Federal Court  Cour fédérale

**Date: 20091007**

**Docket: T-280-09**

**Citation: 2009 FC 1015**

**Ottawa, Ontario, October 7, 2009**

**PRESENT: The Honourable Mr. Justice Kelen**

**BETWEEN:**

**HARNAM SINGH JOHAR**

**Appellant**

**and**

**THE MINISTER OF**
**CITIZENSHIP AND IMMIGATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an appeal pursuant to section 14(5) of the *Citizenship Act*, R.S., 1985, c. C-29 (the Act) of a decision by a Citizenship Judge, dated December 29, 2008, denying the appellant's application for Canadian citizenship on the basis that he did not meet the residency requirement under subsection 5(1)(c) of the Act.

**FACTS**

[2] The 76 year old appellant is a citizen of India. He arrived in Canada and became a permanent resident on April 26, 2000.

[3] The appellant made an application for Canadian citizenship on August 22, 2007 with the assistance of one of his sons, Amardeep Singh Johar. The appellant listed the following absences from Canada, reproduced in a table from para. 3 of the respondent's memorandum of argument:

| **Dates** | **Destination** | **Reasons** | **Duration (Days)** |
|---|---|---|---|
| March 16, 2004 to March 19, 2004 | San Francisco, USA | Vacation | 3 |
| March 15, 2005 to April 18, 2005 | New-Delhi, India | Vacation visiting friends and relatives | 34 |
| April 20, 2005 to April 26, 2005 | Chicago, USA | Vacation, visiting son | 6 |
| May 28, 2005 to May 30, 2005 | San Francisco, USA | Vacation (cruise) | 2 |
| November 7, 2005 to April 15, 2006 | New-Delhi, India | Vacation, visiting friends and relatives | 159 |
| June 25. 2006 to July 2, 2006 | Alaska, USA | Vacation (cruise) | 7 |
| February 21 ,2007 to May 22, 2007 | New-Delhi, India | Vacation, visiting friends and relatives | 90 |
| Total | | | 301 |

[4] The appellant was instructed to attend an interview with the Citizenship Judge on May 21, 2008. The appellant was accompanied to the interview by his son. The interview lasted between 15 and 20 minutes. The appellant was asked for the passport he held when he first came to Canada. The appellant claimed to have lost his passport during a trip to India in around January 16, 2008 and

reported the loss to Indian police on January 18, 2008, which issued him a report that he provided to the Citizenship Judge.

[5] At the conclusion of the interview the appellant was given a Residence Questionnaire and ordered to complete it along with a copy of the appellant's current passport, a police report, fingerprints, membership cards, and any other supporting documentation.

[6] The appellant remitted the requested documentation on May 27, 2008. The Residency Questionnaire contained the same list of absences from Canada that the application of citizenship contained, with the addition of a recent vacation in 2008 that is not material to this proceeding.

[7] On December 29, 2008, the Citizenship Judge denied the application on the basis that the appellant did not meet the residency requirements under Subsection 5(1)(c) of the Act.

**Decision under appeal**

[8] The Citizenship Judge gave some indication of the residency test he was going to follow at the outset of his reasons:

> Before approving an application for a grant of citizenship made under subsection 5(1) of the Act, I must determine whether you meet the requirements of this Act and the regulations, including the requirement set out in paragraph 5(l)( c) to have accumulated **at least three years** (1,095 days) of residence within the four years (1,460 days) immediately preceding the date of your application. *"At least three years" does not mean less time; it means not fewer than three years* [bold in original] [emphasis added].

The Judge indicated that too long of a temporary absence from Canada was contrary to the purposes of the Act.

[9] The Citizenship Judge held that the appellant failed to provide oral or written evidence of the appellant's residence in Canada, except for some membership cards which the Citizenship Judge reasoned only showed passive indications of presence. The Citizenship Judge held at page 2 of his decision:

> Your passport, that you claimed was lost/stolen, presents a problem in validating your absences from Canada. It is noteworthy to mention that the Police Report you submitted of January 18, 2008, was filed in South West Delhi, approximately four months prior to your hearing of May 21, 2008, You completed your Residence Questionnaire on May 23, 2008 and yet within the four months since you reported the lost/stolen passport, you were able to list in incredible detail your various absences from Canada during the relevant period, without the help of your lost passport. (Underlining added by Court.)
>
> Based on the evidence and upon careful review of all the documents, I have determined that you do not meet the residency requirement. The documents you submitted do not prove your physical presence in Canada. You failed to provide consistent and convincing proof of residency in the relevant period. You are unable to produce your original passport from India and I am unable to verify your absences without your original passport. I have concluded that your absences from Canada, as reported on your citizenship application, as well as in your Residence Questionnaire, cannot be relied upon accurately to reflect all of your absences from Canada and your residence here during the relevant period.

[10] The Citizenship Judge appeared to draw an adverse inference from the failure of the appellant to produce the lost passport to verify the dates of absence from Canada and the appellant's

ability to recall the dates of his absence from Canada without the passport which he listed in his application for citizenship and questionnaire.

[11] The Citizenship Judge concluded that the appellant's submissions were unreliable and that insufficient evidence was adduced to prove the appellant's physical presence in Canada.

[12] The Citizenship Judge therefore denied the citizenship application.

**RELEVANT LEGISLATION**

[13] Section 5(1) of the *Citizenship Act* provides:

| | |
|---|---|
| Grant of citizenship | Attribution de la citoyenneté |
| 5. (1) The Minister shall grant citizenship to any person who | 5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois : |
| (*a*) makes application for citizenship; | *a*) en fait la demande; |
| (*b*) is eighteen years of age or over; | *b*) est âgée d'au moins dix-huit ans; |
| (*c*) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner: | *c*) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante : |
| | (i) un demi-jour pour chaque jour de |

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

résidence au Canada avant son admission à titre de résident permanent,

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

[14] Section 14(5) and (6) of the *Citizenship Act* provides that an appellant may appeal the decision of a citizenship judge to this Court, and that the decision of this Court is final:

Appeal

14. (5) The Minister or the appellant may appeal to the Court from the decision of the citizenship judge under subsection (2) by filing a notice of appeal in the Registry of the Court within sixty days after the day on which

(*a*) the citizenship judge approved the application under subsection (2); or

(*b*) notice was mailed or otherwise given under subsection (3) with respect to the application.

Appel

14. (5) Le ministre et le demandeur peuvent interjeter appel de la décision du juge de la citoyenneté en déposant un avis d'appel au greffe de la Cour dans les soixante jours suivant la date, selon le cas :

*a*) de l'approbation de la demande;

*b*) de la communication, par courrier ou tout autre moyen, de la décision de rejet.

| | |
|---|---|
| Decision final<br><br>(6) A decision of the Court pursuant to an appeal made under subsection (5) is, subject to section 20, final and, notwithstanding any other Act of Parliament, no appeal lies therefrom. | Caractère définitif de la décision<br><br>(6) La décision de la Cour rendue sur l'appel prévu au paragraphe (5) est, sous réserve de l'article 20, définitive et, par dérogation à toute autre loi fédérale, non susceptible d'appel. |

**ISSUES**

[15] The appellant raised four issues in this appeal:

a. Did the Citizenship Judge fail to clearly set forth the definition of "residency" that he was applying to the facts of the appellant's case, thereby erring in law in finding that the appellant did not meet the residency requirements set out under subsection 5(1)(c) of the Act?

b. Did the Citizenship Judge fail to cite any case law in support of his decision and in doing so misapplied and misinterpreted the case law as forth in *Re Papadogiorgakis* [1978] 2 F.C.R. 208, per Thurlow A.C.J. and in *Re Koo*, [1993] 1 F.C.R. 286, per Justice Reed?

c. Did the Citizenship Judge make several errors of fact, which cumulatively constitute sufficient grounds to find that the decision to deny the appellant's application for Canadian citizenship was clearly affected by factual errors?

d. Did the Citizenship Judge fail in his to duty to act fairly by not giving the appellant an opportunity to explain the documents submitted at the Citizen Judge's request including the Residence Questionnaire and by failing to give the appellant an opportunity to explain his very short absences from Canada and the fact that the appellant has no other home anywhere in the world other than his son Amardeep's home in Canada?

**STANDARD OF REVIEW**

[16] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question" (see also *Khosa v. Canada (MCI)*, 2009 SCC 12, per Justice Binnie at para. 53).

[17] In *Amoah v. Canada (MCI)*, 2009 FC 775, at para. 14, I held that the appropriate standard of review for all decisions of a citizenship judge is reasonableness (see also *Canada (MCI) v. Aratsu*, 2008 FC 1222, per Justice Russell at paras. 16-20).

[18] The second and third issues touch on matters involving facts and mixed law and facts. A high level of deference needs to be accorded to fact findings and application of law to the facts by the Citizenship Judge. The standard of review of those two issues is therefore reasonableness (*Ghahremani v. Canada (MCI)*, 2009 FC 411, per Justice Beaudry at para. 19).

[19] In reviewing the citizenship judge's decision on a reasonableness standard, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, *supra*, at para. 47, *Khosa*, *supra*, at para. 59). The Court will only intervene if the decision falls outside the "range of possible, acceptable

outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, *supra*, at para. 47, *Khosa*, *supra*, at para. 59).

[20] The first and fourth issues involve questions of law and procedural fairness and as such are reviewable on standard of correctness (see *Baker v. Canada (MCI)*, [1999] 2 S.C.R. 817; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392; *Council of Canadians with Disabilities v. Via Rail Canada Inc.*, [2007] 1 S.C.R. 650; *Khosa*, *supra*, at paras. 43-44).

**ANALYSIS**

[21] At the hearing, I advised the parties that I would allow the appeal based on the duty to act fairly issue, and the interests of justice. However, I will deal with the four issues in the appeal and ably responded to by counsel for the respondent.

**Issue No. 1: Did the Citizenship Judge fail to clearly set forth the definition of "residency" that he was applying to the facts of the appellant's case, thereby erring in law in finding that the appellant did not meet the residency requirements set out under subsection 5(1)(c) of the Act?**

[22] The appellant submits that the Citizenship Judge did not clearly set out which of the residency tests he chose to follow and it is only possible by inference to determine that the "physical presence" test was used.

[23] In *re Citizenship Act* and in *re Antonios E. Papadogiorgakis*, [1978] 2 F.C. 208 (F.C.T.D.), Thurlow A.C.J. set out the "central existence" test such that notwithstanding absences that exceed

the minimum requirements, the application hinges on whether or not the appellant has centralized his ordinary existence in Canada:

> A person with an established home of his own in which he lives does not cease to be resident there when he leaves it for a temporary purpose whether on business or vacation or even to pursue a course of study. The fact of his family remaining there while he is away may lend support for the conclusion that he has not ceased to reside there. The conclusion may be reached, as well, even though the absence may be more or less lengthy. It is also enhanced if he returns there frequently when the opportunity to do so arises.
>
> It is, as Rand J. [*Thomson v. M.N.R.*, [1946] S.C.R. 209] appears to me to be saying in the passage I have read, "chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question"

[24] Justice Dubé restated this test in *Re: Banerjee* (1994), 25 Imm.L.R. (2d) 235 (F.C.T.D.) at 238 as: "It is the quality of the attachment to Canada that is to be ascertained".

[25] The "physical presence" test was set out by Justice Muldoon in *Pourghasemi (Re)*, [1993] F.C.J. No. 232 (F.C.T.D.), which calls for the appellant to be physically present in Canada for the required number of days. Paragraphs 3-4 of the decision read:

> It is clear that the purpose of paragraph 5(1)(c) is to insure that everyone who is granted precious Canadian citizenship has become, or at least has been compulsorily presented with the everyday opportunity to become, "Canadianized". This happens by "rubbing elbows" with Canadians in shopping malls, corner stores, libraries, concert halls, auto repair shops, pubs, cabarets, elevators, churches, synagogues, mosques and temples - in a word wherever one can meet and converse with Canadians - during the prescribed three years. One can observe Canadian society for all its virtues, decadence, values, dangers and freedoms, just as it is. That is little enough time in which to become Canadianized. If a citizenship

> candidate misses that qualifying experience, then Canadian citizenship can be conferred, in effect, on a person who is still a foreigner in experience, social adaptation, and often in thought and outlook. If the criterion be applied to some citizenship candidates, it ought to apply to all. So, indeed, it was applied by Madam Justice Reed in Re Koo, T-20-92, on December 3, 1992 [Please see [1992] F.C.J. No. 1107.], in different factual circumstances, of course.
>
> The statute does not direct the Court to evince sentimentality in order to evade, or to defy the statutory requirement for residence. Perhaps because of misunderstanding of this Court's previous jurisprudence, appellants seem to be advised to keep Canadian bank accounts, magazine subscriptions, medicare cards, lodgings, furniture, other property and good intentions to meet the statutory criterion, in a word, everything except really residing among Canadians in Canada for three out of the previous four years, as Parliament prescribes. One may ask: So what if the would-be citizen be away at school or university? What is the urgency? If the candidate cannot find an adequate school or university in Canada, let him or her study abroad and then come back to Canada in order to comply with the residence requirement.

[26] Finally, with respect to the "centralized existence" test, Justice Reed in *Koo (Re)*, [1993] 1 F.C. 286, [1992] F.C.J. No. 1107 (F.C.T.D.) set out a list of factors which point to sufficient attachment to Canada so as to allow for the granting of citizenship even where a required minimum number of days has not been met:

> The conclusion I draw from the jurisprudence is that the test is whether it can be said that Canada is the place where the appellant "regularly, normally or customarily lives". Another formulation of the same test is whether Canada is the country in which he or she has centralized his or her mode of existence. Questions that can be asked which assist in such a determination 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 appellant'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 appellant is only a few days short of the 1,095-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 the connection with Canada: is it more substantial than that which exists with any other country?

[27] In *Parapatt v. Canada (MCI),* 2002 F.C.T., 221, 112 A.C.W.S. (3d) 426, at para. 9, and 14, I held that any of the tests are applicable, as long as the Citizenship Judge adopts a test and properly applies it without blending it with another test (*Lam v. Canada (Minister of Citizenship and Immigration)* [1999] F.C.J. No. 410; *Canada (Minister of Citizenship and Immigration) v. Mindich,* [1999] F.C.J. No. 978).

[28] The appellant objects to the failure of the decision to explicitly state which test was applied.

[29] The appellant is incorrect in stating that the Citizenship Judge must explicitly state the residency test that was applied. As long as a reviewing court can implicitly identify the test from the face of the decision, the Citizenship Judge's failure to state the test will not constitute a reviewable error (*Kwan v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 738, 107 A.C.W.S.

(3d) 21, per Justice Blanchard at para. 25; Chowdhury v. Canada (MCI), 2009 FC 709, per Deputy Judge Teitelbaum at paras. 56 and 71).

[30] The Citizenship Judge clearly states that in his opinion too long a stay such that the accumulation of days in Canada is less then 1095 days in a 1460 day period is contrary to the Act. The decision does not disclose any discussion of the factors that inform any of the other residency tests.

[31] In my opinion, the Citizenship Judge clearly set out the physical presence test. This ground of review must therefore fail.

**Issue No. 2: Did the Citizenship Judge fail to cite any case law in support of his decision and in doing so misapplied and misinterpreted the case law as forth in *Re Papadogiorgakis* [1978] 2 F.C.R. 208, per Thurlow A.C.J. and in *Re Koo*, [1993] 1 F.C.R. 286, per Justice Reed?**

[32] The appellant submits that the Judge erred in failing to provide case law to support the following statements:

> *"At least three years" does not mean less time; it means not fewer than three years.*
>
> There is Federal Court jurisprudence which does not require physical presence of the appellant for citizenship for the entire 1,095 days, when there are special or exceptional circumstances. However, in my view, too long an absence from Canada, albeit temporary, during the minimum period of time set out in the Act, as in the present case, in contrary to the purpose of the residency requirements of the Act. (underlining by appellant) (emphasis added).

[33] The appellant submits that the phrase “At least three years” does not mean less time; it means not fewer than three years” is incorrect in law in so far as it implies one must be physically present in Canada for no less then 1095 days unless there are “special or exceptional circumstances”, otherwise the application for citizenship will be refused. The appellant bases his argument on the basis of the sheer numerosity of Federal Court decisions that adopt the *Koo, supra*, test, versus the few decisions that uphold the strict physical presence test.

[34] In my view the fact that there are fewer cases upholding the physical presence test then cases upholding the *Koo* test is irrelevant. The Citizenship Judge applied the physical presence test which requires the appellant to be physically present in Canada for 1095 out of the1460 day period mandated by the Act. There is no requirement that the Citizenship Judge cite case law when he decides to apply one of the residency tests as long as there is no error in applying the test.

**[35]** The phrase “At least three years” does not mean less time; it means not fewer than three years” was supported by case law in the Citizenship Judge’s decision, but the exact statement was upheld by Justice Blais (as he then was) in *Rizvi v. Canada (MCI)*, 2005 FC 1641, at para. 12. No reviewable has been disclosed by the appellant in this regard.

**Issue No. 3: Did the Citizenship Judge make several errors of fact, which cumulatively constitute sufficient grounds to find that the decision to deny the appellant’s application for Canadian citizenship was clearly affected by factual errors?**

[36] The appellant submits that the Citizenship Judge erred when he held that the appellant’s lost passport made it problematic to verify the appellant’s absences from Canada, which led the

Citizenship Judge to speculate that the appellant was absent for a longer period then he stated because there was no way he could remember the exact dates of his absences without the lost passport. The Citizenship Judge's decision stated that he did not believe or find credible that the applicant could reliably list his absences from Canada without his passport, and I repeat for ease of reference:

> Your passport, that you claimed was lost/stolen, presents a problem in validating your absences from Canada. It is noteworthy to mention that the Police Report you submitted of January 18, 2008, was filed in South West Delhi, approximately four months prior to your hearing of May 21, 2008, You completed your Residence Questionnaire on May 23, 2008 and yet within the four months since you reported the lost/stolen passport, you were able to list in incredible detail your various absences from Canada during the relevant period, without the help of your lost passport. (Underlining added by Court.)

[37] Prior case law has upheld a Citizenship Judge's unwillingness to rely on information regarding absences from Canada that cannot be verified by a passport examination is reasonably open to it (*Farshchi v. Canada (MCI)*, 2007 FC 487, 157 A.C.W.S. (3d) 701, per Deputy Justice Strayer at para. 11). Justice Tremblay-Lamer has held that a Citizenship Judge is entitled to draw an adverse inference from a failure to produce a passport without explanation (*Farrokhyar v. Canada (MCI)*, 2007 FC 697, 158 A.C.W.S. (3d) 878, per Justice Tremblay-Lamer at para. 23). This jurisprudence is consistent with the general principle that the onus is on the appellant to provide sufficient evidence that they meet the residency requirements as set out in the Act (*Rizvi, supra*, at para. 21).

[38] The determination that the dates of the appellant's absences from Canada as listed by the appellant in the application for citizenship and questionnaire were unreliable was based upon the judge's view that the appellant could not have accurately remembered his absences as listed, and therefore assumed that he likely spent more then 301 days outside Canada.

[39] The appellant had the onus to explain how he was able to recollect the many exact dates of absences without his passport. At the same time, the Citizenship Judge had a duty of fairness at the interview which is discussed as part of the next issue in this case.

**Issue No. 4: Did the Citizenship Judge fail in his to duty to act fairly by not giving the appellant an opportunity to explain the documents submitted at the Citizen Judge's request including the Residence Questionnaire and by failing to give the appellant an opportunity to explain his very short absences from Canada and the fact that the appellant has no other home anywhere in the world other than his son Amardeep's home in Canada?**

[40] The appellant argues that the Citizenship Judge breached procedural fairness when he failed to ask the appellant how he was able to recollect the exact dates of his absences from Canada without his old passport.

[41] The Citizenship Judge is not obligated to provide an appellant with an opportunity to file additional material. The process cannot become a running commentary on the adequacy of the appellant's evidence (*Zheng v. Canada (MCI)*, 2007 FC 1311, 163 A.C.W.S. (3d) 120, per Justice Simpson at para. 14). However, it is well established that an interview with the Citizenship Judge is "clearly intended to provide the candidate the opportunity to answer or, at

the very least, address the concerns which gave rise to the request for an interview in the first place", and when an appellant is deprived of the opportunity to address those concerns, a denial of natural justice occurs (*Stine v. Canada* (MCI), [1999] F.C.J. No. 1264 (QL), 173 F.T.R. 298, per Justice Pelletier at para. 8; *Tshimanga v. Canada (MCI)*, 2005 FC 1579, 151 A.C.W.S. (3d) 18, per Deputy Justice Rouleau at para. 17-19).

[42] The sworn affidavits of the appellant and his son describe the interview with the Citizenship Judge as a "short 15-20 minute" hearing where none of the Citizenship Judge's concerns regarding residency were communicated. Justice Pelletier held at paragraph 9 in *Stine*, *supra*, that natural justice was denied to the appellant where the Citizenship Judge failed to communicate any of the Judge's concerns regarding the residency qualification, thus depriving the appellant from adducing evidence that may have alleviated those concerns.

[43] It was incumbent upon the Citizenship Judge to alert the appellant in the interview that he could not rely on the list of absences from Canada that were provided in the application for citizenship because he did not believe the appellant could remember the dates without his lost passport. This issue of credibility is evident from the Judge's decision. The failure of the Citizenship Judge to raise this credibility concern led the appellant to repeat the mistake by simply listing the same list of absences in the questionnaire. Had the Citizenship Judge raised his concerns regarding the list of absences the appellant could have explained how the list in his Citizenship Application extracted the dates of absences from the old passport before it was lost. The Citizenship Judge did not understand this explanation and thought that the applicant had remembered the exact dates from

memory when completing the second questionnaire several months after the passport was lost or stolen. Once this explanation was produced the Citizenship Judge is at liberty to find this explanation credible or not credible.

[44] In my view the interview was not adequate in that the Citizenship Judge failed to give the appellant an opportunity to address the credibility concerns of the Citizenship Judge regarding his physical presence in Canada.

[45] The appeal is therefore allowed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

The appeal is allowed and the Citizenship application is remitted to another Citizenship Judge to conduct a new interview. The appellant may provide further evidence of residency.

"Michael A. Kelen"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | T-280-09 |
| **STYLE OF CAUSE:** | HARNAM SINGH JOHAR v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | September 30, 2009 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | KELEN J. |
| **DATED:** | October 7, 2009 |

**APPEARANCES:**

| | |
|---|---|
| Gary Segal | FOR THE APPELLANT |
| Nur Muhammed-Ally | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Gary Segal<br>Barrister & Solicitor<br>Rekai Frankel LLP | FOR THE APPELLANT |
| John H. Sims, Q.C.<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |