Date: 20080226

Docket: T-406-07

Citation: 2008 FC 255

Toronto, Ontario, February 26, 2008

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

VARANT PANOSSIAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The issue before the Citizenship Judge (the Judge) was whether the Applicant had satisfied her that he had established and maintained a centralized mode of existence in Canada. In a decision dated January 11, 2007 (the Decision), she concluded that she was not so satisfied and therefore refused his application for Canadian citizenship. These reasons deal with his appeal from that Decision.

BACKGROUND

[2] The Applicant is a citizen of Lebanon by birth. With his brother and parents, he became a permanent resident of Canada on August 8, 1987. However, one month later, on September 6, 1987, the Applicant traveled to Cyprus with his family where he completed his elementary and high school education. He then attended university in the United States and graduated on December 18, 1999 with a Bachelor of Science in Aerospace Engineering. Shortly thereafter, on December 26, 1999, he returned to Canada to seek employment, and in May 2000, he was hired by Goodrich Aerospace Canada Ltd. (Goodrich). It is a Canadian company with facilities in Oakville. The Applicant worked there between May 2000 and January 2002 as a Systems Integrator for Landing Gear and Flight Control Systems. During this period, the Applicant resided in two rented apartments and the Respondent acknowledges that he established his residence in Canada.

[3] However, on January 2, 2002, the Applicant accepted an assignment with Goodrich which took him to Germany for a maximum of one year. That assignment was completed in October 2002. He was immediately assigned to another Goodrich project in the United Kingdom. He stayed there until April 2004 and then accepted a further assignment in France which, although initially for two years, could be extended by agreement. The Applicant continues to work for Goodrich in France today. During these assignments, he kept no residence in Canada and there is no evidence that he left goods in storage here. On his monthly business trips to Canada he stayed in accommodation supplied by Goodrich, with his aunt in Thornhill, Ontario and with his brother at McGill University in Montreal. While overseas, he lived in accommodation provided by Goodrich.

THE CITIZENSHIP APPLICATION

[4] The Applicant's Application for Citizenship was made on April 30, 2004. This meant that the relevant period for examining compliance with the residency requirements in paragraph 5(1)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the Act) runs from April 30, 2000 to April 30, 2004 (the Period).

[5] In the Period, the record is clear that the Applicant was not resident in Canada for the three years or 1095 days required by the Act.

[6] What is not clear is the number of days the Applicant was absent from Canada. He changed the figures three times while his citizenship application was being considered. His initial figure was 731 days absent during the Period. This calculation produced a shortfall of 366 days from the required 1095 days. In his second submission, he reported 681 days absent and his final submission showed that he was away from Canada for 541 days in the Period (or put another way, he was present for 919 days and therefore 176 days short). Because of this substantial change, the Citizenship Judge concluded that she did not have credible evidence on this issue.

THE ISSUES AND THE STANDARD OF REVIEW

[7] In this case, the Judge chose to apply the factors in *Re Koo*, [1993] 1 F.C. 286 (T.D.) at 293-294 to determine whether they suggested that the Applicant had centralized his mode of existence in Canada.

[8] The factors are:

1. was the individual physically present in Canada for a long period prior to recent absences, which occurred immediately before the application for citizenship?
2. where are the applicant's immediate family and dependents (and extended family) resident?
3. does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?
4. what is the extent of the physical absences – if an applicant is only a few days short of the 1095-day total it is easier to find deemed residence than if those absences are extensive?
5. is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, following a course of study abroad as a student, accepting temporary employment abroad, accompanying a spouse who has accepted employment abroad?
6. what is the quality of connection with Canada: is it more substantial than that which exists with any other country?

(Together the *Koo* Factors)

[9] An analysis of the *Koo* Factors involves mixed questions of fact and law. In this particular case, they were largely factual and involved the exercise of discretion and credibility findings. These factors suggest deference.

[10] On the other hand, the presence of a right to appeal and the fact that the inquiry relates to an individual and a lack of relative expertise suggest less deference. In these circumstances, I accept the parties' submissions that reasonableness *simpliciter* is the appropriate standard of review.

THE CITIZENSHIP JUDGE'S DECISION

[11] The Respondent concedes that errors were made in the Decision but submits that none are material. The Applicant, on the other hand, says that many of the errors are material and that the application should be reconsidered by a different Citizenship Judge.

[12] In my view, the following errors were made:

(i) The Applicant returned to Canada in December 1999 and not in May of 2000 as the Decision suggests. Further, the Decision suggests that the Applicant left Canada on November 1, 2001. However, the record is clear that he did not leave for Germany until January 2, 2002. Nevertheless, these errors were not material because the Judge took no issue with the fact that the Applicant initially established his residence in Canada.

(ii) The Decision also suggests that the Applicant surrendered his landing documents. In truth this step was taken by the Applicant's parents when he was still a minor. In any event, the Decision correctly shows that his permanent resident status was reinstated and for this reason I have concluded that this error was not material.

(iii) The Judge also noted that the Applicant's immediate family lived abroad in the Period. This statement was true for the Applicant's parents, but until 2003, the Applicant's brother lived in Montreal while attending McGill University. That said, it is also clear that his brother had not established Canada as his place of residence. He left after graduation and did not return in the Period. For this reason, I have concluded that this error was also immaterial.

(iv) The Decision incorrectly indicates that the Applicant did not have a Canadian driver's licence in the Period. Although he did have a licence, there was no evidence that he kept a car in Canada during the Period so again I have concluded that this error was immaterial.

(v) The Judge concludes that the Applicant's connection to Cyprus and the United States would be closer than his connection to Canada. However, the evidence showed that, in the Period, he was only in Cyprus for six days and in the United States for nineteen days. Nevertheless, I think this error is immaterial because in the Period, the Applicant did not demonstrate a closer connection to Canada than elsewhere. The record shows that at the end of the Period, he had no significant assets in Canada, no immediate family in Canada, no residence and no certainty of employment with Goodrich in Canada once his overseas assignment ended.

(vi) The Decision notes that the Applicant has “some” extended family in Canada. This gives an understated impression because he actually has nineteen extended family members who are Canadian citizens. Nevertheless, the fact that the Applicant has a particular number of family members who are Canadian citizens and residents does not make him a resident. For this reason, the precise size of his extended family is not material.

[13] The Applicant notes that no mention is made of the fact that the Applicant’s employer is a Canadian company, that his assignments were temporary and that the Applicant was required to return to Canada monthly (on average) during his foreign assignments. However, neither an employer’s place of business nor its requirements for visiting head office confer resident status on an absent employee who is an applicant for citizenship, see *Leung, Re* (1991), 42 F.T.R. 149 at paragraph 32. Further, I have determined that the Judge could not properly have described all the assignments as temporary. The one in Germany might be so described but the assignments in the UK and France were not for fixed terms. Each contract could be extended indefinitely as long as the parties agreed and none of the contracts committed the employer to rehiring the Applicant in Canada. Accordingly, in my view, these criticisms do not disclose material errors.

[14] The Applicant says that the Judge erred in failing to make a definitive finding about the Applicant’s days present and absent in the Period. However, given the Judge’s concerns about the Applicant’s credibility, there was no reliable evidence on which she could base a precise finding.

[15] The Judge concluded that the Applicant had not spent a long period resident in Canada before he began to accept overseas assignments. The Applicant says that the period was nearly two years and represented his entire post-graduation life. He says that "long" must be considered in that context and that his stay is improperly described as a "short stay". However, in my view, the Judge did not err. Two years is not a long time. This conclusion is generally consistent with Mr. Justice Mosley's decision in *Khan v. Canada (Minister of Citizenship and Immigration)* 2006 FC 47 in which he upheld a Citizenship Judge's conclusion that eighteen months was not a lengthy stay in Canada.

[16] The Applicant also submits that he was owed a duty of fairness which was violated. The violation allegedly occured because the Act and the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) are at variance in the sense that the residency requirement under the Act to obtain citizenship (subsections 5(1) and 5(1.1)) is different from the residency requirement to retain permanent resident status under the IRPA (section 28) and the Regulations (subsection 61(1) and (3)).

[17] Specifically, the Applicant complains that under IRPA and its Regulations, employment overseas with a Canadian company counts towards fulfillment of his residency obligation while such employment is not provided by the Act as a method of meeting its residency requirement.

[18] In my view, this submission is without merit. There is nothing unfair about Canada's decision to impose more stringent residency obligations on those who choose to apply to become citizens.

CONCLUSION

[19] Although residency was established in the Period, it was not maintained. By choosing to live and work abroad on an ongoing basis through the second half of the Period, the Applicant became a visitor when he returned to Canada to see his relatives and business colleagues. Although he made such trips regularly and spent considerable time here on such visits, and although he based his financial affairs here, those facts did not change the fact that he did not centralize his mode of existence in Canada. He lived and worked abroad.

JUDGMENT

UPON reviewing the material filed and hearing the submissions of counsel for both parties in Toronto on August 27, 2007;

THIS COURT ORDERS AND ADJUDGES that for the reasons given above the appeal is dismissed. No order is made as to costs.

"Sandra J. Simpson"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

Mario Bellissimo	FOR APPLICANT
Linda Chen	FOR RESPONDENT

SOLICITORS OF RECORD:

Mario Bellissimo Barrister and Solicitor Toronto, Ontario	FOR APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Department of Justice Ontario Regional Office Toronto, Ontario	FOR RESPONDENT