Federal Court  Cour fédérale

Date: 20100218

Docket: T-581-09

Citation: 2010 FC 177

Ottawa, Ontario, February 18, 2010

Present: The Honourable Mr. Justice Harrington

BETWEEN:

ARONCE FERDILUS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Ferdilus is originally from Haiti. He came to Canada as a permanent resident in 2002. In August 2006, he applied for Canadian citizenship. The citizenship judge wrote that, had the provisions of paragraph 5(1)(*c*) of the *Citizenship Act* been different, she would not have hesitated to grant Mr. Ferdilus citizenship. This is the judicial review of that decision.

[2] Paragraph 5(1)(*c*) of the Act reads as follows:

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:
. . .	[…]
(*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) 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	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
(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;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

[3] If Mr. Ferdilus had been absent just 365 days, he would have undoubtedly met the requirements of the Act. However, he was absent 771 days.

[4] The citizenship judge added the following:

> [TRANSLATION]
> Federal Court precedents require that, to establish residence, an individual must show, in mind and in fact, a centralization of his or her mode of living in Canada. If such residence is established, absences from Canada do not affect this residence, as long as it is demonstrated that the individual left for a temporary purpose only and maintained in Canada some real and tangible form of residence.

[5] In light of the facts on file, she was not satisfied that Mr. Ferdilus had centralized his mode of living in Canada. Consequently, she did not approve his application, without prejudice to his right to make a further application based on the four years preceding the date of the new application.

[6] Mr. Ferdilus, who was initially represented by counsel but who represented himself at the hearing, clearly understood that I owe no deference to the citizenship judge if she made an error of law but may allow the appeal against her conclusion that he had not centralized his mode of living in Canada only if this finding was unreasonable.

[7] After arriving in Canada, Mr. Ferdilus spent more than two years here, with the exception of short vacations. He obtained a diploma from the Université de Sherbrooke. He then obtained a position with a Canadian non-governmental organization working in Mali. His contract was renewed twice, but always on a temporary basis. He had no intention of settling in Mali, and, when he went on vacation, he always returned to Canada.

[8] The judge found that Mr. Ferdilus's vacations resembled visits more than returns home.

[9] Mr. Ferdilus also filed evidence of student loans, a warehouse receipt for furniture that he had put in storage during his absence, and a bank statement. However, he did not file any income tax returns, an omission that was noted by the citizenship judge.

[10] At the hearing, Mr. Ferdilus explained that he had been told not to submit tax returns during his absence and that he could do so upon his return. He stated that, had he known that the documents submitted were insufficient, he could have filed others. Whatever the case may be, his comments have no bearing on this appeal.

[11] Unfortunately, three lines of cases have developed in this Court regarding the definition of days of residence for paragraph 5(1)(*c*) of the *Citizenship Act*.

[12] According to one, *Pourghasemi (Re)*, [1993] F.C.J. No. 232, 62 F.T.R. 122, Justice Muldoon clearly drew the line: if you are in the country, you meet the test; if you are not, you do not.

[13] According to another, *Papadougiorgakis (Re)*, [1978] 2 F.C. 208 (T.D.), a decision of Associate Chief Justice Thurlow relying on a tax law concept, the citizenship judge must ask where the applicant has "centralized his [or her] mode of living". In that case, a person may leave Canada temporarily, even for relatively extended periods.

[14] Justice Reed developed this theme in *Koo (Re)*, [1993] 1 F.C. 286 (T.D.), and stated that the test can be formulated two ways: whether Canada is the place where the applicant "regularly, normally or customarily lives" or "whether Canada is the country in which he or she has centralized his or her mode of existence". She then set out six questions "that can be asked which assist in such a determination".

[15] The last two judgments cited above show that it is possible to be in Canada in spirit, if not in person. The choice of approach is immaterial, for, in either case, the first step is to determine whether the applicant has centralized his or her mode of living in Canada.

[16] The citizenship judge found that Mr. Ferdilus had not established that he had centralized his mode of living in Canada. That is therefore the end of the matter. Mr. Ferdilus referred to a permanent resident's rights and obligations (s. 28 of the *Immigration and Refugee Protection Act*). Under section 28, a permanent residence must be resident in Canada for at least 730 days during a five-year period, but subparagraph 28(2)(*a*)(iii) stipulates that the days spent outside Canada employed by a Canadian business are included as residence in Canada.

[17] However, this provision is not part of the *Citizenship Act*, which requires a centralized mode of living in Canada.

[18] When reviewing findings of fact, the Court must show deference and cannot simply substitute its opinion for that of the citizenship judge (*Canada* (*Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 80). The Court may

overturn a decision only when that decision does not fall within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick,* 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47). Since the citizenship judge’s finding is not unreasonable, I must dismiss the appeal, even if I might have come to a different conclusion.

[19] In the exercise of my discretion, there will be no order for costs.

ORDER

THE COURT ORDERS that:

1. The application for judicial review is dismissed.

2. Without costs.

"Sean Harrington"
Judge

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-581-09
STYLE OF CAUSE:	Ferdilus v. MCI
PLACE OF HEARING:	Montréal, Quebec
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APPEARANCES:

Aronce Ferdilus	THE APPLICANT ON HIS OWN BEHALF
Evan Liosis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Aronce Ferdilus Montréal, Quebec	THE APPLICANT ON HIS OWN BEHALF
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT