.D.) at paragraph 15.

[10] Put differently, the person seeking citizenship with substantial absences during the material residency requirement period (the material period) must demonstrate a centralized mode of existence in Canada, the place where the person "regularly, normally, or customarily lives": *Koo (Re)*.

[11] In *Re Papadogiorgakis* at paragraph 3, the individual can be said to have centralized his mode of living in Canada during the three years prior to the material period. In this proceeding, there is little, if any significant establishment in Canada prior to the respondent taking up employment for some two years in Germany.

[12] During the three months after the respondent's landing in Canada and prior to his taking up employment in Germany, there is little evidence of his having established himself in Canada.

The respondent had no family in Canada. There is no evidence that he had any established friendships or residential premises or that he paid Canadian taxes. His “establishment” was at best a paper one and a very nominal one at that.

[13] In *Lucki (Re)*, [1993] F.C.J. No. 185 (T.D.), another citizenship case involving a presence of short duration before an extended absence, the applicant landed in Canada with his spouse and their daughter. He worked here as an architect and the daughter attended school. The working assignment which caused the absence was both unexpected and of fixed duration. While working in Cyprus with the United Nations, the applicant paid taxes in Canada. The facts in *Lucki (Re)* and the other cases relied upon by the respondent can be distinguished from those in this proceeding.

[14] In my view, the citizenship judge was “clearly wrong” in his application of *Koo*. His reasoning concerning the *Koo* factors does not withstand “a somewhat probing examination”. In particular, there is no cogent analysis as to whether or when the respondent centralized his mode of living in Canada.

[15] Accordingly, the Minister’s appeal will be granted and the decision of the citizenship judge will be set aside. Of course, it will be open to the respondent to reapply for citizenship on the basis of his return to Canada in July 2005 and any other relevant factors.

**ORDER**

**THIS COURT ORDERS that** this appeal is maintained and the decision of the citizenship judge dated March 12, 2007 is set aside.

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"Allan Lutfy"  
Chief Justice

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

**DOCKET:** T-807-07

**STYLE OF CAUSE:** MCI v. ESAM AYED AHMAD WSHAH

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** October 30, 2007

**REASONS FOR ORDER:** LUTFY C.J.

**DATED:** December 12, 2007

**APPEARANCES:**

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