

Federal Court



Cour fédérale

Date: 20110727

Docket: T-58-11

Citation: 2011 FC 936

Ottawa, Ontario, July 27, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

TUNA ONUR

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Dr. Tuna Onur applied for Canadian citizenship in 2008. A citizenship judge concluded that she met the requirements of the *Citizenship Act*, RS 1985, c C-29, including the requirement that she be resident of Canada for three out of the four years preceding her application. While Dr. Onur was not physically present in Canada for the required duration, the judge found, after thoroughly reviewing Dr. Onur's circumstances, that she had firmly established her residency and maintained

sufficiently strong ties here that she could be said to have centralized her mode of existence in Canada for the necessary period of time.

[2] The Minister argues that the judge's decision was unreasonable since Dr. Onur was present in Canada for only 201 days during the relevant time frame, 894 days short of the necessary three years.

[3] In the unique circumstances of this case, I cannot find that the judge's decision was unreasonable based on the evidence. I must, therefore, dismiss this appeal.

II. Factual Background

[4] Dr. Onur arrived in Canada in 1997 on a student visa. She obtained a PhD in earthquake science at the University of British Columbia. She lived here for eight years, leaving only for brief periods of time. She became a permanent resident in 2005. In 2005, she moved to California temporarily to accompany her Canadian husband who was pursuing research toward his doctoral degree at the University of Victoria, also in earthquake science. She applied for Canadian citizenship on their return to British Columbia in 2008.

III. Was the Citizenship Judge's Decision Unreasonable?

[5] As he was entitled to do, the judge applied the test set out in *Koo (Re)* (1992), [1993] 1 FC 286, 59 FTR 27 (TD). The main question under that test is whether the applicant has centralized her

mode of existence in Canada. The judge must consider a number of factors in answering that question.

[6] Here, the judge concluded that the factors weighed in Dr. Onur's favour, as follows:

(i) Was the individual physically present in Canada for a long period prior to recent absences which occurred before the application for Citizenship?

[7] Dr. Onur was absent from Canada only for 124 days between 1997 and 2005. She lived and studied in Canada for over 8 years before her first lengthy absence.

(ii) Where are the applicant's immediate family and dependants and extended family resident?

[8] Dr. Onur's husband and daughter are Canadian citizens and currently reside here. While her parents and sister live in Turkey, her family ties are strong and mainly Canadian.

(iii) Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?

[9] Dr. Onur returned to Canada 24 times since first coming here in 1997. There was no indication of any intention on her part to establish a permanent home outside of Canada since 1997.

The pattern of her travel was clearly one of returning home to Canada.

(iv) What is the extent of the physical absence?

[10] Dr. Onur's absences during the relevant four-year period were considerable. As such, she would have to establish strong ties to Canada for the purposes of meeting the residency requirement under Act.

(v) Is the physical absence caused by a clearly temporary situation?

[11] Dr. Onur's spouse is an expert in earthquake risk assessment and response planning. Completion of his Ph.D. thesis at the University of Victoria required him to spend a significant period studying the social impact of earthquakes in an area which had suffered major earthquake damage in the recent past. Because no part of Canada fit these criteria, he was required to relocate to California. Dr. Onur took a job in California to help support her family while her husband completed his studies. The experience she gained there has been employed to the benefit of Canada since her return.

[12] Once her spouse's research was complete, Dr. Onur and her family returned to Canada, where they have lived and worked since. Dr. Onur and her spouse applied for and were granted Canadian citizenship for their daughter.

[13] Dr. Onur's absence from Canada was "clearly temporary" in support of her husband's course of study, which due to its unusual and specific focus, required on-site research for a lengthy period outside of Canada.

(vi) What is the quality of the connection with Canada?

[14] Dr. Onur clearly established a home and family in Canada prior to leaving for California with her husband in 2005. The Judge noted the following:

- Dr. Onur's husband was born in Canada and had lived here continuously until his research hiatus in California;
- As part of her own Ph.D. research, Dr. Onur studied earthquake risk in southwestern British Columbia, investigating potential damage to buildings built according to Canadian building codes and construction practices;
- She worked for the Government of Canada as a visiting scientist from 2001 to 2005;
- She had taken French language courses in pursuit of professional-level bilingual proficiency;
- She led numerous research projects focused on Canadian earthquake preparedness;

- While in California she maintained professional memberships and contacts with colleagues in Canada;
- She has been widely published in professional journals and the national media;
- She is a member of the National Building Code of Canada's "Standing Committee on Earthquake Design" and was appointed to this body for a five year term in 2009. This position is unpaid, and demonstrates Dr. Onur's commitment to service, volunteering her professional expertise to enhance the safety of Canadians;
- She and her husband currently work in Canada as earthquake research and engineering consultants;
- While in California, both Dr. Onur and her spouse gained valuable technical knowledge and experience which they have since employed to the benefit of Canada;
- They have made daycare arrangements for their daughter in Canada;
- Dr. Onur pays Canadian income and property taxes, has active bank accounts and credit cards in Canada, a Canadian home mortgage, a social insurance number, health card, and driver's licence; and

- Dr. Onur owns no property outside of Canada and has no business, employment, or investments in any other country.

[15] On this basis, the judge concluded that Dr. Onur had solid family, educational and employment ties to Canada which continue to strengthen over time, and only peripheral ties to any other country. He found that Dr. Onur's was an unusual case in that her only major absence from Canada was clearly temporary and part of her husband's course of studies at a Canadian university. While noting that her absence from Canada was unfortunately timed with respect to the residency requirement imposed by the *Citizenship Act*, he found that she was ideally qualified to become a Canadian citizen, has easily been in Canada long enough, and has returned with such regularity, so as to clearly establish that she had centered her mode of existence in Canada, and nowhere but Canada.

[16] I can find no error in the judge's application of the relevant factors. His conclusion falls within the range of possible and defensible outcomes based on the facts and the law and, accordingly, was not unreasonable.

IV. Conclusion and Disposition

[17] On the unique facts of this case, I find that the citizenship judge's decision was not unreasonable. I must, therefore, dismiss this appeal. There is no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The appeal is dismissed;
2. No order as to costs.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-58-11

STYLE OF CAUSE: MCI v TUNA ONUR

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: July 13, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED:

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