

Federal Court



Cour fédérale

**Date: 20101116**

**Docket: T-2126-09**

**Citation: 2010 FC 1146**

**Toronto, Ontario, November 16, 2010**

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

**BETWEEN:**

**BALASUBRAMANIAM ALIA BALU  
PADMANABHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant is a permanent resident who applied for Citizenship; the present Application is a challenge to a negative decision of a Citizenship Judge. The decision under review contains the following statements:

You entered Canada and were granted permanent resident status on June 30, 2002. You applied for Canadian Citizenship on June 6, 2007. The relevant time period for the purpose of assessing the residence requirement is from June 6, 2003 to June 6, 2007.

Therefore, you have 1,460 material days. You indicated on your Application for Citizenship, that you were absent from Canada for 129 days during the relevant period. This would give you 1,331 days of physical presence in Canada.

However, having reviewed all of the documentation you submitted, having personally interviewed you and for the reasons below, I am not satisfied, on a balance of probabilities, that the information provided by you accurately reflects the number of days that you were, in fact, physically present in Canada.

The main issue is whether you accumulated at least three years of residence in Canada within the four years immediately preceding the date of your application for Canadian citizenship.

[...]

According to your passport, you have valid UAE Residence Permits covering part of the relevant period. This permit requires you to reside in UAE, it becomes invalidated if you leave for more than six months.

Your passports bear many visas issued in UAE when you declared that you were in Canada. You stated that you couriered the passport to Dubai for issuance of the visas. However, there is a visa from Syrian Arab Republic issued on August 12, 2003, a date you stated you were in Canada. There are quite a number of stamps on your passport showing entries and exits of India which are illegible, and there are also stamps which show departure when you declared as arrival and vice versa. Therefore the dates of your declared absences cannot be verified.

It is impossible for me to determine, on a balance of probabilities, how many days you were actually present in Canada, because there is insufficient evidence of your continued physical presence during the periods when you stated to have been in Canada.

(Tribunal Record, pp. 5-6)

[2] The Applicant's affidavit filed in the present Application contains the explanations provided to the Citizenship Judge at the interview:

10. I declared on my application an absence of 129 days. That was the total amount I was absent from Canada. I have been present in Canada for 1331 within the required four year period. As a Citizen of India, I have only one passport, Issued by the Government of India. I submitted my passport which had stamps for my entries and exits from Canada. Non English stamps were translated by certified translators in Ontario, Canada. After landing in Canada (as a permanent resident) I made seven trips outside of Canada in an effort to network with business people to whom I had provided services while living in the United Arab Emirates. By this I hoped to obtain Consultancy Assignments from overseas for me to do in Canada. The Passport Reflects Entry & Exit Stamps together with Visas taken to facilitate these travels; seven times between 13<sup>th</sup> June, 2003 & 19<sup>th</sup> May, 2004. However I met with Minimal Success in Obtaining Consultancy Assignments to do in Canada, therefore I DECIDED TO FOCUS ON LOCAL CONSULTANCY WORK AND DECIDED TO STOP MY OVERSEAS TRAVEL COMPLETELY and thereby save on travel cost, time & effort.
  
11. After having re-entered Canada 19 May 2004, I remained continuously in Canada until 12 May 2007 when I was absent for one week, returning 19 May, 2007. My passport showed no stamps of entry or exit from Canada between May 19, 2004 and May 12, 2007. I left Canada for one week from May 12, 2007 to May 19, 2007. I did not exit Canada at all between May 19, 2004 and May 12, 2007. The relevant period of time to be considered is between June 7, 2003 and June 6, 2007. I have been outside of Canada for only 129 days within this time period and physically present for 1331 days. Stamps in my passport support the fact that I have been absent from Canada for a total of 129 days and physically present in Canada for 1331 days during the four year period from June 7, 2003 to June 6, 2007.

(Tribunal Record, pp. 9-10)

However, it is very apparent that the Citizenship Judge rejected the Applicant's explanations because he was not believed, but no clear reasons are given in the decision for reaching this conclusion. In my opinion this is unfair. The Applicant is entitled to know why his straight-forward

and apparently truthful explanations were rejected. The Citizenship Judge's failure to provide the reasons constitutes a reviewable error which renders the decision unreasonable.

**ORDER**

**THIS COURT ORDERS that:**

Accordingly, the decision under review is set aside and the matter is referred back for redetermination by a different citizenship judge.

\_\_\_\_\_  
"Douglas R. Campbell"

Judge

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

**DOCKET:** T-2126-09

**STYLE OF CAUSE:** BALASUBRAMANIAM ALIA BALU PADMANABHAN  
v. THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 16, 2010

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** NOVEMBER 16, 2010

**APPEARANCES:**

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