

Federal Court		Cour fédérale
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Date: 20091022

Docket: T-326-09

Citation: 2009 FC 1069

Toronto, Ontario, October 22, 2009

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

SURASHRI CHATTERJEE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal by the Minister of Citizenship and Immigration (the “Minister”) pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29, from the decision of a Citizenship Judge, dated January 14, 2009, approving the application for Canadian citizenship made by Surashri Chatterjee (the “Respondent”).

BACKGROUND FACTS

[2] The Respondent is a citizen of India. She came to Canada in 1971 and became a permanent resident. She lived in Canada without interruption until 1997. However, at that date, she moved to India with her husband, and took up a teaching position at the Canadian International School in Bangalore, teaching a curriculum approved by the Ontario educational authorities. She returned to Canada in 2006 and now lives in Toronto. She applied for citizenship on February 7, 2007, having been absent from Canada for a total of 1195 days out of the preceding 1460 days. In addition to the periods of time she spent in India, she also made two visits, the first lasting 40 days, and the second, 25 days, to her daughter who lives in California.

[3] The Citizenship Judge approved her application. The Minister is now appealing this decision.

DECISION UNDER REVIEW

[4] The Citizenship Judge's decision is composed of his handwritten notes on the file, along with his handwritten comments on a form that lists the six questions from *Re Koo*, [1993] 1 F.C. 286, (1992) 19 I.L.R. (2d) 1.

[5] He noted that the Respondent had lived in Canada from 1971 to 1997, graduating from McGill University and becoming a teacher.

[6] Further, the Respondent's husband and daughters are Canadian citizens; one of the daughters lives in Canada, while the other lives in the United States. The Respondent also has considerable investments in Canada.

[7] In the Citizenship Judge's view, the pattern of the Respondent's physical presence in Canada was that of a person returning home rather than that of a visitor. Also, when the Respondent was teaching in India, she always returned to Canada for summer and winter breaks.

[8] The Citizenship Judge noted that the Respondent was outside Canada for 1195 days in the four years preceding her application, "teaching Ontario curriculum in a Canadian school established in India, teaching diplomats' children. She was also accompanying her Canadian citizen husband."

[9] The Citizenship Judge found that the Respondent's absence from Canada was caused by a temporary situation. Furthermore, as she was teaching a Canadian curriculum in a Canadian school and interacting with Canadians, "she [could] be considered as if she [was] in Canada".

[10] Finally, he found that the quality of the Respondent's connection with Canada is "very strong." He noted that she set up her existence here, raised two children in Canada and is involved in volunteering.

[11] The Citizenship Judge was satisfied that despite the Respondent's lengthy but temporary physical absence from Canada, she had established her residence here.

PARTIES' SUBMISSIONS

[12] The Minister argues that the Citizenship Judge focused only on the fact that the respondent had previously lived in Canada for an extended period of time instead of properly considering all of the other factors from *Re Koo, supra*.

[13] Furthermore, the Minister submits that this case is not so “close” as to justify a departure from the strict residency requirements of the *Citizenship Act*, because “[t]he Respondent’s travel and residency abroad were substantial, her absences were lengthy, and there was little evidence about her activities in Canada.”

[14] In this respect, the Minister submits that the Citizenship Judge made findings without regard to the evidence. Thus, he found that the Respondent maintained her residence in Canada despite an absence of any evidence about bank accounts, tax payments, or property ownership in Canada while she was living in India. According to the Minister, such documents as the Respondent had submitted indicate that she was resident in India until 2006, and the Citizenship Judge ignored this evidence in making his findings.

[15] For her part, the Respondent stresses the fact that while in India, she was teaching a Canadian curriculum at a school that maintained close ties to Canada. She insists that her classes and other activities she organized had much Canadian content, and that she therefore “remained a de facto Canadian resident.”

ANALYSIS

[16] As the Minister submits, the question whether a person is resident in Canada is a factual one and the applicable standard of review is reasonableness, as Justice Eleanor Dawson confirmed in *Chen v. Canada (Citizenship and Immigration)*, 2008 FC 763, at par. 5. In the present case, the findings of the Citizenship Judge were not reasonable for the following reasons.

[17] There can be no doubt that the Respondent had ample opportunity to become “Canadianized” prior to her departure for India in 1997. Indeed, the Citizenship Judge, in his conclusions, noted that she has a “very good knowledge of Canada.”

[18] But, in accordance with the *Citizenship Act*’s requirements, the case law indicates that a citizenship applicant must submit evidence of sufficient ties to Canada during three of the four years immediately preceding his or her application. The *Re Koo* test, which the Citizenship Judge applied, provides a measure of flexibility in this respect. However in the present case, the evidence tendered by the Respondent, such as tax and utility bills, banking statements, etc., either pre- or post-dates most of the relevant period.

[19] Therefore, though reluctantly, I agree with the Minister that the Citizenship Judge’s finding that the Respondent maintained her residence in Canada while teaching in India is not based on the evidence and is therefore unreasonable. The Citizenship Judge’s reasons note that the Respondent always returned to Canada for vacations, but this seems to be the only foundation for his conclusion that the Respondent continued to call Canada home during her long absence. Given the length of the

Respondent's stay in India, which is her country of citizenship, this is a shaky foundation for the Citizenship Judge's conclusion.

[20] I have sympathy for the Respondent, but she is, ultimately, responsible for her unfortunate situation, since she had, prior to her departure for India in 1997, at least two decades in which she could have made a successful application for the Canadian citizenship.

[21] For these reasons, the appeal is allowed. The Respondent's Citizenship application is remitted for reconsideration by another Citizenship Judge, who will have the opportunity to ask the Respondent to submit additional evidence of her continued residency in Canada during the material period.

JUDGMENT

THIS COURT ORDERS that the appeal is allowed, and the matter be remitted to another Citizenship Judge for re-determination.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-326-09

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND IMMIGRATION
v. SURASHRI CHATTERJEE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 21, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: OCTOBER 22, 2009

APPEARANCES:

Manuel Mendelzon FOR THE APPLICANT

Surashri Chatterjee FOR THE RESPONDENT
(Self-Represented)

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE APPLICANT
Deputy Attorney General of Canada

Surashri Chatterjee FOR THE RESPONDENT
Toronto, Ontario (Self-Represented)